

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

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

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.

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

[Caption continued on inside cover]

JOINT APPENDIX – VOLUME 3

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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.

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

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.

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

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.

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

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APPEAL

**U.S. District Court
District of Maryland (Greenbelt)
CIVIL DOCKET FOR CASE #: 8:17-cv-02921-TDC**

Iranian Alliances Across Borders et al v. Trump et al
Assigned to: Judge Theodore D. Chuang
Case in other court: USCA, 17-02232
Cause: 28:1331 Federal Question: Other Civil Rights

Date Filed: 10/02/2017
Jury Demand: None
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: U.S. Government
Defendant

Plaintiff

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Plaintiff

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Iranian Alliances Across Borders

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V.

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the United States*

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Defendant

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Defendant

Kevin K. McAleenan
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Defendant

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Defendant

Rex W. Tillerson
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State*

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Defendant

represented by

JA 1105

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| Date Filed | # | Docket Text |
|------------|-------------------|---|
| 10/02/2017 | 1 | COMPLAINT against All Defendants (Filing fee \$ 400 receipt number 0416-6921812.), filed by Jane Doe #5, Jane Doe #2, John Doe #6, Jane Doe #1, Jane Doe #3, Iranian Alliances Across Borders, Jane Doe #4. (Attachments: # 1 Civil Cover Sheet, # 2 Exhibit Attachment A)(Kies, Marianne) (Entered: 10/02/2017) |
| 10/02/2017 | 2 | NOTICE by Jane Doe #1, Jane Doe #2, Jane Doe #3, Jane Doe #4, Jane Doe #5, John Doe #6, Iranian Alliances Across Borders re 1 Complaint, <i>Summons to Defendant Trump</i> (Attachments: # 1 Supplement Summons to Defendant Duke, # 2 Supplement Summons to Defendant McAleenan, # 3 Supplement Summons to Defendant McCament, # 4 Supplement Summons to Defendant Tillerson, # 5 Supplement Summons to Defendant Sessions, # 6 Supplement Summons to U.S. Attorney Schenning)(Kies, Marianne) (Entered: 10/02/2017) |
| 10/02/2017 | 3 | MOTION for Other Relief <i>for Permission to Proceed Under Pseudonymia, and to Omit Individual Plaintiffs' Home Addresses from Caption</i> by Jane Doe #1, Jane Doe #2, Jane Doe #3, Jane Doe #4, Jane Doe #5, John Doe #6, Iranian Alliances Across Borders (Attachments: # 1 Text of Proposed Order, # 2 Supplement Memorandum ISO Motion, # 3 Affidavit Declaration of Sirine Shebaya)(Kies, Marianne) (Entered: 10/02/2017) |
| 10/02/2017 | 4 | NOTICE of Appearance by Sirine Shebaya on behalf of All Plaintiffs (Shebaya, Sirine) (Entered: 10/02/2017) |
| 10/03/2017 | 5 | Supplemental to 1 Complaint, filed by Jane Doe #1, Jane Doe #2, Jane Doe #3, Jane Doe #4, Jane Doe #5, John Doe #6, Iranian Alliances Across Borders, University of Maryland College Park Chapter <i>Complaint with Corrected Caption</i> (Attachments: # 1 Civil Cover Sheet, # 2 Exhibit Attachment A)(Kies, Marianne) (Entered: 10/03/2017) |
| 10/03/2017 | 6 | Supplemental to 3 MOTION for Other Relief <i>for Permission to Proceed Under Pseudonymia, and to Omit Individual Plaintiffs' Home Addresses from Caption</i> filed by Jane Doe #1, Jane Doe #2, Jane Doe #3, Jane Doe #4, Jane Doe #5, John Doe #6, Iranian Alliances Across Borders, University of Maryland College Park Chapter <i>Motion with Corrected Caption</i> (Attachments: # 1 Text of Proposed Order, # 2 Supplement Memorandum ISO Motion, # 3 Affidavit Declaration of Sirine Shebaya)(Kies, Marianne) (Entered: 10/03/2017) |
| 10/03/2017 | 7 | Local Rule 103.3 Disclosure Statement by Iranian Alliances Across Borders (Shebaya, Sirine) (Entered: 10/03/2017) |
| 10/03/2017 | 8 | NOTICE by Jane Doe #1, Jane Doe #2, Jane Doe #3, Jane Doe #4, Jane Doe #5, John Doe #6, Iranian Alliances Across Borders <i>Plaintiffs' Notice of Relatedness to IRAP v. Trump (No. 17-CV-00361-TDC) Under L.R. 103.1(b)(i)</i> (Kies, Marianne) (Entered: 10/03/2017) |

JA 1106

| | | |
|------------|--------------------|---|
| 10/04/2017 | 9 | Summons Issued 60 days as to Elaine C. Duke, Kevin K. McAleenan, James McCament, Jefferson Beauregard Sessions, III, Rex W. Tillerson, Donald J. Trump, U.S. Attorney and U.S. Attorney General(jf3s, Deputy Clerk) (Entered: 10/04/2017) |
| 10/04/2017 | 10 | MOTION to Appear Pro Hac Vice for Eric Rothschild (Filing fee \$100, receipt number 0416-6926023.) by Jane Doe #1, Jane Doe #2, Jane Doe #3, Jane Doe #4, Jane Doe #5, John Doe #6, Iranian Alliances Across Borders(Katskee, Richard) (Entered: 10/04/2017) |
| 10/04/2017 | 11 | MOTION to Appear Pro Hac Vice for Andrew L. Nellis (Filing fee \$100, receipt number 0416-6926052.) by Jane Doe #1, Jane Doe #2, Jane Doe #3, Jane Doe #4, Jane Doe #5, John Doe #6, Iranian Alliances Across Borders(Katskee, Richard) (Entered: 10/04/2017) |
| 10/04/2017 | 12 | MOTION to Appear Pro Hac Vice for Johnathan J. Smith (Filing fee \$100, receipt number 0416-6927207.) by Jane Doe #1, Jane Doe #2, Jane Doe #3, Jane Doe #4, Jane Doe #5, John Doe #6, Iranian Alliances Across Borders(Shebaya, Sirine) (Entered: 10/04/2017) |
| 10/05/2017 | | Case Reassigned to Judge Theodore D. Chuang. Judge George Jarrod Hazel no longer assigned to the case. (ko, Deputy Clerk) (Entered: 10/05/2017) |
| 10/05/2017 | 13 | CASE MANAGEMENT ORDER. Signed by Judge Theodore D. Chuang on 10/5/2017. (jf3s, Deputy Clerk) (Entered: 10/05/2017) |
| 10/05/2017 | 14 | PAPERLESS ORDER granting 10 Motion to Appear Pro Hac Vice on behalf of Eric Rothschild. Directing attorney Eric Rothschild to register online for CM/ECF at http://www.mdd.uscourts.gov/electronic-case-filing-registration . Signed by Clerk on 10/5/2017. (srd, Deputy Clerk) (Entered: 10/05/2017) |
| 10/05/2017 | 15 | PAPERLESS ORDER granting 11 Motion to Appear Pro Hac Vice on behalf of Andrew Nellis. Directing attorney Andrew Nellis to register online for CM/ECF at http://www.mdd.uscourts.gov/electronic-case-filing-registration . Signed by Clerk on 10/5/2017. (srd, Deputy Clerk) (Entered: 10/05/2017) |
| 10/05/2017 | 16 | PAPERLESS ORDER granting 12 Motion to Appear Pro Hac Vice on behalf of Johnathan James Smith. Directing attorney Johnathan James Smith to register online for CM/ECF at http://www.mdd.uscourts.gov/electronic-case-filing-registration . Signed by Clerk on 10/5/2017. (srd, Deputy Clerk) (Entered: 10/05/2017) |
| 10/05/2017 | 17 | NOTICE of Intent to file Motion by Jane Doe #1, Jane Doe #2, Jane Doe #3, Jane Doe #4, Jane Doe #5, John Doe #6, Iranian Alliances Across Borders (Katskee, Richard) (Entered: 10/05/2017) |
| 10/05/2017 | 18 | NOTICE of Appearance by Mark Henry Lynch on behalf of Jane Doe #1, Jane Doe #2, Jane Doe #3, Jane Doe #4, Jane Doe #5, John Doe #6, Iranian Alliances Across Borders (Lynch, Mark) (Entered: 10/05/2017) |
| 10/05/2017 | 19 | MOTION to Appear Pro Hac Vice for Mark W. Mosier (Filing fee \$100, receipt number 0416-6929948.) by Jane Doe #1, Jane Doe #2, Jane Doe #3, Jane Doe #4, Jane Doe #5, John Doe #6, Iranian Alliances Across Borders(Lynch, Mark) (Entered: 10/05/2017) |

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| 10/05/2017 | 20 | MOTION to Appear Pro Hac Vice for Jose Arvelo (Filing fee \$100, receipt number 0416-6929965.) by Jane Doe #1, Jane Doe #2, Jane Doe #3, Jane Doe #4, Jane Doe #5, John Doe #6, Iranian Alliances Across Borders(Lynch, Mark) (Entered: 10/05/2017) |
| 10/05/2017 | 21 | MOTION to Appear Pro Hac Vice for John W. Sorrenti (Filing fee \$100, receipt number 0416-6929971.) by Jane Doe #1, Jane Doe #2, Jane Doe #3, Jane Doe #4, Jane Doe #5, John Doe #6, Iranian Alliances Across Borders(Lynch, Mark) (Entered: 10/05/2017) |
| 10/05/2017 | 22 | MOTION to Appear Pro Hac Vice for Rebecca G. Van Tassell (Filing fee \$100, receipt number 0416-6929980.) by Jane Doe #1, Jane Doe #2, Jane Doe #3, Jane Doe #4, Jane Doe #5, John Doe #6, Iranian Alliances Across Borders(Lynch, Mark) (Entered: 10/05/2017) |
| 10/05/2017 | 23 | Case Management Conference held on 10/5/2017 before Judge Theodore D. Chuang.(FTR- S.Smith-2B.) (ss5s, Deputy Clerk) (Entered: 10/05/2017) |
| 10/05/2017 | 24 | NOTICE of Appearance by Daniel Stephen Garrett Schwei on behalf of All Defendants (Schwei, Daniel) (Entered: 10/05/2017) |
| 10/05/2017 | 25 | ORDER granting Plaintiffs leave to file the Proposed Motion for Preliminary Injunction; scheduling a Motion Hearing for October 17, 2017 at 9:30 a.m. Signed by Judge Theodore D. Chuang on 10/5/2017. (jf3s, Deputy Clerk) (Entered: 10/06/2017) |
| 10/06/2017 | 26 | MOTION for Preliminary Injunction by Jane Doe #1, Jane Doe #2, Jane Doe #3, Jane Doe #4, Jane Doe #5, John Doe #6, Iranian Alliances Across Borders (Attachments: # 1 Text of Proposed Order, # 2 Supplement Memorandum ISO Motion, # 3 Exhibit 1 (Kharrazi Decl.), # 4 Exhibit 2 (Doe #1 Decl.), # 5 Exhibit 3 (Doe #2 Decl.), # 6 Exhibit 4 (Doe #3 Decl.), # 7 Exhibit 5 (Doe #5 Decl.), # 8 Exhibit 6 (Doe #6 Decl.))(Lynch, Mark) (Entered: 10/06/2017) |
| 10/10/2017 | 27 | NOTICE rescheduling the Hearing on the Motions for Preliminary Injunction for October 16, 2017 at 2:00 p.m. at the United States Courthouse at 6500 Cherrywood Lane in Greenbelt, Maryland. (signed by Judge Theodore D. Chuang 10/10/2017). (tds, Deputy Clerk) (Entered: 10/10/2017) |
| 10/11/2017 | 28 | QC NOTICE: 19 Motion to Appear Pro Hac Vice, filed by Jane Doe #4, Jane Doe #2, Iranian Alliances Across Borders, Jane Doe #5, Jane Doe #1, John Doe #6, Jane Doe #3 needs to be modified. See attachment for details and corrective actions needed regarding the signature(s) on the motion. (srds, Deputy Clerk) (Entered: 10/11/2017) |
| 10/11/2017 | 29 | QC NOTICE: 20 Motion to Appear Pro Hac Vice, filed by Jane Doe #4, Jane Doe #2, Iranian Alliances Across Borders, Jane Doe #5, Jane Doe #1, John Doe #6, Jane Doe #3 needs to be modified. See attachment for details and corrective actions needed regarding the signature(s) on the motion. (srds, Deputy Clerk) (Entered: 10/11/2017) |
| 10/11/2017 | 30 | QC NOTICE: 21 Motion to Appear Pro Hac Vice, filed by Jane Doe #4, Jane Doe #2, Iranian Alliances Across Borders, Jane Doe #5, Jane Doe #1, John Doe #6, Jane Doe #3 needs to be modified. See attachment for details and corrective |

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| | | actions needed regarding the signature(s) on the motion. (srds, Deputy Clerk) (Entered: 10/11/2017) |
| 10/11/2017 | 31 | QC NOTICE: 22 Motion to Appear Pro Hac Vice, filed by Jane Doe #4, Jane Doe #2, Iranian Alliances Across Borders, Jane Doe #5, Jane Doe #1, John Doe #6, Jane Doe #3 needs to be modified. See attachment for details and corrective actions needed regarding the signature(s) on the motion. (srds, Deputy Clerk) (Entered: 10/11/2017) |
| 10/11/2017 | 32 | CORRECTED MOTION to Appear Pro Hac Vice for Jose Arvelo by Jane Doe #1, Jane Doe #2, Jane Doe #3, Jane Doe #4, Jane Doe #5, John Doe #6, Iranian Alliances Across Borders. The fee has already been paid.(Lynch, Mark) (Entered: 10/11/2017) |
| 10/11/2017 | 33 | CORRECTED MOTION to Appear Pro Hac Vice for Mark W. Mosier by Jane Doe #1, Jane Doe #2, Jane Doe #3, Jane Doe #4, Jane Doe #5, John Doe #6, Iranian Alliances Across Borders. The fee has already been paid.(Lynch, Mark) (Entered: 10/11/2017) |
| 10/11/2017 | 34 | CORRECTED MOTION to Appear Pro Hac Vice for John W. Sorrenti by Jane Doe #1, Jane Doe #2, Jane Doe #3, Jane Doe #4, Jane Doe #5, John Doe #6, Iranian Alliances Across Borders. The fee has already been paid.(Lynch, Mark) (Entered: 10/11/2017) |
| 10/11/2017 | 35 | CORRECTED MOTION to Appear Pro Hac Vice for Rebecca G. Van Tassell by Jane Doe #1, Jane Doe #2, Jane Doe #3, Jane Doe #4, Jane Doe #5, John Doe #6, Iranian Alliances Across Borders. The fee has already been paid.(Lynch, Mark) (Entered: 10/11/2017) |
| 10/12/2017 | 36 | RESPONSE in Opposition re 26 MOTION for Preliminary Injunction filed by Elaine C. Duke, Kevin K. McAleenan, James McCament, Jefferson Beauregard Sessions, III, Rex W. Tillerson, Donald J. Trump.(Schwei, Daniel) (Entered: 10/12/2017) |
| 10/12/2017 | 37 | AMENDED COMPLAINT against All Defendants, filed by Jane Doe #5, Jane Doe #2, John Doe #6, Jane Doe #1, Jane Doe #3, Iranian Alliances Across Borders, Jane Doe #4. (Attachments: # 1 Attachment A (Proclamation), # 2 Comparison Document)(Lynch, Mark) (Entered: 10/12/2017) |
| 10/13/2017 | 38 | MOTION for Leave to File Two Additional Declarations in Support of Plaintiffs' Motion for a Preliminary Injunction re 26 MOTION for Preliminary Injunction by Jane Doe #1, Jane Doe #2, Jane Doe #3, Jane Doe #4, Jane Doe #5, John Doe #6, Iranian Alliances Across Borders (Attachments: # 1 Proposed Order, # 2 Memorandum in Support of Motion, # 3 Exhibit A, # 4 Exhibit B, # 5 Exhibit C)(Lynch, Mark) (Entered: 10/13/2017) |
| 10/13/2017 | 39 | PAPERLESS ORDER granting 32 Corrected Motion to Appear Pro Hac Vice on behalf of Jose Arvelo. Directing attorney Jose Arvelo to register online for CM/ECF at http://www.mdd.uscourts.gov/electronic-case-filing-registration . Signed by Clerk on 10/13/2017. (cs3, Deputy Clerk) (Entered: 10/13/2017) |
| 10/13/2017 | 40 | PAPERLESS ORDER granting 33 Corrected Motion to Appear Pro Hac Vice on behalf of Mark W Mosier. Directing attorney Mark W Mosier to register |

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| | | online for CM/ECF at http://www.mdd.uscourts.gov/electronic-case-filing-registration . Signed by Clerk on 10/13/2017. (cs3, Deputy Clerk) (Entered: 10/13/2017) |
| 10/13/2017 | 41 | PAPERLESS ORDER granting 34 Corrected Motion to Appear Pro Hac Vice on behalf of John W. Sorrenti. Directing attorney John W. Sorrenti to register online for CM/ECF at http://www.mdd.uscourts.gov/electronic-case-filing-registration . Signed by Clerk on 10/13/2017. (cs3, Deputy Clerk) (Entered: 10/13/2017) |
| 10/13/2017 | 42 | PAPERLESS ORDER granting 35 Corrected Motion to Appear Pro Hac Vice on behalf of Rebecca G Van Tassell. Directing attorney Rebecca G Van Tassell to register online for CM/ECF at http://www.mdd.uscourts.gov/electronic-case-filing-registration . Signed by Clerk on 10/13/2017. (cs3, Deputy Clerk) (Entered: 10/13/2017) |
| 10/14/2017 | 43 | REPLY to Response to Motion re 26 MOTION for Preliminary Injunction filed by Jane Doe #1, Jane Doe #2, Jane Doe #3, Jane Doe #4, Jane Doe #5, John Doe #6, Iranian Alliances Across Borders.(Lynch, Mark) (Entered: 10/14/2017) |
| 10/16/2017 | 44 | Preliminary Injunction Hearing held on 10/16/2017 before Judge Theodore D. Chuang.(Court Reporter: Lisa Bankins - 4C) (klss, Deputy Clerk) (Entered: 10/16/2017) |
| 10/17/2017 | 46 | MEMORANDUM OPINION. Signed by Judge Theodore D. Chuang on 10/17/2017. (kns, Deputy Clerk) (Entered: 10/18/2017) |
| 10/17/2017 | 47 | ORDER granting in part and denying in part 26 Motion for Preliminary Injunction. Signed by Judge Theodore D. Chuang on 10/17/2017. (kns, Deputy Clerk) (Entered: 10/18/2017) |
| 10/18/2017 | 45 | PAPERLESS ORDER granting 38 Motion for Leave to File Additional Declarations as to Additional Plaintiffs. See generally Fed. R. Civ. P. 15(a)(2) (instructing courts to "freely give leave when justice so requires"). Signed by Judge Theodore D. Chuang on 10/18/2017. (nr, Chambers) (Entered: 10/18/2017) |
| 10/18/2017 | 48 | MOTION to Appear Pro Hac Vice for Karun Tilak (Filing fee \$100, receipt number 0416-6950302.) by Jane Doe #1, Jane Doe #2, Jane Doe #3, Jane Doe #4, Jane Doe #5, John Doe #6, Iranian Alliances Across Borders(Lynch, Mark) (Entered: 10/18/2017) |
| 10/18/2017 | 49 | PAPERLESS ORDER granting 48 Motion to Appear Pro Hac Vice on behalf of Karun Tilak. Directing attorney Karun Tilak to use the attorney's existing CM/ECF login and password previously issued in this Court. The account password can be reset at http://www.mdd.uscourts.gov/electronic-case-filing-password-reset . Signed by Clerk on 10/18/2017. (srd, Deputy Clerk) (Entered: 10/18/2017) |
| 10/20/2017 | 50 | NOTICE OF APPEAL as to 47 Order on Motion for Preliminary Injunction, 46 Memorandum Opinion by Elaine C. Duke, Kevin K. McAleenan, James McCament, Jefferson Beauregard Sessions, III, Rex W. Tillerson, Donald J. Trump. (Schwei, Daniel) (Entered: 10/20/2017) |

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| 10/20/2017 | 51 | Transmission of Notice of Appeal and Docket Sheet to US Court of Appeals re 50 Notice of Appeal. IMPORTANT NOTICE: To access forms which you are required to file with the United States Court of Appeals for the Fourth Circuit please go to http://www.ca4.uscourts.gov and click on Forms & Notices.(kns, Deputy Clerk) (Entered: 10/20/2017) |
| 10/20/2017 | 52 | USCA Case Number 17-2232 for 50 Notice of Appeal filed by Jefferson Beauregard Sessions, III, Rex W. Tillerson, Elaine C. Duke, Kevin K. McAleenan, James McCament, Donald J. Trump. Case Manager - RJ Warren. (kns, Deputy Clerk) (Entered: 10/20/2017) |
| 10/20/2017 | 53 | ORDER of USCA consolidating Case No. 17-2231(L) with Case No. 17-2232 and Case No. 17-2233 as to 50 Notice of Appeal filed by Jefferson Beauregard Sessions, III, Rex W. Tillerson, Elaine C. Duke, Kevin K. McAleenan, James McCament, Donald J. Trump. (kns, Deputy Clerk) (Entered: 10/20/2017) |
| 10/20/2017 | 54 | NOTICE by Jane Doe #1, Jane Doe #2, Jane Doe #3, Jane Doe #4, Jane Doe #5, John Doe #6, Iranian Alliances Across Borders re 43 Reply to Response to Motion, <i>Notice of Filing of Joint Record</i> (Attachments: # 1 Exhibit Joint Record 1-10, # 2 Exhibit Joint Record 11-35, # 3 Exhibit Joint Record 36-42, # 4 Exhibit Joint Record 43-46, # 5 Exhibit Joint Record 47-50, # 6 Exhibit Joint Record 51-54, # 7 Exhibit Joint Record 55-59, # 8 Exhibit Joint Record 60-61, # 9 Exhibit Joint Record 62-65, # 10 Exhibit Joint Record 66-184, # 11 Exhibit Joint Record 185-303, # 12 Exhibit Joint Record 304-420, # 13 Exhibit Joint Record 421-764, # 14 Exhibit Joint Record 765-776)(Kies, Marianne) (Entered: 10/20/2017) |

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| Description: | Docket Report | Search Criteria: | 8:17-cv-02921-TDC |
| Billable Pages: | 16 | Cost: | 1.60 |

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

IRANIAN ALLIANCES ACROSS BORDERS
154 Grand Street
New York, NY 10013

IRANIAN STUDENTS' FOUNDATION,
IRANIAN ALLIANCES ACROSS BORDERS
AFFILIATE AT THE UNIVERSITY OF
MARYLAND COLLEGE PARK
3792 Campus Drive
College Park, MD 20742

DOE PLAINTIFFS 1–6¹

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as
President of the United States
1600 Pennsylvania Avenue
Washington, DC 20500

ELAINE C. DUKE, in her official capacity as
Acting Secretary of Homeland Security
3801 Nebraska Avenue NW
Washington, DC 20016

KEVIN K. MCALEENAN, in his official
capacity as Acting Commissioner of U.S.
Customs and Border Protection
1300 Pennsylvania Avenue NW
Washington, DC 20229

Case No. 17-cv-02921
Judge Chuang

FIRST AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF

¹ All of the individual Plaintiffs moved to waive their obligations under Local Rule 102.2(a) to provide addresses, on the basis of their objectively reasonable fear that publicizing their home addresses would subject Plaintiffs to harassment (potentially including violence) and threats. As set forth below, at least three of the “Doe” Plaintiffs reside in Montgomery County, Maryland. For similar reasons, all Plaintiffs moved to proceed anonymously.

JAMES MCCAMENT, in his official capacity as
Acting Director of U.S. Citizenship and
Immigration Services
20 Massachusetts Avenue NW
Washington, DC 20008

REX W. TILLERSON, in his official capacity as
Secretary of State
2201 C Street NW
Washington, DC 20037

JEFFERSON BEAUREGARD SESSIONS III,
in his official capacity as Attorney General of the
United States
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530-0001

Defendants.

INTRODUCTION

1. Plaintiffs bring this case to challenge President Donald J. Trump's latest attempt to implement an unlawful Muslim ban, this time through the "Presidential Proclamation Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats" ("the Proclamation") issued on September 24, 2017 (**Attachment A** to this Complaint). Plaintiffs are United States citizens and Lawful Permanent Residents with bona fide relationships with current or potential applicants for immigrant and non-immigrant visas to the United States from the countries affected by the Proclamation, as well as two organizations of similarly situated individuals.

2. President Trump has been consistent and clear about his intention to restrict Muslims from entering the United States. Beginning on December 7, 2015, he called for "a total and complete shutdown of Muslims entering the United States." Throughout the remainder of

his campaign, he pledged to follow through on this promise in terms that explicitly discriminated against Muslims.

3. In the first days of his presidency, President Trump sought to fulfill this campaign promise by signing Executive Order 13769, entitled “Protecting the Nation from Foreign Terrorist Entry into the United States” (the “First Executive Order”). On its face, the First Executive Order restricted travel to the United States for 90 days for nationals of seven countries, all Muslim-majority countries. It also put in effect a world-wide ban on refugees, with certain exceptions for those of minority religious faiths. The First Executive Order spurred significant litigation in several district courts and was enjoined on a national basis on February 3, 2017, on a finding that the plaintiffs showed they were likely to succeed on the merits of their constitutional challenges, or, in the alternative, that “they have established at least serious questions going to the merits of their claims and the balance of equities tips sharply in their favor.” *Washington v. Trump*, No. 2:17-cv-00141-JLR, ECF 52 at 4 (W.D. Wash. Feb. 3, 2017).

4. On March 6, 2017, President Trump rescinded and replaced the First Executive Order with Executive Order 13780 (the “Second Executive Order”). The Second Executive Order had the same purpose and effect as the first: Both were designed to, and did, prevent Muslims from entering the United States. The major provisions of the two orders were nearly identical. Both included language reflecting bigotry, implicitly associating Muslims with violence and terrorism. The Second Executive Order suffered from the same fundamental constitutional and statutory defects as the first, so it too was blocked by the courts. *Hawaii v. Trump*, 859 F.3d 741 (9th Cir. 2017); *Int’l Refugee Assistance Project v. Trump*, 857 F.3d 554 (4th Cir. 2017) (en banc). The Supreme Court narrowed these two preliminary injunctions to enjoin the application of the relevant provisions with respect to visitors and immigrants to the

United States only if they have a bona fide relationship with a U.S. individual or entity. *Trump v. Int'l Refugee Assistance Project*, 137 S. Ct. 2080 (2017).²

5. In a continuation of his unlawful Muslim ban, on September 24, 2017, President Trump issued the Proclamation, which suspends categorically and indefinitely, without a specified expiration date, the entry into the United States of nationals of five of the six countries included in the Second Executive Order (Iran, Libya, Syria, Yemen, and Somalia), as well as yet another Muslim-majority country (Chad). In an effort to disguise the Proclamation's targeting of Muslims, the Proclamation adds North Korea, even though virtually no North Korean nationals travel to the United States, and adds Venezuela, but then imposes only limited restrictions on the non-immigrant entry of just a small group of Venezuelan government officials and their immediate family members.

6. Despite President Trump's attempts to cloak this latest iteration of his Muslim ban in religiously neutral garb by invoking a national security review and including North Korea and Venezuela, the purpose and effect of the Proclamation remain unchanged: to keep Muslims from entering the United States.

7. The Proclamation penalizes the nationals of the targeted Muslim-majority countries without adequate determinations or findings as to a detrimental impact on the interests of the United States of any of those particular nationals, and it harms U.S. citizens and U.S. Lawful Permanent Residents with family or business ties to these countries—particularly those with bona fide relationships with current or potential applicants for immigrant and non-

² On October 10, 2017, the Supreme Court vacated as moot the judgment in *Trump v. Int'l Refugee Assistance Project*, No. 16-1436, ___ S. Ct. ___, 2017 WL 4518553 (Oct. 10, 2017).

immigrant visas to the United States from the countries affected by the Proclamation—as well as organizations of similarly situated individuals.

8. The Proclamation, like the First and Second Executive Orders that preceded it, violates the Immigration and Nationality Act’s prohibition against discrimination in the issuance of immigrant visas, 8 U.S.C. § 1152(a)(1), and exceeds the President’s authority under the Immigration and Nationality Act’s provisions delineating classes of aliens ineligible for visas or admission and the nature of Presidential suspension that is authorized, 8 U.S.C. § 1182.

9. The Proclamation, like the First and Second Executive Orders that preceded it, violates fundamental, dearly held constitutional protections. It violates the guarantees that the government will not establish, favor, discriminate against, denigrate, or condemn any religion; the guarantee of freedom of speech; and the guarantee of equal protection of the law. It betrays our nation’s most central principles and forsakes our common heritage as a country founded in part on the principle of freedom from religious persecution.

10. As a result of the Proclamation, the individual Plaintiffs and some members of the Iranian Students’ Foundation (“ISF”) are cut off from their family members, unable to have their relatives visit under tourist visas or join them as immigrants to the United States. Specifically, some members of the community ISF serves will not be able to have their families attend commencement celebrations in the winter and spring. ISF also expects a reduction in membership because the Proclamation will make it difficult for future Iranian students to come to the University of Maryland and join the group. The Proclamation violates the Immigration and Nationality Act, constitutes an exercise of authority in excess of the Act, and violates the Establishment Clause and due process and equal protection guarantees of the Fifth Amendment. Plaintiffs Iranian Alliances Across Borders (“IAAB”) and ISF suffer further harms to their

constitutionally-protected rights to engage in the free flow of ideas and association under the First Amendment.

PARTIES

A. The Plaintiffs

11. IAAB is a national organization, founded in 2003 by Iranian-American university students. Its mission is to strengthen the Iranian diaspora community through leadership and educational programming that encourages collaboration and solidarity across borders and between communities. IAAB organizes camps for youths, regional summits, Persian-language educational events, international conferences on the Iranian diaspora, and other activities, and in so doing is in the practice of inviting prominent scholars and other participants from outside the country, including from Iran, to the United States for its events. IAAB affiliates through its Campus Action Network with a national network of affiliated Iranian-American student groups and representatives, including groups at the University of Maryland, College Park, one of the biggest and most active Iranian-American student groups in the nation, and a group at the University of Maryland in Baltimore.

12. ISF is an affiliate of IAAB. It is a student group at the University of Maryland, College Park and is one of the oldest Iranian student organizations in the country. ISF has over 30 active student members at any given time, with many more participants attending events and meetings throughout the year. Most of ISF's members are first generation Iranian-Americans, but some members hold student visas and others are non-Iranian. ISF holds weekly general body meetings, fundraising events, and social events for students. It also regularly organizes conferences and events with attendees and leaders from across the country. ISF hosts cultural celebrations for the Iranian community that are attended by University students, alumni, and members of the community. ISF provides its members and prospective members with

opportunities to meet others with similar interests and backgrounds. It also seeks to keep the rich Persian history and culture alive for the descendants of that nation and all interested in the culture.

13. Doe Plaintiff #1 is a U.S. citizen of Iranian origin who fled religious persecution in Iran. From 2015 to 2016, she lived in Bethesda, Maryland, and was looking forward to building her life there. She met her now-husband in 2015, and they married in 2016. Because her husband does not have permission to reside in the United States, she relocated to the United Arab Emirates on a temporary basis to live with him while his visa application to the United States was being processed. She submitted an I-130 form for her husband in June 2016, and the request was approved on September 20, 2017. She fears that due to the Proclamation, his visa will now be suspended and they will be indefinitely banned from building their life together in Maryland as they had hoped. Their residency status in the United Arab Emirates is uncertain; they can never receive permanent residency and must continue to reapply for temporary residency every three years. They would face persecution if forced to return to Iran.

14. Doe Plaintiff #2 is a U.S. citizen of Iranian origin. She was born in the United States and has lived in Maryland ever since. She graduated from the University of Maryland, College Park in 2017 and continues to live and work in Maryland. In February 2017, she applied for a K-visa for her fiancé, who is Iranian. He completed his interview at the U.S. Embassy in Ankara, Turkey on August 4, 2017, and she is awaiting a final response on his application. If the visa is not granted by October 18, 2017, Doe Plaintiff #2 will be separated indefinitely from her fiancé, and will be forced to choose between the only home she has ever known and the love of her life.

15. Doe Plaintiff #3 is a U.S. citizen of Iranian origin. She became a U.S. citizen in 1994. She has lived in Montgomery County, Maryland for many years and has been a special-education teacher for Montgomery County Public Schools since 2006. She has a pending I-130 application for her younger brother, who is the only remaining family member in Iran. Her mother, father, and two brothers are all in the United States. If the Proclamation goes into full effect on October 18, processing of her petition will be suspended and she will be indefinitely banned from reuniting here with her brother.

16. Doe Plaintiff #4 is a U.S. citizen of Iranian origin. She has lived in the United States since 1978 and is a resident of Montgomery County, Maryland. She has a pending I-130 application on behalf of her sister, who is 72 years old and remains in Iran. If the Proclamation goes into full effect on October 18, the processing of her application will be suspended and she will be indefinitely banned from reuniting here with her sister.

17. Doe Plaintiff #5 is an elderly Iranian national and a Lawful Permanent Resident of the United States, who resides in Montgomery County, Maryland. She has been in the United States since 2010 and lives with her husband and her U.S. citizen son. She applied to sponsor her second son shortly after she became a resident, and her I-130 application was approved in November 2010. In December 2016, her son received a letter scheduling his interview at the U.S. Embassy in Ankara, Turkey for February 5, 2017. Because of the First Executive Order, that interview was canceled. After the First Executive Order was enjoined by the courts, his interview was rescheduled for March 20, 2017. He completed the interview and is now awaiting final approval to come to the United States. Doe Plaintiff #5 is in desperate need of her son's presence, as she is wheelchair-bound. Her husband, who is 90 years old, also has significant health problems. Her U.S. citizen son is their only caretaker, and they all need the assistance of

her other son. If the Proclamation goes into full effect on October 18, the processing of his application will be suspended and Doe Plaintiff #5 will be indefinitely banned from reuniting with her son.

18. Doe Plaintiff #6 is an Iranian national and a Lawful Permanent Resident of the United States, who resides in Maryland. He has lived in the United States for five years and works as an engineer. His wife, who also resides in Maryland, is Iranian and is employed at the National Institutes of Health as a biochemistry researcher. She has a Ph.D. in Chemistry from Johns Hopkins University. They have together made their home in Maryland. His mother-in-law and sister-in-law have each applied for business/tourist (B1/B2) visitor visas in order to come visit them, and both had their interviews at the U.S. Embassy in Dubai on January 5, 2017. If their visitor visas are not issued before the Proclamation goes into full effect on October 18, they will be indefinitely banned from coming to the United States to visit their son-in-law and brother-in-law, as well as their daughter and sister, and they will be separated indefinitely from some of their closest and dearest family members.

B. The Defendants

19. Defendant Donald J. Trump is the President of the United States and is sued in his official capacity. President Trump issued the Proclamation that is the subject of this lawsuit.

20. Defendant Elaine C. Duke is the Acting Secretary of Homeland Security and is sued in her official capacity. The Department of Homeland Security (“DHS”) is an executive department of the United States government, headquartered in Washington, DC. DHS was involved in preparing a report that was cited in the Proclamation and is assigned several responsibilities regarding implementation and enforcement of the Proclamation. Acting

Secretary Duke is responsible for DHS's administration of the Immigration and Nationality Act ("INA") and its implementation and enforcement of the Proclamation.

21. Defendant Kevin McAleenan is the Acting Commissioner of U.S. Customs and Border Protection and is sued in his official capacity. The U.S. Customs and Border Protection ("CBP") is an administrative agency within DHS, headquartered in Washington, DC. The Proclamation assigns CBP various responsibilities regarding implementation and enforcement. Acting Commissioner McAleenan is responsible for CBP's implementation of the INA and its implementation and enforcement of the Proclamation.

22. Defendant James McCament is the Acting Director of U.S. Citizenship and Immigration Services and is sued in his official capacity. The U.S. Citizenship and Immigration Services ("USCIS") is an administrative agency within DHS, headquartered in Washington, DC. USCIS oversees lawful immigration to the United States. Acting Director McCament is responsible for USCIS's implementation of the INA and its implementation and enforcement of the Proclamation.

23. Defendant Rex W. Tillerson is the Secretary of State and is sued in his official capacity. The Department of State is an executive department of the United States, headquartered in Washington, DC. The State Department consulted on the report prepared by DHS and is responsible for issuing visas and implementing the Proclamation. The Proclamation assigns the State Department various responsibilities regarding implementation and enforcement. Secretary Tillerson oversees the State Department's activities with respect to the INA and its implementation and enforcement of the Proclamation.

24. Defendant Jefferson Beauregard Sessions III is the Attorney General of the United States and is sued in his official capacity. The Department of Justice ("DOJ") is an

executive department of the United States, headquartered in Washington, DC. The Proclamation assigns the Department of Justice various responsibilities regarding implementation and enforcement. Attorney General Sessions oversees the DOJ's activities with respect to the INA and the implementation and enforcement of the Proclamation.

JURISDICTION AND VENUE

25. The Court has federal question jurisdiction under 28 U.S.C. § 1331.

26. The Court has authority to award declaratory and injunctive relief under the Declaratory Judgment Act, 28 U.S.C. §§ 2201, 2202 and the Administrative Procedure Act, 5 U.S.C. § 706.

27. Venue is proper in this district under 28 U.S.C. § 1391(e)(1)(C).

STATEMENT OF FACTS

A. President Trump's Express Intent to Target Muslims for Prohibition Against, or Restrictions on, Entry into the United States

28. President Donald Trump made his intent to impose a "Muslim ban" against those entering the United States a central tenet of his campaign for President and since assuming office, he has worked to give effect to this Muslim ban through various measures, culminating in the Proclamation.

29. In a series of interviews in the fall of 2015, Mr. Trump stated that he would require Muslims in the United States to register with the government, and he insisted that the country had "absolutely no choice" but to shut down mosques.

30. On December 7, 2015, after the attack in San Bernardino, California, Mr. Trump released a written statement on his campaign website calling for a "total and complete shutdown on Muslims entering the United States until our country's representatives can figure out what is

going on.”³ This original statement invoked invidious stereotypes of Muslims, suggesting that all Muslims believe in “murder against non-believers who won’t convert” and “unthinkable acts” against women. He suggested that barring immigration by Muslims was necessary to prevent “horrendous attacks” on U.S. soil because “there is great hatred towards Americans by large segments of the Muslim population.”⁴

31. When asked that same day how customs officials would apply such a ban, Candidate Trump said, “[T]hey would say, are you Muslim?” In response, a reporter asked, “[I]f they say yes, they would not be allowed in the country?” Candidate Trump responded, “That’s correct.”⁵

32. This intended Muslim ban became a central talking point of the Trump campaign, promoted by Mr. Trump and his surrogates at campaign events across the country.

33. On January 14, 2016, when asked whether he had rethought his “comments about banning Muslims from entering the country,” Mr. Trump responded “No.”⁶

³ Donald J. Trump, *Donald J. Trump Statement on Preventing Muslim Immigration*, DonaldJTrump.com (Dec. 7, 2015), <https://web.archive.org/web/20170508151734/www.donaldjtrump.com/press-releases/donald-j.-trump-statement-on-preventing-muslim-immigration>.

⁴ *Id.*

⁵ Jenna Johnson & Sean Sullivan, *Donald Trump explains how his ban on Muslims entering the U.S. would work*, WASH. POST (Dec. 8, 2015), https://www.washingtonpost.com/news/post-politics/wp/2015/12/08/donald-trump-explains-how-his-ban-on-muslims-entering-the-u-s-would-work/?utm_term=.c0bda2a45d8b.

⁶ Gerhard Peters & John T. Wooley, *Presidential Candidate Debates: Republican Candidates Debate in North Charleston, South Carolina*, The American Presidency Project (Jan. 14, 2016), <http://www.presidency.ucsb.edu/ws/index.php?pid=111395>.

34. On March 9, 2016, Mr. Trump stated in a televised interview that “I think Islam hates us . . . and we can’t allow people coming into this country who have this hatred of the United States.”⁷

35. On June 13, 2016, after an attack on a nightclub in Orlando, Florida, Mr. Trump gave a speech in which he said, “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.” He went on to clarify that he blamed Islam, writ large, for such attacks: “We cannot continue to allow thousands and thousands of people to pour into our country, many of whom have the same thought process as this savage killer.”⁸ He blamed “Muslim communities” for failing to “turn in the people who they know are bad—and they do know where they are.”⁹

36. On July 17, 2016, Mr. Trump was asked to respond to criticism by his running mate (now the Vice President) that a ban on Muslims entering the country would be unconstitutional. He responded, “So you call it territories, okay? We’re gonna do territories.”¹⁰

37. On July 24, 2016, Mr. Trump was asked if this statement constituted a “rollback” from his intended Muslim ban. His answer was “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

⁷ Exclusive Interview by Anderson Cooper with Donald Trump, Presidential Candidate, in Miami, Fl. (Mar. 9, 2016), <http://www.cnn.com/TRANSCRIPTS/1603/09/acd.01.html>.

⁸ *Transcript: Donald Trump’s national security speech*, Politico (Jun. 13, 2016, 3:06 PM), <http://www.politico.com/story/2016/06/transcript-donald-trump-national-security-speech-224273>.

⁹ *Id.*

¹⁰ Lesley Stahl, *The Republican Ticket: Trump and Pence*, CBS News (Jul. 17, 2016), <http://www.cbsnews.com/news/60-minutes-trump-pence-republican-ticket/>.

so upset when I used the word Muslim. Oh, you can't use the word Muslim. . . . And I'm okay with that, because I'm talking territory instead of Muslim.”¹¹

38. On October 9, 2016, during a televised presidential debate, Mr. Trump stated that “The Muslim ban is something that in some form has morphed into a[n] extreme vetting from certain areas of the world.”¹²

39. These remarks signal Mr. Trump's search for a pretext to disguise blatant animus toward Muslims and presage how his administration would carry out his unconstitutional measure by dressing it up as a bona fide national security measure.

B. The First Executive Order

40. On January 27, 2017, a week after assuming office, President Trump signed Executive Order 13769, titled “Protecting the Nation from Foreign Terrorist Entry into the United States.”¹³ At the time of signing, his original December 7, 2015, statement calling for a “total shutdown” of Muslim entrants remained live on his campaign website.

41. At the signing ceremony, President Trump read the order's title, and stated, “We all know what that means.”¹⁴ The next day, President Trump's advisor and vice chair of his transition team, Rudy Giuliani, stated that the First Executive Order was the result of an

¹¹ Interview by Chuck Todd with Donald Trump, Presidential Candidate on Meet the Press (Jul. 24, 2016, 11:47 AM), <http://www.nbcnews.com/meet-the-press/meet-press-july-24-2016-n615706>.

¹² Gerhard Peters & John T. Wooley, *Presidential Debate at Washington University in St. Louis, Missouri*, The American Presidency Project (Oct. 9, 2016), <http://www.presidency.ucsb.edu/ws/index.php?pid=119038>.

¹³ 82 Fed. Reg. 8977 (Jan. 27, 2017).

¹⁴ Matt Shuham, *Trump Signs Executive Order Laying Out 'Extreme Vetting,'* Talking Points Memo (Jan. 27, 2017, 4:56 PM), <http://talkingpointsmemo.com/livewire/trump-signs-vetting-executive-order>.

instruction by President Trump to him to find a way to implement a “Muslim ban” “legally.”¹⁵ Three days later, on January 30, President Trump referred on his Twitter account to the First Executive Order as “the ban.”¹⁶

42. The First Executive Order banned entry of nationals of seven Muslim-majority countries¹⁷ for 90 days, suspended the entire U.S. Refugee Admissions Program for 120 days, established a policy of prioritizing certain religious denominations over others upon resuming the Refugee program, and indefinitely barred entry of all Syrian refugees.¹⁸

43. In its “Purpose” section, the First Executive Order explicitly relied on negative stereotypes about Islam, stating that the United States should not admit individuals who “place violent ideologies over American law” or engage in acts of violence “including ‘honor killings,’ [or] other forms of violence against women.”¹⁹

44. An overt preference for Christian refugees was one of the objectives of the First Executive Order. Section 5(b) directed the Secretary of State, in consultation with the Secretary of Homeland Security, to give priority to refugee claims made by persons fleeing “religious-

¹⁵ See Rebecca Savransky, *Giuliani: Trump asked me how to do a Muslim ban ‘legally,’* The Hill (Jan. 29, 2017, 8:48 AM), <http://thehill.com/homenews/administration/316726-giuliani-trump-asked-me-how-to-do-a-muslim-ban-legally>.

¹⁶ Donald J. Trump (@realDonaldTrump), Twitter (Jan. 30, 2017 5:31AM), <https://twitter.com/realdonaldtrump/status/826060143825666051?lang=en> (“If the ban were announced with a one week notice, the ‘bad’ would rush into our country during that week. A lot of bad ‘dudes’ out there!”).

¹⁷ Some of the targeted countries have far more than simple Muslim majority. In Iran and Yemen for instance, over 99% of the population is Muslim. *The World Factbook: Middle East: Iran*, CIA, <https://www.cia.gov/library/publications/the-world-factbook/geos/ir.html> (last visited October 2, 2017); *The World Factbook: Middle East: Yemen*, CIA, <https://www.cia.gov/library/publications/the-world-factbook/geos/ym.html> (last visited October 2, 2017).

¹⁸ See 82 Fed. Reg. 8977 §§ 3(c), 5(a)-(c).

¹⁹ *Id.* § 1.

based persecution,” but only if the claimant belonged to a “minority religion in the individual’s country of nationality.”²⁰ Although this exception was not expressly limited to religious minorities residing in Muslim-majority countries, President Trump explained in an interview that this exception was intended to give priority to Christian refugees over their Muslim counterparts.²¹

45. Like the current Proclamation, the First Executive Order attempted to mask its unconstitutional purposes with national security and foreign policy rationales, suggesting that its implementation would protect the country from terrorists.

46. The First Executive Order was immediately met with a series of legal challenges across the country. The day after the First Executive Order was issued, the U.S. District Court for the Eastern District of New York granted an Emergency Motion for Stay of Removal, enjoining the government from removing individuals with approved applications under the Refugee Admissions Program, holders of visas, and other individuals legally authorized to enter the United States from the seven countries designated in the First Executive Order. *Darweesh v. Trump*, No. 1:17-cv-00480, ECF 8 at 2 (E.D.N.Y. Jan. 28, 2017). It did so on the basis that the petitioners had a strong likelihood of success in establishing that removal would violate their rights to due process and equal protection, and that there was imminent danger of “substantial and irreparable injury to refugees, visa-holders, and other individuals from nations subject to” the First Executive Order. *Id.*

²⁰ *Id.* § 5(e).

²¹ David Brody, *Brody File Exclusive: President Trump Says Persecuted Christians Will Be Given Priority As Refugees*, CBN News (Jan. 27, 2017), <http://www1.cbn.com/thebrodyfile/archive/2017/01/27/brody-file-exclusive-president-trump-says-persecuted-christians-will-be-given-priority-as-refugees>.

47. On February 3, 2017, the U.S. District Court for the Western District of Washington issued a Temporary Restraining Order enjoining enforcement of several sections of the First Executive Order on a nationwide basis. *Washington v. Trump*, No. 2:17-cv-00141-JLR, ECF 52 at 5 (W.D. Wash. Feb. 3, 2017). That order was upheld by the U.S. Court of Appeals for the Ninth Circuit. *Washington v. Trump*, 847 F.3d 1151, 1156 (9th Cir. 2017).

48. During the pendency of the Washington case, the U.S. District Court for the Eastern District of Virginia preliminarily enjoined Section 3(c) of the First Executive Order, finding that the statements made by President Trump and his Administration demonstrated an intent to ban Muslims from the United States, and that the plaintiffs were therefore likely to succeed on the merits of their Establishment Clause claims. *See Aziz v. Trump*, No. 1:17-cv-00116-LMB-TCB, ECF 111 at 7–9, 20 (E.D. Va. Feb. 13, 2017).

49. One week after the Ninth Circuit’s decision in *Washington v. Trump*, the Department of Justice informed the Ninth Circuit that the President intended to rescind the First Executive Order and replace it with a “new, substantially revised Executive Order to eliminate what the panel erroneously thought were constitutional concerns.” Defendants-Appellants’ Supplemental Brief on *En Banc* Consideration, *Washington v. Trump*, No. 17-35105, ECF 154 at 4 (9th Cir. Feb. 16, 2017).

50. On February 21, 2017, a White House Senior Policy Advisor elaborated during an interview that the intended revised executive order would include “mostly minor technical differences” but “[f]undamentally, you’re still going to have the same basic policy outcome for the country.”²²

²² Matt Zapposky, *A new travel ban with ‘mostly minor technical differences’? That probably won’t cut it, analysts say*, Wash. Post (Feb. 22, 2017), <https://www.washingtonpost.com/world/national-security/a-new-travel-ban-with-mostly->

51. On February 24, 2017, the Associated Press obtained a DHS report prepared at the request of the Acting Under Secretary for Intelligence and Analysis.²³ That report found that citizenship is “likely an unreliable indicator” of terrorist activity,²⁴ despite the First Executive Order’s supposed purpose to protect the nation from foreign terrorists.

C. The Second Executive Order

52. On March 6, 2017, President Trump issued a new executive order with the same name.²⁵ The Second Executive Order removed Iraq from the list of countries from which nationals were categorically banned from entry into the United States, but subjected Iraqis entering the United States to enhanced vetting.²⁶ The Second Executive Order also eliminated the priority for refugees of minority religions but still referenced “acts of gender-based violence against women, including so-called ‘honor killings’ in the United States by foreign nationals.”²⁷

53. The Second Executive Order also directed the Secretary of Homeland Security to “conduct a worldwide review” to determine what information the U.S. government needed from foreign governments to adjudicate visa applications.²⁸

54. On March 15, 2017, the U.S. District Court for the District of Hawaii issued a nationwide temporary restraining order against Sections 2 and 6 of the Second Executive Order.

[minortechnical-differences-that-probably-wont-cut-it-analysts-say/2017/02/22/8ae9d7e6-f918-11e6-bf01-d47f8cf9b643_story.html](http://www.usatoday.com/story/news/2017/02/24/dhs-memo-contradicttravel-ban-trump/98374184/).

²³ Rick Jervis, *DHS memo contradicts threats cited by Trump’s travel ban*, USA Today (Feb. 24, 2017), <http://www.usatoday.com/story/news/2017/02/24/dhs-memo-contradicttravel-ban-trump/98374184/>.

²⁴ *Id.*

²⁵ 82 Fed. Reg. 13209 (March 6, 2017).

²⁶ *Id.* § 4.

²⁷ *Id.* § 11(a)(iii).

²⁸ *Id.* § 2(a).

Hawaii v. Trump, 241 F. Supp. 3d 1119, 1140 (D. Haw. 2017).²⁹ It did so on the basis that the plaintiffs “met their burden of establishing a strong likelihood of success on the merits of their Establishment Clause claim.” *Id.* at 1123.

55. The next day, this Court issued a preliminary injunction against enforcement of Section 2(c) of the Second Executive Order (the provision restricting entry into the United States by nationals of Iran, Syria, Yemen, Sudan, Libya, and Somalia). *Int’l Refugee Assistance Project v. Trump*, 241 F. Supp. 3d 539, 565–66 (D. Md. 2017). The Court ruled that the plaintiffs showed a likelihood of success on the merits of their Establishment Clause challenge. *Id.* at 564.

56. Speaking at a rally in Nashville, Tennessee, on the same day that the Hawaii Court issued its ruling, President Trump stated that the Second Executive Order was a “watered-down version” of the first one and that “we ought to go back to the first one and go all the way.”³⁰

57. On May 25, 2017, the U.S. Court of Appeals for the Fourth Circuit upheld in large part the nationwide injunction issued by this Court. *IRAP*, 857 F.3d at 606. The government filed a petition for writ of certiorari in the U.S. Supreme Court on June 1, 2017. On the same day, the government filed with the Supreme Court an application for a stay of the injunctions in both *IRAP v. Trump* and *Hawaii v. Trump* (the latter of which was still pending on appeal in the Ninth Circuit).

²⁹ The Ninth Circuit lifted the injunction with respect to the review and reporting provisions of the Second Executive Order on June 12, 2017. *Hawaii*, 859 F.3d at 786.

³⁰ Matt Zapposky, et al., *Federal judge in Hawaii freezes President Trump’s new entry ban*, Wash. Post (Mar. 16, 2017), https://www.washingtonpost.com/local/social-issues/lawyers-face-off-on-trump-travel-ban-in-md-court-wednesday-morning/2017/03/14/b2d24636-090c-11e7-93dc-00f9bdd74ed1_story.html?utm_term=.bf85c7c44a4c.

58. On June 12, 2017, the Ninth Circuit ruled on the *Hawaii* injunction, unanimously ruling in favor of the plaintiffs and upholding the injunction in large part. 859 F.3d at 741. Rather than relying on the constitutional grounds cited by the district court, the Ninth Circuit held that portions of the Second Executive Order likely exceeded the President’s authority under the INA. *Id.*

59. The provisions of the Second Executive Order were originally scheduled to end on June 14, 2017, raising questions about whether the appeal to the Supreme Court might be moot. That day, however, the White House issued a Presidential Memorandum delaying the start date of each of the provisions that had been enjoined by the courts until 72 hours after the injunctions were lifted or stayed as to those provisions.

60. On June 26, 2017, the Supreme Court granted the petitions for certiorari. It consolidated the cases and set them for argument during the first argument session of the Court’s next Term, in October 2017, and ordered the parties to address in their briefing the additional question whether the challenges became moot on June 14. 137 S. Ct. at 2087. The Court also stayed the preliminary injunctions “to the extent the injunctions prevent enforcement of § 2(c) with respect to foreign nationals who lack any bona fide relationship with a person or entity in the United States.” *Id.*³¹ The Ninth Circuit reviewed the District of Hawaii’s modified injunction, and in so doing ruled that the district court did not err in including grandparents, grandchildren, brothers-in-law, sisters-in-law, aunts, uncles, nieces, nephews, and cousins of persons in the United States within the definition of bona fide close familial relationships.

³¹ The Supreme Court’s order outlined the requirements for a bona fide relationship: “For individuals, a close familial relationship is required.” For entities, “the relationship must be formal, documented, and formed in the ordinary course, rather than for the purpose of evading EO-2.” 137 S.Ct. at 2088.

Hawaii v. Trump, ___ F.3d ___, 2017 WL 3911055 at *9 (9th Cir. Sept. 7, 2017). On October 10, 2017, the Supreme Court vacated as moot the judgment in *Trump v. Int’l Refugee Assistance Project*, No. 16-1436, ___ S. Ct. ___, 2017 WL 4518553 (Oct. 10, 2017).

61. During the litigation prompted by the Second Executive Order, President Trump continued to make official statements underscoring that the Executive Orders, in each iteration, were intended to restrict Muslims from entering the United States. In response to a terrorist attack in London on September 15, 2017, for example, President Trump tweeted that “[t]he travel ban into the United States should be far larger, tougher and more specific—but stupidly, that would not be politically correct!”³²

D. The Proclamation

62. On September 24, 2017, President Trump issued the Proclamation, which now expands the Muslim ban to a ban of indefinite duration against the entry into the United States of nationals of the listed Muslim-majority countries, including individuals with bona fide relationships with American citizens and Lawful Permanent Residents.³³ Unlike the two Executive Orders, there is no time limit in the Proclamation; affected persons are indefinitely banned from entering the United States.

63. The Proclamation expressly refers to the Second Executive Order, does not rescind or nullify the vast majority of the provisions of the Second Executive Order, and imposes

³² Donald J. Trump (@realDonaldTrump), Twitter (Sept. 15, 2017, 3:54 AM), <https://twitter.com/realdonaldtrump/status/908645126146265090?lang=en>.

³³ *Presidential Proclamation Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats*, The White House: Office of the Press Secretary (Sept. 24, 2017), **Attach. A**; <https://www.whitehouse.gov/the-press-office/2017/09/24/enhancing-vetting-capabilities-and-processes-detecting-attempted-entry>.

the indefinite ban against entry into the United States as immigrants on nationals of the following six Muslim-majority countries, and broad bans on certain visas, with limited exceptions,³⁴ as follows:

- a. Chad: All nationals of Chad are banned from entry into the United States as immigrants or under business (B-1), tourist (B-2), or business/tourist (B-1/B-2) visas.³⁵
- b. Iran: All nationals of Iran are banned from entry into the United States, except under student and exchange visitor visas (F, M, and J), and such student and exchange visitor visa applicants are subject to unspecified “enhanced screening and vetting requirements.”³⁶
- c. Libya: All nationals of Libya are banned from entry into the United States as immigrants or under business (B-1), tourist (B-2), or business/tourist (B-1/B-2) visas.³⁷
- d. Syria: All nationals of Syria are banned from entry into the United States.³⁸

³⁴ The visa bans outlined in Section 2 of the Proclamation do not apply to lawful permanent residents of the United States; foreign nationals admitted to the United States on or after the applicable effective date of the Proclamation; “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”; dual nationals; foreign nationals traveling on a diplomatic or diplomatic-type visa, NATO visa, C-2 visa, or G-1, G-2, G-3 or G-4 visa; foreign nationals who have been granted asylum; refugees who have already been admitted; or individuals who have been granted relief under the Convention Against Torture. *Id.* § 3(b).

³⁵ *Id.* § 2(a)(ii).

³⁶ *Id.* § 2(b)(ii).

³⁷ *Id.* § 2(c)(ii).

³⁸ *Id.* § 2(e)(ii).

- e. Yemen: All nationals of Yemen are banned from entry into the United States as immigrants or under business (B-1), tourist (B-2), or business/tourist (B-1/B-2) visas.³⁹
- f. Somalia: All nationals of Somalia are banned from entry into the United States as immigrants. Somali nationals traveling on non-immigrant visas are subject to unspecified “additional scrutiny.”⁴⁰

64. The Proclamation’s restrictions that apply to individuals who were subject to the operative provisions of the Second Executive Order—nationals from Iran, Libya, Somalia, Yemen, and Syria who do not have a credible claim of a bona fide relationship with a person or entity in the United States—went into effect on September 24, 2017. All of the Proclamation’s other restrictions are set to go into effect on October 18, 2017.

65. The bans on entry into the United States by nationals of these Muslim-majority countries mean that U.S. citizens and Lawful Permanent Residents cannot reunite in the United States with their spouses, children, and parents who are nationals of countries subject to the Proclamation. And the Proclamation purports to justify its blanket restrictions on immigrant entry from all of these Muslim-majority countries by observing that Lawful Permanent Residents receive “more enduring rights” and are therefore “more difficult to remove than nonimmigrants.”⁴¹

66. In an effort to disguise the underlying intent to ban entry of Muslims into the United States, the Proclamation—unlike its predecessor Executive Orders—also imposes

³⁹ *Id.* § 2(g)(ii).

⁴⁰ *Id.* § 2(h)(ii).

⁴¹ *Id.* § 1(h)(ii).

nominal restrictions relating to nationals of two non-Muslim-majority countries: North Korea and Venezuela. The Proclamation bans immigrant and non-immigrant visas for North Korean nationals (except for the limited exceptions in § 3(b)), but the number of visas issued each year to North Korean nationals is extraordinarily low.⁴² And unlike the restrictions imposed for the Muslim-majority countries, most nationals of Venezuela generally are not subject to a ban; the Proclamation applies solely to a small group of officials of the Venezuelan government and their immediate family traveling under certain classes of non-immigrant visas.⁴³ The additional travel restrictions involving these two non-Muslim-majority countries are thus without practical effect, and in any event cannot transform the unconstitutional Muslim ban into a permissible national-security measure.

67. Excluding the makeweight additions of North Korea and Venezuela, which are subject to only negligible impacts, the Proclamation restricts entry of more than 157 million nationals of Chad, Iran, Libya, Somalia, Syria, and Yemen. Of those nationals, a conservative estimate is that at least 137 million of those people—over 87%—are Muslim.⁴⁴

⁴² For example, according to the 2015 Yearbook of Immigration Statistics published by DHS, only 99 non-immigrants from North Korea were admitted to the United States in 2015. *Table 26: Nonimmigrant Admissions (I-94 Only) By Region And Country Of Citizenship: Fiscal Years 2013 To 2015*, Homeland Security, <https://www.dhs.gov/immigration-statistics/yearbook/2015/table26> (last published Dec. 15, 2016). Similarly, only 55 people from North Korea obtained Lawful Permanent Resident status in 2015. *See Table 3. Persons Obtaining Lawful Permanent Resident Status By Region And Country Of Birth: Fiscal Years 2013 To 2015*, Homeland Security, <https://www.dhs.gov/immigration-statistics/yearbook/2015/table3> (last published Dec. 15, 2016).

⁴³ Attach. A § 2(f)(ii).

⁴⁴ *The World Factbook, Country Comparison: Population*, CIA <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2119rank.html> (last visited Oct. 1, 2017). The Factbook lists the populations of the six Muslim-majority countries subject to the Proclamation, in the total amount of more than 157 million people, as well as the estimated percentages of Muslims in each country. This calculation excludes the entire Muslim population of Somalia, for which information was not available; this suggests that the true

68. Also to try to disguise its underlying religious purpose, the Proclamation purports to be based on the worldwide review of information-sharing practices, policies, and capabilities of foreign countries directed by the Second Executive Order. The Proclamation states that the Secretary of Homeland Security, with assistance from the Secretary of State and Director of National Intelligence, “developed a baseline for the kinds of information required from foreign governments” regarding individuals seeking entry into the United States,⁴⁵ and evaluated each country against this baseline.⁴⁶ The Proclamation states that the Secretary of Homeland Security submitted a report to the President on July 9, 2017, which developed that baseline.⁴⁷ The Proclamation further explains that the Department of Homeland Security, in coordination with the State Department, “collected data,” “measured performance,” and “evaluated risks” associated with each country that they assessed and evaluated against the baseline, culminating in their identification of 16 countries as being “inadequate” and another 31 as “at risk” of becoming inadequate.⁴⁸

69. The contents of the Department of Homeland Security’s review and evaluation have not been made public, despite discussion in the Proclamation indicating that portions have been shared with foreign governments during a “50-day engagement period” with other countries

proportion of the nationals subject to the ban who are Muslim is actually considerably higher than 87%.

⁴⁵ Attach. A § 1(c).

⁴⁶ *Id.* §§ 1(d), (e).

⁴⁷ *Id.* § 1(c).

⁴⁸ *Id.* § 1(d), (e).

with respect to the baseline,⁴⁹ and indicating that the review and evaluation contain information similar to that set forth publicly in the First and Second Executive Orders.

70. The government of Chad issued a statement on September 25, 2017, expressing “astonishment” and “incomprehension in the face of the official reasons for [the] decision” to extend the ban against entry to the United States to nationals of Chad.⁵⁰

71. The Proclamation states that the Secretary of Homeland Security “assesse[d]” seven countries to “have ‘inadequate’ identity-management protocols, information-sharing practices, and risk factors with respect to the baseline . . . such that entry restrictions and limitations are recommended: Chad, Iran, Libya, North Korea, Syria, Venezuela, and Yemen.”⁵¹ The Secretary submitted a report on September 15, 2017, to the President “recommending entry restrictions and limitations” on nationals of the seven countries, but the specifics of those recommendations are not provided in the Proclamation. He also “assesse[d]” that Iraq “did not meet the baseline” but declared that “additional scrutiny” was recommended nonetheless. Although Somalia was not similarly “assessed” by the Secretary, he determined that “special circumstances” warrant “entry restrictions, limitations, and other measures” for nationals of Somalia.⁵² The Proclamation states that the President reviewed the report and imposed the “restrictions and limitations” by the proclamation because, in his judgment, they were necessary,

⁴⁹ *Id.* § 1(f).

⁵⁰ Helene Cooper, Michael D. Shear, & Dionne Searcey, *Chad’s Inclusion in Travel Ban Could Jeopardize American Interests, Officials Say*, N.Y. Times (Sept. 26, 2017), <https://www.nytimes.com/2017/09/26/world/africa/chad-travel-ban-american-interests.html>.

⁵¹ Attach. A § 1(g).

⁵² *Id.* § 1(i).

among other reasons, “to elicit improved identity-management and information-sharing protocols and practices from foreign governments.”⁵³

72. The Proclamation applies to nationals of the listed countries regardless of where they currently reside, including those who reside in other countries that have not been identified as having “‘inadequate’ identity-management protocols, information-sharing practices, and risk factors”—and even if those persons have resided outside their country of origin for their entire lives, and even if those persons reside outside their country of origin because of fear of persecution. This categorical ban on the entry into the United States of more than 157 million nationals of six Muslim-majority nations cannot be justified by a single report prepared in a matter of months on worldwide practices, and cannot be reconciled with the framework of the INA.

73. The Proclamation’s purported reliance on various criteria and imposition of restrictions on North Korean nationals and on a small group of Venezuelan government officials paper over the legal and constitutional defects of the predecessor expressions of the Muslim ban with post-hoc national security justifications. The national-security and other purported rationales for the bans imposed by the Proclamation on millions of Muslims from the several Muslim-majority countries, which disproportionately harm their American Muslim relatives, are not bona fide reasons for the Proclamation.

74. The recently generated national security rationale cannot wipe away the anti-Muslim bias that has animated President Trump’s dogged efforts to fulfill his promise to ban Muslims from entering this country. Indeed, the history of the President’s failed attempts to enact his intended Muslim ban through two Executive Orders supports the inference that the

⁵³ *Id.* § 1(h)(i).

national security report is a pretext. And even if the national security report identifies legitimate vetting and information-sharing issues with respect to the specified countries, the categorical and undifferentiated ban of at least 137 million Muslims is a wildly overbroad response that violates both the INA and the Constitution.

CAUSES OF ACTION

FIRST CLAIM FOR RELIEF (Violation of the Immigration and Nationality Act) (All Parties Against All Defendants)

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

76. The Immigration and Nationality Act (“INA”) provides that “no person shall receive any preference or priority or be discriminated against in the issuance of an immigrant visa because of the person’s race, sex, nationality, place of birth, or place of residence.” 8 U.S.C. § 1152(a)(1)(A).

77. The Proclamation violates the INA by discriminating on the basis of nationality.

78. Defendants’ violation causes ongoing harm to Plaintiffs.

SECOND CLAIM FOR RELIEF (Exceeding the Executive’s Authority Under the Immigration and Nationality Act) (All Parties Against All Defendants)

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

80. Congress established a detailed framework in the INA, 8 U.S.C. § 1182, of specific criteria for “classes of aliens ineligible for visas or admission,” 8 U.S.C. § 1182(a), including on “security and related grounds,” 8 U.S.C. § 1182(a)(3), specifically terrorism, 8 U.S.C. § 1182(a)(3)(B), 1182(a)(3)(F), and foreign policy, 8 U.S.C. § 1182(a)(3)(C). Section 1182 provides for suspension of entry or imposition of restrictions on aliens by the President “for

such period” as deemed necessary if he “finds” that entry of the aliens or class of aliens “would be detrimental to the interests of the United States.” 8 U.S.C. § 1182(f). The INA further addresses aspects of immigration and other entry into the United States in various provisions throughout the statute.

81. The Proclamation exceeds the Executive’s authority under the INA, including under 8 U.S.C. §§ 1182(f).

82. Defendants’ violation causes ongoing harm to Plaintiffs.

THIRD CLAIM FOR RELIEF
(Violation of the Establishment Clause of the First Amendment)
(All Plaintiffs Against All Defendants)

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

84. The Establishment Clause of the First Amendment to the U.S. Constitution prohibits the government from “differentiat[ing] among religions.” *Hernandez v. C.I.R.*, 490 U.S. 680, 695 (1989) (citing *Larson v. Valente*, 456 U.S. 228 (1982)).

85. The Establishment Clause further prohibits the government from taking actions that lack a secular purpose or have the principal or primary effect of advancing or inhibiting religion.

86. The Establishment Clause prohibits the government from endorsing or disapproving of a religion or particular religious beliefs.

87. The Proclamation impermissibly discriminates on the basis of religion and constitutes an unconstitutional denominational preference against Muslims. Despite being cloaked in the rhetoric of national security, the Proclamation—like the Executive Orders that preceded it—is intended to and does disproportionately harm Muslims because of their faith. The six countries whose nationals the Proclamation meaningfully restricts—Chad, Iran, Libya,

Syria, Yemen, and Somalia—are all Muslim-majority countries. The other two countries nominally covered by the ban are North Korea, whose nationals currently receive a vanishingly small number of visas, and Venezuela, whose nationals are affected only if they are family members of government officials “involved in screening and vetting procedures” who are not seeking to immigrate to the United States. Thus the Proclamation’s effects on non-Muslim countries’ nationals are *de minimis*. The continued outsized effect on Muslim entrants demonstrates that the Proclamation discriminates on the basis of religion.

88. In addition, the Proclamation violates the Establishment Clause because the President’s repeatedly stated intent to ban Muslims from immigrating to or entering the United States and the Proclamation’s direct lineage from and effectuation of those policy statements, demonstrate that the Proclamation lacks a predominantly secular purpose and that it has a principal effect of discriminating against, denigrating, and disfavoring Muslims.

89. Finally, the Proclamation communicates official disapproval of Islam, stigmatizing Plaintiffs and their religion.

90. Defendants’ violation causes ongoing harm to Plaintiffs.

FOURTH CLAIM FOR RELIEF
(Violation of the Free Speech Clause of the First Amendment)
(Iranian Alliances Across Borders Against All Defendants)

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

92. The Free Speech Clause of the First Amendment protects the “right to receive information and ideas.” *Stanley v. Georgia*, 394 U.S. 557, 564 (1969).

93. The Proclamation violates the right of IAAB to receive information and ideas from the Persian scholars (many of whom are nationals of Iran) whom IAAB routinely invites to speaking engagements and other cultural community-building events.

94. Defendants' violation causes ongoing harm to IAAB.

FIFTH CLAIM FOR RELIEF
(Violation of Equal Protection Under the Fifth Amendment)
(All Plaintiffs Against All Defendants)

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

96. Plaintiffs are entitled to the protections of the Fifth Amendment.

97. The Due Process Clause of the Fifth Amendment prohibits the federal government from denying equal protection of the law.

98. The Proclamation was motivated by animus and a desire to harm a particular group.

99. The Proclamation has a disparate impact, targeting individuals for discriminatory treatment on the basis of religion and national origin. The discriminatory terms and application of the Proclamation are not justified by legitimate governmental interests, much less by compelling ones.

100. Defendants have violated the equal protection guarantee of the Fifth Amendment.

101. Defendants' violation causes ongoing harm to Plaintiffs.

SIXTH CLAIM FOR RELIEF
(Violation of Procedural Due Process under the Fifth Amendment)
(All Plaintiffs Against All Defendants)

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

103. The Due Process Clause of the Fifth Amendment prohibits the federal government from depriving individuals of their liberty interests without due process of law.

104. Congress has granted statutory rights and prescribed procedures applicable to prospective immigrants and refugees. Due process rights attach to those statutory rights.

105. In addition, United States citizens have a cognizable liberty interest with respect to the ability of specific noncitizen family members to travel to the United States.

106. The Proclamation, in depriving immigrants and refugees of the rights afforded to them by statute, and in depriving United States citizens of travel by specific noncitizen family members to the United States, violates the procedural due process guarantees of the Fifth Amendment.

107. Defendants' violation causes ongoing harm to Plaintiffs.

SEVENTH CLAIM FOR RELIEF
(Violation of the Administrative Procedure Act)
(All Plaintiffs Against Defendants Duke, McAleenan, McCammet, Tillerson, and Sessions)

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

109. The Administrative Procedure Act ("APA") requires courts to set aside agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law"; "contrary to a constitutional right, power, privilege, or immunity"; or "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(A)–(C).

110. The APA requires courts to set aside agency action taken "without observance of procedure required by law." 5 U.S.C. § 706(2)(D). Specifically, the APA requires that federal agencies conduct formal rule making before engaging in action that impacts substantive rights. 5 U.S.C. § 553, 706(2)(D).

111. In instituting the Proclamation, including the requirement that subjects Iranian student and exchange visitor visa applicants to unspecified "enhanced screening and vetting requirements," Defendants have acted contrary to the constitutional rights of Plaintiffs, and in particular Plaintiff ISF and its members, and in excess of statutory jurisdiction, authority, or

limitations, or short of a statutory right. Defendants' actions were taken without observance of procedure required by law. The Proclamation identifies final agency action by the Department of Homeland Security and the Department of State, including the creation of a baseline criteria, collection of data, evaluation and assessment of various practices, procedures, and performance against that baseline, and identification of various countries as inadequate or at risk of being inadequate under that baseline, followed by further information collection, assessment, and identification of countries that continued to be inadequate under that baseline. The agencies took these final actions without complying with the requirements of the Administrative Procedure Act.

112. Defendants' violation causes ongoing harm to Plaintiffs.

**EIGHTH CLAIM FOR RELIEF
(Violation of Right to Free Association under the First Amendment)
(ISFs Against All Defendants)**

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

114. The First Amendment protects the right to associate, as there is a close nexus between the freedoms of speech and association.

115. In instituting the Proclamation, the Defendants prevent Plaintiff ISF from its right to associate. It will be threatened with a reduction in its membership because it will be difficult for students who are Iranian nationals to come to the University of Maryland, and associate with ISF and its membership, hindering its mission of raising awareness about Persian culture, history, and tradition. In so doing, Defendants violate the First Amendment.

116. Defendants' violation causes ongoing harm to Plaintiff ISF.

PRAYER FOR RELIEF

WHEREFORE, all Plaintiffs seek an order and judgment to:

117. Declare that the Proclamation, on its face or as applied, violates the Immigration and Nationality Act, exceeds the Executive's authority under the Act, and violates the Constitution and laws of the United States;

118. Enter a nationwide injunction enjoining Defendants from:

- a. Enforcing the Proclamation;
- b. Applying the Proclamation to deny, revoke, restrict, cancel, or delay issuance of any immigrant or nonimmigrant visa;
- c. Applying the Proclamation to deny or suspend entry or admission of any person;
- d. Applying the Proclamation to prohibit any person from applying for or receiving any benefit under the Immigration and Nationality Act;
- e. Denying any person subject to the Proclamation access to legal counsel of his or her choice;
- f. Applying the Proclamation to instruct any airline or other common carrier to deny passage to any person;
- g. Applying the Proclamation to impose any penalty on any airline or other common carrier for allowing passage to any person covered by the Proclamation;

119. Order Defendants promptly to provide written guidance to employees, contractors, and agents of DHS, the State Department, U.S. Customs and Border Protection, and all other United States government officials and entities necessary to ensure full and timely compliance with all terms of the order to be entered by the Court;

120. Require Defendants promptly to rescind any guidance, directive, memorandum, or statement interpreting or applying the Proclamation that conflicts with any term of the order to be entered by the Court;

121. Require Defendants promptly to post a copy of the written guidance required under paragraph 114 on government websites, including state.gov;

122. Require Defendants promptly to update all relevant public guidance, documentation, and FAQs to reflect the terms of the order to be entered by the Court;

123. Require Defendants to instruct the consular officials handling the visa applications of Plaintiffs, their families, and IAAB's invitees and others attending IAAB programs to print and issue the visas and travel documents within 10 days of the Court's order;

124. Require Defendants to instruct the relevant officials from the State Department and Department of Homeland Security not to deny visas or entry into the United States to Plaintiffs, their families, or IAAB's invitees and others attending IAAB programs for any reason directed by or arising from the Proclamation or guidance implementing it;

125. Require Defendants to process without undue delay visa applications submitted by nationals of Chad, Iran, Libya, Syria, Yemen, and Somalia;

126. Require Defendants to file with the Court, on the tenth day of each month following the entry of the Court's order, a signed and verified declaration stating:

- a. The number of United States visas granted during the previous month to nationals of Chad, Iran, Libya, Syria, Yemen, and Somalia;
- b. The number of United States visa applications denied during the previous month to nationals of Chad, Iran, Libya, Syria, Yemen, and Somalia;
- c. For each denied visa application under the above subparagraph (b), the identifying information or numbers for the application for the Court's reference;
- d. For each denied visa application under the above subparagraph (b), a detailed explanation of the reason or reasons why the application was denied. The

explanation under this subsection must state the facts, authorities, and reasoning relevant to the Defendants' decision on the application;

127. Require Defendants to pay reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988;

128. Any other relief that the Court deems necessary or just to cure the violations specified in this Complaint or that justice may require.

Dated: October 12, 2017

Respectfully submitted,

/s/ Mark H. Lynch

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* *Pro hac vice* application pending.

** *Pro hac vice* application forthcoming.

^ Admitted only in New York; supervised by Richard B. Katskee, a member of the D.C. Bar.

Exhibit 1

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

IRANIAN ALLIANCES ACROSS BORDERS;
et al.

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as
President of the United States; *et al.*

Defendants.

Case No. 17-cv-02921-TDC

**DECLARATION OF MANA KHARRAZI ON BEHALF OF IRANIAN ALLIANCES
ACROSS BORDERS**

Pursuant to 28 U.S.C. § 1746, I, Mana Kharrazi, hereby declare and state as follows:

1. I am over the age of eighteen years. I have personal knowledge of the facts set forth herein or believe them to be true based on my experience or upon personal information provided to me by others, and I am competent to testify thereto.

2. I am the Executive Director of Iranian Alliances Across Borders. IAAB is a 501(c)(3) nonprofit corporation organized under the laws of the state of New York. I have been the Executive Director at IAAB since 2008. Prior to that, beginning in 2006, I served as a program associate and program director. Before that, I participated in IAAB programs as a student.

3. Because of my position as Executive Director, and my prior involvement with the organization, I know the history and background of IAAB as well as the organization's mission, purposes, and activities. I am also involved in the day-to-day operation of IAAB and am therefore familiar with the organization's current expenses, revenues, and resources. I oversee

programs and activities sponsored or arranged by IAAB and am involved with publications that IAAB distributes.

4. The mission of IAAB is to strengthen the Iranian diaspora community through leadership and educational programming that encourages collaboration and solidarity across various borders and multiple communities. IAAB is a diverse organization, open to members of all religious faiths.

5. I am the only paid staff member of IAAB. Along with myself, our work is done by approximately 50-60 unpaid volunteers each year. We host IAAB's Campus Action Network, a national network comprised of affiliated Iranian-American student groups and representatives, including groups at the University of Maryland College Park, one of the biggest and most active Iranian-American student groups in the nation, and the University of Maryland in Baltimore.

6. We maintain a mailing list of over 2000 individuals, for distribution of our monthly newsletter, and other communications.

7. The travel bans issued in the past year, and the anti-Muslim rhetoric during the campaign, resulted in our organization having to devote significant time responding to members of our community who were subjected to hate speech and intimidation in public places, and/or were otherwise distressed and stigmatized by these events. In response to these reports, we launched the "Reject Hate" campaign to help our members respond to and address targeting and harassment. We worked with parents in our community to provide toolkits for the schools their children attend, presenting positive images of Muslims, Middle Easterners, and South Asians and otherwise guiding parents and educators about how to deal with discriminatory and hateful behavior.

8. The travel bans also affected our educational programs, and the new version of the ban issued on September 24, 2017, excluding, without any time limitation, all Iranian nationals from immigrating to the United States, and most Iranian nationals from traveling to the United States, is likely to affect those programs in the future.

9. Our programs include overnight camps for high school students (Camp Ayandeh, begun in 2006), and middle school students (Camp Javan, begun in 2012). Although primarily attended by Iranian Americans, we have also had campers from Iran and Europe. Since 2010, Camp Ayandeh has hosted campers from outside the United States every year, until the Summer of 2017—the first year that the United States ordered a ban on travel by Iranian nationals. Two applicants to IAAB’s camps from overseas dropped out after the travel ban was ordered.

10. The camps are run by volunteer counselors. There have been counselors from overseas every year until the Summer of 2017. One counselor from Germany, with Iranian roots, worked at the camp in 2016, but did not come back in 2017.

11. At our camps, our workshops address social and cultural issues that challenge all young people, and those that arise from their membership in the Iranian diaspora community. These efforts are described in the recently published book “The Limits of Whiteness: Iranian Americans and the Everyday Politics of Race” by Neda Maghbouleh.

12. In the Summer of 2017, we spent a considerable amount of time at our camps addressing our campers’ feelings of fear, self-hate, and lowered self-esteem arising specifically from the statements made about Muslims and Iranians made during the election, and the imposition of travel bans on Iranians and nationals of other predominantly Muslim countries.

13. Our youth shared stories of feeling discriminated against and described negative experiences in their schools. I led a session about the current climate, including the travel ban

and the representation of our communities in the media. I supported youth who described personal stories about being called a ‘terrorist’ and having to respond about their identities. I supported young teenage boys with traumatic experiences of being subjected to ridicule and harassment on sports teams, by parents of friends, classmates, and teachers. Some youth described feeling unsafe in their communities, sometimes saying they did not want their classmates to know that they are Iranian American. Some shared stories about being harassed for their facial hair, being mocked for their names, not feeling a sense of self-love because their Iranian identity subjected them to being treated differently. I also supported a young group of volunteer counselors who shared similar experiences in college

14. We maintain ongoing relationships with the young people who attend our camps, and their families. Those relationships continue into college, where our camp alumni often become leaders and participants in Iranian-American student groups. Participants in these IAAB activities and relationships consider each other to be family.

15. We created a national Campus Action Network of college and university Iranian-American student groups, known as I-CAN. Through those affiliations, we share resources and ideas, collaborate on various events and actions, provide leadership training, and collaborate on programs. Most years we hold an IAAB Student Summit for I-CAN leaders and other interested participants. We are in the process of scheduling that event for the 2017-18 academic year.

16. Like our middle school and high school students, the college and university students that we interact with have experienced sufficient distress and fear as a result of the election rhetoric and the travel bans. Our organization is spending significant time discussing and planning with these student groups how to respond to these disturbing developments.

17. IAAB periodically holds an International Conference on the Iranian Diaspora where scholars, students, journalists, artists, community leaders and other interested people present papers, participate in panels, and otherwise address issues affecting the Iranian Diaspora community globally. The next conference will take place in on April 21 and 22 at New York University. We are sending out our call for proposals in the coming week or two. If the Proclamation goes into effect, potential participants will significantly be discouraged from applying, and participants who do apply would not be able to obtain visas to attend.

18. At prior conferences, about half the invited speakers come from outside the United States, including from Iran. They often bring other members of their organizations or faculty.


19. At prior conferences, there is always an international presence that includes attendees from outside the United States, including Iran.

20. At prior conferences, we have hosted performers with Iranian national origins from outside the country, including the Iranian rock band, Hypernova.

21. The conference requires substantial advance planning, fundraising, and promotion. We raise money to support travel, and pay honorarium for invited speakers. We assist speakers and other participants with the visa process, providing them any documentation they need to submit their application. Addressing whether the ban applies to individuals outside the country who we wish to invite, or who wish to participate in the conference will require organization resources, and likely require guidance that we do not have the internal capacity to provide. We anticipate that potentially affected individuals will be discouraged from attempting to come to the United States for the conference, in light of the challenges and uncertainty associated.

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

Executed on October 5, 2017.



Mana Kharrazi

Exhibit 2

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

IRANIAN ALLIANCES ACROSS BORDERS;
et al.

Plaintiffs,

v.

Case No. 17-cv-02921-TDC

DONALD J. TRUMP, in his official capacity as
President of the United States; *et al.*

Defendants.

DECLARATION OF JANE DOE #1

Pursuant to 28 U.S.C. § 1746, I, [REDACTED], known for the purpose of this case as Jane Doe #1, hereby declare and state as follows:

1. I am over the age of eighteen years, and I make this declaration based on my own personal knowledge. If asked to do so, I could testify truthfully about the matters contained herein.
2. I am a United States citizen. My spouse and I live in the United Arab Emirates (“UAE”).
3. I came to the United States in 2011 as a refugee fleeing persecution in Iran because of my membership in the Baha’i faith, which is outlawed in Iran.
4. I met my husband in March 2014 through my friendship with his aunt, initially over Skype, and began to pursue a long-distance relationship. He was living in the UAE, where he ran and continues to run his own IT company. We pursued our long-distance relationship and, beginning in 2016, we met in person and I spent significant time with him in UAE. We got

married on February 28, 2016. I continued to go back and forth between the United States and the UAE for the next several months.

5. I became a United States Citizen in January 2017.

6. Shortly after that, I moved to be with my husband in UAE while we await the processing of his application for immigration to the United States. I submitted an I-130 application for him in June 2016. It was approved on September 20, 2017. He is now awaiting his interview, which in the ordinary course would be scheduled in the next few months.

7. Before I came to the UAE to join my husband, I lived in Bethesda, Maryland at

[REDACTED]

8. I want to return to the United States with my husband so that we can live in this area of Maryland again. Before leaving for UAE, I was searching for houses in Maryland so that my husband and I could live there together. I only left the United States so that I could be with my husband while his application is being processed, because I love him and do not want to be apart from him. But the United States is my home and I eagerly await the time that we can return together. The only thing standing between me and my return is the processing of my husband's immigration application.

9. My status in the UAE is temporary and uncertain. My residency there depends on my husband's residency. His residency has to be renewed every 3 years, and is contingent on a renewal of his company's license, which must be renewed each year. The UAE government has the discretion to deny each of these applications for any reason whatsoever. There are restrictions on all aspects of our lives—even down to our ability to open bank accounts. Even if they do continue to renew my husband's residency, there is still no guarantee that they will renew mine. I

do not want to be separated from my husband and am eagerly awaiting the time that we can both return to the United States together.

10. I also understand from friends and other Iranians here that the government of the UAE has become reluctant to renew or issue visas to Iranians, and is attempting to push us out gradually. If my husband is deported to Iran, his life will be at risk. I myself cannot return to Iran, as I fled the country as a refugee. And now that my husband is associated with me and my Baha'i religion, he will be at risk there also.

11. My husband is the sole breadwinner for our family. While he was a bachelor, remaining in this uncertain status in the UAE was easier; but now we are a family and he has greater responsibilities, and the uncertainty of our situation makes him very worried.

12. For all these reasons, we are eagerly awaiting completion of his immigrant visa process, so that we can breathe more easily and come to the United States, where we can settle freely and comfortably and feel like we really belong somewhere and can remain there in a permanent way. I understand that if the Proclamation goes fully into effect, his interview will not be scheduled and he will not be able to obtain an immigrant visa to come to the United States with me.

13. When I learned about the travel ban for persons from Iran, I became extremely anxious and depressed. I am afraid that I will not be able to return to my country, and am being forced to choose between my husband whom I love and my home, United States, to which I cannot wait to return. Our circumstances in UAE are also not permanent, and not settled. If my husband's immigrant visa application is suspended because of the Ban, we will have to remain in very uncertain circumstances and may be forced to be separated from each other.

14. It is important for me to remain anonymous in this lawsuit. I am afraid of losing my status in UAE if my name get associated with this lawsuit. If my husband is forced to return to Iran, his life will be in danger there. And as a refugee, I cannot return to Iran either, and would face significant persecution if I were to return. We are not safe here and we urgently need to come to the United States.

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

Executed on October 5, 2017.

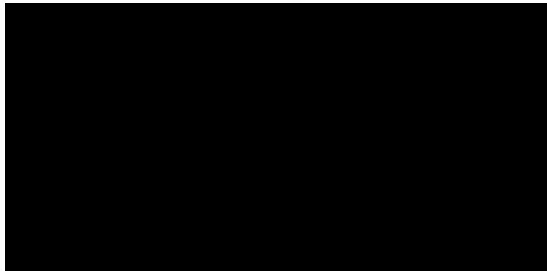


Exhibit 3

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

IRANIAN ALLIANCES ACROSS BORDERS;
et al.

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as
President of the United States; *et al.*

Defendants.

Case No. 17-cv-02921-TDC

DECLARATION OF JANE DOE #2

Pursuant to 28 U.S.C. § 1746, I, [REDACTED], known for the purpose of this case as Jane Doe #2, hereby declare and state as follows:

1. I am over the age of eighteen years, and I make this declaration based on my own personal knowledge. If asked to do so, I could testify truthfully about the matters contained herein.

2. I am a US citizen born in the United States in 1994. I have lived in Maryland my entire life.

3. I went to college at the University of Maryland in College Park and graduated in 2017 with a Bachelor's degree in International Business and Marketing and Persian Studies.

4. I currently work as a loan processor at NVR Mortgage, and have had this job for the last two months.

5. About seven years ago, I first met my fiancé on a visit to Iran. We gradually became closer to each other and started a romantic relationship about a year ago. I visited him in Iran, and we maintained a long-distance relationship. With my current job, it is very difficult for

me to get away to go visit him in Iran, and we eagerly await the time that we can fully be together. It is extremely difficult and emotionally draining for us to be apart from each other. I cannot wait until he joins me in the United States and we can get married.

6. In February 2017, I applied for a K visa for my fiancé. The application was received on February 14, which is Valentine's Day. Things moved relatively quickly after that. On August 4, 2017, he had his interview at the U.S. Embassy in Ankara. We provided dozens of pictures, call logs, a letter detailing our relationship, and paperwork covering other aspects of our relationship. We are now awaiting a final response on his application.

7. I understand that if his visa is not issued by October 18, he will be banned from traveling to the United States by the September 24, 2017 Presidential Proclamation. This will mean that I have to choose between my home and my country here in Maryland and the love of my life, the man I want to marry.

8. We have both been distraught since finding out about the ban. If my fiancé's visa is not granted, we will be completely devastated. It will be very difficult for me to leave my job and the only home I have known. This will tear us apart, and we are already devastated just thinking about it.

9. I believe this Proclamation targets me and my loved ones because of religion and national origin, and not because of any legitimate reason. I feel dismayed and fearful that my country is enacting official policies that discriminate against me and make me feel that I do not belong here. Because of this Proclamation targeting me and my community, I feel insecure and I fear for my safety and the safety of my loved ones. I feel that I am being treated as an outsider in my own country.

10. It is important for me to remain anonymous in this lawsuit. I am aware of rising anti-Muslim and anti-Iranian sentiment that has been reinforced by the two previous travel bans and this latest Presidential Proclamation. I fear especially that, because of the indefinite nature of this Proclamation and the statements it makes about Iranians, there will be even more attacks against my community and my loved ones. I am concerned that revealing my identity will invite harassment or targeting. I am also concerned about revealing sensitive information about my fiancé's immigration status and religion, and about retaliation that he might suffer in Iran if his identity is revealed in the course of this litigation.

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

Executed on October 5, 2017.



Exhibit 4

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

IRANIAN ALLIANCES ACROSS BORDERS;
et al.

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as
President of the United States; *et al.*

Defendants.

Case No. 17-cv-02921-TDC

DECLARATION OF JANE DOE #3

Pursuant to 28 U.S.C. § 1746, I, [REDACTED], known for the purpose of this case as Jane Doe #3, hereby declare and state as follows:

1. I am over the age of eighteen years, and I make this declaration based on my own personal knowledge. If asked to do so, I could testify truthfully about the matters contained herein.
2. I am a dual citizen of the United States and Iran.
3. I first came to the United States as a student in 1995. I became a US citizen in 2004.
4. I currently live in Potomac, Maryland with my husband, and we have two adult twin boys. We first met while I was a student, and were married in August 1995.
5. I am employed as a special education teacher for Montgomery County Public Schools, where I have worked since 2006. I earned a Master's degree in Education from George Washington University in Washington, DC.

6. After I became a U.S. citizen in 2004, I completed and filed I-130 petitions for my two brothers, mother, and father in October 2004. My oldest brother is now a U.S. citizen; my mother is a U.S. citizen; and my father is a Lawful Permanent Resident.

7. My youngest brother is the only one in our family who is still in Iran awaiting final approval of his pending visa application. The I-130 application was approved in late 2005. Because the waiting process for siblings is very long, my brother had been waiting his turn since that time. In May 2017, we finally received a letter saying that my brother's application is ready for processing, and that an interview should be scheduled soon. A few months later, they asked us to resubmit one of the documents in support of his application, and we did that in September 2017, at which point we were informed that his interview should be scheduled soon. After many long years of waiting, we were finally approaching the end of the process.

8. I am aware of the September 24, 2017 Presidential Proclamation banning most travelers from Iran. If it goes into full effect on October 18, I understand that my brother's application will no longer move forward and he will not be issued an immigrant visa. He will be prevented from entering the United States and rejoining his family.

9. The ban on my brother has caused me a great deal of uncertainty, and I have been confused, disheartened, and extremely disappointed about the third iteration of the ban on Muslims and Iranians. I fear that my brother will remain separated from the rest of my family, who all live with me in the United States. He is the only one left in Iran, and we are eagerly awaiting the time when he can come and be reunited with us. I also fear that the Proclamation will result in more hatred and attacks against my community, and I fear for my safety and the safety of my loved ones.

10. It is important for me to remain anonymous in this lawsuit. I am aware of increasing hostility against Iranians and Muslims in the United States. I am also aware of a significant rise in hate crimes against people who are or are perceived to be Muslim, and I fear for the safety and well-being of my family and myself. I am also afraid of retaliation against my brother in the form of a pretextual denial of his visa applications. I wish to remain anonymous in order to protect myself and my family members from these harms.

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

Executed on October 5, 2017.



Exhibit 5

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

IRANIAN ALLIANCES ACROSS BORDERS;
et al.

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as
President of the United States; *et al.*

Defendants.

Case No. 17-cv-02921-TDC

DECLARATION OF JANE DOE #5

Pursuant to 28 U.S.C. § 1746, I, [REDACTED], known for the purpose of this case as Jane Doe #5, hereby declare and state as follows:

1. I am over the age of eighteen years, and I make this declaration based on my own personal knowledge. If asked to do so, I could testify truthfully about the matters contained herein.
2. I am a Lawful Permanent Resident. My husband and I live in the United States with my son, who became a US citizen in 2009 and has been living in the United States since 2004.
3. My husband and I came to the United States in 2010 to join him here. We came in as immigrants and have lived with him in Maryland ever since.
4. My other son currently remains in Iran. I applied to sponsor him shortly after I came to the United States, and the I-130 petition was approved in November 2010.

5. In December 2016, after a long time spent waiting his turn until his visa was ready to be processed, my son received a letter scheduling his interview with the U.S. Embassy in Ankara, Turkey for February 5, 2017. I thought that we were finally at the end of this long process, and would soon be reunited with my son. Before he had his interview, however, President Trump issued the first travel ban and as a result, my son's interview was canceled. After the travel ban was struck down by the courts, his interview was rescheduled for March 20, 2017. He completed his interview and is now awaiting final approval. If the travel ban goes into full effect on October 18, I understand that my son's visa will not be issued, and my separation from him will be prolonged even further.

6. My son is now by himself in Iran, and he wants to come join us here in the United States. I also very much want and need him to be here. I am 79 years old, and as a result of several health issues, am now wheelchair-bound. My husband is 90 years old. He has problems with balance and falls if he walks by himself. It is very difficult for my other son to take care of us by himself, and very hard for us to get around or meet our own needs. We desperately need my other son to be here also.

7. Ever since I found out about the Proclamation, I have been extremely anxious, sad, and worried. I am afraid that I will never be able to see my son. I am afraid that he will not be able to come and be with his elderly parents. This causes me great pain and suffering on a daily basis.

8. I also feel personally attacked, targeted, and disparaged by this new Proclamation, which shows hostility to Iranians generally and to Muslims in particular. It is distressing to feel that the country I call home is targeting me and my children. It also makes me fear for my safety and the safety of my sons and others in my community. By targeting us and treating us like a

threat, the Proclamation encourages people to hate us, and I am afraid of what will come if it goes fully into effect.

9. It is important for me to remain anonymous in this lawsuit. I am aware of rising anti-Muslim and anti-Iranian sentiment related to this Proclamation, and I am afraid of the consequences of revealing my identity. I do not want my family to be targeted or attacked. I also do not want to share private, sensitive information about my religion, my nationality, and my family members' immigration status.

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

Executed on October 5, 2017.



Exhibit 6

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

IRANIAN ALLIANCES ACROSS BORDERS;
et al.

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as
President of the United States; *et al.*

Defendants.

Case No. 17-cv-02921-TDC

DECLARATION OF JOHN DOE #6

Pursuant to 28 U.S.C. § 1746, I, [REDACTED], known for the purpose of this case as John Doe #6, hereby declare and state as follows:

1. I am over the age of eighteen years, and I make this declaration based on my own personal knowledge. If asked to do so, I could testify truthfully about the matters contained herein.
2. I am an Iranian national and a Lawful Permanent Resident. I live in Maryland with my wife, who is also Iranian. I am an engineer, and she is a researcher in Biochemistry at the National Institutes of Health.
3. I came to the United States in 2012 on an immigrant visa that I obtained through the Diversity Visa Lottery and have built my life here in Maryland since 2013.
4. My wife's sister and mother both currently live in Iran. They came to visit us in 2015, but we have not seen them since. Their absence has a heavy impact on my wife, who misses them deeply and was eagerly awaiting their next visit.

5. In November 2016, they both applied for a B1/B2 visa to come visit us. They were interviewed in Dubai on January 5, 2017, and they are currently awaiting issuance of their visas. If the Proclamation goes into effect on October 18, they will not be able to come and visit with us, and my wife will be completely devastated. She is already very lonely and feeling their absence, and she feels she is breaking a promise she made to her mother when she left Iran that she would see her at least once every year.

6. Ever since I found out about the Proclamation, I have been extremely anxious, sad, and worried. I fear that my wife and I will be able to visit with our family members. I fear that my sister- and mother-in-law will not be able to see us regularly, and that my brother will not be able to gain entry into the United States.

7. We came to the United States to take advantage of opportunities, to study and learn, and to contribute our skills to our new home and community. Now, we feel as if we have become targeted and threatened.

8. In my job, I contribute to the work of this government: I am an engineer and my company has government contracts and we do major jobs for the government. It feels especially unjust and injurious that, even while I am contributing to helping the government do its work, the government is now targeting me and telling me that my family and I do not belong here.

9. I feel personally attacked, targeted, and disparaged by this new Proclamation, which shows hostility to Iranians generally and to Muslims in particular. It makes me feel like an outsider in the country that I call my home. And it makes me fear for my safety and the safety of my wife, my loved ones, and my community.

10. It is important for me to remain anonymous in this lawsuit. I am aware of rising anti-Muslim and anti-Iranian sentiment related to this Proclamation, and I am afraid of the

consequences of revealing my identity. I do not want my family to be targeted or attacked. I also do not want to share private, sensitive information about my religion, my nationality, and my family members' immigration status, and I do not want my application for naturalization to be impacted by my pursuit of this legal challenge.

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

Executed on October 5, 2017.



Exhibit A

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

IRANIAN ALLIANCES ACROSS BORDERS;
et al.

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as
President of the United States; *et al.*

Defendants.

Case No. 17-cv-02921-TDC

**DECLARATION OF NASEEM PASHAI ON BEHALF OF
IRANIAN STUDENTS' FOUNDATION**

Pursuant to 28 U.S.C. § 1746, I, Naseem Pashai, hereby declare and state as follows:

1. I am over the age of eighteen years. I have personal knowledge of the facts set forth herein or believe them to be true based on my experience or upon personal information provided to me by others, and I am competent to testify thereto.

2. I am the current President of the Iranian Students' Foundation (ISF) at the University of Maryland College Park (UMD). ISF is a student group that is formally registered with the UMD Student Government Association (SGA), and it receives funding provided by the state through the SGA. I was elected to be the President of ISF in May 2017 and have served as President since.

3. As the current President of ISF, I am familiar with the organization's history, background, and purpose. Because I lead a team of nine executive board positions, who are each responsible for various projects, events, and activities, I am intimately involved in the day-to-day operations of ISF. In addition, I am responsible for managing many aspects of the organization's

functions including ISF's relationship with the campus SGA, overseeing internal matters with other members of the Executive Board, and interfacing with our member base and the broader community outside of UMD.

4. Founded over thirty years ago, ISF is one of the oldest Iranian student organizations in the country. It is comprised of over 30 active student members at any given time, and has many more members that frequent events and meetings throughout the year. While most of ISF's members are first generation Iranian-Americans, some members hold student visas, and a few others are non-Iranian. ISF has a broader network base of over 600 people who receive weekly newsletters by email, and over 700 members in its Facebook group online.

5. Throughout the year, ISF holds weekly general body meetings, fundraising events, and social events for students. ISF provides students with opportunities to build community and connect by hosting social gatherings and closely collaborating with student groups at UMD and other universities. In addition, ISF regularly organizes conferences and events with attendees and leaders from across the country.

6. In addition to serving as an organization for UMD students, ISF has become a hub for the greater Iranian community in the DC, Maryland, and Virginia area. ISF hosts cultural celebrations for the entire Iranian community that are attended by UMD students, alumni, and members of the community who otherwise have no connection to the University.

7. Along with myself, ISF has nine other student executive board positions. ISF also has a Board of Advisors that consists of ISF's three most recent presidents.

8. ISF's primary purpose is to provide members and prospective members with the opportunity to meet others with similar interests and backgrounds. A secondary goal of ISF is to keep the rich Persian history and culture alive for both the descendants of that nation and for all

interested in the culture. Furthermore, ISF strives to raise awareness about Persian culture, dance, tradition, holidays, and history, as well as modern-day Iran and issues facing Iranian-Americans.

9. After previous versions of the travel ban were introduced, many ISF members have lost their sense of safety and security. Many students who participate in our activities and events are from abroad and can no longer rely on their traditional systems of love, support, and comfort, during this time of uncertainty. While other international students can look forward to what opportunities lie ahead, ISF members are unsure of what lies ahead. The Proclamation has created great anxiety in these students, who are unable to plan for their future and now feel unwelcome and discriminated against because of it.

10. Overwhelmingly among our members, there is a feeling of being targeted and singled out by this Presidential Proclamation, and a feeling that our families, ties to Iran, and perceived religion are now liabilities that allow the government to discriminate against us. As an organization that focuses on celebrating Iranian heritage and culture, ISF and its members believe the travel ban represents an official denigration of our heritage, national origin, and culture. ISF members have felt as though they are being separated and isolated from the broader community, singled out and treated as though we are outsiders in our own country.

11. If the Proclamation goes fully into effect, it would make it impossible for Iranian family members of students to visit or attend graduation ceremonies. After sending their children thousands of miles away for greater opportunities, many parents will never have the chance to witness their child walk across the stage and receive a diploma. ISF is aware of two Iranian students who are scheduled to graduate in December 2017, and their families will not be able to obtain visas to attend their commencement celebrations once the travel ban goes into

effect, even though their families had already applied and had already been scheduled for interviews at the U.S. Embassy in Dubai. There are likely many more students in this situation currently, and many more who will be when the Spring graduation dates approach.

12. As a policy that seeks to eliminate an entire group of people from entering this country, ISF worries that the recent Presidential Proclamation will threaten its very existence. At a minimum, we expect that it will reduce ISF's membership. The travel ban will make it more difficult for future Iranian students to come to UMD in search of better opportunities, like many generations before them. Without Iranian students and the greater Iranian-American community to serve, ISF would have no purpose.

13. Under this administration, Iranian and Iranian-American students feel as though our community is under attack. ISF members have come to realize that the current administration does not accept us for who we are—it is as if they are telling us we do not belong. This is the first time where individuals like myself, who were born here in the United States, feel like we are not welcome here.

14. Anti-Iranian sentiment caused by the travel ban has caused great fear and uncertainty for many students at UMD, which has long been a place where Iranians have come and found a home away from home because of ISF. We believe that the issues facing our community are negatively impacting academic performance and campus life for many ISF members. Because the Proclamation and previous discriminatory policies like it have singled out the Iranian culture by stigma, many ISF members feel compelled to take extra steps to counteract what is happening on a national level. Similarly, ISF has had to devote time and resources to responding to the increased anti-Iranian sentiment caused by the travel ban. While this presents greater opportunities to educate others about the Iranian culture, ISF is deeply

concerned about the many harmful ways in which the travel ban would impact our students, the organization, and the legacy we have built over the last three decades.

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

Executed on October 12, 2017.



Naseem Pashai, President of ISF

Exhibit B

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

IRANIAN ALLIANCES ACROSS
BORDERS, *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, *et al.*,

Defendants.

Civil Action No.: 17-CV-2921
Judge Chuang

**DECLARATION OF WALLACE D. LOH,
PRESIDENT, UNIVERSITY OF MARYLAND**

Pursuant to 28 U.S.C. § 1746, I, Wallace D. Loh, declare as follows:

1. I am the President of the University of Maryland (“UMD”). The University of Maryland was founded in 1856 and is the flagship campus of Maryland’s higher educational system. It is a top-ranked, nationally recognized public research institution. We have 38,000 students, including students from all 50 States and 118 countries. We have 9,000 faculty and staff, including three Nobel laureates. We are a member of the Association of American Universities. We have a \$1.9 billion annual operating budget, including \$500 million in external research funding.

2. Before assuming presidency of the University of Maryland in 2010, I served in leadership positions at other public institutions of higher education across the country:

- Dean, School of Law, University of Washington, 1990-95 (assistant professor, 1974-77; associate professor, 1977-80; professor, 1980-95);

- Vice-Chancellor for Academic Affairs, University of Colorado at Boulder, 1995-97 (professor of law, 1995-97);
- Dean, College of Arts & Sciences, Seattle University, 1999-2008 (professor, public service, psychology, 1999-2008);
- Executive Vice-President and Provost, University of Iowa, 2008-10.

I also served as Director of Policy in the Office of Governor, State of Washington, 1997-99.

3. I received my Bachelor of Arts degree from Grinnell College, magna cum laude 1965; my Masters of Arts degree from Cornell University, 1967; my Ph.D. (psychology) from the University of Michigan, 1971 (Ford Foundation Prize Fellowship; National Science Foundation Fellowship; Foreign Area Program Fellowship, American Council of Learned Societies); I received my Juris Doctorate from the Yale Law School, 1974 (Board of Editors, Yale Law Journal).

4. I am a Professor of Public Policy at the University of Maryland, and previously held teaching positions as Professor of Law at Washington, Colorado-Boulder, and Iowa Universities; and Visiting Professor of Law at Cornell, Peking University (China), Emory, University of Texas at Austin, University of Houston, and Vanderbilt. My scholarship and teaching are in the areas of law and social change and in criminal justice reform.

5. I have received various honors and awards, including: Fellow, American Academy of Arts and Sciences; board of directors, American Council of Education; advisory board, U.S. Comptroller General; former advisory board chair, U.S. Department of Homeland Security; "Influential Marylander" (Daily Record); "Power 100" (Washington Business Journal); "Immigrant Achievement Award" (American Immigration Council); former President,

Association of American Law Schools; “Trailblazer Award,” National Asian-Pacific American Bar Association; recipient of three honorary degrees.

6. I was born in Shanghai, China in 1945. I moved as a child with my family to Peru. After high school, I immigrated to the United States and became a naturalized citizen. I am over eighteen years of age, am competent to testify, and have personal knowledge of the matters in this declaration.

7. On February 2, 2017, I was one of 48 University presidents from across the country who wrote to President Trump, urging him to rescind Executive Order 13769 issued on January 27, 2017, entitled “Protecting the Nation from Foreign Terrorist Entry into the United States.” We explained in our letter what we, as University presidents, have witnessed firsthand on our campuses:

“We write as presidents of leading American colleges and universities to urge you to rectify or rescind the recent executive order closing our country’s borders to immigrants and others from seven majority-Muslim countries and to refugees from throughout the world. If left in place, the order threatens both American higher education and the defining principles of our country.

“The order specifically prevents talented, law-abiding students and scholars from the affected regions from reaching our campuses. American higher education has benefited tremendously from this country’s long history of embracing immigrants from around the world. Their innovations and scholarship have enhanced American learning, added to our prosperity, and enriched our culture. Many who have returned to their own countries have taken with them the values that are the lifeblood of our democracy. America’s educational, scientific, economic, and artistic leadership depends

upon our continued ability to attract the extraordinary people who for many generations have come to this country in search of freedom and a better life.

“This action unfairly targets seven predominantly Muslim countries in a manner inconsistent with America’s best principles and greatest traditions. We welcome outstanding Muslim students and scholars from the United States and abroad, including the many who come from the seven affected countries. Their vibrant contributions to our institutions and our country exemplify the value of the religious diversity that has been a hallmark of American freedom since this country’s founding. The American dream depends on continued fidelity to that value.

“We recognize and respect the need to protect America’s security. The vetting procedures already in place are rigorous. Improvements to them should be based on evidence, calibrated to real risks, and consistent with constitutional principle.

“Throughout its history America has been a land of opportunity and a beacon of freedom in the world. It has attracted talented people to our shores and inspired people around the globe. This executive order is dimming the lamp of liberty and staining the country’s reputation. We respectfully urge you to rectify the damage done by this order.

8. President Trump’s March 6, 2017 order of the same title, Executive Order 13780, provided for a similar devastating impact. Those orders were preliminarily enjoined by this and other courts. *Hawaii v. Trump*, 859 F.3d 741 (9th Cir. 2017); *Int’l Refugee Assistance Project v. Trump*, 857 F.3d 554 (4th Cir. 2017) (en banc).

9. On September 24, 2017, the third iteration of President Trump’s order was issued, entitled the “Presidential Proclamation Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats”

(the “Proclamation”). **Attachment A.** I have reviewed the Proclamation and write this declaration to identify for the court the concrete and irreparable harm that will be suffered by the students, their families, researchers, faculty members, scholars, speakers, and visitors at the University of Maryland if that Proclamation is allowed to go into effect. The Proclamation singles out six predominantly Muslim countries: Syria, Iran, Somalia, Chad, Libya and Yemen. Approximately 111 of our students and 11 of our faculty and staff are nationals of these six countries.

10. Implementation of the Proclamation would directly impair the University of Maryland’s ability to carry out its mission of teaching, research, and support for the economic development of Maryland as well as the United States. Implementation of the Proclamation will interrupt and impede the academic progress and scholarly research of various students and faculty members.

11. The Proclamation, as well as the two Executive Orders that preceded it, has generated anxiety among the student body at the University of Maryland, particularly among our Muslim students. These adverse psychological effects extend even to those who are not nationals of the countries on which the Proclamation directly imposes restrictions, including students who are either United States citizens, Lawful Permanent Residents in the United States, or nationals of other countries. These students have expressed intense feelings of insecurity, depression, and alienation, and report feeling divided from their peers. These emotional and psychological harms impact their productivity during their time at the University.

12. The Proclamation will directly harm students of the University of Maryland, in particular those who are nationals of Syria, Iran, and Somalia, because of the restrictions that the Proclamation imposes on nationals of those countries as entrants to this country on

nonimmigrant students. Our current students have great anxiety about whether they will be barred from renewing their student visas and continuing their studies and research at the University of Maryland.

- a. For nationals of Syria, the Proclamation indefinitely suspends all non-immigrant visas, including student and exchange visitor visas (F, M, and J). **Attachment A** § 2(e)(ii).
- b. For nationals of Iran, the Proclamation imposed unspecified “enhanced screening and vetting requirements,” on holders of student and exchange visitor visas (F, M, and J). *Id.* § 2(b)(ii).
- c. For nationals of Somalia, all “visa adjudications” and “decisions regarding their entry as nonimmigrants” are “subject to additional scrutiny” of an unspecified nature. *Id.* § 2(h)(ii).

13. Those students, as well as students who are nationals of Chad, Libya, and Yemen, will be directly harmed by the Proclamation because it indefinitely bans nationals of those countries from entering the United States on other non-immigrants visas such as B-1 tourist visas, thereby meaning that these students will be barred from visits by various family members throughout their college education at the University. In addition, members of our faculty or post-graduate students, researchers, and scholars, similarly are directly harmed by the indefinite ban on visas for family members from their countries of nationality.

14. Students and faculty members at the University who are United States citizens and Lawful Permanent Residents who have family members who are nationals and residents of the countries subject to the Proclamation restrictions will be similarly harmed by the inability of those family members to obtain visas to visit them.

15. Of particularly great distress to me is the fact that the Proclamation will prevent some of our students from having the honor and joy of the attendance of their parents and other family members at their college graduation ceremony. A student's graduation from college is a milestone in his or her life, a day often remembered specifically for the rest of one's life, and a day on which students honor their parents' contributions and family support as major contributing factors to their success. The banning of a student's family from his or her college graduation ceremony is a type of harm that is irreparable not just because of the absence of the family participation in one of the great milestones in that student's life, but also because of the stigmatization and isolation of that student from the full experience of and participation in the ceremonies as experienced by his or her classmates.

- a. The University's winter graduation ceremony is scheduled for December 19, 2017. If the Proclamation is allowed to go into full effect, there is at least one student at the University of Maryland who likely will not be able to have his family attend his graduation as a direct result of the Proclamation. His parents are nationals of Iran, and had applied (before issuance of the Proclamation) for tourist visas to attend his graduation ceremony. They have an interview scheduled at the United States embassy in Dubai to review their visa application, but according to the terms of the Proclamation, they will be denied such visas. At least one other student of Iranian origin is similarly situated.
- b. Due to the indefinite nature of the Proclamation, such harm will befall other students at the University at each semester's graduation ceremonies if the Proclamation is in effect.

16. Individuals harmed by the Proclamation—students, faculty members, researchers, and visiting scholars, and the loved ones who support them—are essential to the University’s educational and research missions, and are members of our campus family.

17. The Proclamation threatens the University’s enrollment. Approximately 25 individuals from the six Muslim-majority countries subject to the restrictions of the Proclamation have submitted applications for admission to UMD. If the Proclamation were to go into full effect, admitted students from Syria will not be able to receive student visas, or in the case of nationals of Iran and Somalia, will be subject to unclear vetting and restrictions before potentially receiving a visa. Many of those students would have pursued education in high-demand STEM disciplines (science, technology, engineering and mathematics). The University will lose their valuable efforts and presence in our community, and the state of Maryland will lose the long-term economic contributions of their studies and work.

18. The Proclamation harms the University’s ability to attract talented students from abroad, which will financially impact UMD and the state of Maryland. According to a report analyzing the 2015-2016 academic year, international students contribute \$150 million annually to the University in payments for tuition, housing, and academic material. They generated and maintained more than 2,200 jobs. See NAFSA, *Maryland Benefits from International Students*, <https://istart.iu.edu/nafsa/reports/state.cfm?state=MD&year=2015>. The Proclamation creates a perception that U.S. educational institutions do not welcome students from predominately Muslim countries, and will deter those students from choosing to study at UMD. The loss of these students will reduce the University’s revenues.

19. The Proclamation will directly harm visiting scholars and speakers whose participation in scholarship and events at the University depends on processing and renewal of

business, tourist, and other visas. The Proclamation bans such visas for nationals of Chad, Iran, Libya, Syria, and Yemen, and subjects such visas for nationals of Somalia to unspecified “additional scrutiny.” The students at the University of Maryland, including United States citizens, will be harmed by their inability to attend events at which such scholars and speakers would otherwise participate to share their views, research, and academic analysis.

20. Students, faculty, scholars, and speakers contribute to the University community and its intellectual education of its student body through their academic pursuits and achievements. Many teach and research in fields that are in-demand, and they are difficult, if not impossible, to replace. For example, UMD conducted an extensive international search for a statistician with specific expertise to work on a team studying colony collapse disorder in honeybees. That statistician had accepted an offer to relocate to UMD and participate in this critical work. After President Trump signed Executive Order 13769 on January 27, 2017, however, she expressed discomfort about moving to the United States and reversed her decision. This knowledge gap has, and will continue to, slow the progress of this important research. If the Proclamation is allowed to go into full effect, UMD expects to be further harmed in its effort to recruit top talent from abroad, either because the needed experts will be unable to enter the country under the terms of the Proclamation, or because they are uncomfortable with the Proclamation’s effect on others.

21. The Proclamation also imposes direct harms on students, faculty members, and other members of our campus family who are not nationals, and do not have family members who are nationals, of the countries subject to the restrictions of the Proclamation, because the Proclamation undermines the intellectual, cultural, and social diversity of the University. Diversity, including diversity based on national origin, religion, and background, is uniquely

valuable in an institution of higher learning. The University of Maryland benefits tremendously by participation on campus by students, faculty, scholars, and speakers from other nations and religious backgrounds. As the Supreme Court has held, educational benefits of diversity are a compelling interest, particularly because diversity “promotes learning outcomes and better prepares students for an increasingly diverse workforce and society, and better prepares them as professionals.” *Grutter v. Bollinger*, 539 U.S. 306, 330 (2003) (internal quotations and citation omitted).

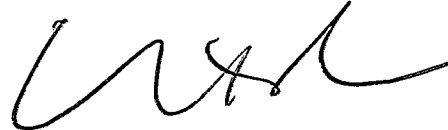
22. Furthermore, students, faculty, scholars, and speakers from the specific countries restricted by the Proclamation can provide particular wisdom and insight into our efforts to improve the world’s current problems. Their presence is essential for cross-cultural understanding and learning. The Proclamation inhibits these opportunities for cross-cultural understanding, which is integral to providing a high-quality University education.

23. A substantial number of the students who attend the University of Maryland did not grow up in diverse communities or attend diverse primary or secondary schools. Indeed, some never met a Muslim before attending UMD. The Proclamation restricts the opportunities for these students to broaden their understanding of other cultures, nations, and religions during their university education. Indeed, the Proclamation sends the entirely wrong message that Muslims are not welcome and not to be trusted in this country and thereby reinforces prejudices and stereotypes that a university education should help to break down. In this respect, the Proclamation directly hinders and frustrates the mission and role of the University of Maryland.

24. It is in the interest of the University, as well as in the national interest, to welcome talented persons of all nations to study, teach, and do research in the United States, in order to maintain and improve America’s position as a leader in higher education and research. To reach

those goals, we must remain true to our bedrock values of diversity, inclusion, tolerance, and intellectual freedom. The Proclamation imposes urgent and concrete harms to the University's community, mission, and values.

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 10, 2017.

A handwritten signature in black ink, appearing to read 'WDL', is written above a horizontal line.

Wallace D. Loh
President, University of Maryland

Exhibit C

Lynch, Mark

From: Schwei, Daniel S. (CIV) <Daniel.S.Schwei@usdoj.gov>
Sent: Thursday, October 12, 2017 12:34 PM
To: Lynch, Mark
Cc: sirine@muslimadvocates.org; nellis@au.org; rothschild@au.org; katskee@au.org; Kies, Marianne; Mosier, Mark
Subject: RE: 17-2921 IAAB v. Trump Hearing Time

Mark,

The Government opposes your filing of the declaration, for the reasons stated in my prior e-mail. Judge Chuang's order directed plaintiffs to file their opening motion by October 6, and you have provided no reason why the declaration could not have been filed by the deadline.

Also, while Plaintiffs do not require consent or leave of court to amend the complaint at this time, that amended complaint does not change the character of the PI proceedings in any way. Allowing plaintiffs to add additional claims or parties at this stage would be unfair and prejudicial to the Government, and again would be inconsistent with Judge Chuang's scheduling order.

Best,
Daniel

From: Lynch, Mark [mailto:mlynch@cov.com]
Sent: Thursday, October 12, 2017 9:51 AM
To: Schwei, Daniel S. (CIV) <DSchwei@civ.usdoj.gov>
Cc: sirine@muslimadvocates.org; nellis@au.org; rothschild@au.org; katskee@au.org; Kies, Marianne <MKies@cov.com>; Mosier, Mark <mmosier@cov.com>
Subject: RE: 17-2921 IAAB v. Trump Hearing Time

Daniel -- We plan to file later today an amended IAAB complaint to add claims under the APA and to add the Iranian Students' Foundation (ISF) as a plaintiff. (As you know, amendment at this time does not require consent of the defendants or leave of the court.) ISF will also file a declaration addressing the issues of standing and injury, similar to the declarations of the other plaintiffs. Will you consent to the filing of that declaration?

Thanks for your attention to this matter.

Mark

From: Schwei, Daniel S. (CIV) [mailto:Daniel.S.Schwei@usdoj.gov]
Sent: Tuesday, October 10, 2017 8:11 PM
To: Lynch, Mark <mlynch@cov.com>
Cc: sirine@muslimadvocates.org; nellis@au.org; rothschild@au.org; katskee@au.org; Kies, Marianne <MKies@cov.com>; Mosier, Mark <mmosier@cov.com>
Subject: RE: 17-2921 IAAB v. Trump Hearing Time

Mark,

The Government opposes your filing of this declaration. You have not provided any reason why the declaration could not have been filed by the deadline for your opening motion, and in any event this declaration—from a non-party entity—is not necessary to the Court's resolution of your motion.

Best,
Daniel

From: Lynch, Mark [<mailto:mlynch@cov.com>]
Sent: Tuesday, October 10, 2017 6:28 PM
To: Schwej, Daniel S. (CIV) <DSchwei@civ.usdoj.gov>
Cc: sirine@muslimadvocates.org; nellis@au.org; rothschild@au.org; katskee@au.org; Kies, Marianne <MKies@cov.com>; Mosier, Mark <mmosier@cov.com>
Subject: RE: 17-2921 IAAB v. Trump Hearing Time

Dear Daniel:

We plan to file tomorrow a motion to leave to file the attached declaration from the President of the University of Maryland, which we just obtained today, and we wanted to provide it to you as soon as possible. We also ask if we can represent in our motion that defendants consent to the filing of this declaration.

Thank you for your attention to this matter.

Sincerely,
Mark Lynch

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

IRANIAN ALLIANCES ACROSS)
 BORDERS, *et al.*,)
)
 Plaintiffs,)
)
 v.)
)
 DONALD TRUMP, in his official capacity)
 as President of the United States, *et al.*,)
)
 Defendants.)

No. 8:17-cv-02921-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. 46 and 47, both dated October 17, 2017.

Dated: October 20, 2017

Respectfully submitted,

CHAD A. READLER
Acting Assistant Attorney General

HASHIM M. MOOPAN
Deputy Assistant Attorney General

STEPHEN M. SCHENNING
Acting United States Attorney

JENNIFER D. RICKETTS
Director, Federal Programs Branch

JOHN R. TYLER
Assistant Director, Federal Programs Branch

/s/ Daniel Schwei
DANIEL SCHWEI (Bar No. 96100)
MICHELLE R. BENNETT (Bar No. 806456)

ARJUN GARG (Bar No. 806537)
Senior Trial Counsel / Trial Attorney
United States Department of Justice
Civil Division, Federal Programs Branch
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Tel: (202) 305-8693
Fax: (202) 616-8470
E-mail: daniel.s.schwei@usdoj.gov
michelle.bennett@usdoj.gov
arjun.garg@usdoj.gov

Attorneys for Defendants

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

APPEAL

**U.S. District Court
District of Maryland (Baltimore)
CIVIL DOCKET FOR CASE #: 1:17-cv-02969-TDC**

Zakzok et al v. Trump et al
Assigned to: Judge Theodore D. Chuang
Case in other court: USCA, 17-02233
Cause: 28:2201 Declaration Judgement (aliens and nationality)

Date Filed: 10/06/2017
Jury Demand: None
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: U.S. Government
Defendant

Plaintiff

Eblal Zakzok

represented by **Andrew J. Ehrlich**
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Garrison, LLP
1285 Avenue of the Americas
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Jethro Mark Eisenstein
Profeta & Eisenstein

JA 1201

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PRO HAC VICE

JA 1202

*ATTORNEY TO BE NOTICED***Steven C. Herzog**

Paul, Weiss, Rifkind, Wharton &
Garrison, LLP

1285 Avenue of the Americas

New York, NY 10019

212-373-3000

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Email: sherzog@paulweiss.com

ATTORNEY TO BE NOTICED

Charles E Davidow

Paul Weiss Rifkind Wharton and
Garrison LLP

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Washington, DC 20006-1047

12022237380

Fax: 12022047380

Email: cdavidow@paulweiss.com

ATTORNEY TO BE NOTICED

Plaintiff

Sumaya Hamadmad

represented by **Andrew J. Ehrlich**

(See above for address)

ATTORNEY TO BE NOTICED

Faiza Patel

(See above for address)

PRO HAC VICE

ATTORNEY TO BE NOTICED

Gadeir I. Abbas

(See above for address)

PRO HAC VICE

ATTORNEY TO BE NOTICED

Jethro Mark Eisenstein

(See above for address)

ATTORNEY TO BE NOTICED

Lena F. Masri

(See above for address)

PRO HAC VICE

ATTORNEY TO BE NOTICED

Liza Velazquez

(See above for address)

JA 1203

PRO HAC VICE
ATTORNEY TO BE NOTICED

Michael William Price
(See above for address)
ATTORNEY TO BE NOTICED

Robert A Atkins
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Charles E Davidow
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

Fahed Muqbil

represented by **Andrew J. Ehrlich**
(See above for address)
ATTORNEY TO BE NOTICED

Faiza Patel
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Gadeir I. Abbas
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Jethro Mark Eisenstein
(See above for address)
ATTORNEY TO BE NOTICED

Lena F. Masri
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Liza Velazquez
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Michael William Price
(See above for address)
ATTORNEY TO BE NOTICED

Robert A Atkins
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Charles E Davidow
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

John Doe #1

represented by **Andrew J. Ehrlich**
(See above for address)
ATTORNEY TO BE NOTICED

Faiza Patel
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Gadeir I. Abbas
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Jethro Mark Eisenstein
(See above for address)
ATTORNEY TO BE NOTICED

Lena F. Masri
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Liza Velazquez
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Michael William Price
(See above for address)
ATTORNEY TO BE NOTICED

Robert A Atkins
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Charles E Davidow

(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

Jane Doe #2

represented by **Andrew J. Ehrlich**
(See above for address)
ATTORNEY TO BE NOTICED

Faiza Patel
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Gadeir I. Abbas
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Jethro Mark Eisenstein
(See above for address)
ATTORNEY TO BE NOTICED

Lena F. Masri
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Liza Velazquez
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Michael William Price
(See above for address)
ATTORNEY TO BE NOTICED

Robert A Atkins
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Charles E Davidow
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

Jane Doe #3

represented by **Andrew J. Ehrlich**
(See above for address)
ATTORNEY TO BE NOTICED

Faiza Patel

(See above for address)

*PRO HAC VICE**ATTORNEY TO BE NOTICED***Gadeir I. Abbas**

(See above for address)

*PRO HAC VICE**ATTORNEY TO BE NOTICED***Jethro Mark Eisenstein**

(See above for address)

*ATTORNEY TO BE NOTICED***Lena F. Masri**

(See above for address)

*PRO HAC VICE**ATTORNEY TO BE NOTICED***Liza Velazquez**

(See above for address)

*PRO HAC VICE**ATTORNEY TO BE NOTICED***Michael William Price**

(See above for address)

*ATTORNEY TO BE NOTICED***Robert A Atkins**

(See above for address)

*PRO HAC VICE**ATTORNEY TO BE NOTICED***Charles E Davidow**

(See above for address)

ATTORNEY TO BE NOTICED

V.

Defendant**Donald Trump***in his official capacity as President of
the United States*

represented by **Daniel Stephen Garrett Schwei**
United States Department of Justice
20 Massachusetts Ave NW Room 6145
Washington, DC 20001
2023058693
Fax: 2026168470
Email: daniel.s.schwei@usdoj.gov

JA 1207

LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

U.S. Department of Homeland Security

represented by **Daniel Stephen Garrett Schwei**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

U.S. Department of State

represented by **Daniel Stephen Garrett Schwei**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Elaine Duke
In her official capacity as Acting Secretary of Homeland Security

represented by **Daniel Stephen Garrett Schwei**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Steven C. Herzog
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Rex W. Tillerson
In his official capacity as Secretary of State

represented by **Daniel Stephen Garrett Schwei**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

| Date Filed | # | Docket Text |
|-------------------|--------------------------|---|
| 10/06/2017 | <u>1</u> | COMPLAINT against Elaine Duke, Rex W. Tillerson, Donald Trump, U.S. Department of Homeland Security, U.S. Department of State (Filing fee \$ 400 receipt number 0416-6932959.), filed by Jane Doe #3, Fahed Muqbil, Sumaya Hamadmad, John Doe #1, Eblal Zakzok, Jane Doe #2. (Attachments: # <u>1</u> Summons, # <u>2</u> Summons, # <u>3</u> Summons, # <u>4</u> Summons, # <u>5</u> Summons, # <u>6</u> Civil Cover Sheet)(Davidow, Charles) (Entered: 10/06/2017) |
| 10/06/2017 | <u>2</u> | MOTION for Preliminary Injunction by John Doe #1, Jane Doe #2, Jane Doe #3, Sumaya Hamadmad, Fahed Muqbil, Eblal Zakzok (Attachments: # <u>1</u> Text of Proposed Order)(Davidow, Charles) (Entered: 10/06/2017) |
| 10/06/2017 | <u>3</u> | NOTICE by John Doe #1, Jane Doe #2, Jane Doe #3, Sumaya Hamadmad, Fahed Muqbil, Eblal Zakzok <i>Letter re: Motion for Preliminary Injunction / Request to File Memorandum</i> (Davidow, Charles) (Entered: 10/06/2017) |
| 10/10/2017 | | |

JA 1208

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|------------|--------------------|--|
| | | Case Reassigned to Judge Theodore D. Chuang. Judge George Levi Russell, III no longer assigned to the case. (aos, Deputy Clerk) (Entered: 10/10/2017) |
| 10/10/2017 | 4 | ORDER granting Plaintiff's leave to file the Motion for Preliminary Injunction; directing that a Supplement is due October 10, 2017 at 12:00 noon; directing that the Zakzok Plaintiff's will be permitted to file a Reply by October 14, 2017 at 12:00 noon. Signed by Judge Theodore D. Chuang on 10/10/2017. (aos, Deputy Clerk) Modified on 10/10/2017 (aos, Deputy Clerk). (Entered: 10/10/2017) |
| 10/10/2017 | 5 | QC NOTICE: 1 Complaint, filed by Sumaya Hamadmad, Jane Doe #2, Eblal Zakzok, John Doe #1, Fahed Muqbil, Jane Doe #3 was filed incorrectly.***Please file a proposed summons for the U.S. Attorney for the District of Maryland and The Attorney General of the United States. (kw2s, Deputy Clerk) (Entered: 10/10/2017) |
| 10/10/2017 | 6 | Memorandum in support of 2 MOTION for Preliminary Injunction filed by John Doe #1, Jane Doe #2, Jane Doe #3, Sumaya Hamadmad, Fahed Muqbil, Eblal Zakzok. (Attachments: # 1 Declaration of Fahed Muqbil, # 2 Declaration of Eblal Zakzok, # 3 Declaration of Sumaya Hamadmad, # 4 Declaration of John Doe #1, # 5 Declaration of Jane Doe #2, # 6 Declaration of Jane Doe #3) (Davidow, Charles) Modified on 10/11/2017 (tds, Deputy Clerk). (Entered: 10/10/2017) |
| 10/10/2017 | 7 | NOTICE by John Doe #1, Jane Doe #2, Jane Doe #3, Sumaya Hamadmad, Fahed Muqbil, Eblal Zakzok re 5 QC Notice - Miscellaneous, 1 Complaint, <i>Request of Issuance of Summonses for Acting U.S. Attorney Stephen Schenning and Attorney General Jefferson Beauregard Sessions III</i> (Attachments: # 1 Summons)(Davidow, Charles) (Entered: 10/10/2017) |
| 10/10/2017 | 8 | MOTION for Permission for Certain Plaintiffs to Proceed under Pseudonyms and to Omit Individual Plaintiffs' Home Addresses from Caption by John Doe #1, Jane Doe #2, Jane Doe #3, Sumaya Hamadmad, Fahed Muqbil, Eblal Zakzok (Attachments: # 1 Memorandum, # 2 Text of Proposed Order)(Davidow, Charles) (Entered: 10/10/2017) |
| 10/10/2017 | 9 | NOTICE rescheduling the Hearing on the Motions for Preliminary Injunction for October 16, 2017 at 2:00 p.m. at the United States Courthouse at 6500 Cherrywood Lane in Greenbelt, Maryland. (signed by Judge Theodore D. Chuang 10/10/2017). (tds, Deputy Clerk) (Entered: 10/10/2017) |
| 10/10/2017 | 10 | MOTION to Appear Pro Hac Vice for Robert A. Atkins (Filing fee \$100, receipt number 0416-6935673.) by John Doe #1, Jane Doe #2, Jane Doe #3, Sumaya Hamadmad, Fahed Muqbil, Eblal Zakzok(Davidow, Charles) (Entered: 10/10/2017) |
| 10/10/2017 | 11 | MOTION to Appear Pro Hac Vice for Andrew J. Ehrlich (Filing fee \$100, receipt number 0416-6935675.) by John Doe #1, Jane Doe #2, Jane Doe #3, Sumaya Hamadmad, Fahed Muqbil, Eblal Zakzok(Davidow, Charles) (Entered: 10/10/2017) |
| 10/10/2017 | 12 | MOTION to Appear Pro Hac Vice for Liza Velazquez (Filing fee \$100, receipt number 0416-6935677.) by John Doe #1, Jane Doe #2, Jane Doe #3, Sumaya |

| | | |
|------------|--------------------|--|
| | | Hamadmad, Fahed Muqbil, Eblal Zakzok(Davidow, Charles) (Entered: 10/10/2017) |
| 10/10/2017 | 13 | MOTION to Appear Pro Hac Vice for Steven C. Herzog (Filing fee \$100, receipt number 0416-6935678.) by John Doe #1, Jane Doe #2, Jane Doe #3, Sumaya Hamadmad, Fahed Muqbil, Eblal Zakzok(Davidow, Charles) (Entered: 10/10/2017) |
| 10/11/2017 | 14 | MOTION to Appear Pro Hac Vice for Faiza Patel (Filing fee \$100, receipt number 0416-6936961.) by John Doe #1, Jane Doe #2, Jane Doe #3, Sumaya Hamadmad, Fahed Muqbil, Eblal Zakzok(Davidow, Charles) (Entered: 10/11/2017) |
| 10/11/2017 | 15 | MOTION to Appear Pro Hac Vice for Jethro Mark Eisenstein (Filing fee \$100, receipt number 0416-6936974.) by John Doe #1, Jane Doe #2, Jane Doe #3, Sumaya Hamadmad, Fahed Muqbil, Eblal Zakzok(Davidow, Charles) (Entered: 10/11/2017) |
| 10/11/2017 | 16 | MOTION to Appear Pro Hac Vice for Lena F. Masri (Filing fee \$100, receipt number 0416-6936982.) by John Doe #1, Jane Doe #2, Jane Doe #3, Sumaya Hamadmad, Fahed Muqbil, Eblal Zakzok(Davidow, Charles) (Entered: 10/11/2017) |
| 10/11/2017 | 17 | MOTION to Appear Pro Hac Vice for Michael William Price (Filing fee \$100, receipt number 0416-6936992.) by John Doe #1, Jane Doe #2, Jane Doe #3, Sumaya Hamadmad, Fahed Muqbil, Eblal Zakzok(Davidow, Charles) (Entered: 10/11/2017) |
| 10/11/2017 | 18 | Summons Issued 60 days as to Elaine Duke, Rex W. Tillerson, Donald Trump, U.S. Department of Homeland Security, U.S. Department of State, U.S. Attorney and U.S. Attorney General. (tds, Deputy Clerk) (Entered: 10/11/2017) |
| 10/12/2017 | 19 | NOTICE of Appearance by Daniel Stephen Garrett Schwei on behalf of All Defendants (Schwei, Daniel) (Entered: 10/12/2017) |
| 10/12/2017 | 20 | RESPONSE in Opposition re 2 MOTION for Preliminary Injunction filed by Elaine Duke, Rex W. Tillerson, Donald Trump, U.S. Department of Homeland Security, U.S. Department of State.(Schwei, Daniel) (Entered: 10/12/2017) |
| 10/13/2017 | 21 | MOTION to Appear Pro Hac Vice for Gadeir I. Abbas (Filing fee \$100, receipt number 0416-6941425.) by John Doe #1, Jane Doe #2, Jane Doe #3, Sumaya Hamadmad, Fahed Muqbil, Eblal Zakzok(Davidow, Charles) (Entered: 10/13/2017) |
| 10/13/2017 | 22 | PAPERLESS ORDER granting 10 Motion to Appear Pro Hac Vice on behalf of Robert A Atkins. Directing attorney Robert A Atkins to register online for CM/ECF at http://www.mdd.uscourts.gov/electronic-case-filing-registration . Signed by Clerk on 10/13/2017. (cs3, Deputy Clerk) (Entered: 10/13/2017) |
| 10/13/2017 | 23 | [FILED IN ERROR] PAPERLESS ORDER granting 11 Directing attorney to register online for CM/ECF at http://www.mdd.uscourts.gov/electronic-case-filing-registration . Signed by Clerk on 10/13/2017. (cs3, Deputy Clerk) Modified on 10/13/2017 (kns, Deputy Clerk). (Entered: 10/13/2017) |
| | | |

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|------------|--------------------|--|
| 10/13/2017 | 24 | PAPERLESS ORDER granting 12 Motion to Appear Pro Hac Vice on behalf of Liza Velazquez. Directing attorney Liza Velazquez to register online for CM/ECF at http://www.mdd.uscourts.gov/electronic-case-filing-registration . Signed by Clerk on 10/13/2017. (cs3, Deputy Clerk) (Entered: 10/13/2017) |
| 10/13/2017 | 25 | PAPERLESS ORDER granting 13 Motion to Appear Pro Hac Vice on behalf of Steven C. Herzog. Directing attorney Steven C. Herzog to register online for CM/ECF at http://www.mdd.uscourts.gov/electronic-case-filing-registration . Signed by Clerk on 10/13/2017. (cs3, Deputy Clerk) (Entered: 10/13/2017) |
| 10/13/2017 | 26 | PAPERLESS ORDER granting 14 Motion to Appear Pro Hac Vice on behalf of Faiza Patel. Directing attorney Faiza Patel to register online for CM/ECF at http://www.mdd.uscourts.gov/electronic-case-filing-registration . Signed by Clerk on 10/13/2017. (cs3, Deputy Clerk) (Entered: 10/13/2017) |
| 10/13/2017 | 27 | PAPERLESS ORDER granting 15 Motion to Appear Pro Hac Vice on behalf of Jethro Mark Eisenstein. Directing attorney Jethro Mark Eisenstein to register online for CM/ECF at http://www.mdd.uscourts.gov/electronic-case-filing-registration . Signed by Clerk on 10/13/2017. (cs3, Deputy Clerk) (Entered: 10/13/2017) |
| 10/13/2017 | 28 | PAPERLESS ORDER granting 16 Motion to Appear Pro Hac Vice on behalf of Lena F. Masri. Directing attorney Lena F. Masri to register online for CM/ECF at http://www.mdd.uscourts.gov/electronic-case-filing-registration . Signed by Clerk on 10/13/2017. (cs3, Deputy Clerk) (Entered: 10/13/2017) |
| 10/13/2017 | 29 | PAPERLESS ORDER granting 11 Motion to Appear Pro Hac Vice on behalf of Andrew J. Ehrlich. Directing attorney Andrew J. Ehrlich to register online for CM/ECF at http://www.mdd.uscourts.gov/electronic-case-filing-registration . Signed by Clerk on 10/13/2017. (cs3, Deputy Clerk) (Entered: 10/13/2017) |
| 10/13/2017 | 30 | [FILED IN ERROR] SUMMONS Returned Executed by Jane Doe #3, Fahed Muqbil, Sumaya Hamadmad, John Doe #1, Eblal Zakzok, Jane Doe #2. Elaine Duke served on 10/12/2017, answer due 12/11/2017; Rex W. Tillerson served on 10/12/2017, answer due 12/11/2017; Donald Trump served on 10/12/2017, answer due 12/11/2017; U.S. Department of Homeland Security served on 10/12/2017, answer due 12/11/2017; U.S. Department of State served on 10/12/2017, answer due 12/11/2017.(Davidow, Charles) Modified on 10/17/2017 (tds, Deputy Clerk). (Entered: 10/13/2017) |
| 10/13/2017 | 31 | PAPERLESS ORDER granting 17 Motion to Appear Pro Hac Vice on behalf of Michael William Price. Directing attorney Michael William Price to register online for CM/ECF at http://www.mdd.uscourts.gov/electronic-case-filing-registration . Signed by Clerk on 10/13/2017. (cs3, Deputy Clerk) (Entered: 10/13/2017) |
| 10/13/2017 | 32 | PAPERLESS ORDER granting 21 Motion to Appear Pro Hac Vice on behalf of Gadeir I. Abbas. Directing attorney Gadeir I. Abbas to register online for CM/ECF at http://www.mdd.uscourts.gov/electronic-case-filing-registration . Signed by Clerk on 10/13/2017. (cs3, Deputy Clerk) (Entered: 10/13/2017) |
| 10/14/2017 | 33 | REPLY to Response to Motion re 2 MOTION for Preliminary Injunction filed by John Doe #1, Jane Doe #2, Jane Doe #3, Sumaya Hamadmad, Fahed Muqbil, |

| | | |
|------------|--------------------|---|
| | | Eblal Zakzok. (Attachments: # 1 Declaration of Steven C. Herzog, # 2 Exhibit 1, # 3 Exhibit 2, # 4 Exhibit 3, # 5 Exhibit 4, # 6 Exhibit 5, # 7 Exhibit 6, # 8 Exhibit 7, # 9 Exhibit 8, # 10 Exhibit 9, # 11 Exhibit 10, # 12 Exhibit 11, # 13 Exhibit 12, # 14 Exhibit 13, # 15 Exhibit 14)(Davidow, Charles) (Entered: 10/14/2017) |
| 10/16/2017 | 34 | Preliminary Injunction Hearing held on 10/16/2017 before Judge Theodore D. Chuang.(Court Reporter: Lisa Bankins - 4C) (klss, Deputy Clerk) (Entered: 10/16/2017) |
| 10/17/2017 | 35 | QC NOTICE: 30 Summons Returned Executed as to USA, filed by Sumaya Hamadmad, Jane Doe #2, Eblal Zakzok, John Doe #1, Fahed Muqbil, Jane Doe #3 was filed incorrectly. <i>***Please re-file the documents that pertain only to Summonses that were returned executed. Documents titled "Affidavits of Service by Certified Mail" were filed but they do not constitute actual service of the Summonses. ECF No. 30 has been noted as FILED IN ERROR, and the document link has been disabled.</i> (tds, Deputy Clerk) (Entered: 10/17/2017) |
| 10/17/2017 | 36 | MEMORANDUM OPINION. Signed by Judge Theodore D. Chuang on 10/17/2017. (kns, Deputy Clerk) (Entered: 10/18/2017) |
| 10/17/2017 | 37 | ORDER granting in part and denying in part 2 Motion for Preliminary Injunction. Signed by Judge Theodore D. Chuang on 10/17/2017. (kns, Deputy Clerk) (Entered: 10/18/2017) |
| 10/19/2017 | 38 | SUMMONS Returned Executed by Jane Doe #3, Fahed Muqbil, Sumaya Hamadmad, John Doe #1, Eblal Zakzok, Jane Doe #2. (Davidow, Charles) (Entered: 10/19/2017) |
| 10/19/2017 | 39 | AFFIDAVIT of Service by Certified Mail for Summons, Complaint for Declaratory and Injunctive Relief, Civil Cover Sheet, Letter dated October 6, 2017 Addressed to Judge Theodore D. Chuang, Plaintiffs' Motion for a Preliminary Injunction, Text of the Proposed Order Granting the Motion, Memorandum of Law in Support of Plaintiffs' Motion for a Preliminary Injunction, Declaration of Fahed Muqbil, Declaration of Eblal Zakzok, Declaration of Sumaya Hamadmad, Declaration of John Doe #1, Declaration of Jane Doe #2, Declaration of Jane Doe #3, Plaintiffs' Motion for Permission for Certain Plaintiffs to Proceed Under Pseudonyms and to Omit Individual Plaintiffs' Home Address from Caption, Plaintiffs' Memorandum of Law in Support of their Motion for Permission for Certain Plaintiffs to Proceed Under Pseudonyms and to Omit Individual Plaintiffs' Home Addresses from Caption, Text of Proposed Order Granting the Motion served on Donald J. Trump, Jefferson Beauregard Sessions III, U.S. Department of Homeland Security, U.S. Department of State, The Honorable Elaine C. Duke, The Honorable Secretary of State Rex W. Tillerson on October 11, 2017, filed by John Doe #1, Jane Doe #2, Jane Doe #3, Sumaya Hamadmad, Fahed Muqbil, Eblal Zakzok.(Davidow, Charles) Modified on 10/23/2017 (kw2s, Deputy Clerk). Modified on 10/23/2017 (tds, Deputy Clerk). (Entered: 10/19/2017) |
| 10/20/2017 | 40 | NOTICE OF APPEAL as to 36 Memorandum Opinion, 37 Order on Motion for Preliminary Injunction by Elaine Duke, Rex W. Tillerson, Donald Trump, U.S. |

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| | | Department of Homeland Security, U.S. Department of State. (Schwei, Daniel) (Entered: 10/20/2017) |
| 10/20/2017 | 41 | Transmission of Notice of Appeal and Docket Sheet to US Court of Appeals re 40 Notice of Appeal. IMPORTANT NOTICE: To access forms which you are required to file with the United States Court of Appeals for the Fourth Circuit please go to http://www.ca4.uscourts.gov and click on Forms & Notices.(kns, Deputy Clerk) (Entered: 10/20/2017) |
| 10/20/2017 | 42 | USCA Case Number 17-2233 for 40 Notice of Appeal filed by Rex W. Tillerson, U.S. Department of State, U.S. Department of Homeland Security, Donald Trump, Elaine Duke. Case Manager - RJ Warren.(kns, Deputy Clerk) (Entered: 10/20/2017) |
| 10/20/2017 | 43 | ORDER of USCA consolidating Case No. 17-2231(L) with Case No. 17-2232 and Case No. 17-2233 as to 40 Notice of Appeal filed by Rex W. Tillerson, U.S. Department of State, U.S. Department of Homeland Security, Donald Trump, Elaine Duke. (kns, Deputy Clerk) (Entered: 10/20/2017) |
| 10/23/2017 | 44 | [FILED IN ERROR] QC NOTICE: 39 Affidavit of Service, filed by Sumaya Hamadmad, Jane Doe #2, Eblal Zakzok, John Doe #1, Fahed Muqbil, Jane Doe #3 was filed incorrectly. ***Please re-file documents by selecting Serviceof Process> Summons Returned Executed. <i>It has been noted as FILED IN ERROR, and the document link has been disabled.</i> (kw2s, Deputy Clerk) Modified on 10/23/2017 (tds, Deputy Clerk). (Entered: 10/23/2017) |

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

EBLAL ZAKZOK,
SUMAYA HAMADMAD,
FAHED MUQBIL,
JOHN DOE #1, and
JANE DOES #2-3

Plaintiffs,

v.

DONALD TRUMP, in his official capacity
as President of the United States,
1600 Pennsylvania Avenue NW
Washington, D.C. 20035

U.S. DEPARTMENT OF HOMELAND
SECURITY,

Serve on: Elaine Duke
Acting Secretary of Homeland Security
Washington, D.C. 20528;

U.S. DEPARTMENT OF STATE,

Serve on: Rex W. Tillerson,
Secretary of State
2201 C Street NW
Washington, D.C. 20520;

ELAINE DUKE

In her official capacity as Acting Secretary
of Homeland Security
Washington, D.C. 20528;

REX W. TILLERSON

In his official capacity as Secretary of State
2201 C Street NW
Washington, D.C. 20520

Defendants.

Civil Action No.:

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

INTRODUCTION

1. This case is a challenge to President Donald Trump's third attempt at banning Muslims from the United States. On September 24, 2017, President Trump issued a proclamation titled "Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats." Proclamation No. 9645, 82 Fed. Reg. 45,161 (Sept. 24, 2017) ("Proclamation"). The Proclamation, *inter alia*, indefinitely banned virtually all travel to the United States from six Muslim-majority countries. Plaintiffs are citizens or permanent residents of the United States who will not be able to reunite with their family members or will otherwise be injured as a direct result of the Proclamation.
2. The President previously attempted to halt the entry of Muslims to the United States on two occasions. One week after taking office, fulfilling a campaign pledge to effectuate a "total and complete shutdown of Muslims entering the United States,"¹ President Trump issued an executive order titled "Protecting the Nation from Foreign Terrorist Entry into the United States." Exec. Order No. 13,769, 82 Fed. Reg. 8977 (Jan. 27, 2017) ("EO-1"). The order suspended travel from seven majority-Muslim countries for 90 days and banned all refugees from those countries. EO-1 contained an exception for "minority faiths," making explicit its discriminatory intent, and the order was quickly enjoined by federal courts. *See Washington v. Trump*, 847 F.3d 1151 (9th Cir. 2017); *Int'l Refugee Assistance Project v. Trump*, 857 F.3d 554 (4th Cir.), *cert. granted*, 137 S. Ct. 2080 (2017) (*per curiam*).

¹ Jenna Johnson, *Trump Calls for 'Total and Complete Shutdown of Muslims Entering the United States'*, N.Y. Times, Dec. 7, 2015, <https://www.washingtonpost.com/news/post-politics/wp/2015/12/07/donald-trump-calls-for-total-and-complete-shutdown-of-muslims-entering-the-united-states/>.

3. On March 27, 2017, the President issued what he described as a “watered down” version of EO-1,² also called “Protecting the Nation From Foreign Terrorist Entry Into the United States.” Exec. Order No. 13780, 82 Fed. Reg. 13,209 (Mar. 6, 2017) (“EO-2”). It too was enjoined by several federal courts as unconstitutional and in violation of the Immigration and Nationality Act (“INA”), §§ 202(a)(1)(A), 207, 212(f), Pub. L. No. 89-236, 66 Stat. 187 (codified as amended at 8 U.S.C. §§ 1152(a)(1)(A), 1182(f)). *Hawaii v. Trump*, 859 F.3d 741 (9th Cir.) (per curiam), *cert. granted sub nom. Trump v. Int’l Refugee Assistance Project*, 137 S. Ct. 2080 (2017). On June 26, 2017, the Supreme Court consolidated the Hawaii and Maryland cases, granted certiorari, and narrowed the preliminary injunctions entered by the lower courts. *Trump v. Int’l Refugee Assistance Project*, 137 S. Ct. 2080, 2086-87 (2017) (per curiam).
4. Like the previous two iterations, President Trump’s September 2017 attempt at instituting a Muslim ban invokes national security concerns. In defending EO-2, the government argued that a suspension on travel was necessary to protect the country from the threat of terrorist attacks from nationals of the targeted countries. The Ninth Circuit rejected that argument, noting that there had been “no finding that present vetting standards are inadequate, and no finding that absent the improved vetting procedures there likely will be harm to our national interests.” *Hawaii*, 859 F.3d at 771.
5. The government now offers a new – and equally unsupported – rationale. According to the Proclamation, between July 9, 2017 and September 15, 2017, the Departments of State and Homeland Security carried out a “worldwide review” of visa procedures in

² Jacob Pramuk, *Trump May Have Just Dealt a Blow to His Own Executive Order*, CNBC, Mar. 15, 2017, <http://www.cnbc.com/2017/03/15/trump-may-have-just-dealt-a-blow-to-his-own-executive-order.html>.

order to determine which countries were “inadequate” based on an analysis of their “identity-management protocols, information-sharing practices, and risk factors.” Proclamation at §1(e). This contrived process identified 47 countries as “inadequate” or “at risk” of becoming “inadequate.” *Id.* In the end, however, the administration acted on the same religious animus that animated the first two unlawful orders and imposed indefinite wholesale ban on citizens of five of the same countries that were the subject of EO-1 and EO-2: Iran, Libya, Somalia, Syria, and Yemen. Another Muslim majority country, Chad, was also added to the list. Finally, North Korean nationals, as well as certain Venezuelan government officials and their families, were also banned.

6. Throughout, President Trump’s objective has remained constant: to keep Muslims out of the United States. The visa “review” is a pretext. Adding North Koreans and small group of Venezuelan government officials to the mix does not change this, but rather is a transparent attempt to add a fig leaf of religious neutrality to the order. The primary effect of the Proclamation is to exclude the nationals of several Muslim countries without adequate justification as to why or how this would protect the homeland.
7. The Proclamation imposes concrete harms on American Muslim citizens and permanent residents whose family members are barred from traveling to the United States. Like its predecessors, EO-1 and EO-2, the Proclamation violates the fundamental constitutional guarantee that the government may not establish or favor one religion over another. Like the President’s earlier orders, it also violates the prohibition against discrimination on the basis of race, nationality or country of origin contained in the Immigration and Nationality Act, and exceeds the President’s authority under that law to identify classes of aliens who are not eligible for entry to the United States.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 because this action arises under the U.S. Constitution, the Administrative Procedure Act (“APA”) § 10(e), 5 U.S.C. §706, and the Immigration and Nationality Act (“INA”) §§ 202(a)(1)(A), 207, 212(f), Pub. L. No. 89-236, 66 Stat. 187 (codified as amended at 8 U.S.C. §§ 1152(a)(1)(A), 1182(f)).
9. This Court is authorized to award the requested declaratory and injunctive relief under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, and the APA, 5 U.S.C. § 706.
10. Venue is proper in this District under 28 U.S.C. §1391(b)(2) and (e)(1). Defendants are officers or employees of the United States acting in their official capacities, and agencies of the United States. Plaintiff Jane Doe #2 resides in this District. No real property is involved in this action.

PARTIES

11. Plaintiff Eblal Zakzok, PhD, is a native of Syria and a lawful permanent resident of the United States, who currently resides in Columbus, Ohio. Dr. Zakzok teaches Surveying, Remote Sensing and Geographical Information Systems at the Ohio State University. He was tortured in Aleppo by the Syrian regime and granted asylum in the United States in 2014. Dr. Zakzok’s wife and three of his children were granted asylee benefits in 2016 and came to the U.S. to join him. But Dr. Zakzok’s eldest daughter was forced to remain in Turkey, as she was over 21 at the time and thus not eligible for derivative asylum benefits. On August 25, 2017, Plaintiff Zakzok filed a Petition for Alien Relative, Form I-130, seeking approval for his daughter, Turkie, to immigrate to the United States. The Petition is currently still pending with USCIS.

12. Plaintiff Sumaya Hamadmad is an American citizen of Syrian descent who currently resides in Ohio. Plaintiff Hamadmad's sister is a Syrian national, currently residing in Amman, Jordan, who is trying to visit Hamadmad and her other relatives in the United States. She also plans to participate in an academic project with American researchers and applied for a B1/B2 visa on October 3, 2017. Plaintiff Hamadmad's father-in-law is a Syrian national, living in Syria. Hamadmad's husband filed an I-130 Petition for Alien Relative on behalf of his father. The Petition is currently still pending with USCIS.
13. Plaintiff Fahed Muqbil is an American citizen of Yemeni descent who currently resides in Mississippi. In 2012, Muqbil married his wife, a Yemeni national. They have two daughters together, one of whom has a serious birth defect and is currently receiving medical treatment in the United States. Plaintiff Muqbil seeks to bring his wife, who now resides in Egypt, to the United States as an immigrant on the basis of their marriage. In June 2017, Muqbil submitted an I-130 Petition for Alien Relative on behalf of his wife, which was subsequently approved on August 17, 2017. Plaintiff Muqbil and his wife have an appointment for a visa interview in Egypt scheduled for October 10, 2017.
14. John Doe #1 is a United States citizen residing in New Jersey. In 2017, he married a Syrian national in the United States. John Doe #1 seeks to bring his wife, who now resides in Portugal, back to the United States as an immigrant on the basis of their marriage.
15. Jane Doe #2 is an American citizen of Syrian descent who currently resides in Maryland with her mother, her husband, and her child. Earlier this year, Jane Doe #2 submitted an I-130 Petition on behalf of her father, a Syrian national living in a Gulf nation, who seeks

to immigrate to the United States and be reunited with his family. USCIS approved the petition, but her father has not yet been interviewed for his visa application.

16. Jane Doe #3 is an American citizen residing in Minnesota. She is engaged to a Somali foreign national residing in Malaysia, who seeks to immigrate to the United States and marry Jane Doe #3. She has submitted an I-129F petition on behalf of her fiancé, which USCIS has approved. However, the fiancé's visa application is still pending.

17. Defendant Donald J. Trump is the President of the United States. He issued the original January 27, 2017, Executive Order (EO-1), the second March 6, 2017, Executive Order (EO-2), and most recently, the September 24, 2017, Proclamation that is the subject of this Complaint.

18. Defendant U.S. Department of Homeland Security ("DHS") is a federal cabinet agency responsible for implementing and enforcing the INA and the Proclamation that is the subject of this Complaint. DHS is a Department of the Executive Branch of the United States Government, and is an agency within the meaning of 5 U.S.C. § 522(f). The U.S. Citizenship and Immigration Services ("USCIS") is a component of DHS that is responsible for adjudicating requests for immigration benefits for individuals located within the United States.

19. Defendant U.S. Department of State is a federal cabinet agency responsible for implementing the Proclamation that is the subject of this Complaint. It is a department of the Executive Branch of the United States Government, and it is an agency within the meaning of 5 U.S.C. § 522(f).

20. Defendant Elaine Duke is the Acting Secretary of Homeland Security. Acting Secretary Duke has responsibility for overseeing enforcement and implementation of the Proclamation by all DHS staff. She is sued in her official capacity.

21. Defendant Rex Tillerson is the Secretary of State and has responsibility for overseeing enforcement and implementation of the Proclamation by all State Department staff. He is sued in his official capacity.

STATEMENT OF FACTS

President Trump's Statements on Muslims and Islam

22. Defendant Trump has made frequent, explicitly bigoted statements about Islam and Muslims in print, on television, via official statements, and on Twitter. EO-1, EO-2, and the Proclamation are the manifestations of that religious animus.

23. On or about March 10, 2016, in an interview aired on CNN, Defendant Trump declared "Islam hates us."³

24. On December 13, 2015, during a Fox News interview, Defendant Trump was asked if his campaign promise to implement a Muslim Ban would apply to a Canadian businessman who is Muslim. His response equated Islam to a disease and said that its followers were sick, disease-ridden people. Specifically, Defendant Trump stated: "There's a sickness. They're [Muslims are] sick people. There's a sickness going. There's a group of people that is very sick."⁴

³ Theodore Schleifer, *Donald Trump: 'I think Islam hates us,'* CNN, Mar. 10, 2016, <http://www.cnn.com/2016/03/09/politics/donald-trump-islam-hates-us/>.

⁴ Dan Friedman, *Trump cites 'sickness' in defense of Muslim immigration ban proposal*, Washington Examiner, Dec. 13, 2015, <http://www.washingtonexaminer.com/trump-cites-sickness-in-defense-of-muslim-immigration-ban-proposal/article/2578269>.

25. Defendant Trump's campaign statements regarding Islam and Muslims reveal that the intent of the Proclamation, like EO-1 and EO-2 before it, is to disfavor Islam and stigmatize Muslims.
26. After winning the Republican nomination, Defendant Trump began using more neutral language to describe his Muslim Ban pledge.
27. On or about July 24, 2016, however, Defendant Trump conceded that the neutral language was simply a veneer intended to subdue the public controversy generated by his discriminatory plan. In an interview on NBC, Defendant Trump explained: "People were so upset when I used the word Muslim. Oh, you can't use the word Muslim...And I'm OK with that, because I'm talking territory instead of Muslim."⁵

EO-1

28. On January 27, 2017, Defendant Trump issued EO-1. Section 3(c) suspended entry of immigrant and nonimmigrant nationals of seven Muslim-majority countries: Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen.
29. Although EO-1 did not use the words Islam or Muslim, the pretext was apparent from the beginning. A close Trump advisor, Rudolph Giuliani, boasted on national television that he had been asked to "show [Donald Trump] the right way to do [the Muslim Ban] legally." Giuliani said he had formed a commission to find a way to achieve the Muslim Ban's scope without mentioning Islam or Muslims.⁶

⁵ Carrie Dann, *Donald Trump: I'm Running Against Hillary Clinton, Not 'Rest of the World,'* NBC News, July 24, 2016, <https://www.nbcnews.com/storyline/2016-conventions/trump-i-m-running-against-hillary-not-rest-world-n615581>.

⁶ Amy Wang, *Trump asked for a 'Muslim ban,' Giuliani says – and ordered a commission to do it 'legally,'* Wash. Post, Jan. 29, 2017, http://wapo.st/2khcw0t?tid=ss_tw&utm_term=.ab2db76b30de.

30. Indeed, EO-1 contained explicit preferences for “religious minorities” in the seven Muslim-majority countries targeted by the ban. Sections 5(b) and 5(e) established special benefits only available to persons who were not Muslim. Section 5(b) authorized the Secretary of State “to prioritize refugee claims made by individuals on the basis of religious-based persecution ... provided that the religion of the individual is a minority religion in the individual’s country of nationality.” Since the countries that were the subject of the ban were overwhelmingly Muslim, these religious minorities were by definition non-Muslim people. Section 5(e) contained a similar explicit preference for persons who were not Muslim from the seven banned countries.
31. EO-1 also contained a reference to “honor killings,” a term that is commonly used to portray domestic violence in the Muslim community as sanctioned by Islam. It suggested that the threat of admitting persons who engaged in “honor killings” was what, in part, justified the categorical visa ban on seven Muslim-majority countries.
32. Defendant Trump emphasized EO-1’s religious preference. He explained during an interview with the Christian Broadcasting Network that his order was “going to help [persecuted Christians]” as opposed to Muslims. His answer made clear that the intent of EO-1 was to treat foreign nationals in the seven identified countries differently based on their faith.⁷
33. EO-1 was immediately challenged in several courts and its operative provisions were enjoined, including by a nationwide injunction issued on February 3, 2017. *See Washington v. Trump*, No. C17-0141-JLR, 2017 WL 462040 (W.D. Wash. Feb. 3, 2017)

⁷ Carol Morello, *Trump Signs Order Temporarily Halting Admission of Refugees, Promises Priority for Christians*, Wash. Post, Jan. 27, 2017, http://wapo.st/2kbZl05?tid=ss_tw&utm_term=.816cd900dc2d.

(enjoining sections 3(c), 5(a)-(c), and 5(e) of EO-1); *Darweesh v. Trump*, No. 17 CV 480, 2017 WL 388504 (E.D.N.Y. Jan. 28, 2017) (prohibiting the government from removing individuals pursuant to EO-1); *Aziz v. Trump*, No. 1:17 CV 116, 2017 WL 580855 (E.D. Va. Feb. 13, 2017) (granting preliminary injunction of portions of EO-1 on Establishment Clause grounds).

34. On February 9, 2017, the Ninth Circuit Court of Appeals issued a unanimous decision upholding a temporary restraining order issued by the United States District Court for the Western District of Washington enjoining and restraining Sections 3(c) and 5(a)-(c) of the First Muslim Ban. *See Washington*, 847 F.3d 1151.
35. Defendant Trump revoked EO-1 via a subsequent order, Exec. Order No. 13780, “Protecting the Nation from Foreign Terrorist Entry Into the United States” (EO-2).

EO-2

36. Defendant Trump signed EO-2 on March 6, 2017, which was a clear continuation of Defendant Trump’s attempt to discriminate against Muslims and broadcast a message of disfavor against Islam.
37. Aside from a new “Policy and Purpose” section, EO-2 is largely the same as EO-1. Indeed, EO-2 contains entire sections of EO-1’s text, including EO-1’s Section 5(g), Section 6, Section 8, and Section 10.
38. EO-2 established the same mechanism as EO-1 to extend the 90-day ban applicable to foreign nationals from six of the seven banned countries. EO-2 §2. And it adopted the same mechanism to review information from foreign countries to determine whether additional countries should be added. *Id.*

39. EO-2 excluded Iraq from its scope and exempted lawful permanent residents and current visa holders, but it kept the 120-day refugee ban and reduced the refugee cap to 50,000. EO-2 also maintained EO-1's reference to "honor killings" associated with Muslims.
40. A senior advisor to Defendant Trump, Stephen Miller, explained that the goal of EO-2's revisions was "to be responsive to the judicial ruling" and that the changes in EO-2 were to be "mostly minor, technical differences. Fundamentally, you are still going to have the same, basic policy outcome for the country."⁸
41. The national security claims underlying EO-2 were obviously pretextual. The Department of Homeland Security had conducted an assessment concluding that national origin was an "unlikely indicator" of terrorist threats to the US, and that the countries affected by EO-1 and EO-2 were not the top countries of origin for immigrants who actually committed acts of terrorism inside the United States.⁹
42. On March 15, 2017, the U.S. District Court for the District of Hawaii issued a nationwide injunction enjoining Defendants from enforcing or implementing sections 2 and 6 of EO-2. *Hawaii v. Trump*, 241 F.Supp.3d 1119 (D. Haw. 2017). On June 12, 2017, the Ninth Circuit largely upheld the injunction. *See Hawaii*, 859 F.3d at 756.
43. On March 16, the U.S. District Court for the District of Maryland also issued a nationwide injunction against parts of EO-2, *Int'l Refugee Assistance Project v. Trump*, 241 F.Supp.3d 539 (D. Md. 2017), which was upheld in relevant part by the Fourth Circuit on May 25, 2017. *Int'l Refugee Assistance Project*, 857 F.3d at 544.

⁸ *Miller: New Order Will Be Responsive to the Judicial Ruling*, Fox News (Feb. 21, 2017), <http://video.foxnews.com/v/5331823544001/?#sp=show-clips>.

⁹ *Citizenship Likely an Unreliable Indicator of Terrorist Threat to the United States*, Dept. of Homeland Sec., <https://assets.documentcloud.org/documents/3474730/DHS-intelligence-document-on-President-Donald.pdf> (draft report obtained and released by Associated Press on Feb. 24, 2017).

44. The Defendants in *Hawaii* and *Int'l Refugee Assistance Project* petitioned the Supreme Court for a writ of *certiorari* and applied for a stay of the injunctions pending appeal. On June 26, 2017, the Supreme Court granted *certiorari*, consolidated the two cases, and partially stayed the preliminary injunctions, allowing the Second Muslim Ban to become effective, except as to foreign nationals with a “bona fide relationship with a person or entity in the United States.” *See Trump*, 137 S. Ct. at 2088.
45. The Court stayed the *Hawaii* injunction with respect to “foreign nationals abroad who have no connection to the United States,” but reaffirmed that sections 2(c), 6(a), and 6(b) of EO-2 “may not be enforced against foreign nationals who have a credible claim of a bona fide relationship with a person or entity in the United States.” *Id.* at 2088. The Court’s order specifically protected foreign nationals with a “close familial relationship” with a person in the United States. *Id.*
46. Following the Court’s ruling, the Department of Homeland Security adopted a narrow interpretation of “close familial relationship” designed to exclude as many Muslims as possible from the United States. DHS’s definition of “close familial relationship” excluded grandparents and aunts but allowed mothers-in-law and siblings. This definition was challenged and, on July 13, 2017, the Hawaii district court modified its preliminary injunction to prohibit Defendants from applying the Second Muslim Ban to grandparents, grandchildren, brothers-in-law, sisters-in-law, aunts, uncles, nieces, nephews, and cousins of persons in the United States. The court concluded that such individuals have sufficiently “close family relationship” to fall within the ambit of the preliminary injunction, as modified by the Supreme Court. *Hawaii v. Trump*, No. CV 17-00050 DKW-KSC, 2017 WL 2989048 (D. Haw. July 13, 2017).

47. Defendants provided no rationale for their narrow definition of “close familial relationship” and no security-based rationale exists for allowing siblings but not grandparents of U.S. persons to travel to the United States. The only explanation for such an irrational definition is a desire to keep as many Muslims as possible out of the United States.
48. On July 19, 2017, the Supreme Court denied the government’s motion seeking clarification of the Court’s June 26, 2017 order, thereby leaving the Hawaii court’s July 13, 2017 modified injunction in place. *See Trump v. Hawaii*, No. 16-1540, 2017 WL 3045234, 86 U.S.L.W. 3039 (U.S. July 19, 2017).
49. Under the terms of EO-2 and a subsequent Presidential Memorandum, the entry ban on national of the six countries without such bona fide relationship remained in effect until September 24, 2017,¹⁰ the day the President signed the Proclamation at issue in this case.
50. The Supreme Court had scheduled oral argument in the *Int’l Refugee Assistance Project* and *Hawaii* cases for October 10, 2017. But following the Proclamation, the Court removed the oral argument from its calendar and ordered additional briefing from the parties on whether the Proclamation renders the cases moot. *Trump v. Int’l Refugee Assistance Project*, No. 16-1436, 2017 WL 2405595 (U.S. Sept. 25, 2017).

The Proclamation

51. On September 24, 2017, the day EO-2 was set to expire, Defendant Trump signed the latest iteration of the Muslim ban, the Proclamation at issue in this case. The Proclamation, *inter alia*, permanently bans people from most of the Muslim countries

¹⁰ See Memorandum of June 14, 2017 on Effective Date in Executive Order 13780, 82 Fed. Reg. 27,965 (June 19, 2017).

targeted in EO-1 and EO-2: Iran, Libya, Syria, Yemen, and Somalia. It also includes a ban on people from Chad, another Muslim-majority country.

52. The Proclamation also bans travel from North Korea (from which a negligible number of people come to the United States) as well as some government officials from Venezuela. The impact of the Proclamation, however, is overwhelmingly on Muslims.

53. The Proclamation is an outgrowth of EO-2, which directed the Departments of State and Homeland Security to conduct a “worldwide review” to determine whether additional information would be required from some countries to properly adjudicate visa applications.¹¹ This review found 47 countries to be “inadequate” or “at risk” of becoming “inadequate.” Proclamation at § 1(e). But the end product was just a permanent iteration of EO-1 and EO-2, establishing indefinite wholesale bans on five of the same Muslim countries, based on the same religious animus.

54. On September 27, 2017, Defendant Trump was asked why Sudan was removed from the ban list. Defendant Trump provided no explanation for this action.

55. The addition of North Korea and a small number of Venezuelan government officials to the travel blacklist is a transparent attempt to disguise the Proclamation’s anti-Muslim intent. Only a tiny number of travelers would be affected (just 109 visas were issued to North Korean nationals in 2016, for example),¹² and neither country has a history of sponsoring terrorism in the United States.

¹¹ This review was required by EO-2 § 2. It was temporarily enjoined by a federal court as part of the travel ban litigation, but allowed to go forward in June 2017. *Hawaii v. Trump*, No. 17-00050-DKW-KSC at 23 (D. Haw. Mar. 23, 2017); *Hawaii v. Trump*, 859 F.3d at 741.

¹² Department of State – Bureau of Consular Affairs, *Table XVIII: Nonimmigrant Visas Issued by Nationality (Including Border Crossing Cards) Fiscal Year 2007-2016*, <https://travel.state.gov/content/dam/visas/Statistics/Non-Immigrant-Statistics/NIVDetailTables/FY16%20NIV%20Detail%20Table.pdf> (last accessed Oct. 4, 2017)

56. Overall, the Proclamation bars approximately 138 million Muslim nationals from six Muslim-majority nations, which is more than 85% of the people affected by the Proclamation.¹³
57. The practical effects of the Proclamation also bear a striking resemblance to EO-2. Using 2016 data as a baseline, the current policy would ban 76% of nonimmigrant visa applicants and 91% of immigrant visa applicants affected by the previous order.¹⁴ The overlap is substantial despite the inclusion of Chad and North Korea, which together only had 1,049 total visas issued in 2016 of the kind affected by the Proclamation – tourist, business, and immigrant visas for Chad (940), and all visas for North Korea (109). Likewise, the addition of Venezuela does not meaningfully change the calculus because the restrictions apply only to government officials and their families, not to ordinary visa applicants.
58. In effect, the Proclamation makes permanent many of the temporary restrictions imposed by EO-1 and EO-2. For example, whereas EO-2 temporarily banned Iranian nationals

(100 nonimmigrant visas issued); Department of State – Bureau of Consular Affairs, *Table XIV: Immigrant Visas Issued at Foreign Service Posts (by Foreign State Chargeability) (All Categories) Fiscal Years 2007-2016*,

<https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2016AnnualReport/FY16AnnualReport-TableXIV.pdf> (last accessed Oct. 4, 2017) (9 immigrant visas issued).

¹³ See Pew Research Ctr., *The Global Religious Landscape* 45–50 (2012).

¹⁴ Harsha Panduranga, Faiza Patel, & Michael Price, *Extreme Vetting & the Muslim Ban* 14 (2017). For State Department figures on total nonimmigrant U.S. visa types issued to foreign states, see Department of State – Bureau of Consular Affairs, *FY 2016 Nonimmigrant Visas Issued*, <https://travel.state.gov/content/dam/visas/Statistics/Non-Immigrant-Statistics/NIVDetailTables/FY16%20NIV%20Detail%20Table.pdf> (last accessed September 26, 2017). For State Department figures on U.S. immigrant visas issued to foreign states, see Department of State – Bureau of Consular Affairs, *Table XIV: Immigrant Visas Issued at Foreign Service Posts (by Foreign State Chargeability) (All Categories) Fiscal Years 2007-2016*, *supra*. Data from the tables above were used in combination with the visa issuance types exempted from Executive Order 13780 and Proclamation 9645 to calculate the total number of individuals in the new policy banned from entry in Panduranga, Patel, & Price, *supra*, at 14.

from obtaining any visas, the Proclamation permanently bans Iranian nationals from obtaining most kinds of visas. For the few visas still available to Iranian nationals, those visas are now subjected to a different process.

59. Like EO-2, the Proclamation makes it impossible for nationals from Syria, Somalia, Libya, Yemen, and Iran to obtain immigrant visas. Like EO-2, the Proclamation makes it impossible for Syrian nationals to obtain any non-immigrant visas and prohibits nationals from Libya, Yemen, and Iran from obtaining many kinds of non-immigrant visas. And like EO-2, the Proclamation is rooted in religious animus, not reasonably related to legitimate national security concerns.

Facts Relating to the Claims of the Plaintiffs

Eblal Zakzok

60. Plaintiff Eblal Zakzok (“Zakzok”) is a native of Syria and a lawful permanent resident of the United States, who currently resides in Columbus, Ohio.

61. Zakzok attended graduate school at the University of Manchester in the United Kingdom. In 2008, after obtaining his PhD, he returned to Syria and was employed as a full-time assistant professor at Aleppo University until the beginning of 2014, when Syrian regime security forces detained, beat and tortured him for two weeks.

62. In September 2014, Zakzok and his family fled from Syria to Turkey, to escape the horrific civil war, and to escape further persecution and torture.

63. While his wife and children temporarily remained in Turkey, Plaintiff Zakzok came to the United States on September 30, 2014 to present a paper at an international conference in Michigan and requested asylum.

64. He was granted asylum on December 17, 2014 and was assisted by The Scholar Rescue Fund of the Institute of International Education in obtaining a fellowship at the Ohio State University where he teaches Surveying, Remote Sensing and Geographical Information Systems.
65. Following his successful asylum application, Plaintiff Zakzok's wife and three of his children were granted asylee benefits on January 25, 2016. Shortly thereafter, they traveled to the United States to be reunited with Plaintiff Zakzok.
66. Plaintiff Zakzok's remaining daughter, Turkie Zakzok, was forced to remain in Turkey because she was over 21 at the time he was granted asylum and thus did not qualify for derivative asylum benefits.
67. On August 25, 2017, Plaintiff Zakzok filed a Petition for Alien Relative, Form I-130, seeking approval for his daughter, Turkie, to immigrate to the United States. The Petition is currently still pending with USCIS.
68. On September 24, 2017, President Trump issued a Presidential Proclamation which bars all Syrians from entering the US on either immigrant or non-immigrant visas after October 18, 2017.
69. The Proclamation will bar Plaintiff Zakzok's daughter from obtaining the immigrant visa she has applied for and will prevent her from immigrating to the United States to be reunited with her father, mother and other siblings.
70. Plaintiff Zakzok's daughter cannot obtain permanent legal residence in Turkey, and is therefore at risk of being returned to Syria, where she could face torture and or death.
71. If allowed to go into effect, the Proclamation will deny Plaintiff Zakzok and his family the ability to be a regular and immediate part of each other's lives. Additionally, Plaintiff

Zakzok and his daughter will be forced to continue to live with the fear that his daughter will be targeted by the many criminals in Turkey who specifically target Syrian women.

Sumaya Hamadmad

72. Plaintiff Sumaya Hamadmad (“Hamadmad”), a native of Syria, is a U.S. citizen residing in Ohio.
73. On October 3, 2017, Hamadmad’s sister, a Syrian national currently residing in Amman, Jordan, applied for a B1/B2 visa to enter the United States in order to visit her siblings and other relatives and to participate in an academic project with American researchers.
74. Hamadmad’s sister’s research is for a collaborative project that involves the epigenetics of transgenerational trauma of Syrian refugees. She has been the team leader for data collection of this project in Jordan since 2016 while affiliated with a professor at a university in Jordan. Specifically, she has been in charge of identifying, recruiting, and collecting DNA samples and interview data from all of the families in the study.
75. A U.S. university has invited Hamadmad’s sister to provide input on the specifics regarding the collection of the swab samples and analyses.
76. The Proclamation will prevent Hamadmad’s sister from being able to obtain the required non-immigrant visa and will thus bar her from traveling to the United States for any reason. This ban applies to her even though she was born in Jordan and has never been inside of Syria.
77. Additionally, Hamadmad’s husband has filed an I-130 Petition for Alien Relative seeking approval for his father, who is currently residing in Syria and is a Syrian national, to immigrate to the United States. Due to the current dangerous situation in Syria, it is urgent that Hamadmad’s father-in-law’s application be processed and approved as soon

as possible. The Proclamation, however, will also prevent Hamadmad's father-in-law from having his application for an immigrant visa approved.

Fahed Muqbil

78. Plaintiff Fahed Muqbil is a United States citizen of Yemeni origin. He grew up in Louisiana and currently resides in Mississippi. In 2012, Muqbil met and married his wife, a Yemeni national. They have two daughters. The youngest daughter was born in Yemen in 2016 with a very serious birth defect and its co-morbid conditions – meningomyelocele (spina bifida), hydrocephalus with VP shunt, Chiari II malformation, neurogenic bladder, hydro nephrosis, infantile spasms, an epilepsy that is very difficult to contract, dysphasia, and worsening vision.
79. After her birth, Muqbil travelled from Yemen to Egypt to seek immediate, emergency treatment for her birth defect. During this time, her head size increased markedly and her vision begin to worsen.
80. In May 2017, Muqbil left his wife overseas in Egypt in order to bring his baby daughter to the United States. She was immediately hospitalized at a Children's hospital. The hospital began treating her worsening hydrocephalus, the urinary tract infection, and her seizure disorder. After three weeks, she was discharged to her father and his family. Two weeks later, she was hospitalized again for increasing seizure activity. Currently, she is under the care of a neurologist and is on constant medication. According to her doctors, this type of epilepsy carries a poor neurodevelopmental outcome and that she will have to be closely monitored for the rest of her life.
81. Since her time in the United States, the baby has undergone many life-threatening surgeries. Her doctors predict more surgeries may be needed. The mother, Muqbil's

wife, has not seen her baby for nearly five months. She was not able to be with her daughter nor could she provide her with care during this time.

82. Muqbil submitted an I-130 petition for his wife in June 2017, and the petition was approved on August 17, 2017. Muqbil and his wife are currently in Egypt in preparation for a visa interview scheduled for October 10, 2017. Their daughter is with his family in Mississippi while they navigate the visa process. The baby has multiple appointments, medications, and possible emergency room visits.

83. Unless Muqbil's wife's immigrant visa is issued prior to October 18, 2017, she will be indefinitely banned from caring for her baby and reuniting with Muqbil and her family. For the welfare of her baby and family, Muqbil's wife is needed in the United States.

John Doe #1

84. John Doe #1 is a United States citizen residing in New Jersey.

85. In August 2017, John Doe #1 married a Syrian national in the United States. John Doe #1's spouse then left the country while he worked to set up their home together and apply for her to come to the United States as an immigrant on the basis of their marriage.

86. John Doe #1's spouse now resides in Portugal.

87. John Doe #1 intends to bring his wife to the United States but, in light of the Proclamation, it would be futile for him to file an I-130 petition seeking approval for her to immigrate to the United States, as there is no chance such a petition would be adjudicated and a visa issued prior to the Proclamation's categorical immigrant visa ban which comes into effect on October 18, 2017.

Jane Doe #2

88. Jane Doe #2 is a United States citizen, originally from Syria, and a resident of Maryland.

89. Jane Doe #2's mother entered the United States in June 2016 and became a lawful permanent resident a year later in June 2017. Jane Doe #2's mother now resides in Maryland with Jane Doe, her husband, and their child.
90. Since Jane Doe #2's mother left for the United States, her father has lived and worked in a Gulf nation. Because of work obligations, Jane Doe #2's father was not ready to come to the United States permanently at the time when his wife, Jane Doe #2's mother, entered the United States and later became a lawful permanent resident.
91. Though living and working abroad, Jane Doe #2's father has entered the United States on a tourist visa multiple times without incident.
92. Jane Doe #2 is now pregnant with her second child, and her father has decided to join his wife, daughter, and grandchildren in the United States permanently.
93. Earlier this year, Jane Doe #2 submitted an I-130 petition seeking approval for her father to immigrate to the United States.
94. USCIS approved the petition submitted by Jane Doe #2 on her father's behalf.
95. Upon receiving that approval, Jane Doe #2's father began his visa application, though he has not yet been interviewed.
96. Because he is seeking an immigrant visa and is a Syrian national, the Proclamation will bar Jane Doe #2's father from entering the United States.

Jane Doe #3

97. Jane Doe #3 is a US citizen residing in Minnesota.
98. Jane Doe #3 is engaged to a Somali foreign national residing in Malaysia, where he has lived since 2008.

99. In late 2016, Jane Doe #3 filed an I-129F Petition with USCIS seeking a K-1 visa for her fiancé. The K-1 visa would permit her fiancé to enter the United States, get married, and pursue permanent residence in the United States.

100. USCIS approved Jane Doe #3's I-129F in March 2017, which then allowed her fiancé to apply to the Department of State for his visa.

101. Jane Doe #3's fiancé has been interviewed by a consular official in Malaysia, has submitted all requested information, and is now eligible for the visa for which he applied.

102. However, Section 2(h)(ii) of the Proclamation provides that the entry into the United States of nationals of Somalia as immigrants is suspended. Because the visa sought is an immigrant visa, Jane Doe #3's fiancé will be prohibited from obtaining a visa because of the Proclamation.

CAUSES OF ACTION

COUNT I

(First Amendment – Establishment Clause) (On behalf of all Plaintiffs)

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

104. The Establishment Clause of the First Amendment prohibits the federal government from officially preferring one religion over another, including actions intended to disfavor a religion.

105. Section 2 of the Proclamation and Defendants' actions to implement it are intended to disfavor Islam, and have the effect of disfavoring Islam.

106. Section 2 of the Proclamation and Defendants' actions to implement it violate the Establishment Clause by singling out Muslims for disfavored treatment that is neither justified by, nor closely fitted to, any compelling governmental interest.

107. Defendants' violation of the Establishment Clause is causing ongoing and immediate harm to Plaintiffs.

COUNT II

(Immigration and Nationality Act & Administrative Procedure Act) (On behalf of all Plaintiffs)

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

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

110. Plaintiff Zakzok's daughter has applied for an immigrant visa, but pursuant to Section 2 of the Proclamation, her application will be categorically denied after October 18, 2017. The Proclamation requires denial because of her Syrian nationality, in violation of 8 U.S.C. § 1152(a)(1)(A).

111. Plaintiff Hamadmad's father-in-law has applied for an immigrant visa, but pursuant to Section 2 of the Proclamation, his application will be categorically denied after October 18, 2017. The Proclamation requires denial because of his Syrian nationality, in violation of 8 U.S.C. § 1152(a)(1)(A).

112. Plaintiff Fahed Muqbil's wife has applied for an immigrant visa, but pursuant to Section 2 of the Proclamation, her application will be categorically denied after October

18, 2017. The Proclamation requires denial because of her Yemeni nationality, in violation of 8 U.S.C. § 1152(a)(1)(A).

113. Plaintiff John Doe #1's wife plans to apply applied for an immigrant visa, but pursuant to Section 2 of the Proclamation, her application will be categorically denied after October 18, 2017. The Proclamation requires denial because of her Syrian nationality, in violation of 8 U.S.C. § 1152(a)(1)(A).

114. Plaintiff Jane Doe #2's father has applied for an immigrant visa, but pursuant to Section 2 of the Proclamation, his application will be categorically denied after October 18, 2017. The Proclamation requires denial because of his Syrian nationality, in violation of 8 U.S.C. § 1152(a)(1)(A).

115. Plaintiff Jane Doe #3's fiancé has a pending immigrant visa based on her engagement with her fiancé. Pursuant to Section 2 of the Proclamation, his application will be categorically denied after October 18, 2017. The Proclamation requires such denial because of his Somali nationality, in violation of 8 U.S.C. § 1152(a)(1)(A).

116. Section 2 of the Proclamation explicitly mandates discrimination against immigrant visa applicants because of their nationality, in violation of 8 U.S.C. § 1152(a)(1)(A).

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

COUNT III

**(Substantive Violation of the Administrative Procedure Act through Violations of the Constitution, Immigration and Nationality Act, and Arbitrary and Capricious Action)
(On behalf of all Plaintiffs)**

118. The foregoing allegations are repeated and incorporated as though fully set forth herein.
119. The APA requires courts to hold unlawful and set aside any agency action that is “arbitrary, capricious, and abuse of discretion, or otherwise not in accordance with law”; “contrary to constitutional right, power, privilege, or immunity”; “or “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.” 5 U.S.C. § 706(2)(A)-(C).
120. In issuing and implementing the Proclamation, Defendants have acted contrary to the Establishment Clause of the United States Constitution.
121. In issuing and implementing the Proclamation, Defendants have acted contrary to the INA.
122. Defendants have engaged in nationality-based discrimination, contrary to 8 U.S.C. § 1152(a)(1)(A).
123. Defendants have violated the INA by establishing an *ultra vires* regime for processing nonimmigrant visa applications. Defendants have upended the extensive and complex vetting scheme crafted by Congress and replaced them with a blunt new regime of bans, requirements, exceptions, and waivers.
124. Defendants are attempting to set their own standard for admission to the United States. Proclamation at §§ 2(c), 6(a). They also seek to erase a carefully calibrated congressional scheme for vetting visa applicants, including a comprehensive “terrorism

bar,” 8 U.S.C. § 1182(a)(3)(B); detailed vetting rules, 8 U.S.C. §§ 1202(b)-(d), 1361; and exclusions from the Visa Waiver Program, 8 U.S.C. § 1187(a)(12). In short, Defendants seek to permanently replace an extensive, congressionally-crafted system with its own warren of waivers and exceptions, imposing burdens on the applicant that are in conflict with the provisions of the INA. Proclamation at §§ 3(a)-(c).

125. Plaintiff Hamadmad’s sister has been invited to be a researcher at a top American university and would otherwise be eligible for a B1/B2 (nonimmigrant) visa, but pursuant to Section 2 of the Proclamation, her application will be categorically denied after October 18, 2017.

126. Plaintiff Jane Doe #3’s fiancé has applied for a fiancée visa and would otherwise be eligible to receive it, but pursuant to Section 2 of the Proclamation, his application will be categorically denied after October 18, 2017.

127. In issuing and implementing the Proclamation, Defendants have acted arbitrarily and capriciously. While Defendants have sought to portray as objective and considered the process that led to selecting eight countries for sanctions, it is evident that this is not the case. EO-1 required the Departments of State and Homeland Security to review “identity-management and information-sharing capabilities, protocols, and practices,” but the decisions on which countries to exclude relied to an unspecified extent on other, less objective concerns such as a broad-ranging “risk assessment.” Even with that subjectivity built into the process, the Proclamation acknowledges that it did not follow the conclusions of the review. Iraq was found to have failed the State Department’s baseline standards, but left off the blacklist. Somalia, on the other hand met the standards, but was nevertheless included. The issuance of all immigrant visas was stopped, even though the

individuals applying for them have the strongest connections to the United States and undergo extraordinary vetting prior to approval. Nor does the Proclamation provide any rationale for why certain categories of visas (primarily tourist and business) are excluded while others (such as students) are permitted. More broadly, the Proclamation purports to protect the country from terrorism, but affects millions of people who have absolutely no connection to terrorism. Through their actions described in this Complaint, Defendants have violated the substantive requirements of the APA. Defendants' violation inflicts ongoing and immediate harm on Plaintiffs.

COUNT IV

(Procedural Violation of the Administrative Procedure Act) (On behalf of all Plaintiffs)

128. The foregoing allegations are repeated and incorporated as though fully set forth herein.
129. The APA requires courts to hold unlawful and set aside any agency action taken “without observance of procedure required by law.” 5 U.S.C. § 706(2)(D).
130. The Departments of State and Homeland Security are “agencies” under the APA. *See* 5 U.S.C. § 551(1).
131. The APA requires that agencies follow rulemaking procedures before engaging in action that impacts substantive rights. *See* 5 U.S.C. § 553.
132. In implementing the Proclamation, federal agencies have changed the substantive criteria by which individuals from the targeted countries may enter the United States. This change, among other actions by Defendants, impacts substantive rights.
133. Defendants did not follow the rulemaking procedures required by the APA in enacting and implementing the Executive Order.

134. Defendants have violated the procedural requirements of the APA. This violation inflicts ongoing and immediate harm upon Plaintiffs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court:

- A. Declare that Section 2 of the Proclamation is unauthorized by, and contrary to, the Constitution and laws of the United States;
- B. Enjoin the Defendants from implementing or enforcing Section 2 of the Proclamation across the nation;
- C. Award any other relief as the Court may deem just and proper.

Dated: October 6, 2017

Respectfully submitted,

/s/ Charles E. Davidow

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

EBLAL ZAKZOK, *et al.*,

Plaintiffs,

v.

DONALD TRUMP, in his official
capacity as President of the United
States, *et al.*,

Defendants.

Civil Action No.: 1:17-cv-02969-GLR

DECLARATION OF FAHED MUQBIL

I, Fahed Muqbil, to the best of my knowledge, information and belief, hereby submit this declaration pursuant to 28 U.S.C. § 1746 and declare as follows:

1. I am a United States citizen and an American Muslim. I was born in Yemen on February 16, 1994 and came to the United States with my family when I was approximately one year old. My mother is a U.S. permanent resident and my father is a U.S. citizen, and I was naturalized as a U.S. citizen on June 7, 1995. I grew up in Louisiana and currently reside in Mississippi. My parents and many of my siblings also live in Mississippi.

2. In 2012, I met and married my wife, who is a Yemeni national. My wife is also a Muslim. Together we have two daughters, R.M. and N.M., who were born in Yemen on March 22, 2013 and October 10, 2016, respectively. Both of our daughters are U.S. citizens.

3. After getting married, between 2013 and 2015, I traveled between Mississippi to complete my high school diploma and Yemen to be with my family. I graduated in May 2014 and intended to return to Yemen to be with my wife and older daughter, however, because of the war in Yemen, I was not able to return to Yemen until December 2015. My plan was to live with my family in Yemen until we could obtain a visa for my wife and passports for our daughters to relocate and permanently live in Mississippi. My wife and I wanted to petition for a visa for my wife prior to our younger daughter's birth, but we had trouble doing so because the U.S. Embassy in Yemen was closed due to the war.

4. N.M., my younger daughter, was born with meningomyelocele (spina bifida), a very serious birth defect with multiple co-morbid conditions. In her short life, she has developed hydrocephalus with VP shunt, Chiari II malformation, neurogenic bladder, hydronephrosis, infantile spasms, an epilepsy that is very difficult to control, dysphasia, and worsening vision. Possibly eighty-five percent of her brain is damaged and she is unable to pick up her head or move her feet.

5. N.M. was unable to receive adequate treatment in Yemen due to the war there. As a result, soon after she was born, on November 9, 2016, I went to Egypt with my wife and daughters to seek immediate, emergency treatment for N.M..

6. In Egypt, N.M. developed a condition called hydrocephalus, and fluids began accumulating in her head, causing her head size to increase dramatically and her vision to worsen. In order to get better medical treatment, I brought N.M. to the United States on May 8, 2017, leaving my wife and older daughter behind in Egypt.

7. In the United States, N.M. was immediately hospitalized at a children's hospital. Doctors there began treating her worsening hydrocephalus, a urinary tract infection, and her seizure disorder. To treat her hydrocephalus, the doctors put in a shunt connecting N.M.'s head with her kidney, in order to allow the fluids from her head to drain. After three weeks, she was discharged from the hospital. Two weeks later, she was hospitalized again for increasing seizure activity due to her epilepsy.

8. Currently, N.M. is under the care of a neurologist and is on constant medication. Since coming to the United States, she has undergone several life-threatening surgeries, and her doctors predict more surgeries may be needed. According to her doctors, her form of epilepsy carries a poor neurodevelopmental outcome, and she must be closely monitored for the rest of her life.

9. My wife has been in Egypt since November 2016. My older daughter R.M. has remained in Egypt with her, in part because, given N.M.'s illness, I cannot care for both daughters in the United States without my wife's assistance. We also did not want to separate my wife from both of her daughters – it has been incredibly difficult for my wife to be separated from N.M. N.M. is too sick to safely travel to Egypt, and so my wife and R.M. have not seen N.M. for nearly five months. I am currently with my wife and R.M. in Egypt while we navigate the visa process. I have not seen N.M., who is with my family in Mississippi, in two months. It is heartbreaking that I have needed to choose between being with my wife and older daughter or with my younger daughter.

10. My wife and I are anguished that she is not able to be with and to care for N.M., and are very worried that my wife might be permanently banned from

joining me and N.M. in the United States because of President Trump's Proclamation. As a result, my wife has suffered from depression. It is very painful for me to know that my wife is suffering such distress and to not be able to do anything about it.

11. My wife's absence has also made it very difficult for me to care for N.M.. Because of her illness, N.M. has regular doctors' appointments and takes constant medications. She has required frequent hospital visits and could require future emergency room visits. Although I have assistance from my parents and siblings in caring for N.M., they cannot care for her long term. I need my wife's help, and our daughter needs her mother.

12. As a result of my wife's absence and the significant care N.M. needs, I cannot work or attend college. I planned to study engineering at a local community college but those plans have remained on hold.

13. I submitted an I-130 Petition for Alien Relative for my wife in June 2017, and the petition was approved on August 17, 2017. My wife has an appointment for a visa interview in Egypt on October 10, 2017, and cannot enter the United States until her visa is approved following this interview. I understand that if my wife is not issued a visa before October 18, 2017 – when President Trump's Proclamation goes into effect – she will be indefinitely banned from the United States.

14. I was devastated when I heard about the Proclamation, and I am very worried at the thought of my wife being permanently banned from rejoining me and our young daughter in the United States. I miss living as a family with my wife and both daughters, and it has been very difficult to care for N.M. without the help – and emotional support – of my wife.

15. President Trump's Proclamation makes me feel as if I and my fellow American Muslims are unwanted, different, and somehow dangerous merely because of our religion. It paints me and my family as terrorists when we have done nothing wrong. I feel condemned and penalized for practicing Islam. President Trump's Proclamation treats me as a second class citizen simply because of my Islamic faith. My wife is not a "national security threat." She is a wife and mother who wants to be with her family—she just happens to be Muslim too.

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


FAHED MUQBIL

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

EBLAL ZAKZOK, *et al.*,

Plaintiffs,

v.

DONALD TRUMP, in his official
capacity as President of the United
States, *et al.*,

Defendants.

Civil Action No.: 1:17-cv-02969-GLR

DECLARATION OF EBLAL ZAKZOK

I, Eblal Zakzok, to the best of my knowledge, information and belief, hereby submit this declaration pursuant to 28 U.S.C. § 1746 and declare as follows:

1. I am a native of Syria. I was born in the countryside outside the city of Aleppo in 1970. I am a lawful permanent resident of the United States, and a practicing Muslim.

2. My wife and I married in 1989 and have five children: Turkie, Mohamad, Razan, Saleh and Rasha, who were born in 1993, 1996, 1999, 2001 and 2008, respectively.

3. I studied civil engineering at Aleppo University in Syria and graduated with a degree in 1994. I thereafter continued my studies at the University of Manchester in the United Kingdom and received my Ph.D. in 2007.

4. After graduating from the University of Manchester, my family and I returned to my hometown in Syria and I accepted a position as an assistant professor at Aleppo University.

5. Upon returning to Syria, I noticed the political conditions deteriorating quickly. While my commute from my home to the university in Aleppo would normally take 45 minutes, between 2008 and 2014 it became increasingly difficult and dangerous to get from my hometown to Aleppo. The Syrian regime and rebel groups set up checkpoints along the road to Aleppo and the road was littered with artillery shells. I saw outbursts of violence and fighting on my way to work each day. By early 2014, it would sometimes take me 6 hours to get to work.

6. On February 22, 2014, I was detained by the Syrian regime on my way to work. I was told that my name appeared on a list of persons critical of the Syrian government. I was detained for two weeks, and kept in an approximately 30 square meter cell. At times there were so many people in the cell that we could not sit or lie down. I was beaten and tortured while in custody, and the overcrowded, unsanitary conditions left me with a painful skin disease that persisted even after my release.

7. On March 9, 2014, I was brought before a judge for a hearing, and the judge dismissed the charges and released me. The judge told me that, as a university professor, I should not be living or traveling around Aleppo.

8. After I was released, my family and I decided it was no longer safe for us in Syria and that we had to leave. At that point, my hometown had been taken over by ISIS.

9. In September 2014, my family and I left Syria and immigrated to Istanbul, Turkey.

10. On September 30, 2014, I traveled to the United States to present a paper at a conference at Eastern Michigan University, to which I had been invited shortly before my family and I left Syria. Although I had a visa to enter the United States for this purpose, I was denied entry upon arrival in Detroit, MI, on suspicion that my intent was to immigrate to the United States. Upon being denied entry, I applied for asylum in the United States. I was detained by immigration services while my asylum application was pending.

11. On December 17, 2014, my asylum application was approved. I stayed with friends in the Detroit area for a few months until the Ohio State University offered me a position as an assistant professor of Surveying, Remote Sensing and Geographical Information Systems, in May 2015. OSU offered me this position as part of The Scholar Rescue Fund of the Institute of International Education, which provides fellowships to academics who are refugees living in the United States.

12. After my asylum application was approved, I applied for derivative benefits for my wife and eligible children. My wife and three of my children were granted these benefits on January 25, 2016 and thereafter joined me in Columbus, Ohio. As refugees, the four of us are lawful permanent residents in the United States. I also have a green card.

13. My eldest son's application for derivative asylum benefits was delayed due to administrative processing but was finally approved on October 4, 2017. We expect he will join us in Ohio shortly.

14. My eldest daughter, Turkie, was not eligible for derivative benefits because she was older than 21 years of age when I was granted asylum in the United States. Therefore, on August 25, 2017, I filed a Petition for Alien Relative, Form I-130, seeking approval for Turkie to immigrate to the United States and be reunited with the rest of my family. The Petition is currently pending with USCIS.

15. It is my understanding that the Presidential Proclamation announced by President Trump on September 24, 2017, which bars all Syrians from entering the United States on either immigrant or non-immigrant visas after October 18, 2017, will prevent my daughter Turkie from receiving a visa to immigrate to or visit the United States indefinitely.

16. My wife and I, as well as our children, are distraught at the possibility that Turkie may never be able to be reunited with us in the United States. I fear for my daughter's safety in Turkey, where I understand Syrian women are specifically targeted by criminals. Further, my daughter is not a permanent legal resident in Turkey and therefore could be required to return to Syria, where I fear she would be subjected to the same torture and persecution that I suffered prior to my family fleeing the country.

17. I currently support Turkie financially. When my family and I fled Syria, Turkie's studies at Aleppo University were interrupted and she has not completed her degree. Although she was accepted to Ohio State University in 2015 to complete her degree in English Literature, and received an exceptional score on her English proficiency exam, she was denied a student visa because the government believes it is her intent to immigrate to the United States permanently. If the Proclamation goes into

effect, it will inhibit Turkie's ability to finish her degree and to obtain gainful employment. It will prevent Turkie from rejoining our family in Ohio where she would live with us and contribute to the household income. It would further require me to continue to supporting her financially, which costs thousands of dollars per month, while she regrettably lives alone without our family in Istanbul.

18. I do not understand why the President is trying to ban people from Syria and other Muslim countries from entering the United States. I feel this is basically an attack on my religion, Islam, and on all Muslims who want to immigrate to this country.

I declare under penalty of perjury that the foregoing is true and correct. Executed at Columbus, Ohio on October 9, 2017.

Eblal zakzok

EBLAL ZAKZOK

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

EBLAL ZAKZOK, *et al.*,

Plaintiffs,

v.

DONALD TRUMP, in his official
capacity as President of the United
States, *et al.*,

Defendants.

Civil Action No.: 1:17-cv-02969-GLR

DECLARATION OF SUMAYA HAMADMAD

I, Sumaya Hamadmad, to the best of my knowledge, information and belief, hereby submit this declaration pursuant to 28 U.S.C. § 1746 and declare as follows:

1. I am a United States citizen, and a practicing Muslim of Syrian descent. I live in Ohio with my husband and three children.
2. Although I was born in Syria, I left Syria when I was three years old and moved to the United Arab Emirates, and then subsequently to Jordan. I came to the United States in 2001 to pursue my Ph.D. in Pharmacology, which I obtained in 2006. I completed a postdoctoral fellowship at Yale University and am currently a researcher in pharmacology at the Ohio State University.
3. I have a younger sister, Dima, who lives in Amman, Jordan. My sister was born in Jordan and has lived in Jordan all her life, but is not a Jordanian citizen.

Syrian citizenship is inherited through the nationality of your parents, and there is no path to citizenship for Syrian immigrants in Jordan.

4. My sister recently graduated from the Jordan University of Science and Technology. She works at a non-governmental organization in Jordan, performing research for a collaborative project that involves the epigenetics of transgenerational trauma of Syrian refugees. She has been the team leader for data collection on this project in Jordan since 2016. Specifically, she is in charge of identifying, recruiting, and collecting DNA samples and interview data from all of the families in the study.

5. Dima has received invitations to perform crucial genetic research at Yale University and the University of Florida. She would be advising on the specifics regarding the collection of DNA swab samples and analyses. She applied for a B1/B2 visa on October 3, 2017, which would permit her to come to the United States for a mixed business and tourist purpose, so that she can perform this research and visit my family during her trip.

6. My sister was interviewed on October 9 at the U.S. Embassy in Jordan and was approved for her B1/B2 visa and was told the visa should be issued in approximately five days.

7. It is my understanding that the Presidential Proclamation announced by President Trump on September 24, 2017, which bars all Syrian citizens from entering the United States on either immigrant or non-immigrant visas after October 18, 2017, will prevent my sister from receiving any further visas to visit or conduct business in the United States indefinitely.

8. My sister was born in Jordan, and she has spent her whole life in Jordan. But it is my understanding that my sister will not be treated like a Jordanian when the Proclamation goes into effect. She will be treated like someone who lives in Syria, even though she has never been to Syria. I do not understand why the United States would prohibit someone like my sister, who has never been to Syria and who is needed to perform important research in the United States, from traveling to the United States.

9. The Proclamation will also prevent my father-in-law, a Syrian national, living in Syria, from being able to visit or immigrate to the United States.

10. My husband has filed a Form I-130, Petition for Alien Relative, on my father-in-law's behalf. The petition is currently pending.

11. My father-in-law has been diagnosed with skin cancer and prostate cancer. It is difficult to get access to quality medical care for this kind of condition in Syria. We would like for him to be able to receive treatment for these conditions in the United States.

12. It is stressful to be unable to help my father-in-law. He is 81 years old, and it is hard to live in Syria. My children are his only grandchildren and it is painful for all of us that he lives so far away and may be separated from us indefinitely.

13. It is important to me that my children spend time and connect with the older generations of my family. I have seen how much impact an in-person visit with family can have on my children. My children met their cousins for the first time a year ago, and they still talk about how special it was to meet someone who loves them in person.

14. I want my children to be able to hug their aunt and grandfather, speak Arabic with them, and develop the kind of close relationship with them that can only come from spending physical time together. My sister has not been to the United States since 2005 and has not been able to meet one of my children—her nephew—in person. My mother died four years ago and so I know there are only so many opportunities for my children to meet their family.

15. If the Proclamation goes into effect, I may never be able to provide for my children this important experience of connecting with their relatives. It will inhibit my ability to instill in my children that they are Syrian-American and have a proud heritage.

16. I feel that this Proclamation hurts the United States. Most of my friends who are immigrants are scientists, engineers, doctors, and graduate students. They are people who help contribute and make this country great. I would not have been able to get my Ph.D. if this Proclamation was in place when I arrived. It makes me nervous for the country's future.

17. I believe the Proclamation damages the welcoming atmosphere that the United States had when I immigrated here.

18. I fear for myself and my family that the United States no longer embraces people of different backgrounds and abilities, and I feel that this Proclamation is basically an attack on my Islamic faith and all Muslims.

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

Executed at Columbus, Ohio on October 9, 2017.

Sumaya Hamad

SUMAYA HAMADMAD

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

EBLAL ZAKZOK, *et al.*,

Plaintiffs,

v.

DONALD TRUMP, in his official
capacity as President of the United
States, *et al.*,

Defendants.

Civil Action No.: 1:17-cv-02969-GLR

DECLARATION OF JOHN DOE #1

I, [REDACTED], known as John Doe #1 for the purposes of this case, to the best of my knowledge, information and belief, hereby submit this declaration pursuant to 28 U.S.C. § 1746 and declare as follows:

1. I am a United States citizen, and I am Muslim. I live in New Jersey.
2. I was born on [REDACTED], in Kuwait. I first came to the United States in 1999. I have a Master's Degree in Social Work and Management and Policy from Rutgers University
3. In August 2017, my wife and I, a Syrian national, married in the United States.
4. My wife was born and grew up in Saudi Arabia. She studied dentistry, and is now pursuing a Master's degree in dentistry in Portugal on a full scholarship.

5. Soon after we married, my wife returned to Portugal to continue her studies while I set up our home in New Jersey and prepared to apply for her to come to the United States as an immigrant on the basis of our marriage.

6. I have one child, my nine-year-old stepdaughter. She is my wife's biological daughter, and a Syrian national. My stepdaughter lives in Saudi Arabia with my wife's parents. She is a permanent resident of Saudi Arabia, and her permanent residency status expires in 2018.

7. Our plan is for my wife to immigrate to the United States on an I-130 visa after she completes her master's program and then to apply for derivative benefits for my stepdaughter to join us. We plan to raise our daughter in the United States. It is currently very difficult for me to visit my stepdaughter because of Saudi Arabia's stringent visa requirements.

8. I have not yet applied for an I-130 visa on my wife's behalf. I understand that, if the Proclamation goes into effect, applying for the visa would be pointless and my wife will be barred from joining me in the United States.

9. I have and will continue to suffer emotional, psychological, physical and financial injuries as a result of the Proclamation. I now realize that I may never be joined by my wife in the United States or afforded the opportunity to create the expanded family I envisioned. I have no other family in the United States, and the possibility that my wife may never be able to join me in the United States has left me distraught. Since the Proclamation, I have been anxious, depressed, stressed and feel helpless.

10. The Proclamation imperils my relationship with my wife, whom I love and just married. My wife and I plan to have more children, and the Proclamation will make it difficult or impossible to do so.

11. The Proclamation will also have a significant financial impact on me. If my wife is prevented from immigrating to the United States when she finishes her degree, I will have to support her while she lives abroad. If she is delayed in immigrating to the United States after she finishes her degree, we will suffer her lost wages during that time.

12. I am a practicing Muslim and feel marginalized and excluded by the Proclamation on the basis of my religion. I believe that there are many other countries that do not comply with the protocols that the President has used as a basis for denying entry to citizens of the countries in the Proclamation, but it was my country of ancestry, and that of my wife, that he singled out for the ban because there are many Muslims who live there. I believe that the ban is based on bigotry and hatred, and that it stigmatizes me for being Muslim.

13. It is important for me to remain anonymous in this lawsuit. I am aware of rising anti-Muslim sentiment in the United States, and I fear that the Proclamation and the previous travel bans empower those that discriminate against Muslims. I feel marginalized because other U.S. citizens are not being prevented from having a relationship with their spouse in the way that I am.

14. I am further concerned that revealing my identity will invite harassment or targeting of me in the United States, or my wife in Portugal, on the basis of our religion and national origin. I am also concerned that revealing my identity could

negatively affect the outcome of immigration proceedings for my wife and cause her visa application to be denied in retaliation for this lawsuit.

I declare under penalty of perjury that the foregoing is true and correct. Executed at Hackensack, New Jersey on October 6, 2017.

[REDACTED]

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

EBLAL ZAKZOK, *et al.*,

Plaintiffs,

v.

DONALD TRUMP, in his official
capacity as President of the United
States, *et al.*,

Defendants.

Civil Action No.: 1:17-cv-02969-GLR

DECLARATION OF JANE DOE #2

I, [REDACTED], known as Jane Doe #2 for the purposes of this case, to the best of my knowledge, information and belief, hereby submit this declaration pursuant to 28 U.S.C. §1746 and declare as follows:

1. I am a United States citizen and a resident of Maryland. I am also Muslim.
2. My parents are both Syrian. They moved to Kuwait in the 1980s, before my birth. They remained there until the invasion of Kuwait by Iraq in 1990. At the outset of the war, they returned to Syria to escape the violence. I was born in Syria during that time.
3. After the conclusion of the war, my father quickly returned to Kuwait to begin rebuilding. He is an educator, and resumed his work as a teacher. My father has not been back to Syria in the more than twenty-years since then.

4. My mother took me, along with my brother, back to Kuwait in the mid-1990s.

5. I began my university studies in architecture in Syria. At that time, I planned to complete my education in Syria and get married after I graduated.

6. My plans changed in 2011, when the Syrian Civil War began. Fearing for my safety, I returned to Kuwait briefly to stay with my parents.

7. I then traveled to the United States to meet my fiancé. We married in 2011. I resumed my study of architecture and graduated with a Bachelor of Science degree.

8. My husband and I now live in Maryland with our three-year-old son.

9. In June 2016, my mother, who was then in Kuwait, came to the United States visit and later decided to stay with my family and help us raise our child. My mother is now a lawful permanent resident.

10. When my mother came to the United States, my father remained in Kuwait. He continued to work as a teacher, and he and my mother relied on his income. My father has visited us in the United States, and has met his grandson, but his visits have been brief.

11. My husband and I are now expecting our second child. Financial circumstances will now permit my father to join us in the United States. He hopes to spend time with his grandchildren and to help raise them.

12. Earlier this year, I submitted an I-130 Petition on behalf of my father. The petition was approved, and my father has begun his visa application. He has not yet been interviewed.

13. I understand that if the Proclamation goes into effect, my father would be barred from coming to the United States indefinitely.

14. It is very important to me and my family that my father be able to join us in the United States. I want my children to know both of their grandparents, and to learn from them. My father would speak to my children in Arabic, teaching them both the language and our culture in a way that my husband and I cannot. It is very important to us that our children be bilingual, understand their culture and history, and have a close, personal relationship with their grandparents.

15. My son and my father speak with each other using video conferencing software, but these interactions cannot replace the experience of being together face-to-face.

16. My husband and I are both very involved in our community. We are vocal members of the Syrian American Council, which advocates for freedom for the Syrian people.

17. We are also both fully involved with a local child-centered school for children of ages five and younger. We teach at the school and do administrative work to facilitate its operation. Our young students learn about art, culture, and diversity. My mother has also become involved with the school since her arrival. I hope that my father will be able to join us and contribute to the school as well.

18. My work with children has reinforced my belief in the importance of family. Children benefit emotionally and psychologically from being with their family, and it is very damaging if they are disconnected from them.

19. I also fear for my father's safety if he is not able to come to the United States. My father's immigration status in Kuwait depends on his continued employment. As he approaches retirement, there is a risk that he will no longer be able to stay in that country.

20. If my father has to leave Kuwait and cannot come to the United States, the only place he could go would be Syria.

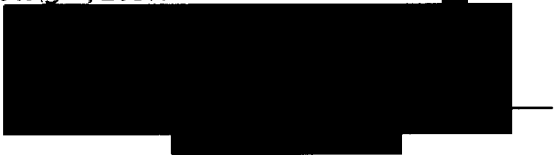
21. Because of my husband's and my political involvement with the Syrian American Council, I believe that my father would be at grave risk if he were forced to return to Syria. I fear that he could be detained, tortured, or even killed.

22. I have now lived in the United States for approximately six years. The President's Proclamation, and the Executive Orders that preceded it, make me feel that I am discriminated against, despite the fact that I am now a citizen.

23. I believe that the Muslim ban is unconstitutional and unfair. It will hurt a lot of people and separate a lot of families. The Constitution is supposed to protect people, and to protect minorities. The Proclamation would make it so that my family could not be together. It would hurt Americans—me, my husband, my son, and my unborn child. This is not what the Constitution is about.

24. I have requested to remain anonymous in this lawsuit because I am afraid that my participation in this lawsuit might harm my father's visa application.

I declare under penalty of perjury that the foregoing is true and correct. Executed at Columbia, Maryland on October 9, 2017.

A large black rectangular redaction box covers the signature area of the document.

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

EBLAL ZAKZOK, *et al.*,

Plaintiffs,

Civil Action No.: 1:17-cv-02969-GLR

v.

DONALD TRUMP, in his official capacity
as President of the United States, *et al.*,

Defendants.

DECLARATION OF JANE DOE #3

I, [REDACTED] known as Jane Doe #3 for the purposes of this case, to the best of my knowledge, information and belief, hereby submit this declaration pursuant to 28 U.S.C. §1746 and declare as follows:

1. I am a United States citizen. I was born in Somalia and am Muslim. I came to the United States in 2006 as a refugee fleeing the horrific, war-torn conditions in Somalia. I obtained my U.S. citizenship in 2012.

2. I live and work in Minnesota, where I am a health care assistant at a hospital. All of my family lives in Minnesota.

3. In April 2016, I became engaged to be married. My fiancé is from Somalia and currently lives in Malaysia, where he has lived since 2008 and is obtaining a Master's Degree in Finance. He has a student visa to study in Malaysia, but is scheduled to graduate this month (October 2017), after which time he will no longer be able to remain in Malaysia on his student visa.

4. My fiancé and I have planned that he will come to Minnesota after finishing his Master's Degree and that we will marry as soon as he arrives in the United States, and start a family. My fiancé also plans to get a job using his Master's Degree; his skill, labor, and finances will help us to build a family. Being separated from my fiancé has been very difficult and has put a strain on our relationship. I never want us to be separated again.

5. In December 2016, I filed an I-129F petition with the United States Citizen and Immigration Services (USCIS) for my fiancé to come to the United States. The USCIS approved the I-129F petition in March 2017. After the petition was approved, my fiancé applied for a K-1 visa with the U.S. State Department. He was interviewed by a consular official in Malaysia and has provided the government with all of the information it has requested. However, the visa has not yet been granted.

6. I understand that if President Trump's Proclamation goes into effect, my fiancé will be prohibited from obtaining a visa, even though he has not been to Somalia for almost a decade.

7. Since the Proclamation, I have felt very upset and hopeless. I also feel nervous and anxious when interacting with other people.

8. I am afraid that I will never be able to marry and build a life and family with the person I love. The uncertainty of not knowing whether my fiancé will ever be able to come to the United States has affected my relationship with him and given me

nightmares. The situation has also affected my physical health. I am diabetic, and when there is a lot of stress in my life, it is difficult to control my blood sugar levels.

9. I believe that the Proclamation is motivated by a desire to stigmatize Muslims and treats me like a second class citizen. I am an American citizen — I came to the United States legally and passed the citizenship test — but the Proclamation denies Muslims our rights and treats us differently in our own country. I personally feel stigmatized by the Proclamation.

10. I have noticed people treating me differently since the Proclamation was announced. When people on social media learn that I am from Somalia, they respond with hurtful messages and ask if I am in the United States legally. I am afraid that when I travel in the future, I will be pulled aside for additional screening and questioning because my passport states that I was born in Somalia. I am afraid that I will be isolated and separated from my fellow American citizens.

11. It is important to me to remain anonymous in this lawsuit. I am afraid that if I reveal my identity, my fiancé's visa will be jeopardized because of my participation in this lawsuit.

12. I am also afraid of the backlash that might result if I cannot proceed anonymously. I have already faced a lot of backlash from people on social media just because I am from Somalia. If my identity is revealed in a lawsuit against the government, I am afraid there will be anti-Muslim retaliation against me.

I declare under penalty of perjury that the foregoing is true and correct. Executed at BURNSVILLE, Minnesota on October 9, 2017.



UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

EBLAL ZAKZOK, *et al.*,

Plaintiffs,

v.

DONALD TRUMP, in his official
capacity as President of the United
States, *et al.*,

Defendants.

Civil Action No.: 1:17-cv-02969-TDC

DECLARATION OF STEVEN C. HERZOG

I, Steven C. Herzog, to the best of my knowledge, information and belief, hereby submit this declaration pursuant to 28 U.S.C. §1746 and declare as follows:

1. I am Counsel with the law firm of Paul, Weiss, Rifkind, Wharton & Garrison LLP, counsel for Plaintiffs in the above-captioned action.
2. A true and correct copy of the September 13, 2017 New York Times article by Ron Nixon entitled “*Trump Administration Punishes Countries that Refuse to Take Back Deported Citizens*,” is attached hereto as Exhibit 1. The article can also be found at <https://www.nytimes.com/2017/09/13/us/politics/visa-sanctions-criminal-convicts.html>.
3. A true and correct copy of the May 16, 2017 Washington Times article by Stephen Dinan entitled “*Trump Presses More Countries Take Back U.S. Deportees in Immigration Success*,” is attached hereto as Exhibit 2. The article can also be found at <http://www.washingtontimes.com/news/2017/may/16/countries-refusing-us-deportees-cut-from-20-to-12/>.

4. A true and correct copy of the October 9, 2017 CATO Institute article by David Bier entitled “*Travel Ban is Based on Executive Whim, Not Objective Criteria*,” is attached hereto as Exhibit 3. The article can also be found at <https://www.cato.org/blog/travel-ban-based-executive-whim-not-objective-criteria>.

5. A true and correct copy of the International Civil Aviation Organization (“ICAO”) webpage entitled “*ICAO PKD Participants*,” is attached hereto as Exhibit 4. The webpage can also be found at <https://icao.int/Security/FAL/PKD/Pages/ICAO-PKDParticipants.aspx>.

6. A true and correct copy of the INTERPOL webpage entitled “*Border Management*,” is attached hereto as Exhibit 5. The webpage can also be found at <https://www.interpol.int/INTERPOL-expertise/Border-management/SLTD-Database>.

7. A true and correct copy of the September 27, 2017 NPR article by Scott Neuman entitled “*Why is Chad on Trump's Travel Ban List?*” is attached hereto as Exhibit 6. The article can also be found at <http://www.npr.org/sections/thetwo-way/2017/09/27/553967424/why-is-chad-on-trumps-travel-ban-list>.

8. A true and correct copy of the 2017 Brennan Center for Justice report by Harsha Panduranga, Faiza Patel, & Michael W. Price entitled “*Extreme Vetting & The Muslim Ban*,” is attached hereto as Exhibit 7. The report can also be found at https://www.brennancenter.org/sites/default/files/publications/extreme_vetting_full_10.2.pdf.

9. A true and correct copy of the March 2009 American Civil Liberties Union (“ACLU”) report by Michael German and Michelle Richardson entitled “*Reclaiming Patriotism: A Call to Reconsider the Patriot Act*,” is attached hereto as Exhibit 8. The report can also be found at https://www.aclu.org/files/pdfs/safefree/patriot_report_20090310.pdf.

10. A true and correct copy of the U.S. Embassy Baghdad's webpage entitled "*Guidelines for Completing the DS 160 Non Immigrant Visa Application*," is attached hereto as Exhibit 9. The webpage can also be found at <http://blogs.worldlearning.org/iylep/files/2012/03/DS-160-NIV-Instructions-IYLEP-World-Learning.pdf>.

11. A true and correct copy of the presentation by U.S. Embassy Kingston, Jamaica entitled "*DS-160 Nonimmigrant Visa Application Form, a Complete Step-by-Step Instructional Guide*," is attached hereto as Exhibit 10. The presentation can also be found at <https://photos.state.gov/libraries/jamaica/231771/PDFs/DS-160%20Instructions.pdf>.

12. A true and correct copy of the Department of Homeland Security Draft Report entitled "*Citizenship Likely an Unreliable Indicator of Terrorist Threat to the United States*," is attached hereto as Exhibit 11. The report can also be found at <http://www.aila.org/infonet/dhs-report-citiz-unreliable-indicator-of-threat>.

13. A true and correct copy of the March 2017 Department of Homeland Security intelligence assessment entitled "*(U//FOUO) Most Foreign-born, US-based Violent Extremists Radicalized after Entering Homeland; Opportunities for Tailored CVE Programs Exist*," is attached hereto as Exhibit 12. The assessment can also be found at <http://www.msnbc.com/rachel-maddow-show/trms-exclusive-dhs-document-undermines-trump-case-travel-ban>.

14. A true and correct copy of the January 25, 2017 CATO Institute article by Alex Nowrasteh entitled "*Little National Security Benefit to Trump's Executive Order on Immigration*," is attached hereto as Exhibit 13. The article can also be found at <https://www.cato.org/blog/little-national-security-benefit-trumps-executive-order-immigration>.

15. A true and correct copy of the September 26, 2017 Washington Post article by David Bier entitled "*The Basic Premise of Trump's Travel Ban is Wrong*," is attached hereto as Exhibit 14. The article can also be found at https://www.washingtonpost.com/opinions/the-basic-premise-of-trumps-travel-ban-is-wrong/2017/09/26/7cb868b0-a2d5-11e7-8cfe-d5b912fab99_story.html.

I declare under penalty of perjury that the foregoing is true and correct. Executed at Brooklyn, New York on October 14, 2017.



Steven C. Herzog

EXHIBIT 1

The New York Times | <https://nyti.ms/2y07s3s>

POLITICS

Trump Administration Punishes Countries That Refuse to Take Back Deported Citizens

By RON NIXON SEPT. 13, 2017

WASHINGTON — The Trump administration has imposed visa sanctions against four countries that have refused to take back citizens who were convicted of crimes in the United States and ordered deported, officials said on Wednesday.

The Department of Homeland Security said it notified the State Department that the governments of Cambodia, Eritrea, Guinea and Sierra Leone had denied or unreasonably delayed accepting the return of convicts. American diplomats in the countries were ordered to impose visa restrictions, officials said in a statement, but did not say what types of visas would be affected.

“International law obligates each country to accept the return of its nationals ordered removed from the United States,” said Elaine Duke, the acting secretary of Homeland Security. “Cambodia, Eritrea, Guinea, and Sierra Leone have failed in that responsibility.”

Officials said the restrictions would remain in place until the countries cooperate.

The issue has been a longstanding problem for officials at Immigration and Customs Enforcement, the agency charged with deportations.

They say other nations will often refuse to issue travel documents or delay providing them. In turn, agency officials said, they are forced to release criminals, including those who have committed assaults and murders, in the United States. A 2001 Supreme Court ruling barred the government from detaining immigrants indefinitely simply for lack of a country willing to take them.

The Obama administration was criticized for not using its authority to impose visa sanctions against countries that refused to work with American officials to deport immigrants with criminal convictions.

In one of the most recent examples, ICE officials had to release in 2012 a Haitian immigrant, Jean Jacques, who had served time for attempted murder; Haitian officials blocked his deportation because they said Mr. Jacques could not prove that he was a citizen. In June 2015, he stabbed to death Casey Chadwick, a 25-year-old woman from Norwich, Conn., and he was sentenced last year to 60 years in prison in a case that received widespread attention.

President Trump, who campaigned on cracking down on illegal immigration, had promised to punish countries that refused to take back their citizens and signed an executive order in January directing the departments of State and Homeland Security to suspend visas from countries that refused to take back their citizens.

Immigration officials said the sanctions send a message to the holdout nations.

“American citizens have been harmed because foreign governments refuse to take back their citizens,” said Thomas Homan, the acting director of ICE. “These sanctions will ensure that the problem these countries pose will get no worse as ICE continues its work to remove dangerous criminals from the United States.”

Homeland Security officials said about 700 Eritrean nationals in the United States are subject to final orders of removal, but Eritrean officials have refused to cooperate. More than 1,900 Cambodian nationals in the United States are subject to a final order of removal, and 1,412 have criminal convictions, officials said.

ICE officials say they have been forced to release about 2,137 Guinean and 831 Sierra Leone nationals, many with serious criminal convictions.

Get politics and Washington news updates via Facebook, Twitter and the Morning Briefing newsletter.

A version of this article appears in print on September 14, 2017, on Page A16 of the New York edition with the headline: U.S. Punishes Four Countries for Refusing to Take Back Criminals.

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EXHIBIT 2

Trump presses more countries take back U.S. deportees in immigration success



President Trump has created a determined focus at the Homeland Security and State departments, which are both involved in speeding up deportations. (Associated Press/File) [more >](#)

By Stephen Dinan - *The Washington Times* - Tuesday, May 16, 2017

Between cajoling, threats and actual punishments, Homeland Security has managed to drastically cut the number of countries that habitually refuse to take back immigrants whom the U.S. is trying to deport, officials said Tuesday, notching an early immigration success for President Trump.

The number of recalcitrant countries has dropped from 20 to 12 over the months since the presidential election, and some longtime offenders — including Iraq and Somalia — have earned their way off the naughty list. The list of countries is the shortest this decade.

U.S. Immigration and Customs Enforcement officials couldn't immediately say how many people have been deported because of the changes, but Somalia has taken back 259 just seven months into the fiscal year. That is far more than the 198 it took back in all of 2016 and the 17 it took in 2015.

Marlen Pineiro, assistant director for removal operations at ICE, said the efforts began under the Obama administration but that Mr. Trump has created a determined focus at the Homeland Security and State departments, which are both involved in speeding up deportations.

"The wind being at our wings is really driving us forward," she said.

In many cases, that means criminals who otherwise would have been released onto the streets are now being sent to their home countries.

Recalcitrant countries have long been among the serious issues that didn't get much attention, though the consequences can be extreme.

In one notorious case, Haiti refused to take back an illegal immigrant who had served time for attempted murder, and U.S. officials were forced to release him. He killed a young woman in Connecticut just months after his release.

Another illegal immigrant, Thong Vang, was released from prison in 2014 after serving time for rape convictions, and his home country of Laos refused to take him back. He was sent to a California prison last year and shot two guards, police said.

Armed with those kinds of cases, Mr. Trump made recalcitrant countries a part of his presidential campaign. He vowed to begin putting pressure on countries to take back their deportees.

One of his first executive orders instructed Homeland Security to take steps to pressure other countries, including potentially stopping the issuance of visas to governments that refuse to cooperate.

Jessica Vaughan, policy studies director at the Center for Immigration Studies, said Mr. Trump and his Homeland Security Department should get most of the credit for the changes for ramping up pressure beyond the diplomatic "demarche" letters that the Obama administration used.

"On matters like this, the Trump administration is speaking not so softly and waving the sharp stick of visa sanctions," she said. "That's a lot more effective than apologetically delivered demarches."

Still on the naughty list are Cuba and China — the two biggest offenders over the years. As of last year, the U.S. was trying to deport some 35,000 Cubans with criminal records. The number of criminal migrants awaiting deportation to China stood at 1,900.

Even there, progress is being made, Ms. Piniero said. After the Obama administration's diplomatic outreach, Cuba signed a deal to begin taking back any new migrants — though it is still reluctant to eat into the backlog.

"They are accepting all the removals under the joint statement that have come in after Jan. 12," Ms. Piniero said.

China remains a tougher situation, despite Mr. Trump's efforts to advance relations with Chinese President Xi Jinping.

"We are working on China. We're preparing our recommendations," Ms. Piniero said.

Other countries still on the recalcitrant list are Burma, Cambodia, Eritrea, Guinea, Iran, Laos, Morocco, South Sudan and Vietnam. Hong Kong was added into the list this month because its repatriation policy is controlled by China.

The countries that dropped off the list, in addition to Somalia and Iraq, were Afghanistan, Algeria, Burkina Faso, the Gambia, Mali, Senegal and Sierra Leone.

Iraq earned its way off the list after it promised better cooperation in the wake of Mr. Trump's first extreme vetting executive order.

U.S. law allows for penalties, including denying visas, against countries that refuse to take back their deportees.

That punishment has been used twice, and both times only on a limited basis. The Bush administration stopped issuing visas to officials from Guyana in 2001. Within months, the country had taken back 112 of the 113 Guyanans whom the U.S. was trying to deport.

Late last year, after intense pressure from Congress, the Obama administration triggered the penalty for the Gambia, stopping issuance of visas for government officials and their families.

The Gambian Embassy said it quickly took steps to comply by issuing travel documents to the people ICE had requested and by reviewing new cases.

"Our country respects the laws of the United States, and we are working closely with the U.S. authorities to take care of the situation," Hamba Manneh, a counselor at the embassy, told The Washington Times in October after the penalties were issued.

Thanks to that action, the Gambia has been taken off the recalcitrant list, though it is still one of 47 countries on the "at-risk" list. The visa penalty on the Gambia hasn't been lifted.

In the case of Somalia, the U.S. has deported its citizens who were in custody. Voice of America reported last month that some 4,000 other Somalis are still on the target list.

Most of them were released from custody over the years because of resistance by their home governments, and now the U.S. must track them down to deport them.

Ms. Pineiro said ICE has moved to create a more formal process for identifying recalcitrant countries.

In the past, she said, the list was based on a sense of the state of each country. Now, she said, officials look at specific metrics such as how long it takes to issue travel documents, whether the country will conduct identity interviews to facilitate deportation and whether countries have a favorable deportation-to-release ratio.

EXHIBIT 3



CATO AT LIBERTY

OCTOBER 9, 2017 2:07PM

Travel Ban Is Based on Executive Whim, Not Objective Criteria

By DAVID BIER

President Trump's travel ban proclamation states that the Department of Homeland Security (DHS) developed a global baseline for visa vetting that all governments must meet before their nationals can travel to the United States. The proclamation states that the president then applied DHS's baseline to all countries and then restricted travel to all those that failed them. This explanation is untrue.

DHS created nine baseline criteria grouped into three categories (see the Appendix for a detailed explanation of each one). Here they are:

- **Category 1:** Identity management: 1) Use of electronic passports embedded with data; 2) Reports lost and stolen passports; 3) Makes available upon request identity-related information.
- **Category 2:** National security information: 4) Makes available terrorist and criminal information upon request; 5) Provides identity document exemplars; 6) Allows U.S. government's receipt of information about passengers and crew traveling to the U.S.
- **Category 3:** Risk indicators: 7) Is a known or potential terrorist safe haven; 8) Is a participant in the Visa Waiver Program that meets all of

The proclamation states that the president then applied the DHS baseline to every country and banned all those—and only those—that fail its criteria. *This never happened.*

Despite statements to the contrary, the proclamation admits that the president did not ban all countries that failed the requirements and did ban others that met them. It applies higher-than-the-baseline criteria to the countries on the list, but never applies those more stringent criteria to other countries that remained off the list. The president's proclamation also applies mitigating factors to avoid banning every failing country but then didn't apply those new mitigating factors to the other banned countries. Even when applying all of these additional criteria, no set of failed or met factors can explain the proclamation's choices of which countries to ban. The travel ban simply lacks an objective grounding.

The presidential proclamation did not apply the DHS baseline to every country.

The proclamation states that Iraq failed the baseline, but it did not ban Iraqis. It is the only country that it claims to have failed yet not banned. By itself, this proves that the baseline is not automatically applied, but we know that many other countries also failed.

At least 86 countries did not issue electronic passports in 2017, and many others had nationals still using older non-electronic passports. At least 16 countries never report lost or stolen passports and, as of mid-2014, about 150, including large countries China, India, and Indonesia, rarely did. In May 2017, 12 countries regularly refused to accept U.S. deportees—only one of which was a travel ban country—and on September 13, 2017, just before the travel ban came out, the U.S. sanctioned four non-travel ban countries for this reason. None of those four were travel ban countries. In 2017, 153 countries did not participate in the Visa Waiver Program, and as of December 2015, a third of participating countries did not meet its requirements. In 2016, the State Department identified 13 terrorist safe havens—only three made the list.

The proclamation tells us that some countries decided to share information or passport samples, but it makes no mention of countries complying with the above criteria. It tells us that DHS initially identified 16 failing countries, but then settled on nine and exempted Iraq, implying that seven countries moved from failing to passing. Even if all of these seven countries initially failed each criterion above and then corrected the failure, 75 non-travel ban countries would still not be issuing e-passports; six would still not be reporting passports; and four would still not be accepting deportees. The number of terrorist safe havens appears to have remained the same.

Either the proclamation misrepresents how the baseline applies to each country (i.e. countries don't need to meet all of its requirements) or the proclamation misrepresents how the president applied the baseline (i.e. he didn't apply it to each country).

The proclamation did not apply the DHS baseline to travel ban countries.

Not only do many of these countries meet most of the baseline requirements, the proclamation did not actually apply the baseline to them. The administration applied something else entirely. Here are a few examples:

- Somalia issues e-passports but fails this requirement because “the United States and many other countries do not recognize it.” This is a much higher standard than the baseline.
- Libya and Venezuela do not “regularly refuse to receive their nationals” whom the United States deports—which is why Immigration and Customs Enforcement does not list either as an offender in this regard—but we are told that they are “not *fully* cooperative with respect to receiving their nationals,” and so they are banned. Here, the baseline allows some refusals, but when the proclamation then applies this criterion, it requires total or full cooperation.
- Chad is not a “terrorist safe haven,” according to the State Department, and actively partners with the United States against terrorists, but apparently *still* fails this requirement because terrorists “are active within Chad or in the surrounding region.” Under the DHS criteria, a country must be a terrorist safe haven or potential safe haven. But according to

the proclamation, the mere presence of “active” terrorists nearby can ban nationals from a nation even if the terrorists are *outside* of the country. This is moving the goalposts to an entirely different field.

- Somalia “satisfies the information-sharing requirements of the baseline” but its “lack of territorial control... compromises Somalia’s ability... to share.” In other words, Somalia *shares* what it can, but due to its limitation, it cannot *collect* the information that the United States wants. Thus, this is about capacity, not cooperation, in terrorist surveillance. This higher-than-baseline standard also appears to apply to Libya which “faces challenges” to sharing. Again, the ability to collect is substantially different than the baseline requirement to share upon request.
- Iran is not a safe haven for terrorists, but the proclamation justifies its inclusion by stating that it is a State Sponsor of Terrorism. This is a very different standard than a “terrorist safe haven,” which requires “ungoverned, under-governed, or ill-governed physical areas where terrorists are able to organize, plan, raise funds, communicate, recruit, train, transit, and operate in relative security.” Iran does not fit this description, yet the proclamation still found it to have failed the baseline.

The point here is that the proclamation did not actually apply the DHS standards. It applied wholly different requirements that are not part of the baseline.

The proclamation did not apply its own criteria to every non-travel ban country.

Applying the proclamation’s additional criteria to every country adds no more clarity. Indeed, if these more stringent requirements become part of the baseline then more countries would fail and be banned. Thus, the selection of these eight countries becomes even *more* arbitrary than it already is. Another 125 non-travel ban countries don’t have e-passports or have e-passports that many countries don’t recognize. Like Syria, Sudan is also a State Sponsor of Terrorism. Active terrorists “in the surrounding region” would add at least the 31 non-travel ban countries where Foreign Terrorist Organizations are based and probably a half dozen more. The same must also be true for the higher-than-baseline deportee acceptance requirement.

Yet even if we apply these higher-than-baseline criteria, still not all of the travel ban countries fail them. Iran issues an internationally recognized electronic passport. North Korea has no terrorist groups in its vicinity.

The proclamation did not apply his own criteria to every travel ban country.

The proclamation explains that it did apply the baseline to Iraq because Iraq meets four mitigating factors and that it did not ban any Venezuelans, except for a few bureaucrats, because they meet a fifth mitigating factor. Yet meeting any or even all of these mitigating factors does not mean that the country is off the list. Here are the mitigating factors:

- One mitigating factor is having a “cooperative relationship” with the United States. This would apply to Chad, Libya, Yemen, and Somalia. The first three the proclamation itself describes as “counterterrorism partners,” and Somalia is a member of the U.S. Global Coalition to Defeat ISIS.
- Another mitigating factor is having a “commitment to combating” ISIS. This factor would apply to six of the travel ban countries, all of the counterterrorism partners listed above as well as Syria and Iran, both of whom are committing significant resources to defeating ISIS in Syria and Iraq.
- Another mitigating factor is the presence of U.S. troops. This would apply at least to Chad, Syria, Yemen, Libya, and Somalia, and possibly even Venezuela.
- Another mitigating factor is the presence of U.S. diplomats. This would also apply to Chad and Venezuela.
- Finally, the existence of “alternative sources of information” about Venezuelan travelers mitigates against their governments’ failure to meet the baseline. But this mitigating factor would also apply to some travelers from every other country. The fact that sources of information exist about some travelers and immigrants from these countries is precisely why there was not already a ban in place. Travelers face the burden of proof in

Every travel ban country meets one of the mitigating factors. Chad meets all of them. Libya, Yemen, and Somalia meet four of the five, every factor except the presence of U.S. diplomats. Syria meets three of the conditions. Iran and Venezuela meet two of them. Thus, we have no idea how these mitigating factors matter, when they are applied, or what they can compensate for.

No combination of factors explains the proclamation’s travel ban selections.

Not all travel ban countries fail all of the baseline criteria, and not all of the other non-banned countries meet the baseline criteria. The next most logical explanation is that some combination of factors explains the list. The proclamation hints at this possibility, asserting that these eight countries “have ‘inadequate’ identity-management protocols, information-sharing practices, **and** risk factors.” At a minimum, this means that each country on the list has failed at least one criterion in each of the three baseline categories. Yet once again, the proclamation then admits that this is not true.

It states that DHS “determined that Somalia satisfies the information-sharing requirements of the baseline and states that Venezuela met “the baseline standards identified,” except for those relating to public-safety and terrorism-related information sharing and risk criteria. In addition, Iran appears to meet the identity management requirements. It uses an electronic passport that is recognized by other countries, and according to INTERPOL, Iran’s cooperation with lost or stolen passports is “quite strong,” and that it is “able to get information from Iran” on criminals. North Korea and Chad don’t appear to meet any of the risk criteria (except for complying with the rules of the Visa Waiver Program, which at least according to the State Department only applies to VWP countries).

In the table below, I mark *failed* criteria with Ns and those that the countries meet with Ys. Each country has two columns, the left (P) for what’s in the proclamation itself, and the right (R) for what I was able to identify independently or where I have no reason to doubt the proclamation (see the

Appendix for a full explanation). Question marks signify that either the proclamation is unclear or, in the case of the (R) column, the answer is unknown or uncertain. The blanks indicate that the proclamation is silent on the issue. See the annex for an explanation of each factor. “Total fails” in the last column refer to all countries in the world failing that criterion.

Other than not complying with the requirements of the Visa Waiver Program—which appears to only apply to VWP countries—there is no single factor that all eight countries fail. That’s true even if you focus only the statements that the proclamation itself makes or add in the higher-than-baseline requirements. Even if we combine all the terrorism requirements into one criterion, not all the countries on the list would fit that requirement. Introducing the mitigating factors only muddies the picture even further, as there is also no consistent application of those.

Table: Factors for Each Country Mentioned in the Travel Ban Proclamation

| DHS Baseline | Chad | | Iran | | Libya | | Syria | | Yemen | | Somalia | | North Korea | | Venezuela | | Iraq | | Total Fails |
|-------------------------------|------|---|------|---|-------|---|-------|---|-------|---|---------|---|-------------|---|-----------|---|------|---|-------------|
| Proclamation-Research | P | R | P | R | P | R | P | R | P | R | P | R | P | R | P | R | P | R | R |
| 1. E-Passports | N | N | | Y | Y | Y | Y | N | N | N | Y | Y | N | N | Y | Y | | N | 81 |
| 2. Stolen Passports | | ? | | Y | ? | Y | ? | Y | ? | ? | Y | Y | N | N | Y | Y | | ? | 16 |
| 3. Other Info | Y | Y | | Y | Y | Y | ? | ? | | Y | Y | Y | N | N | Y | Y | | Y | ? |
| 4. Terrorist info | N | Y | N | ? | Y | Y | N | ? | N | Y | Y | Y | N | N | N | ? | | Y | ? |
| 5. Passport Samples | | ? | | ? | | ? | | ? | | ? | Y | Y | N | N | | ? | | ? | ? |
| 6. Airline info | | Y | | Y | | Y | | Y | | Y | Y | Y | N | ? | | Y | | Y | 191 |
| 7. Visa Waiver | ? | ? | ? | ? | ? | ? | ? | ? | ? | ? | ? | ? | ? | ? | ? | ? | | ? | ? |
| 8. Refuses deportees | | Y | N | N | Y | Y | | Y | | Y | | Y | ? | ? | | Y | | Y | 12 |
| 9. No haven | | Y | | Y | N | N | N | N | | N | N | N | | Y | Y | Y | | N | 15 |
| Subtotal Ns | 2 | 1 | 2 | 1 | 1 | 1 | 3 | | 2 | 2 | 1 | 1 | 6 | 5 | 1 | 0 | 0 | 2 | |
| Trump Criteria | Chad | | Iran | | Libya | | Syria | | Yemen | | Somalia | | North Korea | | Venezuela | | Iraq | | Total Fails |
| Proclamation & Research | P | R | P | R | P | R | P | R | P | R | P | R | P | R | P | R | P | R | R |
| 1. Recognize E-Passport | | N | | Y | N | N | N | N | N | N | N | N | N | N | | N | | N | 135 |
| 2. Not unable to collect info | N | N | | Y | N | N | N | N | N | N | N | N | | Y | | N | | N | >15 |
| 3. No state sponsor | | Y | N | N | Y | Y | N | N | Y | Y | | Y | | Y | | Y | | Y | 3 |
| 4. Terrorists not nearby | N | N | ? | N | N | N | N | N | N | N | N | N | | Y | | N | | N | 44 |
| 5. Terrorist threats | ? | ? | N | ? | ? | ? | N | ? | ? | ? | N | N | | Y | | ? | | N | ? |
| 6. Fully aid deportees | ? | Y | N | N | N | ? | ? | ? | | Y | | ? | | Y | N | ? | | ? | >14 |
| Subtotal Ns | 2 | 3 | 3 | 3 | 4 | 3 | 5 | | 3 | 3 | 4 | 4 | 1 | 1 | 1 | 3 | 0 | 4 | |
| Total Ns | 4 | 4 | 5 | 4 | 5 | 4 | 8 | | 5 | 5 | 5 | 5 | 7 | 6 | 2 | 3 | 0 | 6 | |
| Mitigate | Chad | | Iran | | Libya | | Syria | | Yemen | | Somalia | | North Korea | | Venezuela | | Iraq | | Total Met |
| Cooperative | Y | Y | | N | Y | Y | | N | Y | Y | Y | Y | | N | | N | Y | Y | ? |
| U.S. Military | | Y | | N | | Y | | Y | | Y | | Y | | N | | Y | Y | Y | 112 |
| Diplomats | | Y | | N | | N | | N | | N | | N | | N | | Y | Y | Y | 183 |
| Combats ISIS | | Y | | Y | | Y | | Y | Y | Y | Y | Y | | N | | N | Y | Y | 72 |
| Add. info sources | | Y | | Y | | Y | | Y | | Y | | Y | | Y | Y | Y | | Y | 191 |
| Total Ys | 1 | 5 | 0 | 2 | 1 | 4 | 0 | | 2 | 4 | 2 | 4 | 0 | 1 | 1 | 3 | 4 | 5 | |

Sources: *International Civil Aviation Organization; White House; U.S. Department of State; Immigration and Customs Enforcement; Department of Defense; U.S. Department of State; Customs and Border Protection; See Appendix*

Conclusion

For countries on the list, and for any country wishing to remain off the list, it is vitally important that they understand which factors led to their inclusion or exclusion. If the United States is acting in good faith—seeking to change behavior as opposed to looking for an excuse to ban people—its criteria should be clearly explained and understood. The Iran nuclear deal, for example, has very precise requirements for Iran to avoid sanctions, down to the exact percentage of purity for its enriched uranium. This is very far from the case here.

No consistent combination of factors or mitigating factors triggers the ban. Not every country needs to meet the baseline requirements, and while certain mitigating factors can protect a country from the ban, meeting some or all of them doesn't always result in exclusion. The travel ban simply lacks an objective standard of application.

APPENDIX: TRAVEL BAN CRITERIA

Nine Primary Baseline Requirements

Category 1: “Identity management information”/“Integrity of documents”

1) “Use of electronic passports embedded with data”: The International Civil Aviation Organization is a United Nations agency responsible for tracking travel documents. According to the ICAO, 86 countries fail to issue an electronic passport embedded with data. Of the travel ban countries, Venezuela, Iran, Libya, and Somalia do issue electronic passports. This criterion lacks even a vague quantification aspect, so we cannot know what share of passports must possess these capabilities. For example, certain nationals of the United Kingdom still rely on non-electronic passports, despite the country now issuing such passports.

2) “Reports lost and stolen passports to the appropriate entities”: This criterion lacks a quantification aspect—what share of lost or stolen passports must be reported and how regularly must the country report? According to INTERPOL on whose database the U.S. government relies on for this information, 174 countries share this information, meaning that 16 INTERPOL member states and at least one other do not. (The U.S. admits travelers from 191

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countries.) Of the 174 sharing countries, as of mid-2014, only a small minority were regularly contributing to the database, and the most populous countries in the world—China, India, and Indonesia, contribute few. In 2014, at least India did not participate at all.

In December 2015, DHS reported that all 38 Visa Waiver Program countries shared lost or stolen passport information. INTERPOL itself doesn't report on individual member participation in a systematic way, but it did release data in 2011 to researchers, showing that 101 countries, including Syria, were using INTERPOL's passport screening system in some fashion. In 2014, INTERPOL described Iran's reporting compliance as "very strong." Somalia is said to have met all information sharing requirements, and Venezuela is described as lacking only one of the information sharing requirements. Syria also appears to report lost or stolen passports. Libya also uses INTERPOL's Stolen and Lost Travel Document database.

3) "Makes available upon request identity-related information not included in its passports": There doesn't appear to be any systematic reporting on this requirement, and again, there's not even vague quantification aspect to this criterion. However, the order indicates that Somalia met all information sharing requirements and that Venezuela only failed one information sharing requirement. I assumed that the counterterrorism partner countries—Yemen, Libya, Chad—also share this information as Somalia does. Chad and Yemen utilize the U.S. Personal Identification Secure Comparison and Evaluation System (PISCES), which is a border control screening system that the U.S. created to aid information sharing between itself and countries with porous borders. At least 32 countries use PISCES.

Category 2: "National security and public-safety information"

4) "Makes available, directly or indirectly, known or suspected terrorist and criminal-history information upon request": This requirement focuses on the *willingness* of a government to *share* information with the United States unlike secondary baseline criterion #2 below, which requires an ability to collect. We know this because Somalia is said to have met this requirement despite being said to be *unable* to share as much information as the U.S. would

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like. As far as criminal history information goes, all 192 INTERPOL member countries, including all travel ban countries except North Korea, share information regarding felons via “red notices” to INTERPOL that all members, including the United States, receive. This has been the case for all countries except Somalia since 2007. All 38 Visa Waiver Program countries have entered into agreements to share information directly with the U.S. Terrorist Screening Center, though more than a third of them were not doing so as of December 2015, according to DHS. DHS officials told the GAO, however, that some countries report this information through other means.

Other countries also share this information, but there does not appear to be systematic reporting on it. According to section 1(f) the proclamation, 11 countries agreed to share this information in response to U.S. requests. Libya does contribute to INTERPOL’s databases for criminals, terrorists, and war criminals. Somalia does as well. The proclamation asserts that six travel ban countries—Chad, Iran, Syria, Yemen, North Korea, and Venezuela—fail this requirement.

We know, however, that Yemen and Chad are misclassified because, as counterterrorism partners, they do share when they can, and both countries utilize the U.S. Personal Identification Secure Comparison and Evaluation System (PISCES), which the U.S. has funded and introduced specifically for watch-listing purposes. At least 32 countries use PISCES. According to INTERPOL, only 52 countries last year reported individuals to its foreign terrorist fighter database. The State Department’s embassy cable about the proclamation asks specifically about participation in this.

It’s also unclear whether Iran, Syria, and Venezuela *never* share this information. The U.S.-backed Iraqi government is coordinating with both Iran and Syria against ISIS, and Iran is helpful in sharing information about its passport abusers. But again, there’s not even vague quantification aspect to this criterion: how much information or how often.

5) “Provides passport and national-identity document exemplars”: The Department of Homeland Security’s Immigration and Customs Enforcement Forensic Laboratory accepts and analyzes foreign passport samples to identify

fraudulent documents and alert immigration inspectors to them. Other than Visa Waiver Program countries, all of which do so, there does not appear to be systematic reporting on this criterion. According to section 1(f) the proclamation, 29 countries provided samples in response to the U.S. request. The proclamation itself does not describe any travel ban country as failing this requirement, except for perhaps North Korea.

6) “Impedes the United States Government’s receipt of information about passengers and crew traveling to the United States”: DHS vets the biographic information (19 data fields) of travelers to the United States using its Advance Passenger Information and Passenger Name Records system. Airlines, not governments, must provide this information to fly to the United States. Foreign governments may “impede” the delivery of this information through privacy laws or other measures that bar its transfer. The European Union entered into protracting negotiations with the United States on this point. However, according to DHS, by mid-2013, compliance was “near 100 percent.”

Category 3: “National security and public-safety risk assessment”/“National security risk indicators”

7) “Is a known or potential terrorist safe haven”: The idea of a “potential” terrorist safe haven is not a phrase that appears in any of the State Department’s Country Reports on Terrorism from which the idea of a “safe haven” originates. I considered any country a “potential safe haven” if the State Department at any time in the last decade has considered it a safe haven. In 2016, there were 13 “safe havens”: 1) Somalia, 2) Egypt, 3) Iraq, 4) Indonesia, 5) Malaysia, 6) the Philippines, 7) Lebanon, 8) Libya, 9) Yemen, 10) Afghanistan, 11) Pakistan, 12) Colombia, and 13) Venezuela. Additionally, Mali was a safe haven in 2015. No other country was removed from the list in the last five years. The State Sponsors of Terrorism are automatically not included on this list, and it appears that the reasons for Iraq’s inclusion—the existence of the Islamic State—would apply to Syria. The other two state sponsors, Sudan and Iran, do not meet the definition of a terrorist safe haven.

8) **“Is a participant in the Visa Waiver Program that meets all of its requirements”**: The United States must invite a country to participate in the Visa Waiver Program, which allows for visa-free travel to the United States. Only 38 countries out of 191 fulfill this requirement. As of December 2015, 13 or 14 countries didn’t fulfill the requirements of the program. The State Department cable implies that this requirement actually only applies to Visa Waiver Program countries, which would make more sense, but the proclamation itself doesn’t say that and, given how much else has changed, we can’t know for sure that it means that.

9) **“Regularly fails to receive its nationals subject to final orders of removal from the United States”**: According to Immigration and Customs Enforcement (ICE), 12 countries failed this requirement as of May 2017: Cuba, Burma, Cambodia, Eritrea, Guinea, Iran, Laos, Morocco, South Sudan, Vietnam, China, and Hong Kong. In September 2017, four countries—Eritrea, Cambodia, Guinea, and Sierra Leone—were sanctioned for it. In May, Sierra Leone was not on the list but was sanctioned in September. Iran is on the May 2017 list. It is the only travel ban country listed as uncooperative by ICE.

Six Higher-Than-Baseline Requirements

Category 1: Identity systems

1) **“Issues an electronic passport the United States, and many other countries, recognize”**: The proclamation states that Somalia fails this higher-than-baseline requirement. It is unclear how many countries would also fail this requirement. However, according to the ICAO, only 58 countries participated the ICAO’s Public Key Directory as of 2017, which “ensures that border authorities around the world can validate ePassports.” The State Department’s cable asks about the country’s use of this directory. Of the travel ban countries, only Iran is a participant.

Category 2: Security sharing

2) **“Compromised ability... to share information about its nationals who pose criminal or terrorist risks”**: The proclamation tells us that Somalia and Libya fail this higher-than-baseline requirement. As distinct from criterion #4

above, it focuses on the inability to collect and then share information, not the willingness to share it. It is too vague to assess in any particularly rigorous way. Of the travel ban countries, Libya, Chad, and Yemen are counterterrorism partners. This implies that although the proclamation describes Chad and Yemen as failing criterion #4 above, they actually fail this higher-than-baseline requirement.

Category 3: Other risks

3) “Designated as a state sponsor of terrorism”: Iran and Syria are said to have failed this unlisted requirement. Sudan is also a State Sponsor of Terrorism, but after being on prior versions, this new version of the travel ban removed it.

4) “Terrorist groups are active within [the country] or in the surrounding region”: Chad is said to have failed this higher-than-baseline requirement. This requirement is much broader than baseline criterion #7, regarding terrorist safe havens. This criterion appears to have been added by the president or White House officials because it does not appear in the State Department cable instructing U.S. embassies to request certain information from foreign governments related to the proclamation. It brings in activities of terrorists outside of the borders of the country. The terrorist groups listed as threats from Chad are neither based in Chad nor composed of Chadians.

According to the U.S. Department of State, terrorist groups in 2016 based their operations in 37 countries. Here they are in order of most groups to least groups: Pakistan, Afghanistan, Palestine, Lebanon, **Syria, Libya**, India, Iraq, Israel, Mali, Niger, Algeria, Burkina Faso, Colombia, Egypt, Indonesia, **Iran**, Nigeria, Philippines, Tunisia, Turkey, Bangladesh, Cameroon, Cote D’Ivoire, France, Greece, Ireland, Japan, Nepal, Peru, Russia, **Somalia**, Spain, Sri Lanka, United Kingdom, **Venezuela**, and **Yemen**. The first 22 countries have at least two terrorist organizations operating in their country. In addition, it mentions groups that sometimes threaten, cross into, operate on the borders of, or have in the past made attacks, or host individual leaders in Malaysia, Ivory Coast, Mauritania, Brazil, Ecuador, Qatar, and “European countries.” Of the travel ban countries, only North Korea is not on this list.

5) **“Not fully cooperative with respect to receiving its nationals subject to final orders of removal from the United States”**: Libya and Venezuela are said to have failed this higher-than-baseline requirement, which is more stringent than baseline criterion number #9 that stipulates that must “regularly” fail to respect removal orders, while this criterion requires “full” or complete compliance. The government does not report how many countries are not fully cooperative with deportees, but back in May 2016, DHS listed 23 countries as uncooperative—perhaps some of the 11 that dropped from the list by May 2017 are now not “fully” cooperative. It’s noteworthy that Sierra Leon was on the list in May 2016, off in May 2017, and then separately sanctioned in September 2017. The same was true for Libya, but Venezuela has not appeared on any of the lists. In any case, this more stringent category would sweep in several more non-travel ban countries.

6) **“Lack of territorial control”**: This unlisted criterion justifies the inclusion of Somalia. It is duplicative, however, because Somalia is a terrorist safe haven and part of the definition of a safe haven is ungoverned or under-governed areas. For this reason, this would also apply to all 12 of the known or potential terrorist safe havens listed in criterion #4. There are, however, several other areas in various countries around the world that are not under the control of the central government. However, for our purposes here, I will assume that any country that is not a potential or known safe haven has territorial control.

BONUS #7) “Fails to satisfy at least one key risk criterion”: The proclamation repeats the phrase that six countries fail “at least one *key risk criterion*” without specifying which one. “Risk criterion” relates only to the category #3 national security risk factors. It does not use this phrase for Somalia and North Korea, but it appears that they would each fail two of these criteria. It becomes even more difficult to figure out which criteria the other governments failed given the vague phrase “*at least one*”—meaning that it could be more than one—and the fact that we know that the order is not applying the risk factors as actually detailed in section 1(c).

The proclamation throws in additional uncertainty by saying that the security risks “include” the three listed, implying that there could be more. But the fact that the proclamation lists these three risks implies that it considers them to be

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the “key” risks. It would be very strange, but not out of character for this strange proclamation—to list non-key risks and not key ones. In any case, the State Department cable to embassies requesting information about each country for this proclamation lists slightly different versions of these three as the “three security risk indicators,” so this does appear to be comprehensive list (in the cable, the Visa Waiver Program requirement applies only to the Visa Waiver Program countries).

If it is true that this criterion doesn’t apply to non-Visa Waiver Program countries, then there are only two risk criteria that each country *could* fail. In this case, Chad, Libya, and Venezuela don’t fail any risk criteria, even though the proclamation claims that they do.

Five Mitigating Factors

1) “Commitment to combating the Islamic State of Iraq and Syria”: Section 1(g) of the proclamation explains that this factor mitigates the fact that Iraq failed the baseline, keeping it out of the ban. This phrase would also apply to Somalia and Chad, each of which are members of the U.S.-led Global Coalition to Defeat ISIS, as well as Syria and Iran. Syrian government forces are the primary opposition forces to ISIS in Syria, and according to the Pentagon, Iran is backing almost 100,000 troops in Iraq.

2) “Close cooperative relationship”: This factor also is also said to have mitigated the fact that Iraq failed the baseline. A total of 69 countries have defense agreements with the United States, though some of these include countries like Cuba and Venezuela. There are also 72 coalition partners in the U.S.-led Global Coalition to defeat ISIS. The State Department describes a large number of countries as counterterrorism partners. The United States certainly has “cooperative relationships” with travel ban governments in Chad, Libya, Yemen, and Somalia. The first three the order itself describe as “counterterrorism partners,” and Somalia is a member of the U.S. Global Coalition to Defeat ISIS as is Chad. Mitigating factor #3 further highlights the cooperation between these four governments and the United States. The United States does not have cooperative relationships with the other travel ban governments: North Korea, Iran, Syria, or Venezuela.

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3) “Presence of United States forces”: This factor also mitigates the fact that Iraq failed the baseline. According to the Defense Department, the United States has military personnel in 178 countries, including six travel ban countries: Chad, Libya, Somalia, Venezuela, Syria, and Yemen. Only North Korea and Iran have no U.S. troops. The Pentagon has underreported the true numbers of U.S. troops in countries, and there are some 51,490 troops reported as occupying an “unknown” location, so identifying the exact number of troops in any particular country is difficult. But it lists 112 countries with double-digit personnel figures. For the purposes of the table below, I considered only these 112 as having a U.S. “military presence.” It also has military “bases” in 74 countries. These include bases in Libya, Iraq, Chad, Yemen, and Somalia.

- In Chad, the U.S. has held annual military “exercises” in Chad since 2005, has conducted special operations in Chad for several years, and has a drone base there. About 2,000 U.S. special forces and Chadian soldiers conducted counterterrorism raids together in April 2017.
- In Yemen, U.S. troops are on the ground fighting with the Yemeni government against militants there, and in August, they engaged in a joint operation against al Qaeda. U.S. soldiers were seriously wounded there in May, and in January, one died. From 2009 to 2017, the U.S. has carried out 214 drone attacks in Yemen.
- The U.S. has involved itself militarily in Somalia for decades. In Somalia, U.S. forces have carried out 24 counterterrorism raids and 32 drone strikes. In April 2017, the Trump administration sent “dozens” of new soldiers there.
- In Libya, U.S. forces were instrumental in the overthrow of Libyan dictator Muammar Qaddafi in 2011. U.S. forces are still carrying air strikes in the country and also carry out special operations on the ground. President Trump is considering increasing the ground presence.

4) “United States diplomatic presence”: This factor also mitigates the fact that Iraq failed the baseline. The United States also has a diplomatic presence in Chad and in Venezuela. The United States maintains limited or no diplomatic

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presence in Antigua and Barbuda; Dominica; Grenada; St. Kitts and Nevis; St. Lucia; St. Vincent and the Grenadines; Guinea-Bissau; Bhutan; North Korea; Iran; Yemen; Syria; Libya; Netherlands Antilles, Curaçao; and Belarus.

5) “Alternative sources for obtaining information to verify the citizenship and identity”: Once again, there is absolutely no doubt that this factor applies to all eight travel ban countries. As mentioned at the top, no one can receive a visa to travel to the United States without proving their identity and eligibility, so if no one from these countries could do so, there would already be a travel ban. This is why the basic premise of the travel ban is wrong.

Topics: [International Economics, Development & Immigration](#)

Tags: [Immigration](#); [Travel Ban](#); [Trump](#)

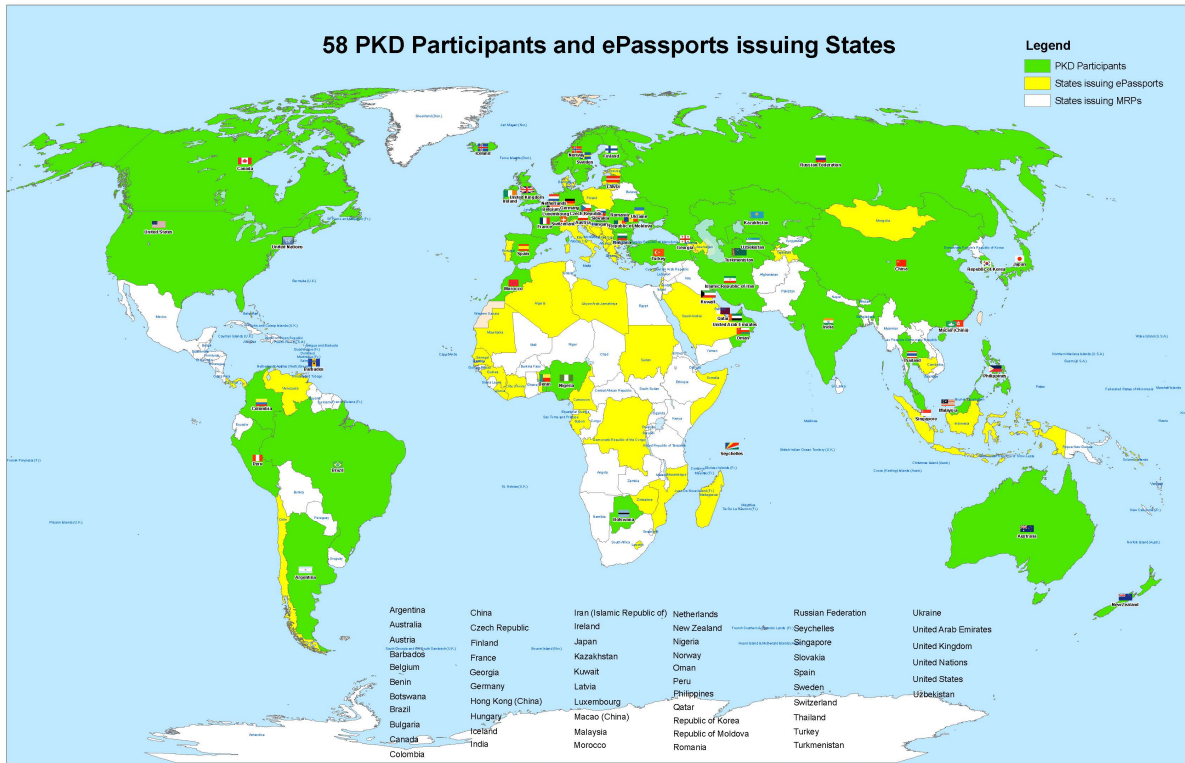


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EXHIBIT 4

ICAO PKD Participants



List of PKD Participants

| PKD Participant Number | State | Joining Date |
|------------------------|---|--------------|
| 1 | Australia (PKD Board Member) | 19/03/2007 |
| 2 | New Zealand (PKD Board Member) | 19/03/2007 |
| 3 | Singapore | 19/03/2007 |
| 4 | United Kingdom (PKD Board Member) | 19/03/2007 |
| 5 | Japan (PKD Board Member) | 19/03/2007 |
| 6 | Canada (PKD Board Member) | 19/03/2007 |
| 7 | United States of America (PKD Board Member) | 02/11/2007 |
| 8 | Germany | 01/11/2007 |
| 9 | Republic of Korea | 28/03/2008 |
| 10 | France | 19/06/2008 |
| 11 | People's Republic of China (PKD Board Member) | 26/11/2008 |
| 12 | Republic of Kazakhstan | 19/12/2008 |
| 13 | India | 12/02/2009 |
| 14 | Nigeria (PKD Board Member) | 13/04/2009 |
| 15 | Switzerland (PKD Board Member) | 10/07/2009 |

| | | |
|----|---|------------|
| 16 | Ukraine | 30/10/2009 |
| 17 | Latvia | 28/06/2010 |
| 18 | The Czech Republic | 30/06/2010 |
| 19 | Macao, China | 28/09/2010 |
| 20 | United Arab Emirates (PKD Board Member) | 25/10/2010 |
| 21 | Hong Kong, China | 26/10/2010 |
| 22 | Slovak Republic | 23/11/2010 |
| 23 | The Netherlands (PKD Board Member) | 08/12/2010 |
| 24 | Kingdom of Morocco | 29/12/2010 |
| 25 | Austria | 31/12/2010 |
| 26 | Hungary | 15/02/2011 |
| 27 | Norway | 20/06/2011 |
| 28 | Bulgaria | 12/10/2011 |
| 29 | Luxembourg (PKD Board Member) | 30/11/2011 |
| 30 | Sweden (PKD Board Member) | 01/12/2011 |
| 31 | United Nations | 14/06/2012 |
| 32 | Spain | 10/07/2012 |
| 33 | Russian Federation | 31/08/2012 |
| 34 | Malaysia (PKD Board Member) | 09/11/2012 |
| 35 | Argentina | 13/12/2012 |
| 36 | Thailand | 05/03/2013 |
| 37 | Ireland | 08/03/2013 |
| 38 | Republic of Moldova | 11/06/2013 |
| 39 | Belgium | 31/10/2013 |
| 40 | Brazil (PKD Board Member) | 03/01/2014 |
| 41 | Qatar | 10/03/2014 |
| 42 | Seychelles | 14/03/2014 |
| 43 | Uzbekistan | 19/03/2014 |
| 44 | Philippines | 21/03/2014 |
| 45 | Iran (Islamic Republic of) | 18/05/2014 |
| 46 | Colombia | 19/05/2015 |
| 47 | Romania | 03/02/2016 |
| 48 | Finland | 26/02/2016 |
| 49 | Benin | 03.03.2016 |
| 50 | Botswana | 05/04/2016 |
| 51 | Kuwait | 20/04/2016 |
| 52 | Georgia | 25/05/2016 |
| 53 | Turkey | 30/09/2016 |
| 54 | Iceland | 30/09/2016 |
| 55 | Oman | 22/12/2016 |
| 56 | Turkmenistan | 13/02/2017 |
| 57 | Peru | 28/02/2017 |

EXHIBIT 5

Fighting terrorism and transnational crime through effective border management.

Stolen and Lost Travel Documents database

INTERPOL's database of Stolen and Lost Travel Documents (SLTD) enables INTERPOL National Central Bureaus (NCBs) and other authorized law enforcement entities – such as immigration and border control officers – to ascertain the validity of a travel document (passports, identity documents, visas) in seconds.

The SLTD database was created in 2002, following the 11 September 2001 terrorist attacks in the USA, in order to help member countries secure their borders and protect their citizens from terrorists and other dangerous criminals using fraudulent travel documents.

How it works

Details of stolen and lost passports are submitted directly to the STLD database by INTERPOL NCBs and law enforcement agencies via INTERPOL's [I-24/7 secure global police communication system](#). Only the country which issued a document can add it to the database.

Law enforcement officials at INTERPOL NCBs and other locations with access to INTERPOL's databases through the I-24/7 system – such as airports and border crossings – can query the passports of individuals travelling internationally against the SLTD, and immediately determine if the document has been reported as lost or stolen so they can take the necessary actions.

INTERPOL is not automatically notified of all passport thefts occurring worldwide, and the SLTD database is not connected to national lists of stolen or lost passports. As such, information on national statistics must be requested directly from the country in question.

Statistics

Starting with a few thousand records from just 10 countries, the SLTD database has grown exponentially.

- **174 countries** contribute to the database which contains more than **68 million records**;
- From January to September 2016 it was **searched more than 1,243,000,000 times**, resulting in more than **115,000 positive responses, or 'hits'**.

Extending access to SLTD

Despite the potential availability of the STLD database, not all countries systematically search the database to determine whether an individual is using a fraudulent passport.

In order to increase the use of the SLTD database worldwide, INTERPOL encourages each member country to extend access to the I-24/7 network – and through it access to its criminal databases including the STLD – to major airports, border crossings and other strategic locations. This requires the installation of technical equipment or specialized software.

To help identify and stop criminals from using lost or stolen travel documents long before they get to the airport or the border, INTERPOL has developed [I-Checkit](#). This initiative allows trusted partners in the airline industry to submit travel documents for screening against the SLTD database when customers book a plane ticket.

A positive 'hit' will be relayed to law enforcement, to take any necessary actions.

Advice for travellers

Do not attempt to travel with a document that you have reported as lost or stolen.

Once you have declared your travel document as lost or stolen to your national authorities, it is cancelled and considered invalid. The details of the document are passed on to INTERPOL and entered into the SLTD database. Border officials in INTERPOL's member countries can screen passenger information directly against the SLTD database. Selected airlines can submit the document details through [I-Checkit](#) for screening.

If you try to travel with an invalid document, entry or boarding is denied. The travel document is seized to prevent its future use and you cannot travel.

[View the travel safe infographic](#)

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EXHIBIT 6

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AMERICA

Why Is Chad On Trump's Travel Ban List?

September 27, 2017 · 12:30 PM ET

SCOTT NEUMAN



Chadian soldiers rest in the shade of their armored vehicle near Malam Fatori in April 2015, after troops retook the town from Boko Haram.

Philippe Desmazes/AFP/Getty Images

When the White House issued its amended travel ban over the weekend, it added three countries to the list: North Korea, Venezuela ... and Chad.

JA 1310

That's angered the government of the Central African country and perplexed policy analysts and political observers outside the Trump administration.

"Chad is totally puzzled and baffled by President Trump's decision to slap this ban on Chadian nationals," NPR's Ofeibea Quist-Arcton tells *Morning Edition*. "Chad is not happy, because it feels that it has done its utmost in the fight against terrorism."

And the language issued by the White House in the president's executive order has done little to clarify the rationale. It praises Chad for being "an important and valuable counterterrorism partner" and says Washington "looks forward to expanding that cooperation."

Nonetheless, the executive order also states that "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."

Libya is among the eight nations under restriction in Trump's order. But other neighboring countries such as Nigeria, the base of Boko Haram, aren't on the list. And Sudan — one of only three countries on the U.S. list of state sponsors of terrorism — had been on a previous list but was dropped in the latest version.

"Chad played a significant role in [fighting] Boko Haram from northeastern Nigeria. And pound for pound, the Chadian military is one of the toughest around, particularly in West Africa," John Campbell, the former U.S. ambassador to Nigeria during George W. Bush's administration, tells NPR's David Welna.

As NPR's Arnie Seipel has reported, "The new restrictions on Chad and North Korea are a broad ban on nationals from those countries entering the States. For Venezuela, restrictions apply to government officials and their immediate family. These changes are set to take effect on Oct. 18."

Chad has issued a statement asking Washington to reconsider, saying the decision to place it on the list "seriously undermines the image of Chad and the good relations between the two countries."

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"The Chadian Government expresses its incomprehension in the face of the official reasons behind this decision," the statement added.



A U.S. special forces soldier (right) watches as Chadian troops and Nigerian special forces take part in a hostage rescue drill at the end of the Flintlock 2015 military exercise in Mao, Chad.

Jerome Delay/AP

As Ofeibea points out, as recently as March, Chad and the U.S. participated together with other African countries in Flintlock 2017, the latest iteration of an annual joint military exercise aimed at strengthening ties and counterterrorism efforts. "I was

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there. I met [U.S. Ambassador Geeta Pasi], who talked enthusiastically about relations with Chad," Ofeibea says.

"It's bewildering," Reed Brody, a human rights lawyer who has worked in Chad, tells The Atlantic. "I've been trying to explain to Chadians that there's no reason."

There have been questions as to whether Chad's inclusion might have something to do with oil. Chad had accused Exxon Mobil, which exports crude from Chad, of not meeting its tax obligations to the African state. The Chadian government sought a whopping \$74 billion fine in addition to \$819 million in overdue royalties.

Ofeibea says people are wondering whether the inclusion of Chad is meant as "an arm-twister." Adding to such speculation is the fact that U.S. Secretary of State Rex Tillerson was the chairman and CEO of Exxon Mobil before joining the Trump administration.

In any case, Exxon and Chad reached a settlement in June.

chad boko haram nigeria sudan

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EXHIBIT 7

BRENNAN
CENTER
FOR JUSTICE
TWENTY
YEARS

EXTREME VETTING &
THE MUSLIM BAN

Harsha Panduranga, Faiza Patel, and Michael W. Price

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ABOUT THE AUTHORS

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Faiza Patel serves as co-director of the Brennan Center's Liberty and National Security Program, which seeks to ensure that our counterterrorism laws and policies respect constitutional values and promotes transparency and accountability in national security matters. She has testified before Congress opposing the dragnet surveillance of Muslims, developed legislation creating an independent Inspector General for the NYPD, and organized advocacy efforts against anti-Muslim laws and policies. She has authored and co-authored eight reports: *Extreme Vetting and the Muslim Ban* (2017), *Trump-Russia Investigations: A Guide* (2017); *The Islamophobic Administration* (2017); *Countering Violent Extremism* (2017), *Overseas Surveillance in an Interconnected World* (2016), *What Went Wrong with the FISA Court* (2015), *Foreign Law Bans* (2013), *A Proposal for an NYPD Inspector General* (2012), and *Rethinking Radicalization* (2011). Ms. Patel's writing has been featured in major newspapers including *The New York Times* and *The Washington Post*, and she is a frequent commentator on national security and counterterrorism issues for print, televisions, and radio outlets. She is a member of the Board of Editors of the legal blog *Just Security*. Born and raised in Pakistan, Ms. Patel is a graduate of Harvard College and the NYU School of Law.

Michael W. Price serves as Senior Counsel for the Brennan Center's Liberty and National Security Program. He has worked to oppose discriminatory surveillance practices, developed legislation to create an independent Inspector General for the NYPD, and authored numerous amicus briefs on behalf of the Brennan Center and others in cases involving electronic surveillance and privacy issues. Mr. Price is a frequent commentator on national security issues for media and has published widely in academic outlets. He is the author of *National Security and Local Police* (2013) and *Rethinking Privacy: Fourth Amendment "Papers" and the Third-Party Doctrine* (2016). Before joining the Brennan Center, Mr. Price was the National Security Coordinator for the National Association of Criminal Defense Lawyers, where he provided legal assistance for the defense of detainees in the military commissions at Guantanamo Bay. Mr. Price also engaged in litigation and public advocacy on issues related to privacy, electronic searches and surveillance, and government secrecy. He holds a J.D. from NYU School of Law and a B.A. from Columbia University in Political Science and Middle East & Asian Languages and Cultures.

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INTRODUCTION

Just one week after taking office, President Trump signed Executive Order 13769, which banned travel from seven predominantly Muslim countries – Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen – for ninety days.¹ The impact of this “Muslim ban” was immediate, dramatic, and highly visible: travelers were detained at airports and prevented from boarding planes to the United States as family and friends waited anxiously for their arrival. The ban’s repudiation of America’s commitment to religious freedom and nondiscrimination generated protests around the country. It was enjoined by federal courts around the country as discriminatory, until the Supreme Court allowed a limited portion of it to go forward. But the ban was just the beginning. According to Executive Order 13769 and its successor, Executive Order 13780, the ban was just a temporary measure, designed to pave the way for the indefinite suspension of travel from certain countries as well as “extreme vetting.”

The new regime, which is just coming into view, operates as a de facto Muslim ban. First, starting in May 2017, the State Department began implementing new vetting procedures for certain categories of visa applicants, the burden of which will likely fall most heavily on Muslims. Further, on September 24, 2017, President Trump issued a proclamation that indefinitely bars almost all travel to the United States from six Muslim-majority countries (Chad, Iran, Libya, Somalia, Syria, and Yemen),² and subjects Iraqi nationals to “additional scrutiny.”³ Although the proclamation also bans travel from North Korea (from which a negligible number of people come to the U.S.) and some government officials from Venezuela, its impact is overwhelmingly on Muslims.

There is ample evidence that this is by design. Beginning on December 7, 2015, when then-candidate Trump called for a “total and complete shutdown of Muslims entering the United States,” the president made his goal crystal clear, repeatedly.⁴ Despite months of litigation accusing the president of intentional religious discrimination, that campaign pledge remained online until May 2017.⁵ Extreme vetting and the Muslim ban are ways of fulfilling this promise. As Trump himself said in the second presidential debate, “[t]he Muslim ban is something that in some form has morphed into an extreme vetting from certain areas of the world...”⁶ More recently, with the travel ban stopped by courts, Trump was even more explicit, tweeting: “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!”⁷

These measures are only part of the administration’s broader nationalistic, isolationist agenda which includes plans to cut legal immigration in half over a decade;⁸ rescind protections for “Dreamers,” undocumented young adults who were brought to the U.S. as children;⁹ substantially increase arrests of undocumented people;¹⁰ and build a wall on the U.S./Mexico border.¹¹ The Trump agenda would also put a damper on travel to the United States by slowing down visa application processing,¹² and increasing the required paperwork by “double, triple or more.”¹³

The administration’s claim that travel bans and extreme vetting are necessary to protect the nation against terrorist threats from overseas is unsupported by evidence and – particularly in the context of the president’s stated goal of banning Muslims – seems pretextual. Multiple federal courts were unconvinced by the administration’s argument that national security required a cessation of travel from certain countries.¹⁴ And as a federal appellate court recently pointed out: “There is no finding that present vetting standards are inadequate, and no finding that absent the improved vetting procedures there likely will be harm to our national interests.”¹⁵ Indeed, empirical studies show that the risk of a deadly attack on U.S. soil by a foreigner who has been improperly vetted is infinitesimally small. This is not surprising: The process for screening foreign nationals

entering the U.S. is rigorous and the U.S. has one of the world's most thorough visa vetting systems.¹⁶ Applicants not only face an imposing legal standard aimed at ensuring that those planning to visit the U.S. do not intend to stay in the country, but are also run through a gamut of national security checks.¹⁷ Concerns are treated seriously: Anyone flagged for additional review is thoroughly examined by security officials, a process that can take months.

Nonetheless, the Trump administration appears committed to banning travel from certain Muslim-majority countries and adding further burdens to the already robust visa screening process.

First, the administration has instituted indefinite bans in place of the temporary ones, which again seem targeted as Muslims. The new rules stem from a "worldwide review," mandated by the initial Muslim ban order, to determine whether additional information would be required from some countries to properly adjudicate visa applications.¹⁸ Although the administration has sought to paint the process for deciding which countries were blacklisted as an objective exercise, it clearly also allowed for substantial discretion to be exercised. According to the Department of Homeland Security (DHS) 47 countries were found to be "inadequate" or "at risk" of becoming "inadequate" in meeting "global requirements for information sharing" related to identity verification and cooperation on counterterrorism matters.¹⁹ But in the end, the president selected eight nations for sanctions, citing "other risk factors" (e.g., significant terrorist presence within a country's territory) and "foreign policy, national security, and counterterrorism goals".²⁰ These malleable considerations can be and were used to justify selective and sweeping travel restrictions. Indeed, the weight of the sanctions fell primarily on Muslim countries, five of which were on the original Muslim ban list. The addition of North Korea and certain Venezuelan government officials to the blacklist seems to have little to do with the stated counterterrorism purpose of the initiative. Only a tiny number of travelers would be affected (just 109 visas were issued to North Korean nationals in 2016, for example²¹) and neither country has a history of sponsoring terrorism in the United States.²²

Second, the Trump administration has begun imposing additional requirements on those still eligible for a visa to enter the United States. According to the September 2017 proclamation, nationals of Iran, Iraq, and Somalia will be subjected to additional screening. The State Department has started doing the same for "applicant populations warranting increased scrutiny."²³ We do not yet know how these populations will be chosen, but it is notable that the State Department estimates that 65,000 people annually will be subject to further scrutiny,²⁴ which is roughly the number of temporary visas granted in fiscal year 2016 to citizens of countries affected by the first two Muslim ban executive orders.²⁵

Tagging individuals for additional scrutiny is not out of the ordinary in the visa process. But the context in which extreme vetting has been introduced suggests that it may be a means of erecting barriers based on stereotypes about Muslims rather than individualized assessments. Particularly troubling is the requirement that visa applicants provide consular officers with extensive information about their online presence, such as their social media handles.²⁶ There are serious questions about the effectiveness of this tool. Anyone seeking to avoid scrutiny could easily erase their social media footprint. And interactions on platforms such as Facebook and Twitter are notoriously open to misinterpretation – especially since they may be truncated, conducted via symbols, and are context, culture and language specific. These types of checks do, however, undermine fundamental freedoms of speech and faith, both of foreigners and their American friends, families and business contacts. The collection of social media profiles also facilitates ideological profiling,²⁷ a practice that has been rejected by Congress as contrary to American ideals and dismissed by experts as ineffective.

Analysis of social media profiles will not be limited to groups identified as particularly risky: DHS is in the process of developing the requirements for an automatic screening system that will continuously analyze a multitude of databases, including those containing social media information, to evaluate such subjective characteristics as whether a traveler is likely to “becom[e] a positively contributing member of society.”²⁸ Not only is this proposition of dubious efficacy, it raises loud alarm bells about privacy, free speech, and discrimination.

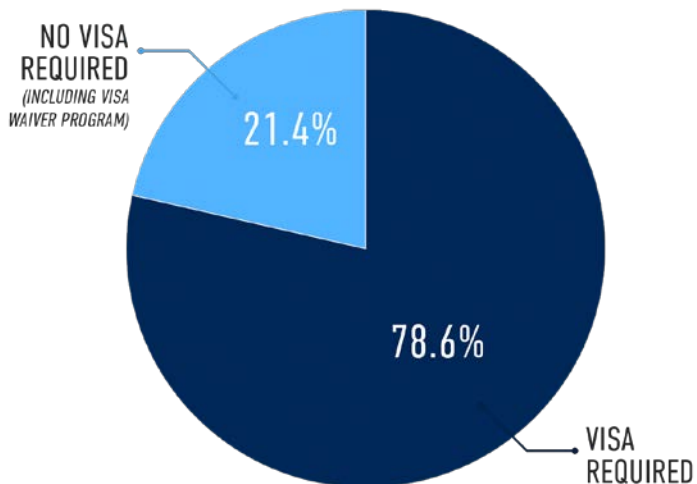
Making our already stringent visa regime more “extreme” also carries significant economic and cultural costs. It dampens international travel, which accounts for billions of dollars in revenue, both from travelers from the countries directly affected and others. Already, the Commerce Department is reporting a 4.2 percent drop in international visitors to the U.S. in the first quarter of 2017 compared to the first quarter of 2016.²⁹ While it is impossible to say definitively that this was caused by the administration’s anti-foreigner policies and rhetoric, this inference hardly seems like a “reach.”³⁰

Clamping down on travel will also choke off the free exchange of ideas and interaction with the world that are hallmarks of a successful and open democratic society. Anecdotal reports suggest that visiting the U.S. is becoming more difficult. A trade summit at the University of Southern California intended to boost business ties between America and Africa had no Africans – all 60 of those scheduled to participate were denied visas.³¹ A gathering at the University of Wisconsin had to be canceled for the same reason.³² An all-girls robotics team from Afghanistan and a women’s soccer team from Tibet, both registered to participate in events intended to foster cross-cultural understanding, were denied visas.³³ There are many other such stories that show how travel restrictions undermine American interests and values.³⁴ If American universities are to be beacons of innovation and the exchange of ideas, they need to be able to welcome people from across the globe; if American values include gender equality, as the Muslim ban executive orders themselves state,³⁵ the country should welcome aspiring women engineers and athletes; if America values economic growth, it needs to foster international business partnerships and science and technology learning. This is all to say that the national interest is not served by a reflexive ratcheting up of visa requirements, but requires a thoughtful evaluation of the range of interests at stake.

This report exposes the stereotypes and discriminatory intent underlying the Trump administration’s push for travel bans and extreme vetting and highlights the dangers of such a policy. It begins in Part I by using empirical evidence to debunk the administration’s claim that foreign nationals who slip through the visa process pose a serious terrorism risk in the U.S. It demonstrates that the U.S. strictly controls who comes into the country, outlining the demanding process for obtaining a visa to travel to the U.S. and the robust national security safeguards that are part of the visa issuance process. As the chart below shows, citizens from about 80 percent of the countries in the world require visas to visit the United States.³⁶ Only visitors from a few, wealthy countries that are U.S. allies, such as the United Kingdom, Japan, Chile, and Australia, do not have to obtain a visa to enter the U.S.

This report focuses on the procedures for issuing temporary – or “nonimmigrant” – visas for travelers such as tourists, students, and businesspeople. The screenings for obtaining a permanent visa or refugee status are even more rigorous, and continue to be supplemented as part of extreme vetting.³⁷ Part II analyzes the most recent ban and the Trump administration’s vetting plans, demonstrating how they reflect harmful stereotyping that implements President Trump’s agenda of choking off travel from many parts of the world. This section explains the contradictions and deficiencies in the administration’s stated justification for the September 2017 ban, and also details initiatives to incorporate social media and automated vetting as part of the visa process, arguing that there is little evidence of their effectiveness and considerable evidence suggesting that they will trample on free speech and privacy norms. In Part III, the report discusses the myriad other costs of making travel to the U.S. more difficult, such as damage to our economy, values, and culture. The report concludes that the U.S. already rigorously vets those seeking to travel to the country and that measures such as travel bans and “extreme vetting” are both unnecessary and harmful.

NATIONALITIES NEEDING VISAS FOR U.S. TRAVEL



SOURCE: STATE DEPT.

I. TERRORISM THREAT AND EXISTING VETTING

Despite the president’s claims to the contrary, the numbers show that the threat of terrorism in the United States from foreign-born persons is very small and the country’s visa vetting system is one of the world’s most rigorous.

a. EXAGGERATED CLAIMS OF TERRORISM THREAT FROM FOREIGN BORN PERSONS

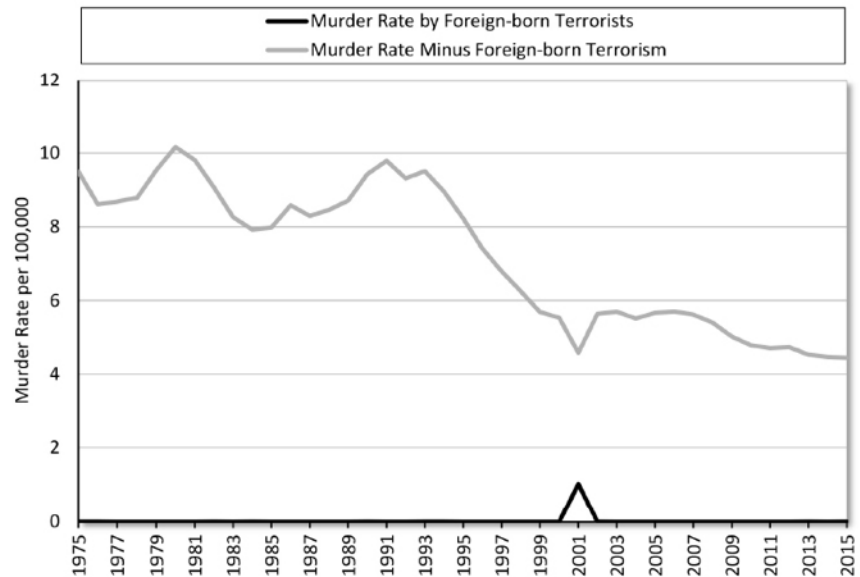
Figure 1 from the Cato Institute shows vividly that murders by foreign-born terrorists are so small in number that, with the exception of the 9/11 attacks, they are functionally counted as zero.³⁸

Indeed, over the past ten years, Americans have been more than ten times as likely to be buried alive or die in a lightning strike than to die in a terrorist attack perpetrated by a foreign-born terrorist on U.S. soil.³⁹

The Cato Institute study also shows that tightening visa vetting mechanisms would not have stopped four out of five total foreign-born terrorists who have successfully carried out deadly attacks on U.S. soil since September

11, 2001.⁴⁰ Four were U.S. permanent residents or citizens who perpetrated attacks years after entering the country, meaning that entry screening would have been unlikely to catch their intentions to commit violence.⁴¹ Only Tashfeen Malik – who, along with her husband killed 14 people and injured 22 others in San Bernardino – entered the U.S. not long before perpetrating an attack.⁴² Stepping back and looking at all domestic terrorist attacks committed by foreigners in the U.S. between 1975 and the end of 2015, Cato’s analysis of cases shows that 7.38 million visas were issued for every one issued to a terrorist, amounting to a near-zero 0.0000136 percent of visas.⁴³

Figure 1 – U.S. Murder Rates, Excluding Foreign-Born Terrorism



Source: Disaster Center, "United States Crime Rates 1960–2014"; RAND Database of Worldwide Terrorism Incidents; National Consortium for the Study of Terrorism and Responses to Terrorism Global Terrorism Database; and author’s calculations.

Reproduced with permission from the Cato Institute.

Despite this empirical record, Executive Order 13780 (the second version of the Muslim ban) made the unsupported claim that “[s]ince 2001, *hundreds* of persons born abroad have been convicted of terrorism-related crimes in the United States.”⁴⁴ The only two examples cited in the order demonstrate the paucity of evidence. The first involved two Iraqi refugees who, after coming to the U.S., pled guilty to using improvised explosive devices against U.S. troops in Iraq and attempting to support Al Qaeda efforts to kill U.S. soldiers in Iraq.⁴⁵ They were never implicated in possible attacks on U.S. soil, and did not pose a risk of the type from which the order seeks to protect – domestic attacks committed by foreigners. The second example involved a person who came to the U.S. as a child and decided to engage in terrorist activities as an adult, for which a lack of screening cannot account.⁴⁶ Indeed, a DHS intelligence assessment found that most foreign-born terrorists turned to violence more than a decade after coming to the U.S., “limiting the ability of screening and vetting officials to prevent their entry because of national security concerns.”⁴⁷

The administration has not put forward even a modicum of evidence for its claims that foreigners pose a significant threat to America within its borders. Terrorism – though understandably fear-inducing – remains a rare form of violence in the U.S. Foreign-born perpetrators are even more rare. This at least in part because, as described below, the U.S. has one of the strictest visa vetting regimes in the world.

b. STRICT VETTING FOR VISAS

As anyone who has applied for a visa to the United States can attest, gaining permission to enter the country is not easy. Experts routinely rate the U.S. visa system as one of the toughest in the world,⁴⁸ and people have long complained that it is a slow and expensive process.⁴⁹

The process starts by filling out the Form DS-160, which asks for a range of biographical information and contains background and security questions. Applicants must also provide fingerprints and a photograph. Some of the materials and information required to assemble a visa application are shown in Table I below.

Table I: Visa Application: Supporting Documents and Questions⁵⁰

| Biographic and Biometric Information | Supporting Documentation (Recommended) | Security Questions (examples) |
|---|--|---|
| Names and aliases | Passport | “Have you ever or do you intend to provide financial assistance or other support to terrorists or other terrorist organizations?” |
| Home address and address in the U.S. | Proof of travel plans (event invitation, itinerary) | |
| Home / work / cell phone numbers; email address | Family documents (photographs, family tree, marriage and birth certificates) | “Have you committed, ordered, incited, assisted, or otherwise participated in extrajudicial killings, political killings, or other acts of violence?” |
| Travel information (including purpose of trip, U.S. address, source of funding for trip, details on last five U.S. trips, five years’ foreign travel history) | Proof of employment and financial viability (letter from employer, business registration, pension book, income tax returns, bank statements) | “Are you coming to the United States to engage in prostitution or unlawful commercialized vice or have you been engaged in prostitution or procuring prostitutes within the past 10 years?” |
| Contacts in the U.S. for identity verification purposes. | Proof of property ownership in home country (deeds, mortgage papers, photographs) | “Are you or have you ever been a drug user or addict?” |
| Family information (includes parents’ and spouse’s names, dates of birth, U.S. residency status) | | “Do you have a communicable disease of public health significance such as tuberculosis (TB)?” |
| Work / education / training information (primary occupation, employer, work address, salary, description of duties, five years’ employment history, education history from middle school) | | “Have you ever been arrested or convicted for any offense or crime, even though subject of a pardon, amnesty, or similar action?” |
| Ten fingerprints; photograph | | |

Applicants then face a considerable legal hurdle under the Immigration and Nationality Act (INA),⁵¹ the statute governing visa issuance. They must prove a negative: A temporary visa applicant is “presumed to be an

immigrant” – that is, someone who would stay in the U.S. permanently – unless they affirmatively convince a consular officer that this is not the case.⁵² To overcome this presumption, a visa applicant must marshal extensive evidence to prove that they have every incentive to return to their home country. Such evidence includes: proof of income and property ownership; proof of business ownership, or assets; proof of employment; proof of immigration or visa status in the country where they are residing; and travel itinerary or other explanation of the planned trip.⁵³

Consular officers probe – asking for additional documentation when appropriate – applicants’ reasons for wanting to visit the U.S. as well as for other possible causes under the INA for denying a visa, which are formally called “Grounds for Inadmissibility.” These are used to exclude people, for example, with certain medical conditions as well those who have a criminal history, are likely to become a public charge or work without proper certification, or, as discussed in Section II, pose a national security risk.⁵⁴

In sum, potential visitors who come from one of the over 100 countries whose citizens must obtain a visa cannot travel to the U.S. on a whim. They must meet the INA’s strict criteria, plan far in advance, and obtain materials in support of their visa applications from a range of sources. Even if they do all that, their application can be denied simply for “fail[ure] to establish to the satisfaction of the consular officer [eligibility] to receive a visa.”⁵⁵

c. INTENSIVE NATIONAL SECURITY CHECKS

National security plays a critical role in the process of deciding whether to grant an individual permission to travel to the U.S.

APPLICATION PROCESS FOR A U.S. VISA

DS-160 visa application form

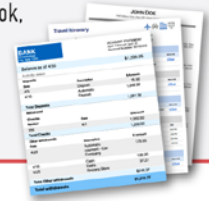
Required information:

- Home address / U.S. address / all phone numbers / email address
- Purpose of trip, U.S. address and contacts, source of funding for trip, 5 years U.S. and foreign travel history
- Family (parents and spouse)
- Work / education / training (primary occupation, employer, work address, salary, description of duties, 5 years’ employment history, education history)
- Security questions
- Ten fingerprints & photograph



Applicant must overcome presumption that she intends to permanently stay in the U.S. by demonstrating strong links to home country.

- Proof of travel plans (invitation, itinerary)
- Family documents (photographs, family tree, marriage & birth certificates)
- Proof of employment and financial viability (letter from employer, business registration, pension book, income tax returns, bank statements)
- Proof of property ownership (deeds, mortgage papers)



Applicant’s data is run against several national security and criminal record databases.



Interview with a consular officer, who will probe applicant’s story.



Even if all requirements are met, visa will be denied if an applicant is unable to “establish to the satisfaction of the consular officer [his eligibility] to receive a visa.” Visa denials almost never subject to judicial review.

Consular officers screen all visa applicants against a range of U.S. government and international databases containing voluminous law enforcement, intelligence, and immigration holdings, including classified information, to verify their identity and assess whether they pose a security risk.⁵⁶ According to the Migration Policy Institute, “non-citizens are [now] screened at more intervals, against more databases, which contain more detailed data, than ever before.”⁵⁷ Table II below lists some of the databases consulted to vet visa applicants.

Table II: National Security Screening Databases

| Kingfisher | Consular Lookout and Support System (CLASS), Consular Consolidated Database (CCD), & Other Checks | Pre-Adjudicated Threat Recognition Intelligence Operations Team (PATRIOT)⁵⁸ |
|---|--|---|
| <p>Introduced by the National Counterterrorism Center ⁵⁹</p> <p>Checks all visa applicants against the U.S. government’s central repository of <i>classified</i> holdings on known or suspected terrorists, such as the Terrorist Identities Environment (“TIDE”)⁶⁰</p> <p>Consular officer receives “red” (positive match) or “green” (no match) light. If KFE returns red, a Security Advisory Opinion – or interagency review involving the NCTC, DHS, FBI, and others – must be requested.⁶¹</p> | <p>All applicants are run through CLASS;⁶² consular officer receives printout of CLASS results prior to applicant’s interview</p> <p>CLASS checks against information submitted by the DHS, FBI, DEA, and other agencies, as well as against non-classified records from the Terrorist Screening Database (commonly referred to as the “Watchlist”), which has data on known or suspected terrorists submitted from across the U.S. government⁶³</p> <p>CLASS also runs checks against biographic and biometric data held in the CCD, which contains records of all visa applications from the mid-1990s. The CCD has contained photos of all applicants since 2001, and ten finger scans of all applicants since 2007. The database includes over 140 million records.⁶⁴</p> <p>Applicants’ personal information and fingerprints are run against various law enforcement biometric databases, including: DHS’s IDENT, and the FBI’s NGI, those agencies’ primary repositories of biometric information, with millions of records. Applicant photos are compared to the FBI’s photographic database on known or suspected terrorists.⁶⁵</p> | <p>DHS-run vetting program used at the approximately 30 diplomatic outposts in 25 countries where DHS agents are posted. Will screen all non-immigrant visa applications submitted online prior to adjudication when fully implemented.</p> <p>Integrates resources from ICE, CBP, Department of State, and the intelligence community to screen applicants prior to the visa interview stage.</p> <p>Potential derogatory matches are investigated by on site DHS personnel.</p> |

An important element of this identity verification and threat detection process is the use of biometric information collected from applicants.⁶⁶ Biometric information – such as fingerprints, facial images, and iris scans – is unique to individual travelers and difficult to forge, which makes it a better way to confirm identity

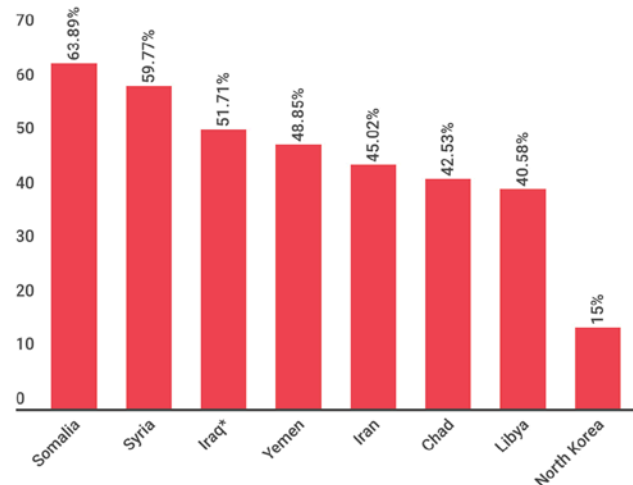
than biographic information (such as names, birthdays, and addresses).⁶⁷ Since 2002, people wanting to come to the U.S. have had to include with their visa application ten fingerprints and a photograph, which are then integrated into their visa if they are issued one.⁶⁸ As with biographic information, biometric information is compared to the extensive information contained in federal government databases. For example, a consular officer running standard checks will be notified if an applicant's fingerprints matched those from an ongoing Department of Defense criminal investigation or a known terrorist safe house.⁶⁹

Biometric material is not the only additional information on travelers now available to immigration enforcement officials. Cross-border intelligence and data sharing efforts have been significantly stepped up since 2001. Under the EU-US Passenger Name Record (PNR) agreement, for example, DHS receives flight reservation data collected by airlines operating between the U.S. and Europe, including biographical information, contacts, credit cards, and baggage information.⁷⁰ This information is not only used at the time of travel, but is distributed through DHS systems that are used to evaluate visa applicants.⁷¹

Applicants tagged for further scrutiny – either on the basis of their interview with a consular officer or because their names have been flagged through one of these security screenings – are subjected to a Security Advisory Opinion (SAO), or administrative review, a multi-agency security review coordinated by the State Department in Washington, D.C. During this review, the visa application is put on hold until the SAO process is completed and renders approval or rejection.⁷² According to the State Department, most security reviews are resolved – one way or another – within 60 days, with the caveat that “the timing will vary based on individual circumstances of each case.”⁷³ Practitioners generally advise clients that SAOs can take months to clear, with terrorism-related reviews taking from 10 - 14 weeks, or even longer to process.⁷⁴

In recent years, visa processing has become more automated. The “Kingfisher Expansion” program, launched in 2013, allows officials to check application information against classified government holdings, directly from any given consular outpost. The official submits a “vetting package” electronically, and the system checks it against databases like the Terrorist Identities Datamart Environment (TIDE), “the US Government’s central repository on international terrorist identities,”⁷⁵ without the State Department in Washington, D.C., having to act as an intermediary. The system simply responds with either a “red light” or “green light,” indicating whether further review is necessary.⁷⁶

Figure 2 – Refusal Rate for Tourist and Business Visas 2016



The system as currently configured already results in visas being denied to nationals of countries targeted by the administration's Muslim ban at very high rates, as Figure 2 shows.⁸⁸ In other words, they are already being subjected to extraordinary scrutiny.

d. IN-PERSON VETTING: THE VISA INTERVIEW

After an applicant's materials are processed, consular officers conduct in-person interviews, which the State Department's Foreign Affairs Manual calls "the most significant part of the visa issuing process."⁸⁹ The interview is a fraud prevention mechanism, designed to help catch relevant facts that applicants may be concealing.⁹⁰ The "vast majority of visa applicants" are interviewed; waivers are only available (although not necessarily granted) for those younger than 14 or older than 79; those seeking to renew visas that expired less than 12 months ago; and persons traveling as diplomats or officials of international organizations.⁹¹

Consular officers receive extensive (and continuing) training on how to conduct interviews and review applications effectively with a "strong emphasis on border security."⁹² Among other things, they must review interview case studies in which they critique recorded interviews and simulate their duties; they must be generally familiar with the culture and speak the language of the country where they are stationed; and they must have a Top Secret security clearance.⁹³ Officers may ask "all sorts of questions about the applicant's personal situation and are trained to ...detect signs of emotion or nervousness that may indicate deception," and have access to extensive information obtained from background

Banning Muslims: Ten Trump Statements⁷⁷

1. "Donald J. Trump is calling for a total and complete shutdown of Muslims entering the United States"⁷⁸
2. "It's not unconstitutional keeping people out... Because look, we are at war with radical Islam."⁷⁹
3. "The Muslim ban is something that in some form has morphed into extreme vetting for certain areas of the world."⁸⁰
4. "It's an expansion... People were so upset when I used the word Muslim... I'm talking territory instead of Muslim."⁸¹
5. "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."⁸²
6. "I think Islam hates us... And we can't allow people coming into this country who have this hatred of the United States and of people who are not Muslim."⁸³
7. "We're having problems... with Muslims coming into the country"⁸⁴
8. On banning Muslim immigration" "You know my plans all along. I've proven right."⁸⁵
9. Executive Order 13,769 is "a new vetting measure to keep radical Islamic terrorists out of the United States of America"⁸⁶
10. "When [Mr. Trump] first announced it, he said, 'Muslim ban.'... He said, 'Put a commission together. Show me the right way to do it legally.'"⁸⁷

investigations to facilitate the applicants' provision of "full and frank" information relevant to the visa

application.⁹⁴

If an applicant is denied a visa at the end of this long process, they generally have no recourse – the doctrine of consular non-reviewability forecloses judicial review in almost all cases.⁹⁵

Trump has advocated for “extreme vetting” based on the notion that the rigorous screening systems described above are inadequate to protect the American homeland from “Radical Islamic Terrorism.”⁹⁶ This is wrong. As explained above, the U.S. visa regime is extremely rigorous and particularly since the 9/11 attacks has included extensive national security safeguards. The proof is in the pudding: terrorism by foreign-born persons on U.S. soil is very rare.

II. THE “MUSLIM BAN” AND “EXTREME VETTING”

Trump’s promises of a “Muslim ban” and “extreme vetting” are closely intertwined. The early versions of the Muslim ban have been replaced by a new, indefinite iteration, issued on September 24, 2017. It is the result of a review process, which examined whether countries adequately cooperate with the U.S. to confirm the identities of those applying for visas or other immigration benefits and provide information necessary to assess whether such individuals pose “a security or public-safety threat,” as well as a generalized “risk assessment.”⁹⁷ While secure identity documents, information sharing, and counterterrorism cooperation have long been goals of the U.S. government, the Trump administration’s initiative departs from previous efforts by imposing blunt sanctions in the form of near categorical bans. Moreover, the result of the review largely replicated earlier iterations of the Muslim ban, raising obvious questions about the administration’s selective application of malleable criteria.

“Extreme vetting” has also begun and is slated for discriminatory application.⁹⁸ Whereas the existing screening system has generally used individualized assessments to identify people subject to further scrutiny,⁹⁹ the Trump administration has made clear that it will use vetting to target particular nationalities, such as Iraqis, Somalis and Yemenis, as shown in Table III below.¹⁰⁰ In addition, expanded efforts to collect social media data from selected people – especially coupled with DHS’s reported plan to analyze all publicly available information on travelers, both potential and actual, and assess them using vague and subjective criteria – only amplify concerns that the visa issuance process will become systematically infused with religious and ideological biases.

a. IDENTITY VERIFICATION, INFORMATION SHARING, AND THE MUSLIM BAN 3.0

The declared aim of the Trump administration’s “worldwide review” of vetting procedures was to have countries across the globe help the U.S. better screen visa applicants.¹⁰¹ But in practice, it has led to yet another iteration of the Muslim ban, and a continuation of the same discriminatory policy.

The United States has long encouraged countries to comply with internationally accredited technical standards for issuing travel documents, sharing available information on people who are or may be public safety threats, and answering questions about domestic counterterrorism policies.¹⁰² The United Nations and INTERPOL, with leadership from the U.S., have guided these types of passport security and information sharing initiatives.¹⁰³ Increasing compliance with the standards put forward by the International Civil Aviation Organization (“ICAO”), for example, has been a long-held policy goal of the U.S. government.¹⁰⁴ The ICAO standards require that: (1) countries issue “ePassports” that are biometrically capable, meaning they support identity verification linked to features unique to individual people – such as facial images or fingerprints – that

are hard to forge; and (2) submit information authenticating those passports to the ICAO's central database which can be used by other countries to better identify forgeries.¹⁰⁵

Such efforts are not without their critics,¹⁰⁶ but they rest on agreement among many governments and international agencies on the need to improve systems for verifying identity and preventing passport fraud.¹⁰⁷ Currently, more than 100 countries issue ePassports, and 58 participate in the database.¹⁰⁸ The costs of switching from traditional to biometric passports can be substantial,¹⁰⁹ however, and other factors – such as lack of capacity or conflict – may make it difficult for countries to participate in these systems. Of the countries from which President Trump has banned travel, however, only Syria and Yemen do not issue ePassports.¹¹⁰ Iran already participates in the ICAO database.¹¹¹

The Trump administration also wants countries to regularly report lost and stolen travel documents to INTERPOL's Stolen and Lost Travel Document Database (SLTD).¹¹² All 190 INTERPOL-member countries can report these documents through their National Central Bureaus – which theoretically link local law enforcement to the INTERPOL network.¹¹³ The Obama administration too was concerned about improving reporting.¹¹⁴ However, this is not an easy task.¹¹⁵ Some countries have not committed to doing so and even the efforts of participating countries are hampered by a “lack of connection...between law enforcement...[and] border control authorities... [and the] cost of deployment and existing IT infrastructure.”¹¹⁶ Additionally, the Trump administration would require countries to share criminal records as well as data on known or suspected terrorists.¹¹⁷ Commonly, such information sharing is governed by bilateral agreements,¹¹⁸ several of which have been operational.¹¹⁹ According to DHS, these exchanges have been helpful for crime fighting and identifying “prospective travelers who may pose a risk to the United States.”¹²⁰

Once again, better information sharing and reporting on lost and stolen passports are longstanding U.S. foreign policy goals. Indeed, all countries from which visa-free travel to the U.S. is allowed must conform to these requirements, although they do not always fully meet all of them.¹²¹ But never has non-compliance with these types of requirements triggered a broad travel ban.¹²² Such blunt restrictions raise several serious concerns.

First, by totally banning immigrant visas from seven countries, the administration is departing from a long-standing priority of U.S. visa policy which is reflected in the Immigration and Nationality Act: the re-unification of families.¹²³ A large proportion of immigrant visas are issued to family members of Americans.¹²⁴ In fact, an earlier Supreme Court ruling on the Muslim ban enjoined the government from enforcing it against individuals who have “bona fide” relationships in the United States, including close family members of citizens and legal permanent residents.¹²⁵ In doing so, the Court recognized the delay of entry into the country as a legal harm to U.S. family members.¹²⁶

The September 2017 proclamation suggests that people admitted to the country based on familial ties “may present national security or public-safety concerns that may be distinct from those admitted as nonimmigrants,” because they have “more enduring rights” and are “more difficult to remove...even after national security concerns arise.”¹²⁷ This is a facially implausible justification. If the concern were truly about the lack information available to identify and vet visa applicants, then that concern would be at its lowest ebb with respect to immigrant visas, which generally require sponsorship by a U.S. citizen, permanent resident, or employer. The U.S. sponsor must submit reams of documentation and paperwork¹²⁸ – requirements to which the Trump administration has added substantially¹²⁹ – in order to verify their relationship with the applicant.¹³⁰ In other words, visa officers already have extensive information that allows them to establish the identity of those applying for immigrant visas.

Table III: Impact of September 2017 Proclamation

| Country | Immigrants | Business Visitors | Tourists | Students |
|--------------------|--|--|--|---|
| Chad | Banned | Banned | Banned | As before |
| Iran | Banned | Banned | Banned | Will be subject to "enhanced screening and vetting" |
| Libya | Banned | Banned | Banned | As before |
| North Korea | Banned | Banned | Banned | Banned |
| Syria | Banned | Banned | Banned | Banned |
| Venezuela | As before | Banned: government officials involved in screening and vetting procedures and immediate family members | Banned: government officials involved in screening and vetting procedures and immediate family members | As before |
| Yemen | Banned | Banned | Banned | As before |
| Somalia | Banned | "Subject to additional scrutiny" | "Subject to additional scrutiny" | "Subject to additional scrutiny" |
| Iraq | will be "subject to additional scrutiny" | "subject to additional scrutiny" | "subject to additional scrutiny" | "subject to additional scrutiny" |

Second, just because countries do not meet a specific prescribed standard – say they fail to report lost or stolen documents to INTERPOL’s SLTD – does not necessarily mean that permitting their nationals to enter the U.S. will create serious national security risks. As discussed in Section I above, and shown in Table I, a substantial amount of information is already collected from every visa applicant to corroborate their identity, both in the form of biometric data (fingerprints and photographs) and background information (travel, address, employment, or financial history, including corroborating documentation). Indeed, empirical analysis has found no evidence that “lack of reliable information from ... governments ... has caused higher rates of terrorism-related crimes from [Muslim ban] countries.”¹³¹

Finally, there is little doubt that the criteria for deciding which countries to blacklist have been selectively applied. Banning travel for non-compliance with identity verification protocols, for example, would have devastating economic and diplomatic consequences if applied equally to all countries. For example, China,

India, and Indonesia comprise about 40 percent of the world's population but contribute very little data to the INTERPOL database on stolen and lost passports.¹³² Even developed European countries that participate in the Visa Waiver Program struggle to comply with their information sharing obligations.¹³³ And U.S. officials recognize that the “standards are so high that most countries won't meet them.”¹³⁴

Instead, as many experts feared,¹³⁵ the countries chosen for sanctions stemming from the “worldwide review” seem to have been handpicked to meet other goals. Several anomalies in the proclamation – as well as its ultimate impact – show why this is the case.

According to the proclamation, DHS initially identified 47 countries that were “inadequate” or “at risk” based on their “identity-management protocols, information-sharing practices, and risk factors.”¹³⁶ “Engagement” with these governments allowed DHS to whittle the list down to eight countries that did not meet its baseline standards, but only *seven* of these countries became the target of broad travel bans. Iraq was not subject to a ban due to diplomatic and military considerations.¹³⁷ In contrast, DHS found that Somalia *did* satisfy the baseline requirements, but nonetheless recommended a travel ban.¹³⁸ This raises questions as to the extent to which the process was manipulated, particularly given the president's singling out of Somalis as posing a terrorism threat.¹³⁹ The proclamation also claims that its restrictions on non-immigrant visas are “tailored” in order to: 1) mitigate security threats; and 2) to recognize certain countries' willingness to cooperate in U.S. efforts to combat terrorism or to encourage improvements.¹⁴⁰ But as Table III shows, for five countries – Chad, Iran, Libya, Somalia, Yemen – the restrictions are functionally the same. Tourists and business people are forbidden, but students are allowed in. There is no explanation provided for why students might pose less of a risk than other visitors. Perhaps an answer might be found in the success that states such as Hawaii and Washington have enjoyed in asserting their interest in receiving international students in their public universities, but that hardly seems connected to the stated purpose of the order.¹⁴¹

Leaving aside process, the practical effects of new travel ban bear a striking resemblance to its predecessor, Executive Order 13780. Using 2016 data as a baseline, the current policy would ban 76% of nonimmigrant visa applicants and 91% of immigrant visa applicants affected by the previous order.¹⁴² The overlap is substantial despite the inclusion of Chad and North Korea, which together only had 1,049 total visas of the kind affected by sanctions issued in 2016 – tourist, business, and immigrant visas for Chad (940), and all visas for North Korea (109).¹⁴³ Likewise, the addition of Venezuela does not meaningfully change the calculus because the restrictions apply to government officials and their families, not ordinary applicants.¹⁴⁴

Far from being “tailored,”¹⁴⁵ these measures are – most charitably – a blunt instrument: the cloak of visa security is being used as an excuse to ban citizens of a select group of Muslim countries, as the administration has been trying to do since January 2017. The inclusion of non-Muslim states cannot erase the president's oft-repeated commitment to use extreme vetting as a way of keeping Muslims out of the United States.

b. IDENTIFYING APPLICANTS WARRANTING “ADDITIONAL SCRUTINY”

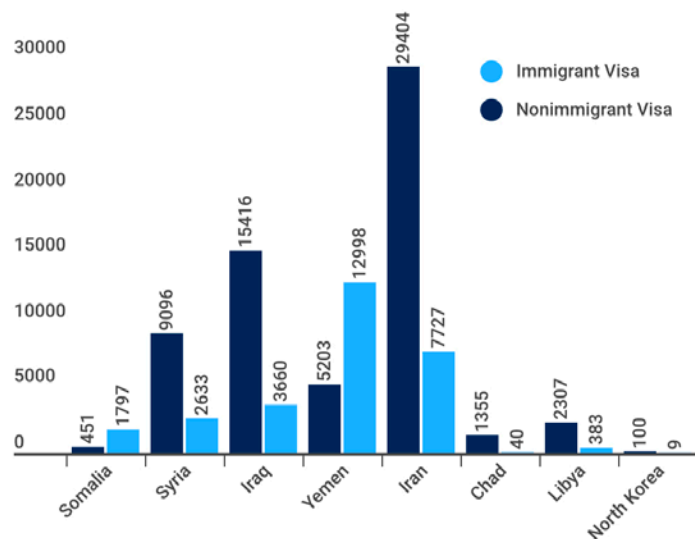
Trump's recent proclamation prescribed additional visa vetting for nationals of Iran, Iraq, and Somalia.¹⁴⁶ Such broad-brush scrutiny is not surprising because the administration's extreme vetting initiative is premised on identifying “populations” warranting additional vetting.¹⁴⁷ While consular officers have long collected additional information when their interviews with visa applicants raised suspicions, or when a traveler's name was flagged by a security database, it appears that the State Department will now target populations, likely identified by their shared religion – with national origin or ideology used as a proxy.

While the State Department has stated that travelers will be vetted “based on individual circumstances and information they provide,”¹⁴⁸ the most recent proclamation shows that the U.S. will subject entire countries to this regime. Even before the September proclamation was issued, the State Department estimated that the new rules would affect 65,000 people.¹⁴⁹ This number closely tracks the roughly 68,000 nonimmigrant visas issued in 2016 to nationals of the seven countries included in the first travel ban (Executive Order 13769), as shown in Figure 3 below.¹⁵⁰ It also aligns with the 66,000 such visas that would have been affected by the proclamation were it applied in 2016.¹⁵¹ In addition, the Department’s first attempt at implementing these requirements – which was halted due to ongoing litigation – directed consular officials to implement these measures to all nationals of the initial Muslim ban countries.¹⁵² In sum, “populations warranting increased scrutiny” could simply be code for people from Muslim countries or some subset thereof.

Notwithstanding Trump’s assumptions to the contrary, such an approach is unlikely to make us safer. There is no evidence that religion or national origin are indicative of a propensity to terrorism. Writing in opposition to the Muslim ban, more than 40 national security experts from across the political spectrum argued that vetting should be responsive to “specific, credible threats based on individualized information,” not stereotypes of religions or countries.¹⁵³ Even an analysis by Trump’s own DHS found that citizenship was an unreliable indicator of terrorism threat,¹⁵⁴ a finding echoed by two federal appeals courts in rejecting the security rationale for Muslim ban Executive Order proffered by the administration.¹⁵⁵ As has been detailed in previous Brennan Center reports, decades of counterterrorism research has not been able to confirm traits that could be used to identify people who have a propensity for terrorism.¹⁵⁶ Indeed, national security officials have also warned that banning people from Muslim countries would have broader consequences, damaging the “strategic and national security interests of the United States,” corroding relationships with allies and reinforcing the terrorist propaganda.¹⁵⁷

The administration has argued that the Muslim ban was based on the Obama administration’s previous identification of Iran, Iraq, Sudan, Syria, Libya, Somalia, and Yemen as “sources of terror.”¹⁵⁸ This is only half true. Under Obama, a combination of legislative and executive action made it so people previously eligible for visa-free travel to the U.S. who had traveled to Iran, Iraq, Sudan, Syria, Libya, Somalia, and Yemen on or after March 1, 2011 were required to apply for visas to enter the U.S. and therefore go through the same, individualized vetting process through which citizens of non-visa waiver countries proceed.¹⁵⁹ Dual nationals of Iran, Iraq, Sudan, and Syria were also required to obtain visas even if they held European passports.¹⁶⁰ Though not a blanket ban, this policy does discriminate solely on the basis of travelers’ links to predominantly Muslim countries, and has been criticized for doing so. The E.U. considered a reciprocal measure to strip U.S.

Figure 3 – Number of Nonimmigrant and Immigrant Visas Issued 2016



citizens' visa-free travel privileges;¹⁶¹ the technology industry has assailed it as discriminatory and bad for business;¹⁶² and prominent lawmakers, both Democratic and Republican, have censured the visa requirement for dual nationals.¹⁶³ Nonetheless, it is notable that the change was, in some sense, a vote of confidence in the existing visa vetting process, which was considered sufficiently robust to “help neutralize the threat from foreign terrorists entering our country,” in the words of House Speaker Paul Ryan (R.- WI).¹⁶⁴

However Obama-era vetting policies came about, Trump is now president. And his Islamophobic statements combined with circumstantial evidence of which affected “populations” will be chosen for additional scrutiny give rise to a worry that the onerous and invasive requirements described in detail below will be applied discriminatorily and to the likely detriment of national security.

c. WHAT IS “ADDITIONAL SCRUTINY”?

i. BIOGRAPHICAL AND TRAVEL INFORMATION

Applicants falling within “populations” the Trump administration determines need additional scrutiny, as well as visa applicants from Iran, Iraq, and Somalia, will be required to provide additional information including: 15 years' worth of travel, address, and employment history; email addresses, and phone numbers; names of siblings, children, former spouses not already provided; prior passport numbers; and details and documentation on any travel to an area controlled by a terrorist organization.¹⁶⁵ These applicants will almost certainly be subject to additional intensive interagency security reviews, which will, at the very least, delay visas for months on end.¹⁶⁶

These new requirements would subject potential travelers to significant burdens. For example, gathering travel information for the last 15 years – including details such as locations visited on trips, sources of funds for travel to foreign, and even potentially domestic, locations, and corroborating documentation¹⁶⁷ – could require weeks' worth of time and substantial resources, involve tracking down accommodation and transportation providers, and finding credible people to corroborate trip details. Nor is it clear that reaching so far back in time would offer security benefits, particularly since many current terrorist threats like ISIS did not even emerge until 2013.¹⁶⁸ Indeed, the questions for even a short visit to the U.S. require more personal information than the forms required to get a Top Secret security clearance.¹⁶⁹

Two consequences of this policy are, however, clear. First, it will enable the collection of more information for government databases, potentially for use in data mining, as discussed below. Second, it imposes a sufficiently heavy burden that people wanting to come to the U.S. will find gathering required supplemental application materials difficult, and many others will be discouraged from even applying for a visa.

ii. SOCIAL MEDIA INFORMATION

The review of social media postings is increasingly touted as a tool for vetting those seeking to enter the U.S. In 2016, DHS added an optional social media identifier field to the portal through which nationals of visa waiver countries apply for entry into the U.S. It also ran a pilot program that screened the social media posting of certain temporary visa applicants.¹⁷⁰ The new rules being implemented by the Trump administration require those from “populations warranting additional scrutiny” to provide all social media platforms and identifiers used over the last five years.¹⁷¹ Further, social media checks are required for people who have been in an area at any time it was controlled by ISIS, or if a consular outpost suspects that an applicant may be linked to ISIS

or another terrorist group.¹⁷²

The expansion of social media data collection is unsupported by evidence that it is a reliable means of improving visa vetting. In fact, the DHS Office of Inspector General recently audited the Department's existing social media pilot programs to screen applicants for immigration benefits. Its report – titled “DHS’ Pilots for Social Media Screening Need Increased Rigor to Ensure Scalability and Long-term Success” – found that DHS did not have sufficient metrics in place to measure the programs’ effectiveness. The Inspector General concluded that the pilot programs provided little value for guiding the rollout of any department-wide social media screening program.¹⁷³

Social media platforms amplify issues of subjectivity inherent in many human communications. This is for two reasons. First, as with other communications, context is important. Both humans and computers have trouble properly contextualizing social media communications in order to detect sarcasm or other features of local parlance.¹⁷⁴ A few examples illustrate this problem. In 2012, a U.K. citizen was detained for hours at Los Angeles International Airport and denied entry into the U.S. after telling a friend on Twitter, “[f]ree this week, for quick gossip/prep before I go and destroy America,” slang for partying; he also said he would “dig[] Marilyn Monroe up,” a reference to a popular television show.¹⁷⁵ Rap lyrics have been wrongly interpreted as threatening messages in criminal cases.¹⁷⁶ Further exacerbating these issues, officials will often be looking at posts in different languages, governed by different linguistic conventions.¹⁷⁷ It is not obvious that computers will fare better. For example, DHS’s foray into using tone analysis software to identify national security threats has been questioned for defining terms statically, without accounting for historical or linguistic nuances.¹⁷⁸

Second, social media platforms contain many kinds of non-verbal communications: Facebook has “likes” and other emoji reactions; Twitter users can “heart” or “re-tweet” communications.” There is no interpretive consensus on whether many of these kinds of acts count as endorsements.¹⁷⁹ As the Brennan Center and 34 other civil rights and liberties groups explained in a letter to the State Department:

If a Facebook user posts an article about the FBI persuading young, isolated Muslims to make statements in support of ISIS, and another user “loves” the article, is he sending appreciation that the article was posted, signaling support for the FBI’s practices, or sending love to a friend whose family has been affected? ...

A similar dilemma infects Twitter ... A user may click the heart simply to mark a post for later review, but it could falsely signal to her followers – or more urgently, the U.S. government – that she agrees with the sentiment expressed....

In light of the multitude of possible interpretations of both speech and non-verbal communication, consular officers will be able to exercise enormous, unchecked discretion when it comes to assessing foreign residents’ suitability to enter the country and quizzing them about the meaning and significance of a range of expression.¹⁸⁰

Beyond interpretative issues, the accumulation and analysis of social media information corrodes the fundamental freedoms of speech and faith, as well as privacy. The State Department claims that it will not use social media information to deny visas “based on...religion [or] political views.”¹⁸¹ This seems like a rule that begs to be broken. While social media can be used verify identity, it also easily reveals information on political and religious views, as discussed further below. Anyone thinking of coming to the United States will almost

certainly either refrain from expressing views on controversial political or religious matters or sanitize their online personas. Such self-censorship should not be the end result of policies pursued by a democracy committed to the values embodied in the First Amendment to the U.S. Constitution and the International Covenant on Civil and Political Rights, which guarantees “the right to freedom of expression,” including the “freedom to seek, receive and impart information and ideas of all kinds.”¹⁸²

d. IDEOLOGICAL VETTING

Social media analysis facilitates ideological vetting of visa applicants, which is a stated goal of the Trump administration. During the election campaign Trump promised to bring back a Cold War style “ideological screening test.”¹⁸³ At a Phoenix rally, he told the crowd that “extreme vetting” would make sure the U.S. only accepts “the right people,” using “ideological certification to make sure that those we are admitting to our country share our values and love our people.”¹⁸⁴ Trump’s many proclamations about Muslims leave no doubt who he is targeting as being ideologically unfit to travel to the country and he has singled out “honor killings” and discrimination on the basis of gender or sexual orientation as aspects of Islam that are incompatible with American values.¹⁸⁵ The intention to use ideological tests is reflected in Trump’s executive orders implementing the Muslim ban and triggering extreme vetting, and senior DHS officials have said they are working on such a test.¹⁸⁶

The original travel ban, Executive Order 13769, contained several coded references to Islam. For example, among its stated goals was to exclude people who “would place violent ideologies over American law.”¹⁸⁷ This is a reference to jihad (which is the “violent ideology” that is at the forefront of Trump’s counterterrorism policy),¹⁸⁸ and it reflects the view held by fringe Islamophobes, many of whom have been permitted into Trump’s inner circle, that Muslims cannot participate in democratic societies because they hold to a “higher law.”¹⁸⁹ The order would have excluded those who perpetrated “honor killings” or would discriminate against Americans on the basis of race, gender, or sexual orientation.¹⁹⁰ While all of these reprehensible attitudes can be found in many countries, including the United States, in the Western imagination they are associated with Islam.¹⁹¹ The order also would have barred “those who persecute minority religions” and included a telling carve out for non-Muslims,¹⁹² provisions which track Trump’s frequent remarks about how badly Christians are treated in Muslim countries.¹⁹³

The second version, Executive Order 13780, was designed to withstand obvious charges of anti-Muslim bias that stymied the first version in court. It removed many of the references to Islam, suggesting that the White House had at least some understanding that the stereotypes in the original version were objectionable.¹⁹⁴ But it did not purge them entirely, retaining, for example, an instruction to the DHS Secretary to report on the number of “honor killings” by foreigners in the U.S.¹⁹⁵ Indeed, it seems almost certain that the first order reflects the administration’s true intentions. As federal courts have noted in enjoining the second order, Trump has made it obvious that the blatant discrimination that marked the first order also animates its successor.¹⁹⁶ The president called the second order a “watered down, politically correct version,” and recently tweeted that the travel ban should be “far larger, tougher, and more specific” than the one reflected in the

second order.¹⁹⁷ His senior advisor Stephen Miller went on record saying that it would achieve the “same basic policy outcome.”¹⁹⁸

The ideological questions that the administration is reportedly considering asking visitors are in line with the stereotypes about Muslims reflected in Trump’s public statements and Executive Order 13769. According to

the Wall Street Journal, they “include how visa applicants view the treatment of women in society, whether they value the ‘sanctity of human life’ and who they view as a legitimate target in a military operation.”¹⁹⁹

Ideological screening of the kind described above has a long history in U.S. immigration law,²⁰⁰ elements of which still persist.²⁰¹ But Congress has largely moved away from this tactic since 1990, when it unanimously repealed broad ideological exclusions that permitted exclusion of those who “engage[d] in activities which would be prejudicial to the public interest,” even through speech or writing.²⁰² Congress jettisoned ideological vetting because it led to absurd exclusions – for example, author Graham Greene, comedian Charlie Chaplin, novelist Gabriel Garcia Marquez, and Pierre Trudeau, who went on to become the Prime Minister of Canada – and had come to be seen as incompatible with the American ethos.²⁰³ In the words of Senator Daniel Patrick Moynihan, who sponsored the repeal, ideological screening projected a “fearful, muddled, intimidated citizen[ry],” inconsistent with the nature of the American body politic.²⁰⁴

Fortunately, at least some lawmakers today remain concerned about these principles. Senator Claire McCaskill questioned then-DHS Secretary John Kelly at length about the Department’s plans for ideological vetting and expressed deep concern:

It seems to me we are signaling something that's very un-American to the rest of the world by announcing this policy. Every ambassador in Washington read this article in *The Wall Street Journal* yesterday and every ambassador in Washington called back to their country and said, listen to this, they're going to start asking people for their social media password and about their ideology in America. That is incredibly damaging, and all the bad guys are going to ... just lie. I don't get how get we get anything out of it.²⁰⁵

In addition to conflicting with American values and legal norms, as former commissioner of the Immigration and Naturalization Service, Doris Meissner has pointed out, ideological tests “have proven to be poorly equipped to actually predict what people are going to do.”²⁰⁶ This is unsurprising. Decades of empirical research have shown that ideology is not a good predictor of violence. Many people hold views that can be described as “extreme” and never act violently; the reverse is also true.²⁰⁷ Moreover, as discussed above, figuring out the nuances of what people think or believe is difficult, even with social media posts at our disposal.²⁰⁸ Finally, as noted previously, according to a DHS study, the few foreigners who do commit terrorist acts in the U.S. do so years after coming to the country, so investigating their ideological proclivities is unlikely to identify threats.²⁰⁹

Indeed, the law already contains robust mechanisms for identifying and excluding people who support terrorist groups. In particular, the PATRIOT Act passed in the wake of the September 11 attacks provides that those who “endorse[] or espouse[] terrorist activity or persuade[] others to endorse or espouse terrorist activity or support a terrorist organization” can be barred from the country.²¹⁰ As part of the visa process, would-be visitors are asked a number of questions aimed at surfacing links to violent behavior or terrorism.²¹¹ If anything, these and related PATRIOT Act amendments to the INA are overbroad,²¹² as Congress recognized in 2008, when it made it easier for immigration authorities to grant discretionary waivers for their application.²¹³

Overall, ideological tests of the kind the Trump administration appears to embrace reflect the very worst of extreme vetting. They infect policy decisions with religious stereotypes, while providing no identifiable benefits to national security.

e. EXTREME VETTING BY ALGORITHM

Despite the president's vocal support for extreme vetting of Muslims, the administration has sought to portray its the measures as applying only to a limited set of people who require additional scrutiny. The State Department claims that it will gather social media information from populations "warranting additional scrutiny" that it estimates will include 65,000 people. Also, when the DHS Secretary was questioned about reports of ideological screening, he insisted that such measures would only be applied to a very small number of people.²¹⁴

In fact, the administration is contemplating something that reaches much further – an automatic vetting system that will ingest reams of information about *all* potential visitors from government databases and publicly accessible platforms such as "media, blogs, public hearings, conferences, academic websites, social media websites...radio, television, press, geospatial sources, internet sites."²¹⁵ This would presumably include the extensive biographical and biometric data collected from visa applicants, as well as any social media-related information they provide.²¹⁶ According to the Statement of Objectives disclosed at a trade show, the system should evaluate "an applicant's probability of becoming a positively contributing member of society as well as their ability to contribute to national interests,"²¹⁷ and whether they intended to commit a crime or terrorist attack once they arrived here.²¹⁸ It would continue to monitor people even after they come to the U.S., at least for the duration of their visit and potentially afterwards.

Even a cursory examination of the goals of this project demonstrates its fundamental flaws. First, the system is meant to determine whether someone is probable to "positively contribut[e]" to society, "contribut[e] to the national interest." This element of screening was included in the first Muslim ban Executive Order, but removed in its later version.²¹⁹ While the State Department perhaps has the authority to evaluate an individual based on their ability to contribute to the national interest, that standard seems a poor one by which to appraise to visitors, students, and businesspeople who are – by definition – only in the country for a limited period of time. Moreover, the characteristics to be evaluated are subjective and political, not scientific. For example, a transgender political activist seeking to attend a conference might be considered as adding value to U.S. discourse by some and as inflammatory by others. Malleable concepts such as value to "society" and the "national interest" could easily be used to keep out Muslims on the theory that they present a threat to American values as this president and his inner circle clearly believe.²²⁰ The fact that a computer conducts this assessment does not mean the results will be objective.

Nor is there cause to believe that an automated system would be able to make accurate predictions about who will commit a terrorist or criminal act at some point in the future. Attempts to predict criminality in the U.S. typically rely on law enforcement records of arrests and crime as a proxy. Such data may not be available for those applying for visas, and is in any event unreliable because it integrates and perpetuates existing biases in policing.²²¹ Moreover, as experts have repeatedly explained, algorithms are not particularly good at predicting rare events such as terrorism – they generate an unacceptably high rate of errors and should not be used to make decisions that can have a serious impact on individuals' lives.²²²

Finally, ongoing monitoring of visitors to the United States will have tremendous impacts for constitutional privacy and free speech rights. Everyone who is on United States territory is entitled to the same basic constitutional protections, regardless of whether they are a citizen.²²³ Such monitoring would threaten the rights of Americans and visitors alike.

In sum, the automatic social media monitoring being proposed by DHS seems to ignore serious issues of effectiveness and principle.

III. COSTS OF THE MUSLIM BAN AND EXTREME VETTING

This report has outlined how the U.S. already has one of the most restrictive visa systems in the world with layers of national security checks, and that there is little evidence that banning travel or increasing the hurdles to get a visa to come to the United States would have a measurable national security benefit. There is, however, ample evidence that doing so would impose economic costs. And, travel policies and practices that functionally discriminate on the basis of religion, national origin, or ideology would deal a punishing blow to the values that define America. Simply put, a permanent regime of extreme vetting would stanch the flow of money and talent into the United States and undermine the character of American democracy.

a. ECONOMIC COSTS

There is little doubt that restricting travel carries serious economic costs.²²⁴ The United States welcomed more than 180 million temporary visitors in 2015;²²⁵ more than 10 million of them required visas to enter the country.²²⁶ Making it harder to get visas will discourage these people from traveling to the United States. But it will also deter – and seemingly already is deterring – people who are not directly affected by visa policies but are put off by the animus reflected in initiatives like the Muslim ban, extreme vetting, and the border wall. Less travel to the United States means lost revenue, taxes, and jobs.²²⁷ It also means less trade, less foreign direct investment, and fewer scientific and cultural exchanges.²²⁸

The vast majority of temporary visitors come to America for business or tourism.²²⁹ They stay in hotels, eat at restaurants, and buy things at stores, which in turn generates revenue, taxes, and jobs. In 2016, the United States generated \$247 billion from international travel.²³⁰ The State Department estimates that one American job is created for every 67 visitors to the country.²³¹

Other temporary visitors include university students, “specialty” workers under the H1-B program (popular in Silicon Valley), as well as seasonal agricultural workers and intra-company transfers.²³² The benefits of such visas are immense for American companies and universities seeking to attract top talent and compete globally.²³³ Highly skilled immigrants boost the American economy by increasing innovation and productivity, which helps create new jobs and new opportunities for expansion.²³⁴ Indeed, the history of American innovation is inevitably a history of American immigrants. More than 40% of Fortune 500 companies were founded by immigrants or their children, including AT&T, Apple, Google, Intel, General Electric, Oracle, McDonald’s, and eBay.²³⁵ These quintessentially “American” companies owe their existence to immigrants who came to the United States from countries like Syria and Iran, now targeted by President Trump’s travel ban.²³⁶ Foreign-educated doctors fill significant gaps in the U.S. health care system, treating sicker populations and producing better health care outcomes than domestically educated doctors.²³⁷

The decade after September 11 offers a cautionary tale on how extreme vetting could hurt the U.S. economy. High security in the aftermath of attacks led to an immediate drop in travel, followed by a “lost decade” for the travel and tourism industry due to strict new visa requirements, including mandatory in-person interviews.²³⁸ According to the U.S. Travel Association, the post-September 11 rules led to 68 million potential visitors lost, \$509 billion in spending lost, and 441,000 jobs lost.²³⁹ And impacts can be immediate: in just two days after

Trump ordered the first Muslim ban in January 2017, the country's major airlines lost nearly \$5 billion in market value due to worries about its effects.²⁴⁰

On the flip side, easing travel restrictions has been shown to have significant benefits for the country. Under the Visa Waiver Program, initiated under President Ronald Reagan in 1986, temporary visitors from 38 mainly developed countries in Europe do not need a visa to enter the U.S.²⁴¹ The economic benefits of the waiver program are well documented: the Department of Homeland Security estimates that travelers from visa waiver countries spent about \$84 billion on goods and services in FY 2014, or contributed almost \$231 million per day to economies around the country.²⁴²

The September proclamation, as well as the general tenor of the president's statements, makes it clear that travel restrictions will have an outsized impact on Muslims. In the years immediately following September 11, visas issued to visitors from predominantly Muslim countries dropped the most,²⁴³ and early analysis of data suggests such drops may again be occurring.²⁴⁴ State Department data shows that nonimmigrant visas from Arab nations have declined by 16% in 2017 compared to last year; for the countries included in both previous Muslim bans (Iran, Libya, Somalia, Sudan, Syria and Yemen), that number is 44 percent.²⁴⁵

Travel bans and extreme vetting may affect Muslim travelers most directly, but they are likely to cause ripple effects that extend to international travel more generally. In September 2017, the Commerce Department reported a drop of almost 700,000 international visitors in the first quarter of 2017, compared to the previous year – with the largest drops coming from the Middle East and Africa.²⁴⁶ Indeed, extreme vetting appears likely to dampen all travel,²⁴⁷ and like the post-September 11 decade, give the impression that America is closed for business.²⁴⁸

As a group of over 50 academic and scientific groups explained, the new visa policies promulgated by the State Department would not only prevent specific individuals from coming to the United States, but their “undefined and unclear” nature would have “negative indirect impacts in other areas” as well. “The amount of information that could be collected, the lack of knowledge about what will be done with this additional information, and concerns about their privacy may well lead many to look to other countries for scientific partnerships or higher education pursuits.”²⁴⁹ This would deprive the United States of a wealth of talent and opportunities for collaboration in the fields of science, technology, engineering, and mathematics, all of which are key drivers of our economy.²⁵⁰

b. COST TO AMERICAN VALUES

Visa rules that discriminate against visitors on the basis of religion or nationality will come at the cost of core American values. An open society is central to our national character as a nation of immigrants. Freedom of religion and equality are the basic building blocks of American democracy, drawing people from every corner of the world for centuries.

While the American immigration system often does not live up to the nation's highest ideals, it has trended toward more openness and equality over time.²⁵¹ After World War II, Congress officially removed race-based restrictions on immigration, even though it maintained a quota system with a heavy preference for western Europeans.²⁵² Beginning in the civil rights era, Congress began to eliminate national origin as criterion for admission. In 1965, it eliminated the quota system and replaced it with a preference for skilled labor and family unification, flatly rejecting discrimination based on “race, sex, nationality, place of birth, or place of residence.”²⁵³ This reform brought the country's immigration laws in line with its “national history and ideals”²⁵⁴

and “manifested Congressional recognition that the maturing attitudes of our nation made discrimination on these bases improper.”²⁵⁵ It also led to major demographic changes within the United States, as the next half-century saw a rise in immigration from Latin America and Asia.²⁵⁶ Further reforms in 1990 and 2000 raised immigration caps and increased the emphasis on skilled workers as advanced sectors of the economy grew.²⁵⁷

By contrast, President Trump’s extreme vetting and travel ban initiatives come wrapped in fear-laden rhetoric and are accompanied by support for anti-immigrant legislation, which aim to swing the pendulum back toward a pre-civil rights era outlook.²⁵⁸ Even career State Department officials criticized Trump’s executive orders. Using a rare “dissent channel” to protest, the officials emphasized that, “We do not need to alienate entire societies to stay safe. And we do not need to sacrifice our reputation as a nation which is open and welcoming to protect our families.”²⁵⁹

The travel ban and extreme vetting will undermine American values by conveying to the world that the United States is no longer committed to openness and nondiscrimination. They will eat away at our national character for the sake of speculative national security benefits. The fabric of America depends on equal treatment, regardless of race, gender, ethnicity, national origin, and religion. And it depends on the Establishment Clause to separate religion from the state, and the state from religion. Bans and overzealous vetting are unlikely to provide additional security against terrorism, but will surely corrode the fundamental values that make America strong and united, and undermine the country’s ability to foster contact, cordiality, and cooperation with people across the globe. Like the quota system abandoned in 1965, they risk betraying “our basic American tradition”²⁶⁰ by returning to “a cruel and enduring wrong in the conduct of the American Nation.”²⁶¹

CONCLUSION

Given the threat of terrorism, visa issuance decisions must, and do, include strong national security safeguards. There is no evidence that the U.S. system is not up to the task. In fact, the number of attacks by foreign-born terrorists in the U.S. is de minimis. Against this backdrop, the Trump administration is taking steps – such as banning immigrants and visitors from mostly Muslim countries and identifying “populations” that will officially be deemed risky – that emanate from the religious animus so often expressed by President Trump. This approach, which is part and parcel of a broader anti-immigrant agenda, is inimical to American economic interests and fundamental values. It should be rejected as both unnecessary and harmful.

Endnotes

¹ Exec. Order No. 13,769, 82 Fed. Reg. 8977 (January 27, 2017), <https://www.gpo.gov/fdsys/pkg/FR-2017-02-01/pdf/2017-02281.pdf>. The order was enjoined by several courts. *Washington v. Trump*, No. 17-35105, slip op (W.D. Wash.), *rev'd*, 847 F.3d 1151 (9th Cir. Feb. 9, 2017); *Aziz v. Trump*, 234 F.Supp.3d 724, slip op. (E.D. Va. Feb. 13, 2017); *Hawaii v. Trump*, 859 F.3d 741, 771 (9th Cir. 2017), *cert. granted sub nom Trump v. Int'l Refugee Assistance Project*, 137 S. Ct. 2080 (2017); *Int'l Refugee Assistance Project v. Trump*, 241 F.Supp.3d 539 (D. Md.), *rev'd*, 857 F.3d 554 (4th Cir. May 25, 2017). In March 2017, it was replaced by Executive Order 13,780, which removed Iraq from the list of banned countries and included modifications designed to overcome the arguments that had resulted in injunctions against its predecessor. Exec. Order No. 13,780, 82 Fed. Reg. 13209, 13215 (March 6, 2017), § 5(a), <https://www.gpo.gov/fdsys/pkg/FR-2017-03-09/pdf/2017-04837.pdf>

² Proclamation No. 9645, “Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or Other Public-Safety Threats,” September 24, 2017, <https://s3.amazonaws.com/public-inspection.federalregister.gov/2017-20899.pdf> (an unpublished Presidential Document by the Executive Office of the President).

³ Proclamation No. 9645, 6, § 1(g).

⁴ David Bier, “A Dozen Times Trump Equated his Travel Ban with a Muslim Ban,” *CATO at Liberty* (blog), *CATO Institute*, August 14, 2017, <https://www.cato.org/blog/dozen-times-trump-equated-travel-ban-muslim-ban>;

Associated Press, “How Donald Trump’s Plan to Ban Muslim’s Has Evolved,” *Fortune*, June 28, 2016, <http://fortune.com/2016/06/28/donald-trump-muslim-ban/>; Daniella Diaz, “Trump seizes on terror incident to call for travel ban,” *CNN*, September 15, 2017, <http://www.cnn.com/2017/09/15/politics/donald-trump-london-terrorist-attack/index.html>. Trump has also made it clear that he preferred the original version of the ban reflected in Executive Order 13769 to the less overtly discriminatory version that he issued in March 2017 in response to court decisions. Louis Nelson, “Trump slams Justice Department for ‘watered down’ travel ban,” *Politico*, June 5, 2017, <http://www.politico.com/story/2017/06/05/trump-travel-ban-justice-department-239131>.

⁵ Jessica Estepa, “‘Preventing Muslim immigration’ statement disappears from Trump’s campaign site,” *USA Today*, May 8, 2017, <https://www.usatoday.com/story/news/politics/onpolitics/2017/05/08/preventing-muslim-immigration-statement-disappears-donald-trump-campaign-site/101436780/>.

⁶ “Full transcript: Second 2016 presidential debate,” *Politico*, October 10, 2016, <http://www.politico.com/story/2016/10/2016-presidential-debate-transcript-229519>.

⁷ Donald Trump (@realDonaldTrump), “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!,” Twitter, June 5, 2017, 3:44 a.m., <https://twitter.com/realdonaldtrump/status/871679061847879682?lang=en>. And as Trump has advocated for extreme vetting, he has done so in conjunction with his proposal to ban Muslims from the country. *Ibid.*; Lesly Stahl, “The Republican Ticket: Trump and Pence,” *CBS News*, July 17, 2016, <https://www.cbsnews.com/news/60-minutes-trump-pence-republican-ticket/> (In response to a question about his position on Muslim immigration, Trump states: “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.”)

⁸ Peter Baker, “Trump Supports Plan to Cut Legal Immigration by Half,” *New York Times*, August 2, 2017, <https://www.nytimes.com/2017/08/02/us/politics/trump-immigration.html?mcubz=1&r=0>.

⁹ Catherine E. Shoichet, Susannah Cullinane, and Tal Kopan, “U.S. immigration: DACA and Dreamers explained,” *CNN*, September 5, 2017, <http://www.cnn.com/2017/09/04/politics/daca-dreamers-immigration-program/index.html>.

¹⁰ “ICE ERO immigration arrests climb nearly 40%,” Department of Homeland Security, accessed September 15, 2017, <https://www.ice.gov/features/100-days>; Tal Kopan, “ICE: Arrests still up, deportations still down,” *CNN*, August 11, 2017, <http://www.cnn.com/2017/08/11/politics/trump-administration-deportations/index.html>.

¹¹ Anna Brand, “Donald Trump: I would force Mexico to build border wall,” *MSNBC*, June 28, 2015,

<http://www.msnbc.com/msnbc/donald-trump-i-would-force-mexico-build-border-wall>; “President Trump Ranted For 77 Minutes in Phoenix. Here’s What He Said,” *Time*, August 23, 2017, <http://time.com/4912055/donald-trump-phoenix-arizona-transcript/>.

¹² Department of State, *Implementing Immediate Heightened Screening and Vetting of Visa Applications*, by Rex Tillerson, 17 STATE 24324, ¶ 19, <http://fingfx.thomsonreuters.com/gfx/rngs/USA-IMMIGRATION/0100409S0N1/Cables.pdf> (“In order to ensure that proper focus is given to each application, posts should generally not schedule more than 120 visa interviews per consular adjudicator/per day.”). The administration also repealed an Obama-era directive, Executive Order 13597, which required 80 percent of nonimmigrant visa interviews to be scheduled within three weeks of when applications were received. Exec. Order No. 13,802, 82 Fed. Reg. 28747 (June 21, 2017), <https://www.federalregister.gov/documents/2017/06/26/2017-13458/amending-executive-order-13597>; Exec. Order No. 13,597, 77 Fed. Reg. 3373 (January 19, 2012), <https://www.gpo.gov/fdsys/pkg/FR-2012-01-24/pdf/2012-1568.pdf>.

¹³ David Bier, “The Trump administration’s stealth attack on legal immigration,” *Washington Post*, August 28, 2017, https://www.washingtonpost.com/opinions/the-trump-administrations-stealth-attack-on-legal-immigration/2017/08/28/afbf1912-8c04-11e7-8df5-c2e5cf46c1e2_story.html?utm_term=.ca50400f3b91.

¹⁴ *Hawai’i v. Trump*, 241 F. Supp. 3d at 1140; *Aziz v. Trump*, 234 F.Supp.3d 724, 737 (E.D. Va. Feb. 13, 2017).

¹⁵ *Hawaii v. Trump*, 859 F.3d at 771.

¹⁶ Robert Lawson (Professor, Southern Methodist University, Cox School of Business) in discussion with Faiza Patel (Co-Director, Liberty and National Security Program, Brennan Center for Justice), March 2017. Data from Lawson’s Ease of Travel for Foreign Visitors Index was also published in: Robert Lawson and Jayme Lemke, “Travel Visas,” *Public Choice* 153:1-2, 2012, 17-36; James Gwartney, Robert Lawson, and Joshua Hall, *Economic Freedom of the World: 2016 Annual Report*, Fraser Institute, 2016, 182, 280, <https://www.fraserinstitute.org/sites/default/files/economic-freedom-of-the-world-2016.pdf>.

¹⁷ Overstays of temporary visas do make up a significant number of the overall population that is in the United States without authorization. According to DHS, in 2016, about one percent – or 629,000 – travelers overstayed their temporary visas and became unauthorized to remain in the United States. Department of Homeland Security, *Fiscal Year 2016 Entry/Exit Overstay Report*, Department of Homeland Security, 2017, iv, <https://www.dhs.gov/sites/default/files/publications/Entry%20and%20Exit%20Overstay%20Report%2C%20Fiscal%20Year%202016.pdf>. This does not, however, mean that the front-end process is inadequate but rather points to the well-recognized need to improve systems for ensuring that travelers leave the country when their visas expire. Office of Inspector General, *DHS Tracking of Visa Overstays is Hindered by Insufficient Technology*, OIG-17-56, Department of Homeland Security, 2017, 21-25, https://www.oig.dhs.gov/sites/default/files/assets/2017/OIG-17-56-May17_0.pdf.

¹⁸ This review was required by Executive Order 13780. 82 Fed. Reg. 13212, § 2. It was temporarily enjoined by a federal court as part of the travel ban litigation, but allowed to go forward in June 2017. *Hawaii v. Trump*, No. 17-00050-DKW-KSC at 23 (D. Haw. Mar. 23, 2017); *Hawaii v. Trump*, 859 F.3d 741.

¹⁹ Proclamation No. 9645, 1, 6.

²⁰ *Ibid.* at 7, § 1(h).

²¹ Department of State – Bureau of Consular Affairs, “FY 2016 Nonimmigrant Visas Issues,” accessed September 28, 2017, <https://travel.state.gov/content/dam/visas/Statistics/Non-Immigrant-Statistics/NIVDetailTables/FY16%20NIV%20Detail%20Table.pdf> (100 nonimmigrant visas issued); Department of State – Bureau of Consular Affairs, “Table XIV: Immigrant Visas Issued at Foreign Service Posts (by Foreign State Chargeability) (All Categories) Fiscal Years 2007-2016,” accessed September 28, 2017, <https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2016AnnualReport/FY16AnnualReport-TableXIV.pdf> (9 immigrant visas issued).

²² David Bier, “New Travel Ban Would Not Have Prevented the Entry of Any Terrorists Since 9/11,” Cato Institute, September 25, 2017, accessed September 28, 2017, <https://www.cato.org/blog/new-travel-ban-wouldve-prevented-entry-no-terrorists-911>.

²³ “Notice of Information Collection Under OMB Emergency Review: Supplemental Questions for Visa Applicants,” 82 Fed. Reg. 20957 (May 4, 2017), <https://www.federalregister.gov/documents/2017/05/04/2017-08975/notice-of-information-collection-under-omb-emergency-review-supplemental-questions-for-visa>. This initiative was undertaken under Executive Order 13780 (which replaced Executive Order 13769 to better withstand legal scrutiny), presumably under Section 5 which calls for the development of “uniform baseline for screening and vetting standards and procedures” for people coming to the U.S. These vetting standards were to be part of a

program to detect those who: try to enter the country fraudulently; support terrorism, violent extremism, or violence against groups of people; or may otherwise cause harm after gaining entry. 82 Fed. Reg. 13215, § 5(a).

²⁴ “60-Day Notice of Proposed Information Collection: Supplemental Questions for Visa Applicants,” 82 Fed. Reg. 36,180 (August 3, 2017), <https://www.gpo.gov/fdsys/pkg/FR-2017-08-03/pdf/2017-16343.pdf>.

²⁵ Visa numbers were taken from the State Department’s website. For source, please see note 142’s citation of nonimmigrant visa data.

²⁶ Yeganeh Torbati, “Trump administration approves tougher visa vetting, including social media checks,” *Reuters*, May 31, 2017, <http://www.reuters.com/article/us-usa-immigration-visa/trump-administration-approves-tougher-visa-vetting-including-social-media-checks-idUSKBN18R3F8>; Elizabeth Weise, “U.S. now can ask travelers for Facebook, Twitter handles,” *USA Today*, June 1, 2017, <https://www.usatoday.com/story/tech/news/2017/06/01/us-now-can-ask-travelers-facebook-twitter-handles/102393236/>.

²⁷ A senior DHS official has said the administration was working on an ideological test, and then-DHS Secretary and current White House Chief of Staff John Kelly admitted that some travelers are asked ideological questions. Laura Meckler, “Trump Administration Considers Far-Reaching Steps for ‘Extreme Vetting,’” *Wall Street Journal*, April 4, 2017, <https://www.wsj.com/articles/trump-administration-considers-far-reaching-steps-for-extreme-vetting-1491303602>; *Improving Border Security and Public Safety: Hearing Before the S. Comm. On Homeland Security and Governmental Affairs*, 115th Cong. (April 5, 2017) (transcript at 12, available at <https://goo.gl/CKvqEN>).

²⁸ See *Attachment 1: Statement of Objectives*, Immigration and Customs Enforcement Office, U.S. Department of Homeland Security, “Presolicitation Notice, Solicitation No. HSCEMD-17-R-00010, ICE-HIS – Data Analysis Service Amendment,” FedBizOpps.Gov, posted June 12, 2017, 3:09 PM, accessed September 18, 2017, https://www.fbo.gov/index?s=opportunity&mode=form&id=3abbd0ebcab146118a6f6a0ec44c2b4&tab=core&_cvi_ew=1; See also *ibid*, *Attachment 2: Background*. The “Industry Day” materials prepared by ICE-HIS for this Presolicitation Notice were obtained and released by The Intercept in August 2017. Sam Biddle and Spencer Woodman, “These Are the Technology Firms Lining Up to Build Trump’s ‘Extreme Vetting’ Program,” *Intercept*, August 7, 2017, <https://theintercept.com/2017/08/07/these-are-the-technology-firms-lining-up-to-build-trumps-extreme-vetting-program/>.

²⁹ National Travel and Tourism Office, “Table C - Section 1: Total Arrivals, Canada, Mexico, Total Overseas, Europe Non-Resident Arrivals to the U.S. By world region/country of residence April 2017 (Preliminary*),” Department of Commerce (spreadsheet), release date September 2017, accessed September 27, 2017, <http://tinet.ita.doc.gov/view/m-2017-I-001/table1.asp>.

³⁰ Elaine Glusac, “International Tourism to the U.S. Declined in Early 2017,” *New York Times*, September 19, 2017, <https://www.nytimes.com/2017/09/19/travel/tourism-united-states-international-decline.html?mcubz=0>.

³¹ Sam Levin, “No African citizens granted visas for African trade summit in California,” *Guardian*, March 20, 2017, <https://www.theguardian.com/us-news/2017/mar/20/no-african-citizens-visas-california-annual-trade-summit>.

³² Shelley K. Mesch, “US-Africa Energy Summit at Monona Terrace canceled after visas denied,” *Wisconsin State Journal*, September 7, 2017, http://host.madison.com/wsj/business/u-s--africa-energy-summit-at-monona-terrace-canceled/article_95fcaff6-6bd3-59e9-86f8-8b5d645a619c.html.

³³ Chris Fuchs, “Tibetan Women’s Soccer Team Respond After Being Denied U.S. Visas for Tournament,” *NBC News*, March 3, 2017, <https://www.nbcnews.com/news/asian-america/denied-visas-u-s-tibet-women-s-soccer-team-hold-n728626>; Derek Hawkins, “Afghan girls team can travel to U.S. for robotics contest after being denied visas twice,” *Washington Post*, July 13, 2017, https://www.washingtonpost.com/news/morning-mix/wp/2017/07/13/afghan-girls-team-can-travel-to-u-s-for-robotics-contest-after-visas-denied-twice/?utm_term=.fd58135c890a. After being denied twice, and after backlash from human rights advocates, the Afghan robotics team was allowed to enter the country after the State Department formally requested that DHS grant the team members “parole,” allowing them one-time entry for humanitarian reasons or “significant public benefit.” The Gambian team for the same competition was also initially denied and then granted the same exception. *Ibid*.

³⁴ Anastasia Tsioulcas, “Three More SXSW-Bands Denied Entry Into The U.S.,” *NPR*, March 13, 2017, <http://www.npr.org/sections/therecord/2017/03/13/520010920/three-more-sxsw-bound-bands-denied-entry-into-the-u-s>; Padraic Flanagan and Raf Sanchez, “Nigella Lawson barred from boarding US-bound flight,” *Telegraph*, April 2, 2014, <http://www.telegraph.co.uk/news/celebritynews/10740907/Nigella-Lawson-barred-from-boarding-US-bound-flight.html>.

³⁵ 82 Fed. Reg. 13217, at § 11(iii) (references violence against women and “honor killings”); 82 Fed. Reg. 8977, at § 1 (“The United States cannot, and should not, admit those who do not support the Constitution . . . In addition, the United States should not admit those who engage in acts of bigotry or hatred (including “honor” killings, other forms

of violence against women, or the persecution of those who practice religions different from their own) or those who would oppress Americans of any race, gender, or sexual orientation...”).

³⁶ Calculated using publicly available data from the U.S. State Department website. Visa Waiver Program countries are counted as countries from which visas are not required.

³⁷ Ted Hesson, “Trump administration introduces green card hurdle,” *Politico*, August 25, 2017, <http://www.politico.com/story/2017/08/25/trump-administration-green-card-hurdle-242050>; Bier, “The Trump administration’s stealth attack on legal immigration.”

³⁸ Alex Nowrasteh, *Terrorism and Immigration: A Risk Analysis*, Cato Institute, 2016, No. 798, 5, https://object.cato.org/sites/cato.org/files/pubs/pdf/pa798_2.pdf.

³⁹ Emmanuelle Saliba, “You’re More Likely to Die Choking Than Be Killed by Foreign Terrorists, Data Show,” *NBC News*, February 1, 2017, <https://www.nbcnews.com/news/us-news/you-re-more-likely-die-choking-be-killed-foreign-terrorists-n715141>. Other striking comparative risk statistics: toddlers with guns killed more people than foreign terrorists in 2015. Christopher Ingraham, “People are getting shot by toddlers on a weekly basis this year,” *Washington Post*, October 14, 2015, https://www.washingtonpost.com/news/wonk/wp/2015/10/14/people-are-getting-shot-by-toddlers-on-a-weekly-basis-this-year/?utm_term=.ea27df29d3d1; Kim LaCapria, “Toddlers Killed More Americans than Terrorists in 2015,” Snopes, accessed September 15, 2017, <http://www.snopes.com/toddlers-killed-americans-terrorists/>; Gary Younge, “Trump fears terrorists, but more Americans are shot dead by toddlers,” *Guardian*, February 8, 2017, <https://www.theguardian.com/commentisfree/2017/feb/08/trump-muslim-terrorists-gun-violence-america-deaths>. Since September 11, 2001, an average American has been as likely to be crushed by a television or furniture as a terrorist attack. Micah Zenko, “America Is a Safe Place,” *Council on Foreign Relations* (blog), February 24, 2012, <https://www.cfr.org/blog/america-safe-place>.

⁴⁰ Nowrasteh, *Terrorism and Immigration: A Risk Analysis*, 13.

⁴¹ One possible exception is Mohamad Hadayet, who opened fire at Los Angeles International Airport in 2002. For more details see, Eddy Rameriz, “Panel Probes LAX Gunman,” *Los Angeles Times*, October 10, 2002, <http://articles.latimes.com/2002/oct/10/local/me-lax10> (Immigration officials reportedly “doubted Hadayet was a peaceful man when he requested political asylum in 1992.”).

⁴² Tashfeen Malik entered the U.S. on July 27, 2014. She and Syed Rizwan Farook perpetrated the San Bernardino attacks on December 2, 2015 – just under a year and a half after Ms. Malik entered the U.S. Brian Ross et al., “Welcome to America: New Photo Shows San Bernardino Terror Couple Entering US,” *ABC News*, December 7, 2015, <http://abcnews.go.com/US/america-photo-shows-terror-couple-entering-us/story?id=35615829>.

⁴³ Nowrasteh, *Terrorism and Immigration: A Risk Analysis*, 8. The statistic takes into account only visas types that have been used by terrorists to enter the U.S.

⁴⁴ 82 Fed. Reg. 13212, § 1(h) (emphasis added). The order appears to be referencing a study overseen by then-Senator Jeff Sessions, which purportedly shows that there have been more than 380 convictions of foreign-born people on terrorism-related charges from September 11, 2001 through the end of 2014. Analyses by the Brennan Center and the Cato Institute have shown that this number is significantly inflated. First, the Sessions study covers “terrorism-related” charges, which encompass crimes that might start on a terrorism tip but end in something wholly unrelated – one of the listed cases involves a conviction for receiving stolen cereal shipments, because the initial investigation stemmed from unfounded information on possible arms purchases. Alex Nowrasteh, “42 Percent of ‘Terrorism-Related’ Convictions Aren’t for Terrorism,” *CATO at Liberty* (blog), *Cato Institute*, March 6, 2017, <https://www.cato.org/blog/42-percent-terrorism-related-convictions-arent-terrorism>; In fact, only about half of the convictions included in the Sessions study were actually for terrorism offenses. Andrew Lindsay, “What the Data Tells Us About Immigration and Terrorism,” *Brennan Center for Justice* (blog), February 17, 2017, <https://www.brennancenter.org/blog/what-data-tells-us-about-immigration-and-terrorism>. And even among the terrorism convictions included in Sessions’ study, most did not involve any kind of attack in the U.S. but were charges of “material support” for terrorism, which are cases where money, goods or other resources were provided to someone associated with a U.S. designated terrorist group. *Ibid.*

⁴⁵ Department of Justice, “Former Iraqi Terrorists Living in Kentucky Sentenced for Terrorist Activities,” news release, January 29, 2013, <https://www.justice.gov/opa/pr/former-iraqi-terrorists-living-kentucky-sentenced-terrorist-activities>.

⁴⁶ Brief of Former Nat’l Sec. Officials as Amicus Curiae in Support of Plaintiff-Appellees at 8, *Hawaii v. Trump*, 859 F.3d 741 (no. 16-1540) (Docket No. 108), available at <http://cdn.ca9.uscourts.gov/datastore/general/2017/04/20/17-15589%20Former%20National%20Security%20Officials%20Amicus.pdf>.

⁴⁷ Office of Intelligence & Analysis, U//FOUO: *Most Foreign-born, US-Based Violent Extremists Radicalized after Entering Homeland; Opportunities for Tailored CVE Programs Exist*, Department of Homeland Security, IA-0091-12, 2017, 1, <http://i2.cdn.turner.com/cnn/2017/images/03/03/dhs.intell.assessment.pdf>.

⁴⁸ Robert A. Lawson and Saurav Roychoudhury, “Do Travel Visa Requirements Impede Tourist Travel?,” *Journal of Economics and Finance* 40:4, 816-828, 825 (2016).

⁴⁹ Ron Nixon and Jasmine C. Lee, “Getting a Visa to Visit the U.S. Is a Long and Extensive Process for Most,” *New York Times*, March 16, 2017, <https://www.nytimes.com/interactive/2017/03/16/us/visa-process-united-states.html>; David Muir, Christine Brouwer, and Maggy Patrick, “Made in America: Visa Process Slows Down Tourism,” *ABC News*, October 31, 2011, <http://abcnews.go.com/US/made-america-visa-process-slowng-tourism/story?id=14853459>; American Immigration Council, *Why Don’t They Just Get In Line? There Is No Line for Many Unauthorized Immigrants*, American Immigration Council, 2016, https://www.americanimmigrationcouncil.org/sites/default/files/research/why_dont_they_just_get_in_line_and_come_legally.pdf.

⁵⁰ “DS-160 Nonimmigration Visa Application Form: A Complete Step-by-step Instructional Guide,” U.S. Embassy Kingston, Jamaica (PowerPoint Presentation), <https://photos.state.gov/libraries/jamaica/231771/PDFs/DS-160%20Instructions.pdf>; “Safety & Security of U.S. Borders: Biometrics,” Department of State – Bureau of Consular Affairs, accessed September 17, 2017, <https://travel.state.gov/content/visas/en/general/border-biometrics.html>; “USA Visitor Visa - Visitor Documents,” Immihelp, accessed September 21, 2017, <https://www.immihelp.com/visitor-visa/visitor-documents.html>.

⁵¹ Immigration and Nationality Act (INA) of June 27, 1952, Pub. L. No. 82-414, 66 Stat. 163 (1952) (codified as amended in scattered sections of 8 U.S.C.).

⁵² INA § 214 (b) (amended as codified in 8 U.S.C. § 1184 (b) (An applicant “shall be presumed to be an immigrant until he establishes to the satisfaction of the consular officer, at the time of application for a visa, and the immigration officers, at the time of application for admission, that he is entitled to a nonimmigrant status.”). Failure to meet this burden is by far the most common basis for the denial of a nonimmigrant visa application. “Table XX: Immigrant and Nonimmigrant Visa Ineligibilities (by Grounds for Refusal Under the Immigration and Nationality Act) Fiscal Year 2016,” Department of State – Bureau of Consular Affairs, accessed September 18, 2017, <https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2016AnnualReport/FY16AnnualReport-TableXX.pdf> (approximately 2.8 million out of 3.7 million findings of nonimmigrant ineligibility in fiscal year 2016 were related to “failure to establish entitlement to nonimmigration status” according to section 214(b) of the INA). For *all* visa applications for admission to the U.S. the burden of proof is on the person applying “to the satisfaction of the consular officer that he is eligible to receive a visa or other document required for entry.” INA § 214 (b) (codified as amended in 8 U.S.C. § 1361); Department of State, *INA 214 (b), Basis of Refusal Not Equivalent to Inadmissibility or Immigrant Intent*, by Collin Powell, UNCLAS STATE 274068, ¶ 9, http://www.nafsa.org/uploadedFiles/dos_cable_reviews_policy.pdf?n=8421.

⁵³ “Visitor Visa,” Department of State – Bureau of Consular Affairs, accessed September 19, 2017, <https://travel.state.gov/content/visas/en/visit/visitor.html> (see section “Additional Documentation May Be Required”); “Business/Tourist Visa: Supporting Documents,” U.S. Travel Documents, accessed September 19, 2017, <http://www.ustraveldocs.com/in/in-niv-typeb1b2.asp#supportingdocs> (affiliate of the Department of State).

⁵⁴ Department of State, “Ineligibilities and Grounds for Refusals,” 9 Foreign Affairs Manual 301.4, <https://fam.state.gov/fam/09FAM/09FAM030104.html> (overviewing and linking to instructions for various grounds of refusal); INA § 212 (a) (codified as amended in 8 U.S.C. § 1182).

⁵⁵ INA § 214 (b).

⁵⁶ “Ask the State Department: Andrew Simkin,” Department of State (Archives), modified February 2, 2006, accessed September 17, 2017, <https://2001-2009.state.gov/r/pa/ei/ask/79932.htm>.

⁵⁷ Doris Meissner et al., *Immigration Enforcement in the United States: The Rise of a Formidable Machine, Report in Brief*, Migration Policy Institute, 2013, 13, <http://www.migrationpolicy.org/pubs/pillars-reportinbrief.pdf>.

⁵⁸ Hearing on “Overturning 30 Years of Precedent: Is the Administration Ignoring the Dangers of Training Libyan Pilots and Nuclear Scientists,” Before the House Committee on the Judiciary Subcommittee on Immigration and Border Security and House Committee on Oversight and Government Reform, Subcommittee on National Security, accessed April 3, 2014, <https://www.dhs.gov/news/2014/04/03/written-testimony-plcy-joint-house-judiciary-and-house-oversight-and-government> (written testimony of PLCY Office of International Affairs Assistant Secretary and Chief Diplomatic Officer Alan Bersin).

⁵⁹ Jerome P. Bjelopera, Bart Elias, and Alison Siskind, *The Terrorist Screening Database and Preventing Terrorist Travel*, Congressional Research Service, R44678, 2016, 10, <https://fas.org/sgp/crs/terror/R44678.pdf>. The National Counterterrorism Center “leads the way for the USG in terms of analyzing, understanding, and responding to the terrorist threat.” “What We Do,” National Counterterrorism Center, accessed September 22, 2017, <https://www.dni.gov/index.php/nctc-what-we-do>.

⁶⁰ Hearing on “The Homeland Threat Landscape and U.S. Response” Before the S. Comm. On Homeland Security and Governmental Affairs, November 14, 2013 (testimony of Matthew G. Olsen, Director, National Counterterrorism Center, available at <https://www.hsgac.senate.gov/download/?id=4832A095-4FB4-4686-A689-0E14FC665CE9>; National Counterterrorism Center, Terrorist Identities Datamart Environment (TIDE) Fact Sheet, accessed September 22, 2017, https://www.dni.gov/files/Tide_Fact_Sheet.pdf (“The Terrorist Identities Datamart Environment (TIDE) is the US Government’s (USG) central repository of information on international terrorist identities.”).

⁶¹ Department of State, “Briefing on the Current K-1 Visa Screening Process and Review,” news release, December 17, 2015, accessed September 22, 2017, <https://2009-2017.state.gov/r/pa/prs/ps/2015/12/250747.htm>.

⁶² Hearing on “From the 9/11 Hijackers to Amine El-Khalifi: Terrorists and the Visa Overstay Problem” Before the House Committee on Homeland Security Subcommittee on Border and Maritime Security, March 6, 2012, 3, <https://homeland.house.gov/files/Testimony%20Donahue.pdf> (written statement of David Donahue, Deputy Assistant Secretary for Visa Services, Department of State).

⁶³ *Ibid.*, 4.; Hearing on “TSC’s Role in the Interagency Watchlisting and Screening Process,” Before the House Homeland Security Committee, Subcommittee on Transportation Security, September 18, 2014, <https://www.fbi.gov/news/testimony/tscs-role-in-the-interagency-watchlisting-and-screening-process> (statement by Christopher M. Piehota, Director, Terrorist Screening Center, Federal Bureau of Investigations).

⁶⁴ Hearing on “From the 9/11 Hijackers to Amine El-Khalifi: Terrorists and the Visa Overstay Problem” Before the House Committee on Homeland Security Subcommittee on Border and Maritime Security, March 6, 2012, 1, <https://homeland.house.gov/files/Testimony%20Donahue.pdf> (written statement of David Donahue, Deputy Assistant Secretary for Visa Services, Department of State); Ruth Ellen Wasem, *Immigration: Visa Security Policies*, Congressional Research Service, R43589, 2015, 6, <https://fas.org/sgp/crs/homesec/R43589.pdf> (summary)

⁶⁵ Hearing on “Marriage Fraud,” Before the Senate Committee on the Judiciary, <https://www.judiciary.senate.gov/imo/media/doc/03-15-17%20Donahue%20Testimony.pdf> (written testimony of David Donahue, Acting Assistant Secretary of State, Bureau of Consular Affairs, Department of State).

⁶⁶ Please see notes 106 and 107 below for further discussion on the pros and cons of biometric systems as they are currently employed.

⁶⁷ “Office of Biometric Identity Management Identification Services,” Department of Homeland Security, accessed September 17, 2017, <https://www.dhs.gov/obim-biometric-identification-services>.

⁶⁸ “Safety & Security of U.S. Borders: Biometrics,” Department of State – Bureau of Consular Affairs, accessed September 17, 2017, <https://travel.state.gov/content/visas/en/general/border-biometrics.html>. This is an inflexible requirement: applicants who arrive at a consulate or embassy to be fingerprinted with cuts or blisters on any of their fingers or thumbs will not have their application processed. For more details see, for example, “The Interview,” U.S. Embassy & Consulates in the United Kingdom, accessed September 17, 2017, <https://uk.usembassy.gov/visas/tourism-visitor/the-interview/>. Countries whose citizens do not require visas to enter the U.S. must issue passports that contain biometric identifiers. Department of State – Bureau of Consular Affairs, “Visa Waiver Program,” accessed September 19, 2017, <https://travel.state.gov/content/visas/en/visit/visa-waiver-program.html> (“[Y]ou must have an e-passport to use the VWP.”); “e-Passports,” Department of Homeland Security, accessed September 19, 2017, <https://www.dhs.gov/e-passports> (“An e-Passport also contains a biometric identifier.”).

⁶⁹ Kenneth Gantt and Jonathan Cantor, *Privacy Impact Assessment for the Automated Biometric Identification System (IDENT)*, Department of Homeland Security, 2012, 4-5, https://www.dhs.gov/sites/default/files/publications/privacy/PIAs/privacy_pia_usvisit_ident_appendixj_jan2013.pdf. Databases of known or suspected terrorists have long been criticized as being bloated and inaccurate, meaning that many more people are likely to be tagged as positive matches than likely have any connection to terrorism. For more details see, for example, Jeremy Scahill and Ryan Deveraux, “The Secret Government Rulebook for Labelling You a Terrorist,” *Intercept*, July 23, 2014, <https://theintercept.com/2014/07/23/blacklisted/>; Jeremy Scahill and Ryan Deveraux, “Watch Commander: Barack Obama’s Secret Terrorist-Tracking System, By the Numbers,” *Intercept*, August 5, 2014, <https://theintercept.com/2014/08/05/watch-commander/>; American Civil Liberties Union,

U.S. Government Watchlisting: Unfair Process and Devastating Consequences, American Civil Liberties Union, March 2014, <https://www.aclu.org/other/us-government-watchlisting-unfair-process-and-devastating-consequences>.

⁷⁰ Data from Passenger Name Record (PNR) agreement has reportedly been useful to homeland security officials. For more details see *Ten Years After 9/11: Are We Safer?: Hearing Before the S. Comm. on Homeland Security and Governmental Affairs*, 112th Congress 403 (2011) (testimony of Janet Napolitano, former Secretary, Department of Homeland Security, at 10, available at <https://www.hsdl.org/?view&did=733983>) (“During 2008 and 2009, PNR helped the United States identify individuals with potential ties to terrorism in more than 3,000 cases, and in Fiscal Year 2010, approximately one quarter of those individuals denied entry to the United States for having ties to terrorism were initially identified through the analysis of PNR.”). However, the sharing of PNR information has been widely criticized as violating privacy and opening the door to discrimination – in July 2017, the European Court of Justice struck down a proposed PNR agreement between the E.U. and Canada as contrary to fundamental EU rights, including those relating to privacy and data protection. Opinion of Advocate General Mengozzi in Opinion 1/15 (Request for an opinion submitted by the European Parliament), delivered on 8 September 2016, ECLI:EU:C:2016:656, ¶ 328, <https://tinyurl.com/y7abnerj>. This suggests that the E.U./U.S. PNR agreement – with laxer data use and retention restrictions – is in legal danger. Kenneth Propp, “The Coming Threat to Trans-Atlantic Data Transfer Agreements,” *Lawfare*, June 8, 2016, <https://www.lawfareblog.com/needles-haystacks-coming-threat-trans-atlantic-data-transfer-agreements>.

⁷¹ Thomas Bush and Mary Ellen Callahan, *Privacy Impact Assessment for the Automated Targeting System*, Department of Homeland Security, 2012, 6, https://www.dhs.gov/xlibrary/assets/privacy/privacy_pia_cbp_at006b.pdf (the State Department can use ATS-P to vet visa applications).

⁷² “FAQ: Administrative Processing,” Maggio+Kattar and the Dickinson School of Law at Pennsylvania State University, accessed September 17, 2017, http://www.maggio-kattar.com/sites/default/files/FAQ%20FINAL%20%282%29_0.pdf.

⁷³ “Administrative Processing Information,” Department of State – Bureau of Consular Affairs, accessed September 17, 2017, <https://travel.state.gov/content/visas/en/general/administrative-processing-information.html>.

⁷⁴ Liam Schwartz, Avi Friedman, and Anastasia Tonello, “‘DOS’ And ‘DON’T’S’ For Attorneys Representing Visa Applicants (And for Consular Officers, Too!),” from *Immigration Practice Pointers*, American Immigration Lawyers Association, 2010, 530, <http://www.ailawebcle.org/resources/Resources%20for%209-13-11%20Seminar.pdf> (“Don’t anticipate a quick resolution for a Visas Donkey SAO.”); “Security Advisory Opinions,” Dinsmore Immigration Law, accessed September 6, 2017, <http://immigration.dinsmore.com/faq/travel/security-advisory-opinions> (“Visas Donkey is requested when there is a direct ‘hit’ on the visa applicant’s name in the CLASS system. This type of SAO is requested if, for example, the applicant’s name is a direct match to that of a known terrorist.”).

⁷⁵ *Threats to the Homeland: Hearing Before the S. Comm. on Homeland Security and Governmental Affairs*, 113th Cong. 426 (2013) (testimony of Matthew G. Olsen, Director, National Counterterrorism Center), at 9-10; “Terrorist Identities Datamart Environment (TIDE),” National Counterterrorism Center, accessed September 17, 2017, https://www.dni.gov/files/NCTC/documents/features_documents/TIDEfactsheet10FEB2017.pdf.

⁷⁶ Department of State, “Briefing on the Current K-1 Visa Screening Process and Review.”

⁷⁷ Additional statements making clear Trump’s intention to keep Muslims out of America can be found in: David Bier, “A Dozen Times Trump Equated his Travel Ban with a Muslim Ban,” CATO at Liberty (Blog, Cato Institute, August 14, 2017, <https://www.cato.org/blog/dozen-times-trump-equated-travel-ban-muslim-ban>); Alan Gomez, “What President Trump has said about the travel ban,” *USA Today*, June 11, 2017, <https://www.usatoday.com/story/news/politics/2017/06/11/what-president-trump-has-said-about-muslims-travel-ban/102565166/>; *Hawaii v. Trump*, 241 859 F.3d 741, at n. 14; *Int’l Refugee Assistance Project v. Trump*, 15-1351, at 18-23.

⁷⁸ Fred Barbash, “Muslim ban language suddenly disappears from Trump campaign website after Spicer questions,” *The Washington Post*, May 9, 2017, https://www.washingtonpost.com/news/morning-mix/wp/2017/05/09/trumps-preventing-muslim-immigration-vow-disappears-from-campaign-website-after-spicer-questioned/?utm_term=.0fd2951989b8.

⁷⁹ Alan Gomez, “What President Trump has said about the travel ban,” USA Today, June 11, 2017, <https://www.usatoday.com/story/news/politics/2017/06/11/what-president-trump-has-said-about-muslims-travel-ban/102565166/>.

⁸⁰ “Transcript of the Second Debate,” *New York Times*, October 10, 2016,

<https://www.nytimes.com/2016/10/10/us/politics/transcript-second-debate.html?mcubz=1&r=0>.

⁸¹ “Meet the Press – July 24, 2016,” *NBC News*, July 24, 2016, <https://www.nbcnews.com/meet-the-press/meet-press-july-24-2016-n615706>.

⁸² Daniel White, “Read Donald Trump’s Ohio Speech on Immigration and Terrorism,” *Time*, August 15, 2016, <http://time.com/4453110/donald-trump-national-security-immigration-terrorism-speech/>.

⁸³ “Exclusive Interview with Donald Trump,” Anderson Cooper 360 Degrees, *CNN*, March 9, 2016, <http://www.cnn.com/TRANSCRIPTS/1603/09/acd.01.html>.

⁸⁴ Mathew Wisner, “Donald Trump Calls for End of Visa Waiver Program,” *FOX Business*, March 22, 2016, <http://www.foxbusiness.com/politics/2016/03/22/donald-trump-calls-for-end-visa-waiver-program.html>.

⁸⁵ Katie Reilly, “Donald Trump on Proposed Muslim Ban: ‘You Know My Plans,’” *Time*, December 21, 2016, <http://time.com/4611229/donald-trump-berlin-attack/>.

⁸⁶ *Hawaii v. Trump*, 241 F.Supp.3d at 1126.

⁸⁷ Natasha Bertrand, “Giuliani: Trump asked me how to do a Muslim ban ‘legally,’” *Business Insider*, January 29, 2017, <http://www.businessinsider.com/giuliani-trump-asked-me-how-to-do-a-muslim-ban-legally-2017-1>.

⁸⁸ “Adjusted Refusal Rate – B-Visas Only by Nationality Fiscal Year 2016,” Department of State, accessed September 17, 2017, <https://travel.state.gov/content/dam/visas/Statistics/Non-Immigrant-Statistics/RefusalRates/FY16.pdf>.

⁸⁹ Department of State, “Timeliness of Interview,” 9 Foreign Affairs Manual 504.7-2(b), available at <https://fam.state.gov/fam/09FAM/09FAM050407.html>. Though temporary visa interviews typically last a few minutes, the State Department estimates that applicants will spend a longer time at the consulate while application materials are reviewed and processed. For more details see, for example, “Day of the Interview,” U.S. Embassy & Consulates in the United Arab Emirates, accessed September 19, 2017, <https://uk.usembassy.gov/visas/tourism-visitor/the-interview/>. Moreover, the interview is highly significant because it is the point when pieces of the application come together to give the adjudicator a chance to verify claims within provided materials and fill in informational gaps. The process is not perfunctory: consular officers must take notes, and create a “detailed record of the interview” when decisions are difficult or controversial so that “the basis for final action can be fully documented.” Department of State, “How to Conduct Visa Interviews,” 9 Foreign Affairs Manual 403.5 -3, <https://fam.state.gov/searchapps/viewer?format=html&query=u&links=U&url=/FAM/09FAM/09FAM040305.html>.

⁹⁰ “Ask the State Department: Andrew Simkin,” Department of State (Archives) (“The techniques that consular officers use to fight fraud are varied. Probably the best technique is simple: the personal interview.”).

⁹¹ Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108-458, 118 Stat. 3735 Sec. 5301 (2004) (requires, subject to such limited exceptions, “every alien applying for a nonimmigrant visa” between the ages of 14 and 79 to be interviewed); *The Security of U.S. Visa Programs: Hearing Before the S. Comm. on Homeland Security and Governmental Affairs*, 114th Cong. (2016) (written statement of David T. Donahue, Principal Deputy Assistant Secretary for Consular Affairs, Department of State, available at <https://www.hsdl.org/?view&did=796753>) (“The vast majority of visa applicants are interviewed by a consular officer.”).

⁹² Intelligence Reform and Terrorism Prevention Act of 2004; *The Security of U.S. Visa Programs: Hearing Before the S. Comm. on Homeland Security and Governmental Affairs*, 114th Cong. (2016) (written statement of David T. Donahue, Principal Deputy Assistant Secretary for Consular Affairs, Department of State).

⁹³ *The Security of U.S. Visa Programs: Hearing Before the S. Comm. on Homeland Security and Governmental Affairs*, 114th Cong. (2016) (written statement of David T. Donahue, Principal Deputy Assistant Secretary for Consular Affairs, Department of State, at 5-6).

⁹⁴ “Ask the State Department: Andrew Simkin,” Department of State (Archives); Department of State, “Interview by Consular Officer,” 9 Foreign Affairs Manual 504.7-3(A)(d), <https://fam.state.gov/fam/09FAM/09FAM050407.html>.

⁹⁵ *Kerry v. Din*, 135 U.S. 2128, 2141 (2015). For a detailed explanation of the doctrine of consular nonreviewability as applied in *Kerry v. Din* see Jungmin Choi, “Doctrine of Consulate Nonreviewability After *Kerry v. Din*,” *Law360*, November 18, 2015, <https://www.law360.com/articles/728556/doctrine-of-consulate-nonreviewability-after-kerry-v-din>. However, consular managers are supposed to review as many nonimmigrant visa denials as possible, but not fewer than 20 percent of them – this is intended to “ensure uniform and correct application of law

and regulations.” Department of State, “(U) NIV Refusal Review Procedures,” 9 Foreign Affairs Manual 403.10-3(D)(1), <https://fam.state.gov/fam/09FAM/09FAM040310.html>.

⁹⁶ Donald Trump, “Full text: Donald Trump’s speech on fighting terrorism,” *Politico*, August 15, 2016, <http://www.politico.com/story/2016/08/donald-trump-terrorism-speech-227025>; Donald Trump, “Transcript of Donald Trump’s Immigration Speech,” *New York Times*, September 1, 2016, <https://www.nytimes.com/2016/09/02/us/politics/transcript-trump-immigration-speech.html?mcubz=1&r=0>.

⁹⁷ Proclamation No. 9645, 5, § 1(c)(iii).

⁹⁸ Donald Trump (@realdonaldtrump), “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!,” Twitter, June 5, 2017, 3:44 a.m., <https://twitter.com/realdonaldtrump/status/871679061847879682?lang=en>; “President Trump Ranted for 77 Minutes in Phoenix. Here’s What He Said,” *Time*; Office of the Press Secretary, “Press Briefing by Principal Deputy Press Secretary Sarah Sanders and VA Secretary David Shulkin, 6/5/2017,” White House, June 5, 2017, <https://www.whitehouse.gov/the-press-office/2017/06/05/press-briefing-principal-deputy-press-secretary-sarah-sanders-and-va> (Deputy Press Secretary Sarah Sanders: “Extreme vetting is taking place.”).

⁹⁹ This is not intended to suggest that the current system operates free of prejudice. Immigration advocates have pointed out that the criteria used to individually vet travelers already operate to disproportionately flag Muslims travelers for further scrutiny. Schwartz, Friedman, and Tonello, “‘DOs’ And ‘DON’Ts’ For Attorneys Representing Visa Applicants (And for Consular Officers, Too!),” at 530 (“A [person] with the name ‘Mohammad Khan’ or ‘Muhammad Ali’ will very likely be subject to a Donkey clearance.”). However, Trump administration policies appear to reinforce and institutionalize bias.

¹⁰⁰ The information in Table II is drawn from § 2 of Proclamation No. 9645.

¹⁰¹ Exec. Order 13780, 82 Fed. Reg. 13,209, 13,212 (§ 2(b)) (March 6, 2017). Countries are also required to “accept the repatriation of their nationals who are subject to a final order of removal in the United States and provide travel documents to facilitate their removal.” 17 STATE 7200, ¶ 9. Recently, the administration announced that it would not issue certain visas to citizens of Cambodia, Eritrea, Guinea, and Sierra Leone for failure to allow for such repatriation. Department of Homeland Security, “DHS Announces Implementation of Visa Sanctions on Four Countries,” released September 13, 2017, accessed September 19, 2017, <https://www.dhs.gov/news/2017/09/13/dhs-announces-implementation-visa-sanctions-four-countries>.

¹⁰² 17 STATE 7200, ¶ 5 (“The [information sharing] standards [related to identity management and security and public safety threats] reflect a mix 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.”)

¹⁰³ A series of U.N. Security Council resolutions relating to preventing terrorism encourage states to crack down on travel document fraud, enhance law enforcement coordination, and exchange information on threats. 17 STATE 7200, ¶ 9 (“These standards ... reinforce UN Security Council Resolutions 1373, 1624, 2178, and 2322, which call on all member states to cooperate in sharing information on the movements of terrorists and require all states to prevent the movement of terrorists or terrorists groups through effective border controls and controls on the issuance of identity papers and travel documents.”); For more details see also S.C. Res. 1373, U.N. Doc. S/RES/1373 (Sept. 28, 2001); S.C. Res. 1624, U.N. Doc. S/RES/1624 (Sept. 14, 2005); S.C. Res. 2322, U.N. Doc. S/RES/2322, (Dec. 12, 2016). Improving such cooperation was also a key recommendation of the 9/11 Commission. 9/11 Commission, *9/11 Commission Report*, 2004, 389, <https://www.9-11commission.gov/report/911Report.pdf>.

¹⁰⁴ 9/11 Commission, *9/11 Commission Report*, 389 (“The international community arrives at international standards for the design of passports through the International Civil Aviation Organization (ICAO)... We must work with others to improve passport standards and provide foreign assistance to countries that need help in making the transition.”); *Ten Years after 9/11: Preventing Terrorist Travel* (written statement of Janice Jacobs, Assistant Secretary of State for Consular Affairs, Dept. of State, at 21, available at <http://www.hsgac.senate.gov/download/2011-07-13-jacobs-testimony>) (“With International Civil Aviation Organization (ICAO) member passport-issuing authorities around the globe, we have strived to ensure that, as with the U.S. passport, other issuing authorities meet internationally established standards for security and interoperability.”). ICAO-compliant passports are required to use the Visa Waiver Program. Department of State – Bureau of Consular Affairs, “Visa Waiver Program” (“[Y]ou must have an e-passport to use the VWP.”).

¹⁰⁵ “ePassport Validation,” International Civil Aviation Organization, accessed September 20, 2017, <https://www.icao.int/Security/FAL/PKD/Pages/ePassport-Validation.aspx>; “ePassport Basics,” International Civil Aviation Organization, accessed September 20, 2017,

<https://www.icao.int/Security/FAL/PKD/Pages/ePassportBasics.aspx>.<https://www.icao.int/Security/FAL/PKD/Pages/ePassportBasics.aspx>.

¹⁰⁶ While a full discussion of criticisms of these mechanisms is outside the purview of this report, we note two important issues here. First, there are privacy and civil liberties concerns that are associated with the increased collection of biometric data and expansion of terrorist watchlisting capabilities enabled by greater access to information on those labeled by foreign governments as terrorist threats. For more details see, for example, “Biometrics,” American Civil Liberties Union, accessed September 19, 2017, <https://www.aclu.org/issues/privacy-technology/surveillance-technologies/biometrics>; Editors, “Biometric Security Poses Huge Privacy Risks,” *Scientific American*, January 1, 2014, <https://www.scientificamerican.com/article/biometric-security-poses-huge-privacy-risks/>; Hugh Handeyside, “Numbers Tell the Story of Our Government’s Watchlisting Binge,” *American Civil Liberties Union* (blog), August 6, 2014, <https://www.aclu.org/blog/national-security/numbers-tell-story-our-governments-watchlisting-binge?redirect=blog/numbers-tell-story-our-governments-watchlisting-binge>; Katitza Rodriguez, “Biometric National IDs and Passports: A False Sense of Security,” *Electronic Frontier Foundation* (blog), June 19, 2012, <https://www.eff.org/deeplinks/2012/06/biometrics-national-id-passports-false-sense-security>. Second, there are outstanding operational issues with the International Civil Aviation Organization (ICAO)-prescribed technical standards, and their more harmonized application across countries is required to ensure that accompanying security benefits are fully realized. For more details see, for example, Daniel Morgan and William Krouse, *Biometric Identifiers and Border Security: 9/11 Commission Recommendations and Related Issues*, Congressional Research Service, RS21916, 2005, 6, <https://fas.org/sgp/crs/homesec/RS21916.pdf>; Antonia Rana and Luigi Sportiello, “Implementation of security and privacy in ePassports and the extended access control infrastructure,” *International Journal of Critical Infrastructure Protection* 7:4, December 2014, 233-243, 242, <http://www.sciencedirect.com/science/article/pii/S1874548214000614#bib1>. Increased compliance with global standards, as the administration’s “worldwide review” seeks to obtain, and a focus on improving the accuracy and security of biometric technology could address the latter set of concerns, but do not appear designed to address the need for privacy and due process safeguards.

¹⁰⁷ For more details see Raymond Benjamin, Secretary General, Doc 9303, *Machine Readable Travel Documents Part 9 – Deployment of Biometric Identification and Electronic Storage of Data in MRTDs*, International Civil Aviation Organization, 2015, 4, https://www.icao.int/publications/Documents/9303_p9_cons_en.pdf (“Biometrics can be used in the identification function to improve the quality of the background checking performed as part of the passport, visa or other travel document application process, and they can be used to establish a positive match between the travel document and the person who presents it.”); “Biometrics,” National Institute of Standards and Technology, modified July 13, 2017, accessed September 17, 2017, <https://www.nist.gov/programs-projects/biometrics>; “Why use of biometrics?” Government of Canada, modified October 19, 2012, accessed September 17, 2017, <http://www.cic.gc.ca/english/department/biometrics-why.asp>; “Biometrics,” Department of Homeland Security, modified February 6, 2017, accessed September 17, 2017, <https://www.dhs.gov/biometrics>.

¹⁰⁸ “ePassport Basics,” International Civil Aviation Organization, accessed September 26, 2017, <https://www.icao.int/Security/FAL/PKD/Pages/ePassportBasics.aspx>; “ICAO PKD Participants,” International Civil Aviation Organization, accessed September 17, 2017, <https://www.icao.int/Security/FAL/PKD/Pages/ICAO-PKDParticipants.aspx>.

¹⁰⁹ Comptroller and Auditor General, *Identity and Passport Service: Introduction of ePassports*, National Audit Office, 2007, 14, <https://www.nao.org.uk/wp-content/uploads/2007/02/0607152.pdf> (In the U.K., ePassports set-up cost £63 million between 2005 to 2006, which was roughly a third of the £195 million allocated for passport production for the next five years.); David Lewis, “Congo’s pricey passport scheme sends millions of dollars offshore,” *Reuters*, April 13, 2017, <http://www.reuters.com/investigates/special-report/congo-passports/> (In the Democratic Republic of Congo, contracts to produce of biometric passports were worth over \$200 million, though the process was graft-ridden.); Isobel Leybold-Johnson, “Switzerland launches biometric passport,” *Swissinfo.ch*, modified February 9, 2010, accessed September 21, 2017, <https://www.swissinfo.ch/eng/switzerland-launches-biometric-passport/8233316>.

¹¹⁰ “ICAO PKD Participants,” International Civil Aviation Organization.

¹¹¹ *Ibid.*

¹¹² 17 STATE 7200, ¶ 9.

¹¹³ *Passport Fraud: An International Vulnerability: Hearing Before the Subcomm. on Border and Maritime Security of the H. Comm. On Homeland Security*, 113th Cong. 62 (2014) (statement of Shawn Bray, Director, Interpol Washington, at 1-2, available at [BRENNAN CENTER FOR JUSTICE | 33 | 1358](http://docs.house.gov/meetings/HM/HM11/20140404/102057/HHRG-113-HM11-</p>
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[Wstate-BrayS-20140404.pdf](#)).

¹¹⁴ For more details see, for example, *Passport Fraud: An International Vulnerability* (testimony of Alan D. Bersin, Assistant Secretary for International Affairs, Dept. of Homeland Security, and John P. Wagner, Acting Deputy Assistant Commissioner, U.S. Customs and Border Protection, at 2, 6, available at <http://docs.house.gov/meetings/HM/HM11/20140404/102057/HHRG-113-HM11-Wstate-BersinA-20140404.pdf>).

¹¹⁵ Ibid. Obama administration officials had characterized the attainment of consistent reporting on stolen and lost passports from a range of wealthier countries as a “milestone.” *Ten Years after 9/11: Preventing Terrorist Travel* (testimony of David Heyman, Assistant Secretary for Policy, Dept. of Homeland Security, available at <https://www.dhs.gov/news/2011/07/13/testimony-david-heyman-assistant-secretary-policy-senate-committee-homeland-security>).

¹¹⁶ *Passport Fraud: An International Vulnerability* (statement of Shawn Bray, Director, Interpol Washington, 5, available at <http://docs.house.gov/meetings/HM/HM11/20140404/102057/HHRG-113-HM11-Wstate-BrayS-20140404.pdf>).

¹¹⁷ 17 STATE 7200, ¶ 12.

¹¹⁸ Consolidated Appropriations Act of 2016, Pub. L. No. 114-113, Div. O, Title II, § 204(c) (codified as amended in 8 U.S.C. 1187(c)(2)(F)); Government Accountability Office, *Visa Waiver Program: DHS Should Take Steps to Ensure Timeliness of Information Needed to Protect U.S. National Security*, GAO-16-498, Government Accountability Office, 2016, 1-2, 8, <https://www.gao.gov/assets/680/676948.pdf>.

¹¹⁹ *U.S. Department of State Counterterrorism Bureau: The FY 2018 Budget*, 115th Cong. 516 (2017) (written statement for the Record of Nathan A. Sales, Coordinator for Counterterrorism, Dept. of State, at 4, available at <https://www.hsgac.senate.gov/download/?id=F40AF2FB-8D9A-4A67-B9B8-EF13120E29F5>) (noting that the U.S. Government has signed “over 60” HSPD-6 model agreements [which facilitate terrorism-related information sharing]); “International Engagement Results: Information Sharing,” Department of Homeland Security, accessed September 15, 2017, <https://www.dhs.gov/international-engagement-results> (noting that 37 countries have completed versions of Preventing and Combating Serious Crime Agreements [which facilitate criminal record information sharing]).

¹²⁰ *The Visa Waiver Program*, 114th Cong. 516 (2015) (testimony of Mark Koumans, Deputy Assistant Secretary for International Affairs, Dept. of Homeland Security, and Maureen Dugan, Deputy Executive Director, National Targeting Center, U.S. Customs and Border Protection, at 1-2, 6, available at <https://www.hsgac.senate.gov/hearings/visa-waiver-program-implications-for-us-national-security>) (“The VWP and all its elements are a vital part of a robust travel security program.”).

¹²¹ “U.S. Visa Waiver Program: Initial and Continuing Designation Requirements,” Department of Homeland Security, accessed September 20, 2017, <https://www.dhs.gov/visa-waiver-program>; Government Accountability Office, *Visa Waiver Program: DHS Should Take Steps to Ensure Timeliness of Information Needed to Protect U.S. National Security*.

¹²² 17 STATE 72000 (July 12, 2017), ¶ 6 (The State Department has told missions that “designated categories of foreign nationals” from countries that do not “provide[] the information requested or...an adequate plan” to provide it could be barred from entering United States). However, as mentioned in note 101, this administration has imposed similar travel sanctions for failure of countries to accept repatriation of their nationals. Department of Homeland Security, “DHS Announces Implementation of Visa Sanctions on Four Countries.”

¹²³ H.R. Rep. No. 85-1199, pt. 2 (1957), reprinted in 1957 U.S.C.A.N. 2016, 2020 (“The legislative history of the immigration and nationality act clearly indicates that the congress intended to provide for a liberal treatment of children and was concerned with the problem of keeping families of united states citizens and immigrants united.”); “United States Citizenship and Immigration Services, Green Card for Family Members of a Permanent Resident,” U.S. Citizenship and Immigration Services, accessed September 26, 2017, https://my.uscis.gov/exploremyoptions/family_member_green_card (“To promote family unity, immigration law ... certain eligible family members to obtain immigrant visas to come and live permanently in the United States...”); Gabriel “Jack” Chin, “The Civil Rights Revolution Comes to Immigration Law: A New Look at the Immigration and Nationality Act of 1965,” *North Carolina Law Review* 75:273, 1996, 297-298; Peter Margulies, “The New Travel Ban: Undermining the Immigration and Nationality Act,” *Lawfare* (blog), September 25, 2017, accessed September 26, 2017, <https://www.lawfareblog.com/new-travel-ban-undermining-immigration-and-nationality-act> (“For decades, family reunification has been a central goal of the INA, which removed national origin quotas that had been in place for forty years.”).

¹²⁴ Jie Zone and Jeanne Batalova, “Green-Card Holders and Legal Immigration to the United States,” *Migration*

Policy Institute, October 1, 2015, <http://www.migrationpolicy.org/article/green-card-holders-and-legal-immigration-united-states> (“During the last decade, family-based immigration has represented between 60 percent and 70 percent of total lawful permanent immigration.”).

¹²⁵ *Trump v. Int’l Refugee Assistance Project*, 137 S. Ct. 2080, 2087–88, 198 L. Ed. 2d 643 (2017) (recognizing the delay of entry into the U.S. of plaintiffs’ family members caused by Executive Order 13780 as a legal harm).

¹²⁶ *Ibid.*

¹²⁷ Proclamation No. 9645, 9, § 1(h)(ii).

¹²⁸ “The Immigrant Visa Process,” Department of State – Bureau of Consular Affairs, accessed September 26, 2017, <https://travel.state.gov/content/visas/en/immigrate/immigrant-process.html>.

¹²⁹ Bier, “The Trump administration’s stealth attack on legal immigration.”

¹³⁰ “The Immigrant Visa Process,” Department of State – Bureau of Consular Affairs.

¹³¹ Nora Ellingsen and Lisa Daniels, “What the Data Really Shows About Terrorists Who ‘Came Here,’ Part II: A Country-by-Country Analysis,” *Lawfare*, April 11, 2017, <https://www.lawfareblog.com/what-data-really-show-about-terrorists-who-came-here-part-ii-country-country-analysis>.

¹³² *Passport Fraud: An International Vulnerability* (testimony of Alan D. Bersin, Assistant Secretary for International Affairs, Dept. of Homeland Security, and John P. Wagner, Acting Deputy Assistant Commissioner U.S. Customs and Border Protection, 3, available at <http://docs.house.gov/meetings/HM/HM11/20140404/102057/HHRG-113-HM11-Wstate-BersinA-20140404.pdf>) (“[S]ome of the most populous countries in the world including China, India, and Indonesia, have contributed few—if any—records to the SLTD database.”); *Passport Fraud: An International Vulnerability* (statement of Brenda Sprague, Deputy Assistant Secretary for Passport Services, 5, available at <http://docs.house.gov/meetings/HM/HM11/20140404/102057/HHRG-113-HM11-Wstate-SpragueB-20140404.pdf>) (“We believe approximately 70 percent of the SLTD’s current data comes from VWP [Visa Waiver Program] countries.”).

¹³³ For more details see, for example, Government Accountability Office, *Visa Waiver Program: DHS Should Take Steps to Ensure Timeliness of Information Needed to Protect U.S. National Security*, 15-17. Signing HSPD-6 and PCSC agreements are among the preconditions for participating in the Visa Waiver Program, whose participants are overwhelmingly developed, European countries. GAO found that, as of May 2016, about a third of these countries were not sharing information as those agreements require. *Ibid.*, 11, 14.

¹³⁴ Nahal Toosi and Ted Hesson, “New directive may expand Trump travel ban,” *Politico*, July 13, 2017, <http://www.politico.com/story/2017/07/13/trump-travel-ban-could-soon-be-applied-worldwide-240539>.

¹³⁵ For examples of articulated concerns, see “Trump Vetting Review Could Lead to ‘Backdoor’ Travel Ban,” *USA Today*, June 22, 2017, <https://www.usatoday.com/story/news/world/2017/06/22/trump-vetting-review-backdoor-travel-ban/419213001/>.

¹³⁶ Proclamation No. 9645, 6, § 1(e).

¹³⁷ *Ibid.* at 6, § 1(g).

¹³⁸ *Ibid.* at 10, § 1(i) (“Somalia generally satisfies the information-sharing requirements of the baseline described in subsection (c) of this section...”).

¹³⁹ Amy Davidson Sorkin, “What Does Trump’s New Travel Ban Mean For the Supreme Court,” *New Yorker*, September 25, 2017, <https://www.newyorker.com/news/amy-davidson-sorkin/what-does-trumps-new-travel-ban-mean-for-the-supreme-court>.

¹⁴⁰ Proclamation No. 9645, 9, § 1(h)(iii).

¹⁴¹ *Hawaii v. Trump*, 241 F.Supp.3d at 1129.

¹⁴² This table includes figures on total nonimmigrant U.S. visa types issued to foreign states. Department of State – Bureau of Consular Affairs, “FY 2016 Nonimmigrant Visas Issues,” accessed September 26, 2017, <https://travel.state.gov/content/dam/visas/Statistics/Non-Immigrant-Statistics/NIVDetailTables/FY16%20NIV%20Detail%20Table.pdf>. This table includes figures on U.S. immigrant visas issued to foreign states. Department of State – Bureau of Consular Affairs, “Table XIV: Immigrant Visas Issued at Foreign Service Posts (by Foreign State Chargeability) (All Categories) Fiscal Years 2007-2016,” accessed September 26, 2017, <https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2016AnnualReport/FY16AnnualReport-TableXIV.pdf>. Data from the tables above were used in combination with the visa issuance types exempted from Executive Order 13780 and Proclamation 9645 to calculate the total number of individuals in the new policy banned from entry.

¹⁴³ Ibid.

¹⁴⁴ Proclamation No. 9645, 14-15, § 2(f)(ii).

¹⁴⁵ Ibid. at 9-10, § 1(h)(iii).

¹⁴⁶ Ibid. at 6-7, 12, 16, §§ 1(g), 2(b), 2(h).

¹⁴⁷ Yeganeh Torbati, Mica Rosenberg, and Arshad Mohammed, “Exclusive: U.S. embassies ordered to identify population groups for tougher visa screening,” *Reuters*, March 23, 2017, <http://www.reuters.com/article/us-usa-immigration-visas-exclusive/exclusive-u-s-embassies-ordered-to-identify-population-groups-for-tougher-visa-screening-idUSKBN16U12X>.

¹⁴⁸ 82 Fed. Reg. 36,180 (August 3, 2017).

¹⁴⁹ Ibid.

¹⁵⁰ Department of State, “Table XVIII Nonimmigrant Visas Issued by Nationality (Including Border Crossing Cards) Fiscal Year 2007-2016,” *Report of the Visa Office 2016*, <https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2016AnnualReport/FY16AnnualReport-TableXVIII.pdf>. Please see note 142 for reference to immigrant visa data.

¹⁵¹ “FY 2016 Nonimmigrant Visas Issues,” Department of State – Bureau of Consular Affairs; “Table XIV: Immigrant Visas Issued at Foreign Service Posts (by Foreign State Chargeability) (All Categories) Fiscal Years 2007-2016,” Department of State – Bureau of Consular Affairs; Alex Nowrasteh, “New Trump Executive Order Fails Cost-Benefit Test,” *Cato at Liberty* (blog), *Cato Institute*, September 25, 2017, <https://www.cato.org/blog/new-trump-executive-order-fails-cost-benefit-test>.

¹⁵² 17 STATE 24324, ¶ 9-14. These new vetting requirements came about through a series of State Department Cables starting March 10, 2017, and Information Collection Requests posted in the Federal Register memorializing aspects of those cables. The first two cables initially implemented the order in whole, but State Department in a subsequent cable halted instructions applicable specifically to nationals of the travel ban countries after the District of Hawaii enjoined Sections 2 and 6 of Executive Order 13780. The final cable of this series largely reaffirmed previous guidance but told consular officers to hold off on asking applicants specific questions highlighted in the previous cables – for example, for 15 years of travel history – until Office of Management and Budget (OMB) approval was received for those questions. Torbati, Rosenberg, and Mohammed, “Exclusive: U.S. embassies ordered to identify population groups for tougher visa screening.” Those questions were provisionally approved through OMB on May 25, 2017 valid through November 2017, and were submitted for permanent approval on August 3, 2017. The initial period for public comments on the information collection was set to expire on October 2, 2017. 82 Fed. Reg. 20,956 (May 4, 2017); 82 Fed. Reg. 36,180 (August 3, 2017).

¹⁵³ Brief of Former Nat’l Sec. Officials as Amicus Curiae in Support of Plaintiff-Appellees at 13, 28, *Hawaii v. Trump*, 859 F.3d 741 (2017).

¹⁵⁴ Department of Homeland Security, “Citizenship Likely an Unreliable Indicator of Terrorist Threat to the United States,” Draft Report Obtained by *Associated Press*, February 24, 2017, <https://assets.documentcloud.org/documents/3474730/DHS-intelligence-document-on-President-Donald.pdf>.

¹⁵⁵ *Int’l Refugee Assistance Project v. Trump*, 857 F.3d at 596; *Hawaii v. Trump*, 859 F.3d at 771.

¹⁵⁶ Faiza Patel and Meghan Koushik, *Countering Violent Extremism*, Brennan Center for Justice, 2017, 10-11, <https://www.brennancenter.org/sites/default/files/publications/Brennan%20Center%20CVE%20Report.pdf>.

¹⁵⁷ “Letter from Foreign Policy Experts on Travel Ban,” *New York Times*, March 11, 2017, <https://www.nytimes.com/interactive/2017/03/11/us/politics/document-letter-foreign-policy-trump.html?mtref=www.nytimes.com>. Indeed, pro-ISIS social media accounts are reportedly already using the Muslim ban vindicate the claim that the U.S. is at war with Islam and stoke anti-American sentiments. Joby Warrick, “Jihadist groups hail Trump’s travel ban as a victory,” *Washington Post*, January 29, 2017, https://www.washingtonpost.com/world/national-security/jihadist-groups-hail-trumps-travel-ban-as-a-victory/2017/01/29/50908986-e66d-11e6-b82f-687d6e6a3e7c_story.html?utm_term=.b834ad9dbe23.

¹⁵⁸ Glenn Kessler, “Trump’s Claim that Obama First ‘Identified’ the 7 Countries in his Travel Ban,” *Washington Post*, February 7, 2017, https://www.washingtonpost.com/news/fact-checker/wp/2017/02/07/trumps-claim-that-obama-first-identified-the-seven-countries-in-his-travel-ban/?utm_term=.164ad2ca02b0.

¹⁵⁹ “Visa Waiver Program,” Department of State – Bureau of Consular Affairs.

¹⁶⁰ Ibid. “Nationals of VWP countries who are also nationals of Iran, Iraq, Sudan, or Syria” are not eligible for visa-free travel to the U.S.

¹⁶¹ David Inserra, “EU threatens retaliation against U.S. travelers,” *Washington Times*, March 21, 2016, <http://www.washingtontimes.com/news/2016/mar/21/david-inserra-eu-threatens-retaliation-against-us/>.

¹⁶² Sarah Parvini, "Silicon Valley Fears European Backlash After Congress Limits Visa Waiver Program," *Los Angeles Times*, March 14, 2016, <http://www.latimes.com/local/california/la-me-visa-waiver-changes-20160314-story.html>;

¹⁶³ Office of U.S. Senator Jeff Flake, "Senators to Introduce Bipartisan Fix to Dual National Visa Waiver Ban," news release, January 13, 2016, accessed September 19, 2017, <https://www.flake.senate.gov/public/index.cfm/2016/1/senators-to-introduce-bipartisan-fix-to-dual-national-visa-waiver-ban>.

¹⁶⁴ Deirdre Walsh, "House Passes Visa Waiver Overhaul," *CNN*, December 8, 2015, <http://www.cnn.com/2015/12/08/politics/visa-waiver-program-house/index.html>.

¹⁶⁵ Applicants are asked to provide these details if the officer believes they "have been in an area while the area was under the operational control of a terrorist organization." 82 Fed. Reg. 36,181 (August 3, 2017). As the ACLU has pointed out, however, there is no information on how an officer will determine that it "appears" that the applicant was in a region which was under the operational control of a terrorist organization while the applicant was there. American Civil Liberties Union, Comment Submission Regarding Notice of Information Collection under OMB Review: Supplemental Questions for Visa Applicants for Department of State Office of Information and Regulatory Affairs and Visa Office, Bureau of Consular Affairs, May 18, 2017, 3, <https://www.aclu.org/other/aclu-comment-supplemental-questions-visa-applicants>.

¹⁶⁶ 17 STATE 24324, ¶ 7. Paragraph 7 of this cable instructs consular officers to consider sending a "Donkey Security Advisory Opinion (SAO) request" for populations warranting additional scrutiny as identified by the process described in Paragraph 6. In same paragraph, the additional questions are described as part of the process for "SAO requests based on this guidance, as for all other SAO requests." *Ibid*. The American Immigration Lawyers Association estimates Donkey SAOs will take 10-14 weeks to resolve. Schwartz, Friedman, and Tonello, "'DOs' And 'DON'Ts' For Attorneys Representing Visa Applicants (And for Consular Officers, Too!)," at 530.

¹⁶⁷ 82 Fed. Reg. 36,180 (August 3, 2017).

¹⁶⁸ "Syria Iraq: The Islamic State militant group," *BBC News*, August 2, 2014, accessed September 21, 2017, <http://www.bbc.com/news/world-middle-east-24179084>.

¹⁶⁹ U.S. Office of Personnel Management, "Questionnaire For National Security Positions," Standard Form 86 OMB No. 3206 0005, revised December 2010, accessed September 6, 2017, https://www.opm.gov/forms/pdf_fill/sf86-non508.pdf.

¹⁷⁰ "Agency Information Collection Activities: Arrival and Departure Record (Forms I-94 and I-94W) and Electronic System for Travel Authorization," 81 Fed. Reg. 40,892, 40,893 (June 23, 2016), <https://www.gpo.gov/fdsys/pkg/FR-2016-06-23/pdf/2016-14848.pdf>; Edward Helmore, "US Government Collecting Social Media Information from Foreign Travelers," *Guardian*, December 26, 2016, <https://www.theguardian.com/world/2016/dec/26/us-customs-social-media-foreign-travelers>; John Roth, Inspector General, *DHS' Pilots for Social Media Screening Need Increased Rigor to Ensure Scalability and Long-term Success (Redacted)*, Department of Homeland Security, 2017, 2-3, <https://www.oig.dhs.gov/sites/default/files/assets/2017/OIG-17-40-Feb17.pdf>.

¹⁷¹ 82 Fed. Reg. 36,180 (August 3, 2017).

¹⁷² *Superseding 17 STATE 24324: Implementing Immediate Heightened Screening and Vetting of Visa Applications*, by Rex Tillerson, 17 STATE 25814, ¶ 9-10, http://live.reuters.com/Event/Live_US_Politics/791255396; Department of State, Foreign Affairs Handbook, 7-FAH-1 H-943.5-2 (not publicly disclosed).

¹⁷³ Roth, Inspector General, *DHS' Pilots for Social Media Screening Need Increased Rigor to Ensure Scalability and Long-term Success (Redacted)*.

¹⁷⁴ For further discussion of this issue, see Letter to Department of State Office of Information and Regulatory Affairs and Bureau of Consular Affairs, Visa Office, dated May 18, 2017, 4, https://www.brennancenter.org/sites/default/files/analysis/State%20Dept%20Information%20Collection%20Comments%20-%20201817_3.pdf; Aaron Cantu and George Joseph, "Trump's Border Security May Search Your Social Media by 'Tone,'" *Nation*, August 23, 2017, <https://www.thenation.com/article/trumps-border-security-may-search-your-social-media-by-tone/>, ("[in most tone analysis systems,] the term 'trump' indicates positive feeling, something which is likely no longer true for a sizable number of Americans.")

¹⁷⁵ "Caution on Twitter urged as tourists barred from US," *BBC News*, March 08, 2012, <http://www.bbc.com/news/technology-16810312>.

¹⁷⁶ See, e.g., Natasha Lennard, "The Way Dzhokhar Tsarnaev's Tweets Are Being Used in the Boston Bombing Trial Is Very Dangerous," *Splinter*, March 12, 2015, <http://splinternews.com/the-way-dzhokhar-tsarnaevs-tweets->

[are-being-used-in-the-1793846339](#); Bill Chappell, “Supreme Court Tosses Out Man’s Conviction for Making Threat on Facebook,” *NPR*, June 1, 2015, <http://www.npr.org/sections/thetwo-way/2015/06/01/411213431/supreme-court-tosses-outman-s-conviction-for-making-threats-on-facebook>.

¹⁷⁷ Sarcasm is an example of something of which different cultures have different understandings. Ruth Margolis and Tony Hargis, “Two Brits Debate: Are Americans Sarcasm-Literate?” *BBC America*, accessed September 20, 2017, <http://www.bbcamerica.com/anglophenia/2013/02/debate-are-americans-sarcasm-literate> (discussing differences between American and British sarcasm).

¹⁷⁸ Cantu and Joseph, “Trump’s Border Security May Search Your Social Media by Tone.”

¹⁷⁹ For more details see, for example, Abby Ohlheiser, “Is a retweet an endorsement from President-elect Trump?,” *Washington Post*, November 30, 2016, https://www.washingtonpost.com/news/the-intersect/wp/2016/11/30/is-a-retweet-an-endorsement-from-president-elect-trump/?utm_term=.de435e7b0cb9; Wendy Davis, “Facebook ‘Likes’ And Pinterest Photos Can Be Endorsements, FTC Says,” *MediaPost*, May 29, 2015, <https://www.mediapost.com/publications/article/250932/facebook-likes-and-pinterest-photos-can-be-endor.html>; Troutman Sanders LLP, “Facebook ‘Likes’ – Endorsements or Not?,” *Information Intersection*, last modified June 7, 2012, accessed September 16, 2017, <http://www.informationintersection.com/2012/06/facebook-likes-endorsements-or-not/>; Erin Sumner, Luisa Ruge-Jones, and Davis Alcorn, “A functional approach to the Facebook Like Button: an exploration of meaning, interpersonal functionality, and potential alternative response buttons,” *New Media & Society*, March 20, 2017, <http://journals.sagepub.com/doi/abs/10.1177/1461444817697917>; Karla Porter, “Does liking a page on Facebook equal endorsing it?,” *Karlaporter.com*, modified August 9, 2014, accessed September 16, 2017, <https://karlaporter.com/liking-page-facebook-equal-endorsing/>.

¹⁸⁰ Brennan Center for Justice, et. al, Comment Submission Regarding *Notice of Information Collection under OMB Review: Supplemental Questions for Visa Applicants (DS-5535)*, for Department of State Office of Information and Regulatory Affairs and Visa Office, Bureau of Consular Affairs, May 18, 2017, 5, <https://www.brennancenter.org/analysis/brennan-center-urges-state-department-abandon-new-extreme-vetting-initiatives>.

¹⁸¹ 82 Fed. Reg. 36,180 (August 3, 2017).

¹⁸² United Nations General Assembly Resolution 2200A (XXI), “International Covenant on Civil and Political Rights,” December 16, 1966, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>.

¹⁸³ David Iaconangelo, “Why Donald Trump’s ‘ideological screening’ wouldn’t be a first for the US,” *Christian Science Monitor*, August 17, 2016, <https://www.csmonitor.com/USA/2016/0817/Why-Donald-Trump-s-ideological-screening-wouldn-t-be-a-first-for-the-US> (quoting presidential candidate Trump’s remarks at Youngstown State University in Ohio).

¹⁸⁴ “Transcript: Donald Trump’s full immigration speech, annotated,” *Los Angeles Times*, August 31, 2016, <http://www.latimes.com/politics/la-na-pol-donald-trump-immigration-speech-transcript-20160831-snap.htmlstory.html>.

¹⁸⁵ *Ibid.*

¹⁸⁶ Meckler, “Trump Administration Considers Far-Reaching Steps for Extreme Vetting.”

¹⁸⁷ 82 Fed. Reg. 8977 (January 27, 2017).

¹⁸⁸ “RWW News: Michael Flynn: Islam Is A ‘Cancer,’ ‘Political Ideology,’ that ‘Hides Behind’ Religion,” YouTube video, from a speech delivered for ACT for America, August 2016, posted by “RWW Blog,” November 18, 2016, https://www.youtube.com/watch?v=fzh9b_vo4vs; Zack Beauchamp, “Trump’s counter-jihad,” *Vox*, February 13, 2017, <https://www.vox.com/world/2017/2/13/14559822/trump-islam-muslims-islamophobia-sharia>; Andrea Elliot, “The Man Behind the Anti-Shariah Movement,” *New York Times*, July 30, 2011, http://www.nytimes.com/2011/07/31/us/31shariah.html?pagewanted=all&_r=1&.

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¹⁹¹ Hillary Mayell, “Thousands of Women Killed for Family ‘Honor,’” *National Geographic News*, February 12, 2002, http://news.nationalgeographic.com/news/2002/02/0212_020212_honorkilling.html (Widney Brown, Advocacy Director for Human Rights Watch: “In countries where Islam is practiced, they’re called honor killings,

but dowry deaths and so-called crimes of passion have a similar dynamic in that the women are killed by male family members and the crimes are perceived as excusable or understandable.”); Anna Momigliano, “Honor Killing by Any Other Name,” *Nation*, February 2, 2010, <https://www.thenation.com/article/honor-killing-any-other-name/>.

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¹⁹⁴ 82 Fed. Reg. 13,209, 13,215 (§ 5(a)) (March 6, 2017).

¹⁹⁵ *Ibid.*

¹⁹⁶ *Int’l Refugee Assistance Project v. Trump*, 857 F.3d at 595 (“These statements, taken together, provide direct, specific evidence of what motivated both EO-1 and EO-2: President Trump’s desire to exclude Muslims from the United States.”).

¹⁹⁷ Donald Trump (@realDonaldTrump), “The Justice Dept. should have stayed with the original Travel Ban, not the watered down, politically correct version they submitted to S.C.,” Twitter, June 5, 2017, 3:29 a.m.,

<https://twitter.com/realdonaldtrump/status/871675245043888128?lang=en>; Donald Trump (@realDonaldTrump), “The travel ban into the United States should be far larger, tougher and more specific-but stupidly, that would not be politically correct!,” Twitter, September 15, 2017, 3:54 a.m.,

<https://twitter.com/realdonaldtrump/status/908645126146265090?lang=en>.

¹⁹⁸ “Second Defeat for the White House on the President’s Travel Ban,” *CNN*, March 15, 2017, 11:00 PM, <http://transcripts.cnn.com/TRANSCRIPTS/170315/cnnt.02.html> (quoting Stephen Miller, Presidential Advisor, as saying that the second travel ban will result in the “same basic policy outcome”).

¹⁹⁹ Meckler, “Trump Administration Considers Far-Reaching Steps for ‘Extreme Vetting.’”

²⁰⁰ Immigration and Nationality (McCarran-Walter) Act of 1952, Pub. L. No. 82- 414, § 212 (a)(27), 66 Stat. 18225 (codified at 8 U.S.C. § 1304).

²⁰¹ Iaconangelo, “Why Donald Trump’s ‘ideological screening’ wouldn’t be a first for the US.”

²⁰² Immigration Act of 1990, Pub. L. No 101-649, § 301, 104 Stat. 4978, 5029-39; John Scanlan, “Why the McCarran-Walter Act Must Be Amended,” *Maurer Law Digital Repository*, 2494 (1987),

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²⁰⁵ *Improving Border Security and Public Safety: Hearing Before the S. Comm. On Homeland Security and Governmental Affairs*, 115th Cong. (April 5, 2017) (transcript at 13, available at <https://goo.gl/CKvqEN>)

²⁰⁶ Deborah Amos and Larry Kaplow, “Trump Backers Want Ideology Test for Extreme Vetting,” *NPR*, February 4, 2017 <http://www.npr.org/sections/parallels/2017/02/04/513289953/trump-backers-want-ideology-test-for-extreme-vetting>. For more details, see also Iaconangelo, “Why Donald Trump’s ‘ideological screening’ wouldn’t be a first for the US” (quoting Kenyon Zimmer, assistant professor of history at the University of Texas-Arlington on the difficulty of enforcing ideological tests and the “huge abrogation of freedom of speech” that such screening would imply).

²⁰⁷ Patel and Koushik, *Countering Violent Extremism*, n. 92-100.

²⁰⁸ See discussion in Section II.c

²⁰⁹ Office of Intelligence and Analysis, (*U//FOUO*) *Most Foreign-born, US-based Violent Extremists Radicalized after Entering Homeland; Opportunities for Tailored CVE Programs*; See discussion at beginning of **Section I**. Linking what are primarily domestic threats to outsiders is not new – now-repealed ideological exclusions targeting anarchists came as xenophobic sentiments tied anarchism to foreigners, even though most anarchists were second-generation Americans, and foreign-born anarchists radicalized after entry. Iaconangelo, “Why Donald Trump’s ‘ideological screening’ wouldn’t be a first for the US.”

²¹⁰ Michael German and Michelle Richardson, *Reclaiming Patriotism: A Call to Reconsider the Patriot Act*, American Civil Liberties Union, 2009, 26-27, https://www.aclu.org/files/pdfs/safefree/patriot_report_20090310.pdf; 8 U.S.C. § 1182(a)(3)(B)(i)(VII).

²¹¹ For example, they ask: if the applicant is a member of a terrorist organization; has participated, order, incited, assisted, or otherwise participated in extrajudicial killings; or has been responsible for severe violations of religious freedom as a government official. For more details see, for example, “Guidelines for Completing the DS 160 Non Immigrant Visa Application,” U.S. Embassy Baghdad, accessed September 19, 2017, <http://blogs.worldlearning.org/ylep/files/2012/03/DS-160-NIV-Instructions-IYLEP-World-Learning.pdf>; “DS-160 Nonimmigration Visa Application Form: A Complete Step-by-step Instructional Guide,” U.S. Embassy Kingston, Jamaica (Powerpoint Presentation), <https://photos.state.gov/libraries/jamaica/231771/PDFs/DS-160%20Instructions.pdf>.

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²¹⁶ *Ibid* at *Attachment 2: Background*, 4.

²¹⁷ *Ibid* at *Attachment 1: Statement of Objectives*, 1.

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²¹⁹ Compare 82 Fed. Reg. 8977, 8979 § 4(a) (January, 27 2017) with 82 Fed. Reg. 13,209, 13,215 § 5(a) (March 6, 2017).

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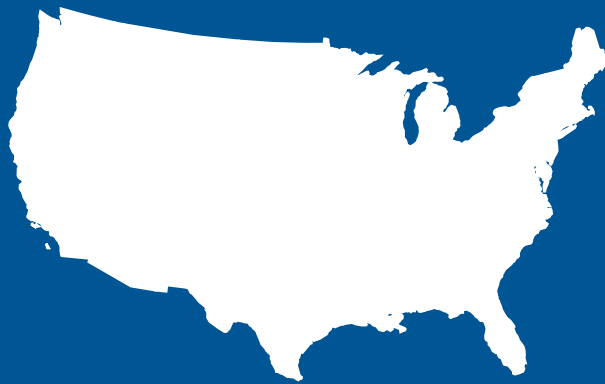
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EXHIBIT 8

RECLAIMING PATRIOTISM

*A Call to Reconsider
the Patriot Act*



RECLAIMING PATRIOTISM

*A Call to Reconsider
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Reclaiming Patriotism A Call to Reconsider the Patriot Act

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EXECUTIVE SUMMARY

More than seven years after its implementation, there is little evidence to demonstrate that the Patriot Act has made America more secure from terrorists. But there are many unfortunate examples that the government abused these authorities in ways that both violated the rights of innocent people and squandered precious security resources. Three Patriot Act-related surveillance provisions will expire in December 2009, which will give the 111th Congress an opportunity to review and thoroughly evaluate all Patriot Act authorities – as well as any other post-9/11 domestic intelligence programs – and to rescind, repeal or modify provisions that are unused, ineffective or prone to abuse.

The framers of the Constitution recognized that giving the government unchecked authority to pry into our private lives risked more than just individual property rights. These patriots understood from their own experience that political rights could not be secured without procedural protections. The Fourth Amendment mandates prior judicial review and permits warrants to be issued only upon probable cause. The nation's founders saw these procedural requirements as the necessary remedies to the arbitrary and unreasonable assaults on free expression exemplified by King George's abuse of general warrants. Stifling dissent does not enhance security. The framers created our constitutional system of checks and balances to curb government abuse and, ultimately, to make the government more responsive to the needs of the people – in whom all government power resides. Limiting the government's power to intrude into private affairs, and checking that power with independent oversight, reduces the error and abuse that conspire to undermine public confidence. As the original patriots knew, adherence to the concepts set forth in the Constitution and the Bill of Rights makes our government stronger, not weaker.

The Patriot Act vastly – and unconstitutionally – expanded the government's authority to pry into people's private lives with little or no evidence of wrongdoing. Unfortunately, when the expiring provisions came up for review in 2005 there was very little in the public record for Congress to evaluate. Excessive secrecy surrounding the government's use of these authorities, enforced through unconstitutional gag orders, prevented any meaningful evaluation of the Patriot Act. Even without adequate supporting justification, in March 2006 Congress passed the USA Patriot Act Improvement and Reauthorization Act, making fourteen of the sixteen expiring provisions permanent.

Little is known about the government's use of many of its authorities under the Patriot Act, but raw numbers available through government reports reflect a rapidly increasing level of surveillance. The statistics show skyrocketing numbers of Foreign Intelligence Surveillance Court orders, National Security Letter (NSL) requests and Suspicious Activity Reports while terrorism prosecution numbers are down and declinations to prosecute FBI international terrorism investigations have increased. Moreover, Department of Justice Inspector General reports (mandated as part of the Patriot Act reauthorization) revealed the government's widespread misuse of NSL and section 215 authorities. Also, several courts have found parts of the Patriot Act unconstitutional, including the NSL gag provisions, enhancements to the material support and ideological exclusion statutes, and Section 218 of the Patriot Act, which lowered the standard for obtaining an individualized Foreign Intelligence surveillance Act (FISA) warrant.

This report identifies the Patriot Act provisions that require intensive oversight and modification to prevent abuse. It also contains specific legislative recommendations for reforming the NSL, FISA, material support and ideological exclusion statutes and section 215 of the Patriot Act:

NSLs and Section 215

- Repeal the expanded NSL and section 215 authorities that allow the FBI to demand information about innocent people who are not the targets of any investigation. Reinstating prior standards limiting the use of section 215 and NSL authorities to gather information only about terrorism suspects and other agents of foreign powers.
- Allow gag orders only upon the authority of a court, and only when necessary to protect national security. Limit scope and duration of such gag orders and ensure that their targets and recipients have a meaningful right to challenge them before a fair and neutral arbiter.
- Impose judicial oversight of all Patriot Act authorities.

Material Support

- Amend the material support statutes to require specific intent to further an organization's unlawful activities before imposing criminal liability.
- Remove overbroad and impermissibly vague language, such as "training," "service" and "expert advice and assistance," from the definition of material support.
- Establish an explicit duress exemption to remove obstacles for genuine refugees and asylum-seekers to enter and/or remain in the United States.
- Provide notice, due process and meaningful review requirements in the designation process, and permit defendants charged with material support to challenge the underlying designation in their criminal cases.

Ideological Exclusion

- Ban ideological exclusion based on speech that would be protected in the United States under the First Amendment.
- Repeal the "endorse or espouse" provision.

FISA Statutes

- Restore the primary purpose requirement to FISA.

While implementation of these recommendations would help fix some Patriot Act-related problems, Congress must examine the full panoply of intelligence activities, especially domestic intelligence gathering programs, and encourage a public debate about the proper nature and reach of government surveillance programs on American soil. The Patriot Act may have been the first overt expansion of domestic spying powers after September 11, 2001 – but it certainly wasn't the last, and arguably wasn't even the most egregious. There have been many significant changes to our national security laws over the past seven years, and addressing the excesses of the Patriot Act without examining the larger surveillance picture may not be enough to rein in an out-of-control intelligence-gathering regime. Fundamentally, Congress must recognize that overbroad, ineffective or abusive surveillance programs are counterproductive to long-term government interests because they violate constitutional standards and undermine public confidence and support of U.S. anti-terrorism programs. Congress should begin vigorous and comprehensive oversight hearings to examine all post-9/11 national security programs to evaluate their effectiveness and their impact on Americans' privacy and civil liberties. This oversight is essential to the proper functioning of our constitutional system of government and becomes even more necessary during times of crisis.

INTRODUCTION

On October 26, 2001, amid the climate of fear and uncertainty that followed the terrorist attacks of September 11, 2001, President George W. Bush signed into law the USA Patriot Act, and fundamentally altered the relationship Americans share with their government.¹ This act betrayed the confidence the framers of the Constitution had that a government bounded by the law would be strong enough to defend the liberties they so bravely struggled to achieve. By expanding the government's authority to secretly search private records and monitor communications, often without any evidence of wrongdoing, the Patriot Act eroded our most basic right – the freedom from unwarranted government intrusion into our private lives – and thwarted constitutional checks and balances. Put very simply, under the Patriot Act the government now has the right to know what you're doing, but you have no right to know what it's doing.

More than seven years after its implementation there is little evidence that the Patriot Act has been effective in making America more secure from terrorists. However, there are many unfortunate examples that the government abused these authorities in ways that both violate the rights of innocent people and squander precious security resources. Three Patriot Act-related surveillance provisions will expire in December 2009, which will give the 111th Congress an opportunity to review and thoroughly evaluate all Patriot Act authorities – as well as any other post-9/11 domestic intelligence programs – and rescind, repeal or modify provisions that are unused, ineffective or prone to abuse. The American Civil Liberties Union encourages Congress to exercise its oversight powers fully, to restore effective checks on executive branch surveillance powers and to prohibit unreasonable searches and seizures of private information without probable cause based on particularized suspicion.

REAL PATRIOTS DEMAND THEIR RIGHTS

The Fourth Amendment to the U. S. Constitution protects individuals against ‘unreasonable searches and seizures.’ In 1886, Supreme Court Justice Joseph P. Bradley suggested that the meaning of this phrase could not be understood without reference to the historic controversy over general warrants in England and her colonies.² General warrants were broad orders that allowed the search or seizure of unspecified places or persons, without probable cause or individualized suspicion. For centuries, English authorities had used these broad general warrants to enforce “seditious libel” laws designed to stifle the press and suppress political dissent. This history is particularly informative to an analysis of the Patriot Act because the purpose of the Fourth Amendment was not just to protect personal property, but “to curb the exercise of discretionary authority by [government] officers.”³

To the American colonists, nothing demonstrated the British government’s illegitimate use of authority more than “writs of assistance” – general warrants that granted revenue agents of the Crown blanket authority to search private property at their own discretion.⁴ In 1761, in an event that John Adams later described as “the first act of opposition” to British rule, Boston lawyer James Otis condemned general warrants as “the worst instrument of arbitrary power, the most destructive of English liberty and the fundamental principles of law, that ever was found in an English law book.”⁵ Otis declared such discretionary warrants illegal, despite their official government sanction, because they “placed the liberty of every man in the hands of every petty officer.”⁶ The resistance to writs of assistance provided an ideological foundation for the American Revolution – the concept that the right of the people to be free from unwarranted government intrusion into their private affairs was the essence of liberty. American patriots carried a declaration of this foundational idea on their flag as they marched into battle: “Don’t tread on me.”

Proponents of the Patriot Act suggest that reducing individual liberties during a time of increased threat to our national security is both reasonable and necessary, and that allowing fear to drive the government’s decisions in a time of emergency is “not a bad thing.”⁷ In effect, these modern-day patriots are willing to exchange our forebearers’ “don’t tread on me” banner for a less inspiring one reading “if you aren’t doing anything wrong you have nothing to worry about.”

Colonial-era patriots were cut from different cloth. They saw liberty not as something to trade for temporary comfort or security, but rather as a cause worth fighting for even when the odds of success, not to mention survival, were slight.

The framers of the Constitution recognized that giving the government unchecked authority to pry into our private lives risked more than just individual property rights, as the Supreme Court later recounted: “The Bill of Rights was fashioned against the background of knowledge that unrestricted power of search and seizure could also be an instrument for stifling liberty of expression.”⁸ These patriots understood from their own experience that political rights could not be secured without procedural protections. The Fourth Amendment requirements of prior judicial review and warrants issued only upon probable cause were determined to be the necessary remedies to the arbitrary and unreasonable assaults on free expression that were characterized by the government’s use of general warrants. “The requirement that warrants shall particularly describe the things to be seized makes general searches under them impossible and prevents the seizure of one thing under a warrant describing another.”⁹ The Supreme Court has long acknowledged the important interplay between First Amendment and Fourth Amendment freedoms. As it reflected in 1965, “what this history indispensably teaches is that the constitutional requirement that warrants must

particularly describe the ‘things to be seized’ is to be accorded the most scrupulous exactitude when the ‘things’ are books, and the basis for their seizure is the ideas which they contain.”¹⁰

The seizure of electronic communications and private records under the Patriot Act today is no less an assault on the ideas they contain than seizure of books during a less technologically advanced era. Indeed, even more fundamental liberty interests are at stake today because the Patriot Act expanded “material support” for terrorism statutes that effectively criminalize political association and punish wholly innocent assistance to arbitrarily blacklisted individuals and organizations. Patriot Act proponents suggest we should forfeit our rights in times of emergency, but the Supreme Court has made clear that the Constitution requires holding the government to more exacting standards when a seizure involve the expression of ideas even where compelling security interests are involved. As Justice Powell explained in *United States v. United States District Court*,

National security cases, moreover, often reflect a convergence of First and Fourth Amendment values not present in cases of “ordinary” crime. Though the investigative duty of the executive may be stronger in such cases, so also is there greater jeopardy to constitutionally protected speech.¹¹

More exacting standards are necessary in national security cases because history has repeatedly shown that government leaders too easily mistake threats to their political security for threats to the national security. Enhanced executive powers justified on national security grounds were used against anti-war activists, political dissidents, labor organizers and immigrants during and after World War I. In the 1950s prominent intellectuals, artists and writers were blacklisted and denied employment for associating with suspected communists and socialists. Civil rights activists and anti-war protesters were targeted in the 1960s and 1970s in secret FBI and CIA operations.

Stifling dissent does not enhance security. The framers created our constitutional system of checks and balances to curb government abuse, and ultimately to make the government more responsive to the needs of the people – which is where all government power ultimately lies. The Patriot Act gave the executive branch broad and unprecedented discretion to monitor electronic communications and seize private records, placing individual liberty, as John Otis warned, “in the hands of every petty officer.”¹² Limiting the government’s power to intrude into private affairs, and checking that power with independent oversight, reduces the error and abuse that conspire to undermine public confidence. As the original patriots knew, adhering to the Constitution and the Bill of Rights makes our government stronger, not weaker.

EXCESSIVE SECRECY THWARTS CONGRESSIONAL OVERSIGHT

Just 45 days after the worst terrorist attack in history Congress passed the Patriot Act, a 342-page bill amending more than a dozen federal statutes, with virtually no debate. The Patriot Act was not crafted with careful deliberation, or narrowly tailored to address specific gaps in intelligence gathering authorities that were found to have harmed the government's ability to protect the nation from terrorism. In fact, the government hesitated for months before authorizing an official inquiry, and it took over a year before Congress published a report detailing the many significant pieces of intelligence the government lawfully collected before 9/11 but failed to properly analyze, disseminate or exploit to prevent the attacks.¹³ Instead of first determining what led to the intelligence breakdowns and then legislating, Congress quickly cobbled together a bill in ignorance, and while under intense pressure, to give the president all the authorities he claimed he needed to protect the nation against future attacks.

The Patriot Act vastly – and unconstitutionally – expanded the government's authority to pry into people's private lives with little or no evidence of wrongdoing. This overbroad authority unnecessarily and improperly infringes on Fourth Amendment protections against unreasonable searches and seizures and First Amendment protections of free speech and association. Worse, it authorizes the government to engage in this expanded domestic spying in secret, with few, if any, protections built in to ensure these powers are not abused, and little opportunity for Congress to review whether the authorities it granted the government actually made Americans any safer.

The ACLU warned that these unchecked powers could be used improperly against wholly innocent American citizens, against immigrants living legally within our borders and against those whose First Amendment-protected activities were improperly deemed to be threats to national security by the attorney general.¹⁴ Many members of Congress shared the ACLU's concerns and demanded the government include “sunsets,” or expiration dates on certain provisions of the Patriot Act to give Congress an opportunity to review their effectiveness over time.

Unfortunately, when the expiring provisions came up for review in 2005 there was very little in the public record for Congress to evaluate. While the ACLU objected to the way the government exercised Patriot Act powers against individuals like Oregon attorney Brandon Mayfield, Idaho student Sami al-Hussayen and European scholar Tariq Ramadan, among others,¹⁵ officials from the Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI) repeatedly claimed there had been no “substantiated” allegations of abuse.¹⁶ Of course, the lack of substantiation was not due to a lack of abuse, but rather to the cloak of secrecy that surrounded the government's use of these authorities, which was duly enforced through unconstitutional gag orders. Excessive secrecy prevented any meaningful evaluation of the Patriot Act. Nevertheless, in March 2006 Congress passed the USA Patriot Act Improvement and Reauthorization Act (Patriot Act reauthorization), making fourteen of the sixteen expiring provisions permanent.¹⁷

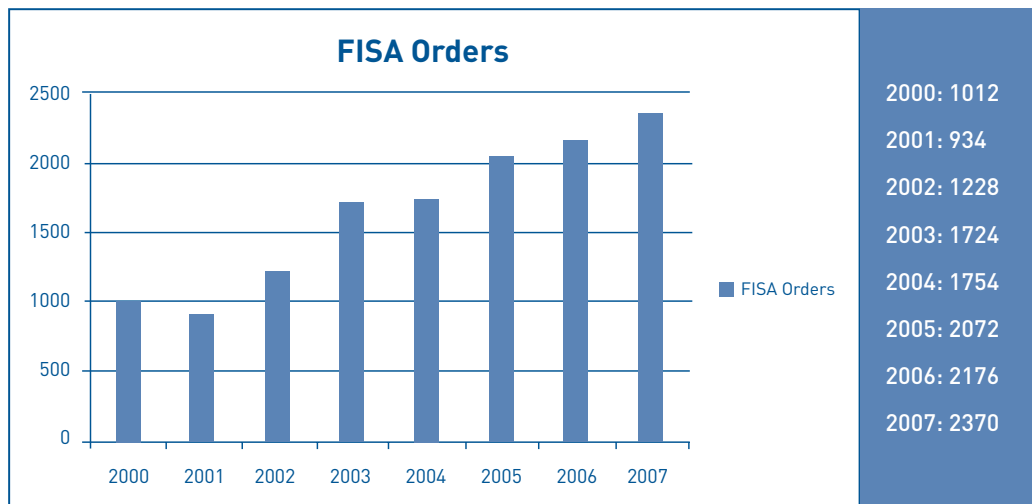
Increasing Levels of Surveillance

Little is known about how the government uses many of its authorities under the Patriot Act, but raw numbers available through government reports reflect a rapidly increasing level of surveillance.

Foreign Intelligence Surveillance Court Orders Approved

(Includes orders for electronic surveillance and physical searches)

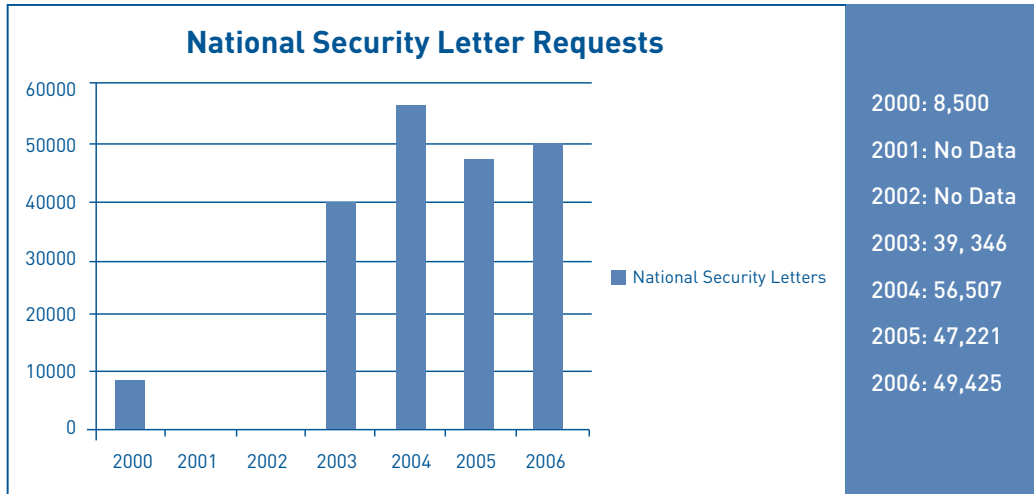
Section 218 of the Patriot Act modified the legal standard necessary to obtain Foreign Intelligence Surveillance Court orders.



See Electronic Privacy Information Center, Foreign Intelligence Surveillance Act Orders 1979-2007, http://epic.org/privacy/wiretap/stats/fisa_stats.html#footnote12 (last visited Dec. 1, 2008).

National Security Letter Requests*

Section 505 of the Patriot Act reduced the legal standard for issuing National Security Letters.

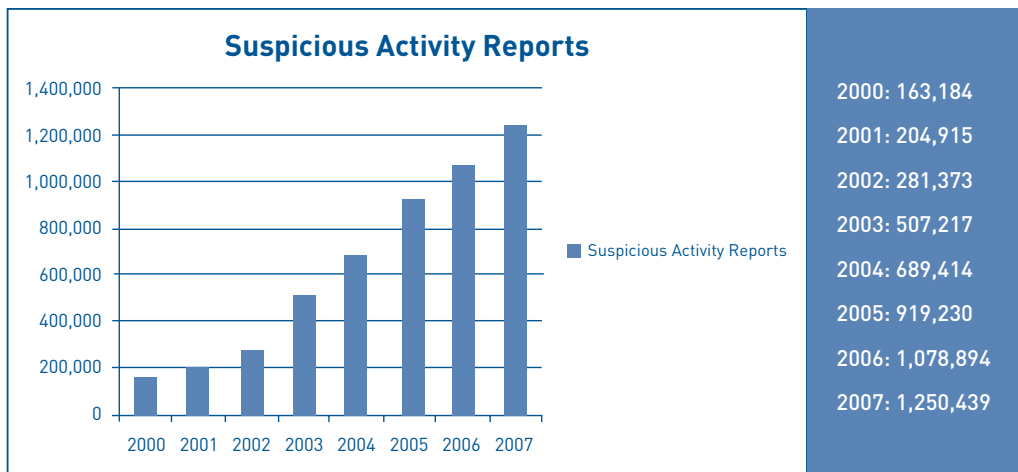


See DEP'T OF JUSTICE, OFFICE OF INSPECTOR GENERAL, A REVIEW OF THE FEDERAL BUREAU OF INVESTIGATION'S USE OF NATIONAL SECURITY LETTERS 69 (Mar. 2007), available at <http://www.usdoj.gov/oig/special/s0703b/final.pdf>; DEP'T OF JUSTICE, OFFICE OF INSPECTOR GENERAL, A REVIEW OF THE FEDERAL BUREAU OF INVESTIGATION'S USE OF SECTION 215 ORDERS FOR BUSINESS RECORDS (Mar. 2007), available at <http://www.usdoj.gov/oig/special/s0703a/final.pdf>.

*These numbers understate the number of NSL requests the FBI actually made during these time periods. The inspector general determined that the FBI did not keep proper records regarding its use of NSLs and the audit revealed significant undercounting of NSL requests. No reliable data exists for the number of NSLs served in 2001 and 2002.

Suspicious Activity Reports filed by financial institutions

Sections 356 and 359 of the Patriot Act expanded the types of financial institutions required to file suspicious activity reports under the Bank Secrecy Act. These reports include detailed personal and account information and are turned over to the Treasury Department and the FBI.



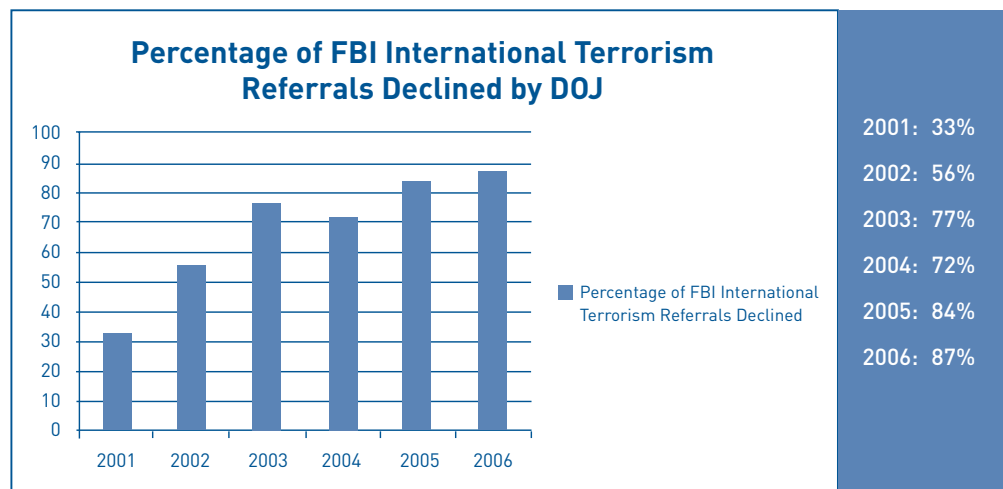
See DEP'T OF THE TREASURY, FINANCIAL CRIMES ENFORCEMENT NETWORK, THE SAR ACTIVITY REVIEW – BY THE NUMBERS, ISSUE 10 (May 2008), available at http://www.fincen.gov/news_room/rp/files/sar_by_num_10.pdf.

More Collection Does Not Result in More Prosecutions

Data produced by the Executive Office for United States Attorneys and analyzed by the Transactional Records Access Clearinghouse (TRAC) shows that prosecutions in FBI international terrorism cases dropped steadily from 2002 to 2008.*



More critical to evaluating the effectiveness of post-Patriot Act surveillance, however, is DOJ's increasing tendency to refuse to prosecute FBI international terrorism investigations during that time period. In 2006, the DOJ declined to prosecute a shocking 87% of the international terrorism cases the FBI referred for prosecution. Only a tiny fraction of the many thousands of terrorism investigations the FBI opens each year are even referred for prosecution, thereby demonstrating that the vast majority of the FBI's terrorism-related investigative activity is completely for naught – yet the FBI keeps all of the information it collects through these dubious investigations, forever.



*See TRANSACTIONAL RECORDS ACCESS CLEARINGHOUSE, NATIONAL PROFILE AND ENFORCEMENT:TRENDS OVER TIME (2006), <http://trac.syr.edu/tracfb/newfindings/current/> (last visited Dec. 1, 2008); Todd Lochner, *Sound and Fury: Perpetual Prosecution and Department of Justice Antiterrorism Efforts*, 30 LAW & POLICY 168, 179 (2008), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1109250 (“In fiscal year 2003 alone the FBI opened over 25,000 terrorism investigations, a figure that dwarfs all declinations by federal prosecutors since that time”).

NEW SUNSET DATES CREATE OVERSIGHT OPPORTUNITY

When Congress reauthorized the Patriot Act in 2006, it established new expiration dates for two Patriot Act provisions and for a related provision of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA).¹⁸ Under the reauthorization these three provisions, **section 206** and **section 215** of the Patriot Act and **section 6001** of the IRTPA, are all set to expire on December 31, 2009. The 111th Congress will revisit these provisions this year, which creates an opportunity for Congress to examine and evaluate the government's use and abuse of all Patriot Act authorities, as well as other post-9/11 surveillance or security programs.

Section 206 of the Patriot Act authorizes the government to obtain “roving wiretap” orders from the Foreign Intelligence Surveillance Court (FISC) whenever a subject of a wiretap request uses multiple communications devices. The FISC is a secret court established under the Foreign Intelligence Surveillance Act (FISA) that issues classified orders for the FBI to conduct electronic surveillance or physical searches in intelligence investigations against foreign agents and international terrorists. Unlike roving wiretaps authorized for criminal investigations, section 206 does not require the order to identify either the communications device to be tapped nor the individual against whom the surveillance is directed, which is what gives section 206 the Kafkaesque moniker, the “John Doe roving wiretap provision.” The reauthorized provision requires the target to be described “with particularity,” and the FBI to file an after-the-fact report to the FISC to explain why the government believed the target was using the phones it was tapping. However, it does not require the government to name the target, or to make sure its roving wiretaps are intercepting only the target's communications. The power to intercept a roving series of unidentified devices of an unidentified target provides government agents with an inappropriate level of discretion reminiscent of the general warrants that so angered the American colonists. There is virtually no public information available regarding how the government uses section 206.

Likewise, little is known about the way the government uses **section 6001** of the IRTPA, which is known as the “lone wolf” provision. Section 6001 authorizes government agencies to obtain secret FISA surveillance orders against individuals who are not connected to any international terrorist group or foreign nation. The government justified this provision by imagining a hypothetical “lone wolf,” an international terrorist operating independently of any terrorist organization, but there is little evidence to suggest this imaginary construct had any basis in reality. Moreover, since terrorism is a crime, there is no reason to believe that the government could not obtain a Title III surveillance order from a criminal court if the government had probable cause to believe an individual was planning an act of terrorism.¹⁹ Quite simply, this provision allows the government to avoid the more exacting standards for obtaining electronic surveillance orders from criminal courts. No public records are available to document whether, or how, the government has used this power.

Section 215 of the Patriot Act provides a sweeping grant of authority for the government to obtain secret FISC orders demanding “any tangible thing” it claims is relevant to an authorized investigation regarding international terrorism or espionage. Known as the “library provision,” section 215 significantly expands the types of items the government can demand under FISA, and lowers the standard of proof necessary to obtain an order. Prior to the Patriot Act, FISA required probable cause to believe the target was an agent of a foreign power. Section 215 only requires the government to claim the items sought are relevant to an authorized investigation. Most significant in this change of standard, however, was the removal of the requirement for the FBI to show that the items sought pertain to a person the FBI is investigating. Under section 215, the government can obtain orders for private records

or items belonging to people who are not even under suspicion of involvement with terrorism or espionage, including U.S. citizens and lawful resident aliens, not just foreigners.

Section 215 orders come with compulsory non-disclosure orders, or “gags,” which contributed to the secrecy surrounding how they were being used. To ensure that it would have at least some information upon which to evaluate Patriot Act powers before the next sunset period, Congress included a provision in the 2006 Patriot Act reauthorization that required the Department of Justice Inspector General (IG) to audit the FBI’s use of National Security Letters (NSLs) and Section 215 orders.²⁰ These reports provided the first thorough examination of the implementation of the post-9/11 anti-terrorism powers. They also confirmed what our nation’s founders already knew: unchecked authority is too easily abused.

EVIDENCE OF ABUSE: THE INSPECTOR GENERAL AUDITS

National Security Letters

NSLs are secret demand letters issued without judicial review to obtain sensitive personal information such as financial records, credit reports, telephone and e-mail communications data and Internet searches. The FBI had authority to issue NSLs through four separate statutes, but these authorities were significantly expanded by **section 505** of the Patriot Act.²¹ **Section 505** increased the number of officials who could authorize NSLs and reduced the standard necessary to obtain information with them, requiring only an internal certification that the records sought are “relevant” to an authorized counterterrorism or counter-intelligence investigation. The Patriot Act reauthorization made the NSL provisions permanent.

The NSL statutes now allow the FBI and other executive branch agencies to obtain records about people who are not known – or even suspected – to have done anything wrong. The NSL statutes also allow the government to prohibit NSL recipients from disclosing that the government sought or obtained information from them. While Congress modified these “gag orders” in the Patriot Act reauthorization to allow NSL recipients to consult a lawyer, under the current state of the law NSLs are still not subject to any meaningful level of judicial review (ACLU challenges to the NSL gag orders are described below).²²

The first two IG audits, covering NSLs and section 215 orders issued from 2003 through 2005, were released in March of 2007. They confirmed widespread FBI mismanagement, misuse and abuse of these Patriot Act authorities.²³ The NSL audit revealed that the FBI managed its use of NSLs so negligently that it literally did not know how many NSLs it had issued. As a result, the FBI seriously under-reported its use of NSLs in its previous reports to Congress. The IG also found that FBI agents repeatedly ignored or confused the requirements of the NSL authorizing statutes, and used NSLs to collect private information against individuals two or three times removed from the subjects of FBI investigations. Twenty-two percent of the audited files contained unreported legal violations.²⁴ Most troubling, FBI supervisors used hundreds of illegal “exigent letters” to obtain telephone records without NSLs by falsely claiming emergencies, apparently finding even the lax standards of NSLs too onerous.²⁵

On March 13, 2008, the IG released a second pair of audit reports covering 2006 and evaluating the reforms implemented by the DOJ and the FBI after the first audits were released in 2007.²⁶ Not surprisingly, the new reports identified many of the same problems discovered in the earlier audits. The 2008 NSL report showed that the FBI issued 49,425 NSLs in 2006 (a 4.7 percent increase over 2005), and confirmed the FBI is increasingly using NSLs to gather information on U.S. persons (57 percent in 2006, up from 53 percent in 2005).²⁷

The 2008 IG audit also revealed that high-ranking FBI officials, including an assistant director, a deputy assistant director, two acting deputy directors and a special agent in charge, improperly issued eleven “blanket NSLs” in 2006 seeking data on 3,860 telephone numbers.²⁸ None of these “blanket NSLs” complied with FBI policy and eight imposed unlawful non-disclosure requirements on recipients.²⁹ Moreover, the “blanket NSLs” were written to “cover information already acquired through exigent letters and other informal responses.”³⁰ The IG expressed concern that such high-ranking officials would fail to comply with FBI policies requiring FBI lawyers to review all NSLs, but it seems clear enough that this step was intentionally avoided because the officials knew these NSL

requests were illegal.³¹ It would be difficult to call this conduct anything but intentional.

The ACLU successfully challenged the constitutionality of the original Patriot Act's gag provisions, which imposed a categorical and blanket non-disclosure order on every NSL recipient.³² Upon reauthorization, the Patriot Act limited these gag orders to situations when a special agent in charge certifies that disclosure of the NSL request might result in danger to the national security, interference with an FBI investigation or danger to any person. Despite this attempted reform, the IG's 2008 audit showed that 97 percent of NSLs issued by the FBI in 2006 included gag orders, and that five percent of these NSLs contained "insufficient explanation to justify imposition of these obligations."³³ While a five percent violation rate may seem small compared to the widespread abuse of NSL authorities documented elsewhere, these audit findings demonstrate that the FBI continues to gag NSL recipients in an overly broad, and therefore unconstitutional manner. Moreover, the IG found that gags were improperly included in eight of the 11 "blanket NSLs" that senior FBI counterterrorism officials issued to cover hundreds of illegal FBI requests for telephone records through exigent letters.³⁴

The FBI's gross mismanagement of its NSL authorities risks security as much as it risks the privacy of innocent persons. The IG reported that the FBI could not locate return information for at least 532 NSL requests issued from the field, and 70 NSL requests issued from FBI headquarters (28 percent of the NSLs sampled).³⁵ Since the law only allows the FBI to issue NSLs in terrorism and espionage investigations, it cannot be assumed that the loss of these records is inconsequential to our security. Intelligence information continuing to fall through the cracks at the FBI through sheer incompetence is truly a worrisome revelation.

FACES of SURVEILLANCE



PETER CHASE is the Director of the Plainville Public Library and was formerly the Vice President of Library Connection Inc, a consortium of 26 Connecticut libraries. In 2005, the FBI used an NSL to demand library patron records from Library Connection and imposed a gag order on the librarians, prohibiting them from speaking to Congress during the debate about the reauthorization of the Patriot Act. Peter and his colleagues decided to challenge the NSL demand and gag. "The government was telling Congress that it didn't use the Patriot Act against libraries and that no one's rights had been violated. I felt that I just could not be part of this fraud being foisted on our nation." Bizarrely, the FBI continued to enforce the gag order even after *The New York Times* revealed Library Connection's identity. The librarians prevailed and the government ultimately withdrew the record demand and the gag order, permitting them to finally tell their story.

Section 215 Orders

The IG's **section 215** audits showed the number of FBI requests for section 215 orders was small by comparison to the number of NSLs issued. Only six section 215 applications were made in 2007.³⁶

The disparity between the number of section 215 applications and the number of NSLs issued seems to suggest that FBI agents were bypassing judicial review in the section 215 process by using NSLs in a manner not authorized by law. An example of this abuse of the system was documented in the IG's 2008 section 215 report. The FBI applied to the FISC for a section 215 order, only to be denied on First Amendment grounds. The FBI instead used NSLs to obtain the information.

While this portion of the IG report is heavily redacted, it appears that sometime in 2006 the FBI twice asked the FISC for a section 215 order seeking "tangible things" as part of a counterterrorism case. The court denied the request, both times, because "the facts were too 'thin' and [the] request implicated the target's First Amendment rights."³⁷ Rather than re-evaluating the underlying investigation based on the court's First Amendment concerns, the FBI circumvented the court's oversight and pursued the investigation using three NSLs that were predicated on the same information contained in the section 215 application.³⁸ The IG questioned the legality of the FBI's use of NSLs based on the same factual predicate contained in the section 215 request rejected by the FISC on First Amendment grounds, because the authorizing statutes for NSLs and section 215 orders contain the same First Amendment caveat.³⁹

The IG also discovered the FISC was not the first to raise First Amendment concerns over this investigation to FBI officials. Lawyers with the Department of Justice Office of Intelligence Policy Review(OIPR) raised the First Amendment issue when the FBI sent the section 215 application for its review.⁴⁰ The OIPR is supposed to oversee FBI intelligence investigations, but OIPR officials quoted in the IG report said the OIPR has "not been able to fully serve such an oversight role" and that they were often bullied by FBI agents:

In addition, the former Acting Counsel for Intelligence Policy stated that there is a history of significant pushback from the FBI when OIPR questions agents about the assertions included in FISA applications. The OIPR attorney assigned to Section 215 requests also told us that she routinely accepts the FBI's assertions regarding the underlying investigations as fact and that the FBI would respond poorly if she questioned their assertions.⁴¹

SUGGESTED REFORM OF NSL STATUTES

- Repeal the expanded NSL authorities that allow the FBI to demand information about innocent people who are not the targets of any investigation. Reinstating prior standards limiting NSLs to information about terrorism suspects and other agents of foreign powers.
- Allow gag orders only upon the authority of a court, and only when necessary to protect national security. Limit scope and duration of such gag orders and ensure that their targets and recipients have a meaningful right to challenge them before a fair and neutral arbiter.
- Impose judicial oversight of all Patriot Act authorities. Allowing the FBI to self-certify that it has met the statutory requirements invites further abuse and overuse of NSLs. Contemporaneous and independent oversight of the issuance of NSLs is needed to ensure that they are no longer issued at the drop of a hat to collect information about innocent U.S. persons.

Two bills introduced in the 110th Congress would have reined in the FBI's use of NSLs: the National Security Letter Reform Act of 2007 (H.R. 3189) sponsored by Representative Jerrold Nadler (D-NY) and the NSL Reform Act of 2007 (S. 2088) sponsored by Senator Russ Feingold (D-WI). These were good bills that took great strides toward limiting the FBI's authority to issue NSLs. Assuming their reintroduction in similar form, they should be acted upon promptly. Further delay will simply mean that thousands more innocent people will have their private records collected by the FBI.

FACES of SURVEILLANCE



BREWSTER KAHLE is the founder and digital librarian of the Internet Archive, a digital library. In November 2007, the FBI used an NSL to demand personal information about one of the Archive's users. The NSL also included a gag order, prohibiting the Archive from revealing the existence of the letter. In April 2008, the FBI withdrew the unconstitutional NSL as part of the settlement of a lawsuit brought by the ACLU and the Electronic Frontier Foundation. "The free flow of information is at the heart of every library's work. That's why Congress passed a law limiting the FBI's power to issue NSLs to America's libraries. While it's never easy standing up to the government - particularly when I was barred from discussing it with anyone - I knew I had to challenge something that was clearly wrong. I'm grateful that I am able now to talk about what happened to me, so that other libraries can learn how they can fight back from these overreaching demands."

When the FISC raised First Amendment concerns about the FBI investigation, the FBI general counsel decided the FBI would continue the investigation anyway, using methods that had less oversight. When asked whether the court's concern caused her to review the underlying investigation for compliance with legal guidelines that prohibit investigations based solely on protected First Amendment activity, the general counsel said she did not because "she disagreed with the court's ruling and nothing in the court's ruling altered her belief that the investigation was appropriate."⁴² Astonishingly, she put her own legal judgment above the decision of the court. She added that the FISC "does not have the authority to close an FBI investigation."⁴³

A former OIPR counsel for intelligence policy argued that while investigations based solely on association with subjects of other national security investigations were "weak," they were "not necessarily illegitimate."⁴⁴ It is also important to note that this investigation, based on simple association with the subject of another FBI investigation, was apparently not an aberration. The FBI general counsel told the IG the FBI would have to close "numerous investigations" if they could not open cases against individuals who merely have contact with other subjects of FBI investigations.⁴⁵ Conducting "numerous investigations" based upon mere contact, and absent facts establishing a reasonable suspicion of wrongdoing, will only result in wasted effort, misspent security resources and unnecessary violations of the rights of innocent Americans.

The FBI's stubborn defiance of OIPR attorneys and the FISC demonstrates a dangerous interpretation of the legal limits of the FBI's authority at its highest levels, and lays bare the inherent weakness of any set of internal controls. The FBI's use of NSLs to circumvent more arduous section 215 procedures confirms the ACLU's previously articulated concerns that the lack of oversight of the FBI's use of its NSL authorities would lead to such inappropriate use.

Moreover, despite the FBI's infrequent use of section 215, the IG discovered serious deficiencies in the way it managed this authority. The IG found substantial bureaucratic delays at both FBI headquarters and OIPR in bringing section 215 applications to the FISC for approval. While neither the FBI's FISA Management System nor DOJ's OIPR tracking system kept reliable records regarding the length of time section 215 requests remained pending, the IG was able to determine that processing times for section 215 requests ranged from ten days to an incredible 608 days, with an average delay of 169 days for approved orders and 312 days for withdrawn requests.⁴⁶ The IG found these delays were the result of unfamiliarity with the proper process, simple misrouting of the section 215 requests and an unnecessarily bureaucratic, self-imposed, multi-layered review process.⁴⁷ Most tellingly, the IG's 2008 report found that the process had not improved since the IG identified these problems had been identified in the 2007 audit.⁴⁸ DOJ has used long processing times

for FISA applications as justification for expanding its surveillance powers and reducing FISC review, but this evidence shows clearly that ongoing mismanagement at the FBI and OIPR drives these delays, not a lack of authority.⁴⁹ Congress should instead compel efficiency at these agencies by increasing its oversight and reining in these expanded authorities.

SUGGESTED REFORMS

- Repeal the expanded section 215 authorities that allow the FBI to demand information about innocent people who are not the targets of any investigation. Return to previous standards limiting the use of 215 authorities to gather information only about terrorism suspects and other agents of foreign powers.

FACES of SURVEILLANCE



TARIQ RAMADAN, a Swiss native and Visiting Fellow at the University of Oxford, is a leading scholar of the Muslim world. The U.S. government revoked Ramadan's visa in August 2004, preventing him from assuming a tenured teaching position at the University of Notre Dame and from attending speaking engagements with U.S. audiences. Although Professor Ramadan has been a consistent critic of terrorism and those who use it, the Department of Homeland Security cited a provision of the Patriot Act that allows the government to deny a visa to anyone whom the government believes has "endorse[d] or espouse[d] terrorist activity" as the basis for its decision. The government later withdrew that accusation but Professor Ramadan remains barred from the country.

UNCONSTITUTIONAL: COURT CHALLENGES TO THE PATRIOT ACT

Court challenges offered another source of information about the government's misuse of Patriot Act powers.

National Security Letter Gag Orders

The ACLU challenged the non-disclosure and confidentiality requirements in NSLs in three cases. The first, *Doe v. Mukasey*, involved an NSL served on an Internet Service Provider (ISP) in 2004 demanding customer records pursuant to the Electronic Communications Privacy Act (ECPA).⁵⁰ The letter prohibited the anonymous ISP and its employees and agents "from disclosing to any person that the FBI sought or obtained access to information or records under these provisions." In the midst of a lawsuit over the constitutionality of the NSL provisions in ECPA, the Patriot Act reauthorization⁵¹ was enacted amending the NSL provision but maintaining the government's authority to request sensitive customer information and issue gag orders – albeit in a slightly narrower set of circumstances. In September 2007, the District Court for the Southern District of New York found that even with the reauthorization amendments the gag provisions violated the Constitution. The court struck down the amended ECPA NSL statute in its entirety,⁵² with Judge Victor Marrero writing that the statute's gag provisions violated the First Amendment and the principle of separation of powers.

In December 2008 the U.S. Court of Appeals for the Second Circuit upheld the decision in part. The appeals court invalidated parts of the statute that placed the burden on NSL recipients to initiate judicial review of gag orders, holding that the government has the burden to justify silencing NSL recipients. The appeals court also invalidated parts of the statute that narrowly limited judicial review of the gag orders – provisions that required the courts to treat the government's claims about the need for secrecy as conclusive and required the courts to defer entirely to the executive branch.⁵³ As this is written, the FBI still maintains its gag on the ISP even though it abandoned its demand for the records.

The second case, *Library Connection v. Gonzales*, involved an NSL served on a consortium of libraries in Connecticut.⁵⁴ In September 2006, a federal district court ruled that the gag on the librarians violated the First Amendment. The government ultimately withdrew both the gag and its demand for records.

The third case, *Internet Archive v. Mukasey*, involved an NSL served on a digital library.⁵⁵ In April 2008, the FBI withdrew the NSL and the gag as a part of the settlement of the legal challenge brought by the ACLU and the Electronic Frontier Foundation.⁵⁶ In every case in which an NSL recipient has challenged an NSL in court, the government has withdrawn its demand for records, creating doubt regarding the government's need for the records in the first place.

In addition, a 2007 ACLU Freedom of Information Act suit revealed that the FBI was not the only agency abusing its NSL authority. The Department of Defense (DOD) does not have the authority to investigate Americans, except in extremely limited circumstances. Recognizing this, Congress gave the DOD a narrow NSL authority, strictly limited to non-compulsory requests for information regarding DOD employees in counterterrorism and counter-intelligence investigations,⁵⁷ and to obtaining financial records⁵⁸ and consumer reports⁵⁹ when necessary to conduct such investigations. Only the FBI has the authority to issue compulsory NSLs for electronic communication records and for certain consumer information from consumer reporting agencies. This authority can only be used in furtherance of authorized FBI investigations. Records obtained by the ACLU show the DOD issued hundreds of NSLs to collect financial and credit information since September 2001, and at times asked the FBI to issue NSLs compelling the production of records the DOD wanted but did not have the authority to obtain. The documents suggest the DOD used the FBI to circumvent limits on the DOD's investigative authority and to obtain information it was not entitled to under the law. The FBI compliance with these DOD requests – even when it was not conducting its own authorized investigation – is an apparent violation of its own statutory authority.⁶⁰

Material Support for Terrorism Provisions

Laws prohibiting material support for terrorism, which were expanded by the Patriot Act, are in desperate need of re-evaluation and reform. Intended as a mechanism to starve terrorist organizations of resources, these statutes instead undermine legitimate humanitarian efforts and perpetuate the perception that U.S. counterterrorism policies are unjust.

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), passed in the wake of the Oklahoma City bombing, criminalized providing material support to terrorists or terrorist organizations.⁶¹ Title 18 U.S.C. § 2339A makes it a federal crime to knowingly provide material support or resources in preparation for or in carrying out specified crimes of terrorism, and 18 U.S.C. § 2339B outlaws the knowing provision of material support or resources to any group of individuals the secretary of state has designated a foreign terrorist organization (FTO).⁶² AEDPA defined “material support or resources” as “currency or other financial securities, financial services, lodging, training, safe-houses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials.” AEDPA also amended the Immigration & Nationality Act (INA) to give the secretary of state almost unfettered discretion to designate FTOs.⁶³

The secretary of state may designate an organization as an FTO if she finds that the organization is foreign, that it engages in or retains the capacity and intent to engage in terrorist activities, and that its activities threaten the national defense, foreign relations or economic interests of the United States. An FTO may challenge its designation in federal court but the INA gives the government the ability to use classified information *in camera* and *ex parte*, so the designated organization never gets to see, much less dispute the allegations against it. Moreover, a judge must

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WANDA GUTHRIE, a volunteer with the Thomas Merton Center for Peace & Justice, an organization founded in 1972 to bring people from diverse philosophies and faiths together to work, through nonviolent efforts, for a more just and peaceful world, was monitored by the FBI Joint Terrorism Task Force. “The government’s surveillance of the TMC events and gatherings which may include those of Roots for Peace is just horrible. Spying invades peoples’ privacy and sacred space when they are speaking out - and make no bones about it, when you’re speaking out for peace it is sacred space. For the FBI to monitor us as if we were terrorists is unconscionable.”

determine that the government acted in an arbitrary and capricious manner – a very difficult legal standard for an FTO to prove - in order to overturn a designation.

Section 805 of the Patriot Act expanded the already overbroad definition of “material support and resources” to include “expert advice or assistance,” and **section 810** increased penalties for violations of the statute.⁶⁴ Through IRTPA, Congress narrowed these provisions in 2004 to require that a person have knowledge that the organization is an FTO, or has engaged or engages in terrorism. However, the statute still does not require the government to prove that the person specifically intended for his or her support to advance the terrorist activities of the designated organization.⁶⁵ In fact, the government has argued that those who provide support to designated organizations can run afoul of the law even if they oppose the unlawful activities of the designated group, intend their support to be used only for humanitarian purposes and take precautions to ensure that their support is indeed used for these purposes.⁶⁶ This broad interpretation of the material support prohibition effectively prevents humanitarian organizations from providing needed relief in many parts of the world where designated groups control schools, orphanages, medical clinics, hospitals and refugee camps.⁶⁷

In testimony before Congress in 2005, ACLU of Southern California staff attorney Ahilan T. Arulanantham gave a first-hand account of the difficulties he experienced while providing humanitarian aid to victims of the 2004 tsunami in Sri Lanka.⁶⁸ At the time of the tsunami approximately one-fifth of Sri Lanka was controlled by the Liberation Tigers of Tamil Eelam (LTTE), an armed group fighting against the Sri Lankan government. The U.S. government designated the LTTE as an FTO, but for the 500,000 people living within its territory, the LTTE operates as an authoritarian military government. As a result, providing humanitarian aid to needy people in this part of Sri Lanka almost inevitably requires dealing directly with institutions the LTTE controls. And because there is no humanitarian exemption from material support laws (only the provision of medicine and religious materials are exempted), aid workers in conflict zones like Sri Lanka are at risk of prosecution by the U.S. government. Arulanantham explained the chilling effect of these laws:

I have spoken personally with doctors, teachers, and others who want to work with people desperately needing their help in Sri Lanka, but fear liability under the “expert advice,” “training,” and “personnel” provisions of the law. I also know people who feared to send funds for urgent humanitarian needs, including clothing, tents, and even books, because they thought that doing so might violate the material support laws. I have also consulted with organizations, in

my capacity as an ACLU attorney, that seek to send money for humanitarian assistance to areas controlled by designated groups. I have heard those organizations express grave concerns about continuing their work for precisely these reasons. Unfortunately, the fears of these organizations are well-justified. Our Department of Justice has argued that doctors seeking to work in areas under LTTE control are not entitled to an injunction against prosecution under the material support laws, and it has even succeeded in winning deportation orders under the immigration law's definition of material support, for merely giving food and shelter to people who belong to a "terrorist organization" even if that group is not designated.⁶⁹

Tragically, our counterterrorism laws make it more difficult for U.S. charities to operate in parts of the world where their good works could be most effective in winning the battle of hearts and minds. In 2006 Congress passed the Patriot Act reauthorization, making the material support provisions permanent.⁷⁰

Such unjust and counter-productive consequences are a direct result of the overbroad and unconstitutionally vague definition of material support in the statute. The First Amendment protects an individual's right to join or support political organizations and to associate with others in order to pursue common goals. The framers understood that protecting speech and assembly were essential to the creation and functioning of a vibrant democracy. As a result, the government cannot punish mere membership in or political association with disfavored groups – even those that engage in both lawful and unlawful activity – without the strictest safeguards.

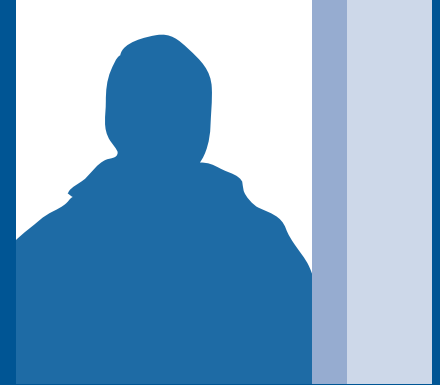
The material support provisions impermissibly criminalize a broad range of First Amendment-protected activity, both as a result of their sweeping, vague terms and because they do not require the government to show that a defendant *intends* to support the criminal activity of a designated FTO. Courts have held that vague statutes should be invalidated for three reasons: "(1) to avoid punishing people for behavior that they could not have known was illegal; (2) to avoid subjective enforcement of laws...; and (3) to avoid any chilling effect on the exercise of First Amendment freedoms."⁷¹ Material support prohibitions against "training," "services" and "expert advice and assistance" fail each of these three standards.

Any suggestion that the government would not use the material support statutes to prosecute purely First Amendment-protected speech is belied by the fact that it already has. In a most notorious example, the government brought charges against University of Idaho Ph.D. candidate Sami Omar Al-Hussayen, whose volunteer work managing websites for a Muslim charity led to a six-week criminal trial for materially supporting terrorism. The prosecution argued that by running a website that had links to other websites that carried speeches advocating violence, Al-Hussayen provided "expert assistance" to terrorists. A jury ultimately acquitted Al-Hussayen of all terrorism-related charges.⁷²

SUGGESTED REFORM OF MATERIAL SUPPORT STATUTES

- Amend the material support statutes to require specific intent to further an organization's unlawful activities before imposing criminal liability.
- Remove overbroad and impermissibly vague language, such as "training," "service" and "expert advice and assistance," from the definition of material support.
- Establish an explicit duress exemption to remove obstacles for genuine refugees and asylum-seekers to enter and/or remain in the United States.
- Provide notice, due process and meaningful review requirements in the designation process, and permit defendants charged with material support to challenge the underlying designation in their criminal cases.

FACES of SURVEILLANCE



The material support provisions also impose guilt by association in violation of the Fifth Amendment. Due process requires the government to prove personal guilt – that an individual *specifically intended* to further the group’s unlawful ends – before criminal sanctions may be imposed.⁷³ Even with the IRTPA amendments, the material support provisions do not require specific intent. Rather, the statutes impose criminal liability based on the mere knowledge that the group receiving support is an FTO or engages in terrorism. Indeed, a Florida district court judge in *United States v. Al-Arian* warned that under the government’s reading of the material support statute, “a cab driver could be guilty for giving a ride to an FTO member to the UN.”⁷⁴ And these constitutional deficiencies are only exacerbated by the unfettered discretion these laws give the secretary of state to designate groups, and the lack of due process afforded to groups that wish to appeal their designation.

A recent study of material support prosecutions from September 2001 to July 2007 reveals an unusually high acquittal rate for these cases.⁷⁵ The DOJ’s trial conviction rate for all felonies is fairly steady over the years: 80% in 2001, 82% in 2002, 82% in 2003 and 80% in 2004.⁷⁶ But almost half (eight of 17) of the defendants charged with material support of terrorism under §2339B who chose to go to trial were acquitted, and three others successfully moved to have their charges dismissed before trial.⁷⁷ This disparity suggests that the government is overreaching in charging material support violations for behavior not reasonably linked to illegal or violent activity. The data is especially troubling given that the median sentence for a conviction at trial for material support under §2339B is 84 months longer than for a guilty plea to the same offense.⁷⁸ That those defendants who risk the additional 84 months in prison are acquitted in almost half of the cases raises a disturbing question of whether the government is using the draconian sentences provided in this Patriot Act-enhanced statute to compel plea bargains where the evidence might not support conviction at trial. Of the 61 defendants whose cases were resolved during the study period, 30 pled guilty to material support and another 11 pled guilty to other charges. Only nine of the remaining 20 were convicted.

In *Humanitarian Law Project v. Mukasey*, a group of organizations and individuals seeking to support the nonviolent and lawful activities of Kurdish and Tamil humanitarian organizations challenged the constitutionality of the material support provisions on First and Fifth Amendment grounds.⁷⁹ They contended that the law violated the Constitution by imposing a criminal penalty for association without requiring specific intent to further an FTO’s unlawful goals, and that the terms included in the definition of “material support or resources” were impermissibly vague. In 2007, the U.S. Court of Appeals for the Ninth Circuit found the terms “training” and “service,” and part of the definition of “expert advice and assistance” unconstitutionally vague under the Fifth Amendment.⁸⁰ The government is appealing this decision.

JOHN DOE, the President of an Internet Service Provider, is an NSL recipient who has been under an FBI gag order for more than four years. John Doe challenged the constitutionality of the NSL statute. Because of the gag order, the lawsuit was initially filed under seal, and even today the ACLU is prohibited from disclosing its client’s identity. The FBI continues to maintain the gag order even though the underlying investigation is more than four years old (and may well have ended), and even though the FBI abandoned its demand for records two years ago. In December of 2008, the U.S. Court of Appeals for the Second Circuit ruled that the NSL statute’s gag provisions, as amended by Congress in 2006, violated the First Amendment.

Ideological Exclusion

The Patriot Act revived the discredited practice of ideological exclusion: denying foreign citizens' entry into the U.S. based solely on their political views and associations, rather than their conduct.

Section 411 of the Patriot Act amended the INA to expand the grounds for denying foreign nationals admission into the United States, and for deporting those already here.⁸¹ This section authorizes the exclusion not only of foreign nationals who support domestic or foreign groups the U.S. has designated as “terrorist organizations,” but also those who support “a political, social or other similar group whose public endorsement of acts of terrorist activity the secretary of state has determined undermines United States efforts to reduce or eliminate terrorist activities.” Moreover, Congress added a provision that authorizes the exclusion of those who have used a “position of prominence within any country to endorse or espouse terrorist activity, or to persuade others to support terrorist activity or a terrorist organization, in a way that the secretary of state has determined undermines United States efforts to reduce or eliminate terrorist activities.”⁸² Though ostensibly directed at terrorism, the provision focuses on words, not conduct, and its terms are broad and easily manipulated. The State Department’s Foreign Affairs Manual takes the sweeping view that the provision applies to foreign nationals who have voiced “irresponsible expressions of opinion.” Over the last six years, dozens of foreign scholars, artists and human rights activists have been denied entry to the United States not because of their actions – but because of their political views, their writings and their associations.

During the Cold War, the U.S. was notorious for excluding suspected communists. Among the many “dangerous” individuals excluded in the name of national security were Nobel Laureates Gabriel Garcia Márquez, Pablo Neruda and Doris Lessing, British novelist Graham Greene, Italian playwright Dario Fo and Pierre Trudeau, who later became prime minister of Canada. When Congress repealed the Cold War-era communist exclusion laws, it determined that “it is not in the interests of the United States to establish one standard of ideology for citizens and another for foreigners who wish to visit the United States.” It found that ideological exclusion caused “the reputation of the United States as an open society, tolerant of divergent ideas” to suffer. When Congress enacted the “endorse or espouse” provision, it ignored this historical lesson.

The ACLU challenged the constitutionality of “ideological exclusion” in *American Academy of Religion v. Chertoff*. In July 2004, the Department of Homeland Security (DHS) used the provision to revoke the visa of Tariq Ramadan, a Swiss citizen, one of Europe’s leading scholars of Islam and a vocal critic of U.S. policy. Ramadan had accepted a position to teach at the University of Notre Dame. After DHS and the State Department failed to act on a second visa application that would have permitted Ramadan to teach at Notre Dame, he applied for a B visa to attend and participate in conferences in the U.S. After the government failed to act on *that* application for many months, in January 2006, the American Academy of Religion (AAR), the American Association of University Professors and PEN American Center – organizations that had invited Professor Ramadan to speak in the United States – filed suit. They argued that the government’s exclusion of Professor Ramadan, as well as the ideological exclusion provision, violated their First Amendment right to receive information and hear ideas, and compromised their ability to

SUGGESTED REFORM OF IDEOLOGICAL EXCLUSION STATUTES

- Ban ideological exclusion based on speech that would be protected in the United States under the First Amendment.
- Repeal the “endorse or espouse” provision.

engage in an intellectual exchange with foreign scholars. When challenged in court, the government abandoned its allegation that Professor Ramadan had endorsed terrorism.⁸³

The district court held that the government could not exclude Ramadan without providing a legitimate reason and that it could not exclude Ramadan based solely on his speech. It ordered the government to adjudicate Ramadan's pending visa application within 90 days.⁸⁴ Thereafter, however, the government found an entirely new basis for barring Ramadan. Invoking the expanded material support provisions of the Real ID Act, the government determined that Professor Ramadan was inadmissible because of small donations he made from 1998 to 2002 to a lawful European charity that provides aid to Palestinians.⁸⁵ The plaintiffs continued to challenge the legality of Professor Ramadan's exclusion as well as the constitutionality of the ideological exclusion provision. In July 2007, the district court upheld Professor Ramadan's exclusion but did not rule on the constitutionality of the ideological exclusion provision, finding instead that the plaintiffs lacked standing. The ACLU appealed and the case remains pending before the the U.S. Court of Appeals for the Second Circuit.

The imposition of an ideological litmus test at the border is raw censorship and violates the First Amendment. It allows the government to decide which ideas Americans may or may not hear. Ideological exclusion skews political and academic debate in the U.S. and deprives Americans of information they have a constitutional right to hear. Particularly now, Americans should be engaged with the world, not isolated from it.

Relaxed FISA Standards

Section 218 of the Patriot Act amended FISA to eliminate the requirement that the *primary purpose* of a FISA search or surveillance must be to gather foreign intelligence.⁸⁶ Under the Patriot Act's amendment, the government needs to show only that a *significant purpose* of the search or surveillance is to gather foreign information in order to obtain authorization from the FISC.⁸⁷ This seemingly minor change allows the government to use FISA to circumvent the basic protections of the Fourth Amendment, even where criminal prosecution is the government's primary purpose for conducting the search or surveillance. This amendment allows the government to conduct intrusive investigations to gather evidence for use in criminal trials without establishing probable cause of illegal activity before a neutral and disinterested magistrate, and without providing notice required with ordinary warrants. Instead, the government can obtain authorization for secret searches from a secret and unaccountable court based on an assertion of probable cause that the target is an "agent of a foreign power;" a representation the court must accept unless "clearly erroneous." An

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BRANDON MAYFIELD, an American attorney practicing in Portland, Oregon, was subjected to secret FISA searches of his home and office after an FBI agent mistakenly identified his fingerprint on materials related to a terrorist bombing in Madrid, Spain. The FBI agents who conducted the searches of the Mayfield home left tell-tale signs of their presence, leading the Mayfield family to fear their home was being burglarized. Mayfield challenged the constitutionality of the Patriot Act provision that allows FBI agents to use FISA orders to gather evidence in a criminal investigation. "In the debate over the scope of the government's authority to wiretap Americans we often hear people say, 'if you're not doing something wrong you have nothing to worry about.' I am here to tell you that even the innocent can have their lives turned upside-down when laws designed to protect against unrestrained government actions are weakened."

improperly targeted person has no way of knowing his or her rights have been violated, so the government can never be held accountable.

Lowering evidentiary standards does not make it easier for the government to spy on the guilty. Rather, it makes it more likely that the innocent will be unfairly ensnared in overzealous investigations. A most disturbing example of the way this provision enables the government to spy on innocent Americans is the case of Brandon Mayfield, an American citizen and former U.S. Army officer who lives with his wife and three children in Oregon where he practices law.

In March 2004, the FBI began to suspect Mayfield of involvement in a series of terrorist bombings in Madrid, Spain, based on an inaccurate fingerprint identification. Although Mayfield had no criminal record and had not left the U.S. in over 10 years, he and his family became subject to months of secret physical searches and electronic surveillance approved by the FISC. In May 2004, Mayfield was arrested and imprisoned for weeks until news reports revealed that the fingerprints had been matched to an Algerian national, Ouhane Daoud. Mayfield was released the following day. In a subsequent lawsuit, *Mayfield v. United States*, a federal district court held that the Patriot Act amendment violated the Fourth Amendment by allowing the government to avoid traditional judicial oversight to obtain a surveillance order, retain and use information collected in criminal prosecutions without allowing the

targeted individuals a meaningful opportunity to challenge the legality of the surveillance, intercept communications and search a person's home without ever informing the targeted individual and circumvent the Fourth Amendment's particularity requirement.⁸⁸

SUGGESTED REFORM OF FISA STATUTES

- Restore the primary purpose requirement to FISA.

FACES of SURVEILLANCE

ONLY ONE PIECE OF THE PUZZLE

The Patriot Act may have been the first overt expansion of domestic spying powers after September 11, 2001 – but it certainly wasn't the last, and arguably wasn't even the most egregious. There have been many significant changes to our national security laws over the past seven years, and addressing the excesses of the Patriot Act without examining the larger surveillance picture may not be enough to rein in an out-of-control intelligence-gathering regime. Congress must not only conduct vigorous oversight of the government's use of Patriot Act powers, it must also review the other laws, regulations and guidelines that now permit surveillance of Americans without suspicion of wrongdoing. Congress should scrutinize the expanded surveillance authorities found in the Attorney General Guidelines for Domestic FBI Operations, Executive Order 12333, IRTPA, the amended FISA, and the ECPA. Ultimately, Congress must examine the full panoply of intelligence activities, especially domestic intelligence gathering programs, and encourage a public debate about the proper nature and reach of government surveillance programs on American soil and abroad.

Fundamentally, Congress must recognize that overbroad, ineffective or abusive surveillance programs are counterproductive to long-term government interests because they undermine public confidence and support of U.S. anti-terrorism programs. An effort by Congress to account fully for abuses of government surveillance authorities in the recent past is absolutely necessary for several reasons. First, only by holding accountable those who engaged in intentional violations of law can we re-establish the primacy of the law and deter future abuses. Second, only by creating an accurate historical record of the failure of these abusive programs can government officials learn from these mistakes and properly reform our national security laws and policies. Finally, only by vigorously exercising its oversight responsibility in matters of national security can Congress reassert its critical role as an effective check against abuse of executive authority.

The Constitution gives Congress the responsibility to conduct oversight, and Congress must fulfill this obligation to ensure the effective operation of our government. Congress should begin vigorous and comprehensive oversight hearings to examine all post-9/11 national security programs to evaluate their effectiveness and their impact on Americans' privacy and civil liberties, and it should hold these hearings in public to the greatest extent possible.



KONSTANTY HORDYNSKI, a student at the University of California at Santa Cruz, was quite surprised to learn that he was in a Pentagon domestic threat database. "I didn't protest with Students Against War to be threatening, or to be un-American, or to waste anyone's time. I protested because it was a way I could stand up for what I believed was right. I knew that my actions were protected by the Constitution. Yet the government believes that the peaceful protest in which I took part is a "credible threat." When lawfully standing up for my beliefs—standing up for what I think is right and just—is a "threat" to the government, something is wrong..."

CONCLUSION – IT IS TIME TO RECLAIM PATRIOTISM

In 2009, Congress must once again revisit the Patriot Act, as three temporary provisions from the 2006 reauthorization are set to expire by the end of the year. This time, however, Congress is not completely in the dark. The IG audits ordered in the Patriot Act reauthorization proved the government lied when it claimed that no Patriot Act powers had been abused. Critics former Attorney General John Ashcroft once derided as hysterical librarians were proven prescient in their warnings that these arbitrary and unchecked authorities would be misused.⁸⁹ Just like the colonists who fought against writs of assistance, these individuals recognized that true patriotism meant standing up for their rights, even in the face of an oppressive government and an unknowable future. Certainly there are threats to our security, as there always have been, but our nation can and must address those threats without sacrificing our essential values or we will have lost the very freedoms we strive to protect.

Courts all around the country have spoken, striking down several Patriot Act provisions that infringed on the constitutional rights of ordinary Americans. Yet the government has successfully hidden the true impact of the Patriot Act under a cloak of secrecy that even the courts couldn't – or wouldn't – penetrate.

It is time for Congress to act. Lawmakers should take this opportunity to examine thoroughly all Patriot Act powers, and indeed all national security and intelligence programs, and bring an end to any government activities that are illegal, ineffective or prone to abuse. This oversight is essential to the proper functioning of our constitutional system of government and becomes more necessary during times of crisis, not less. Serving as an effective check against the abuse of executive power is more than just Congress' responsibility; it is its patriotic duty.

APPENDIX – THE PATRIOT ACT AT A GLANCE

Many provisions in the amended Patriot Act have been abused – or have the potential to be – because of their broad and sweeping nature. The sections detailed on these pages need congressional oversight. Despite numerous hearings during the 2005 reauthorization process, there is a dearth of meaningful information about their use. Congress and the public need real answers, and the forthcoming expiration date is the perfect opportunity to revisit the provisions that have worried civil libertarians since 2001:

- [Section 203: Information Sharing](#). The Patriot Act and subsequent statutes encourage or require information sharing. While it is important for critical details to reach the right people, little is known about the breadth of use and the scope of distribution of our personal information.
- [Section 206: Roving “John Doe” Wiretaps](#). Typical judicial orders authorizing wiretaps, including Foreign Intelligence Surveillance Act (FISA) wiretap orders, identify the person or place to be monitored. This requirement has its roots firmly planted in the original Bill of Rights – the giants of our history having insisted on such a concept, now memorialized in the Fourth Amendment, where it calls for warrants “particularly describing the place to be searched, and the persons or things to be seized.” However, these roving warrants are required to specify neither person nor place, amounting to the “general warrants” that our nation’s founders had abhorred. This section will expire on December 31, 2009.
- [Section 209: Access to Stored Communications](#). The Patriot Act amended criminal statutes so that the government can obtain opened emails and emails older than 180 days with only a subpoena instead of a warrant.
- [Section 212: Voluntary Disclosures and Exigent Letters](#). Current law permits telecommunications companies to release consumer records and content to the government when they have a good faith belief it relates to a threat. However, the Patriot Act and subsequent legislation lowered that trigger from a “reasonable” to “good faith” belief that the information reflects an emergency. The act also took away the requirement that the threat be “imminent.” The Department of Justice Inspector General has confirmed that the government is using this loophole to request information in the absence of true emergencies.
- [Section 213: Sneak and Peek Searches](#). These are delayed notice search warrants. Before the Patriot Act, criminal search warrants required prior notification except in exigent circumstances or for stored communications when notice would “seriously jeopardize an investigation.” The Patriot Act expanded this once narrow loophole – used solely for stored communications – to all searches. Agents might now use this vague catch-all to circumvent longstanding Fourth Amendment protections. These sneak and peek warrants are not limited to terrorism cases – thereby undermining one of the core justifications for the original Patriot Act. In fact, for the 2007 fiscal year, the government reports that out of 690 sneak and peek applications, only seven, or about one percent, were used for terrorism cases.
- [Section 214: Pen Register/Trap and Trace Orders Under FISA](#). Pen register/trap and trace devices pick up communication records in real time and provide the government with a streaming list of phone calls or emails made by a person or account. Before the Patriot Act, this section was limited to tracking the

communications of suspected terrorists. Now, it can be used against people who are generally relevant to an investigation, even if they have done nothing wrong.

- Section 215: FISA Orders for Any Tangible Thing. These are FISA Court orders for any tangible thing – library records, a computer hard drive, a car – the government claims is relevant to an investigation to protect against terrorism. Since passage of the Patriot Act, the person whose things are being seized need not be a suspected terrorist or even be in contact with one. This section is scheduled to expire on Dec. 31, 2009.
- Section 216: Criminal Pen Register/ Trap and Trace Orders. The Patriot Act amended the criminal code to clarify that the pen register/trap and trace authority permits the government to collect Internet records in real time. However, the statute does not define ‘Internet record’ clearly. Congress needs to make sure that the government is not abusing this provision to collect lists of everything an innocent person reads on the Internet.
- Section 218: “Significant Purpose” to Begin an Intelligence Wiretap or Conduct Physical Searches. Before the Patriot Act, the extensive and secretive powers under FISA could only be used when the collection of foreign intelligence – as opposed to prosecution – was the primary purpose of the surveillance. Now, collecting foreign intelligence need only be a “significant” purpose, permitting the government to use this lower FISA warrant standard in place of a traditional criminal warrant. Congress must find out whether the government has conducted surveillance under the relaxed FISA standards for criminal prosecutions.
- Section 219: Single Jurisdiction Search Warrants. The Patriot Act allows judges sitting in districts where terrorism-related activities may have occurred to issue warrants outside of their district, possibly causing hardship on a recipient who may want to challenge the warrant.
- Section 220: Nationwide Search Warrants for Electronic Evidence. This provision permits a judge to issue an order for electronic evidence outside of the district in which he or she sits. This provision may cause a hardship for a remote Internet or phone service provider who wants to challenge the legality of the order.
- Section 411: Ideological Exclusion. The Patriot Act amended the Immigration and Nationality Act to expand the terrorism-related grounds for denying foreign nationals admission into the United States, and for deporting aliens already here. This revived the discredited practice of ideological exclusion: excluding foreign citizens based solely on their political views and associations, rather than their conduct.
- Section 505: National Security Letters. NSLs are demands for customer records from financial institutions, credit bureaus and communications service providers. They have existed for decades, but prior to passage of the Patriot Act and its subsequent amendments, they were limited to collecting information on suspected terrorists or foreign actors. Recipients are gagged from telling anyone besides their lawyers and those necessary to respond to the request that they either received or complied with a NSL. The gag has been struck down as unconstitutional but remains on the books. In 2007 and 2008, the Justice Department’s inspector general reported that upwards of 50,000 NSLs are now issued each year, many of which obtain information on people two and three times removed from a suspected terrorist.

- Section 802: Definition of Domestic Terrorism. The Patriot Act broadened the definition of domestic terrorist acts to include any state or federal crime as a predicate offense, including peaceful civil disobedience.
- Section 805: Material Support. This provision bars individuals from providing material support to terrorists, defined as providing any tangible or intangible good, service or advice to a terrorist or designated group. As amended by the Patriot Act and other laws since September 11, this section criminalizes a wide array of activities, regardless of whether they actually or intentionally further terrorist goals or organizations. Federal courts have struck portions of the statute as unconstitutional and a number of cases have been dismissed or ended in mistrial.
- Section 6001 of intelligence reform bill: “Lone Wolf” Surveillance and Search Orders. Since its inception, FISA has regulated searches and surveillance on US soil for intelligence purposes. Under FISA, a person would have to belong to a group suspected of terrorism before he or she could be surveilled. The Intelligence Reform and Terrorism Prevention Act of 2004 added a new category, allowing someone wholly unaffiliated with a terrorist organization to be targeted for surveillance. This section is scheduled to expire on December 31, 2009.

ENDNOTES

- 1 The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (PATRIOT Act) of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001).
- 2 *Boyd v. United States*, 116 U.S. 616, 624 (1886).
- 3 Thomas Y. Davies, *Recovering the Original Fourth Amendment*, 98 Mich. L. Rev. 547, 556 (1999).
- 4 See *Boyd v. United States*, 116 U.S. 616 (1886).
- 5 *Id.* at 625.
- 6 *Id.* at 625.
- 7 John Yoo and Eric Posner, *Patriot Act Under Fire*, AMERICAN ENTERPRISE INSTITUTE ONLINE, Dec. 1, 2003, available at http://www.aei.org/publications/pubID.19661,filter./pub_detail.asp.
- 8 *Marcus v. Search Warrant*, 367 U.S. 717, 729 (1961).
- 9 *Marron v. United States*, 275 U.S. 192, 196 (1927).
- 10 *Stanford v. Texas*, 379 U.S. 476, 485 (1965).
- 11 *United States v. United States District Court (Keith)*, 407 U.S. 297, 313 (1972).
- 12 *Boyd v. United States*, 116 U.S. 616, 625 (1886).
- 13 S. REP. NO. 107-351 (Dec. 2002); H.R. REP. NO. 107-792 (Dec. 2002).
- 14 Letter from the American Civil Liberties Union to the U.S. House of Representatives (Oct. 23, 2001) (on file with author), available at <http://www.aclu.org/natsec/emergpowers/14402leg20011023.html>; Letter from the American Civil Liberties Union to the U.S. Senate (Oct. 23, 2001) (on file with author), available at <http://www.aclu.org/natsec/emergpowers/14401leg20011023.html>.
- 15 Letter from the American Civil Liberties Union to Senator Dianne Feinstein (April 4, 2005) (on file with author), available at <http://www.aclu.org/safefree/general/17563leg20050404.html>.
- 16 *USA PATRIOT Act of 2001: Hearing Before the S. Select Comm. on Intelligence*, 109th Cong. 97, 100 (2005) (statement of Alberto R. Gonzales, Attorney General of the United States and Robert S. Mueller, III, Director, Federal Bureau of Investigation). A later report by the Department of Justice Inspector General would reveal that between 2003 and 2005 the FBI had self-reported 19 possible legal violations regarding its use of National Security Letters to the President's Intelligence Oversight Board. Attorney General Gonzales received at least six reports detailing FBI intelligence violations, including misuse of NSLs, three months prior to his Senate testimony. To a certain degree AG Gonzales and FBI Director Mueller were truthful in their testimony because as they well knew, President Bush's Intelligence Oversight Board did not meet to "substantiate" any of the violations reported until the Spring of 2007. See DEP'T. OF JUSTICE, OFFICE OF INSPECTOR GENERAL, *A REVIEW OF THE FEDERAL BUREAU OF INVESTIGATION'S USE OF NATIONAL SECURITY LETTERS* 69 (Mar. 2007), available at <http://www.usdoj.gov/oig/special/s0703b/final.pdf>; John Solomon, *Gonzales was told of FBI violations*, WASH. POST, Jul. 10, 2007, at A1, available at <http://www.washingtonpost.com/wp-dyn/content/article/2007/07/09/AR2007070902065.html>; John Solomon, *In Intelligence World, a Mute Watchdog*, WASH. POST, Jul. 15, 2007, at A3, available at <http://www.washingtonpost.com/wp-dyn/content/article/2007/07/14/AR2007071400862.html>.
- 17 USA PATRIOT Improvement and Reauthorization Act of 2005 (PIRA), Pub. L. No. 109-177, 120 Stat. 192 (2006).
- 18 Pub. L. No. 108-458, 118 Stat. 3638 (2004).
- 19 Electronic surveillance orders in criminal investigations are governed by the Omnibus Crime Control and Safe Streets Act of 1968. See 18 U.S.C.A. §§2510-2520 (2006).
- 20 PIRA, *supra* note 17, at § 119(a).
- 21 The four NSL authorizing statutes include the Electronic Communications Privacy Act, 18 U.S.C. § 2709 (2000), the Right

to Financial Privacy Act, 12 U.S.C. § 3401 (2000), the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq. (2000), and the National Security Act of 1947, 50 U.S.C. § 436(a)(1)(2000).

22 As amended, the NSL statute authorizes the Director of the FBI or his designee (including a Special Agent in Charge of a Bureau field office) to impose a gag order on any person or entity served with an NSL. See 18 U.S.C. § 2709(c). To impose such an order, the Director or his designee must “certify” that, absent the non-disclosure obligation, “there may result a danger to the national security of the United States, interference with a criminal, counterterrorism, or counterintelligence investigation, interference with diplomatic relations, or danger to the life or physical safety of any person.” *Id.* at § 2709(c)(1). If the Director of the FBI or his designee so certifies, the recipient of the NSL is prohibited from “disclos[ing] to any person (other than those to whom such disclosure is necessary to comply with the request or an attorney to obtain legal advice or legal assistance with respect to the request) that the [FBI] has sought or obtained access to information or records under [the NSL statute].” *Id.* Gag orders imposed under the NSL statute are imposed by the FBI unilaterally, without prior judicial review. While the statute requires a “certification” that the gag is necessary, the certification is not examined by anyone outside the executive branch. The gag provisions permit the recipient of an NSL to petition a court “for an order modifying or setting aside a nondisclosure requirement.” *Id.* at § 3511(b)(1). However, in the case of a petition filed “within one year of the request for records,” the reviewing court may modify or set aside the nondisclosure requirement only if it finds that there is “no reason to believe that disclosure may endanger the national security of the United States, interfere with a criminal, counterterrorism, or counterintelligence investigation, interfere with diplomatic relations, or endanger the life or physical safety of any person.” *Id.* at § 3511(b)(2). Moreover, if a designated senior government official “certifies that disclosure may endanger the national security of the United States or interfere with diplomatic relations,” the certification must be “treated as conclusive unless the court finds that the certification was made in bad faith.” *Id.*

23 DEP’T OF JUSTICE, OFFICE OF INSPECTOR GENERAL, A REVIEW OF THE FEDERAL BUREAU OF INVESTIGATION’S USE OF NATIONAL SECURITY LETTERS (Mar. 2007), available at <http://www.usdoj.gov/oig/special/s0703b/final.pdf> [hereinafter 2007 NSL Report]; DEP’T OF JUSTICE, OFFICE OF INSPECTOR GENERAL, A REVIEW OF THE FEDERAL BUREAU OF INVESTIGATION’S USE OF SECTION 215 ORDERS FOR BUSINESS RECORDS (Mar. 2007), available at <http://www.usdoj.gov/oig/special/s0703a/final.pdf> [hereinafter 2007 Section 215 Report].

24 2007 NSL Report, *supra* note 23, at 84.

25 2007 NSL Report, *supra* note 23, at 86-99.

26 DEP’T OF JUSTICE, OFFICE OF INSPECTOR GENERAL, A REVIEW OF THE FBI’S USE OF NATIONAL SECURITY LETTERS: ASSESSMENT OF CORRECTIVE ACTIONS AND EXAMINATION OF NSL USAGE IN 2006 (Mar. 2008), available at <http://www.usdoj.gov/oig/special/s0803b/final.pdf> [hereinafter 2008 NSL Report]; DEP’T OF JUSTICE, OFFICE OF INSPECTOR GENERAL, A REVIEW OF THE FBI’S USE OF SECTION 215 ORDERS FOR BUSINESS RECORDS IN 2006 (Mar. 2008), available at <http://www.usdoj.gov/oig/special/s0803a/final.pdf> [hereinafter 2008 Section 215 Report].

27 2008 NSL Report, *supra* note 26, at 9.

28 2008 NSL Report, *supra* note 26, at 127, 129 n.116.

29 2008 NSL Report, *supra* note 26, at 127.

30 2008 NSL Report, *supra* note 26, at 127.

31 2008 NSL Report, *supra* note 26, at 130.

32 See *Doe v. Ashcroft*, 334 F.Supp. 2d 471 (S.D.N.Y. 2004); *Doe v. Gonzales*, 500 F.Supp. 2d 379 (S.D.N.Y. 2007); *Doe v. Gonzales*, 386 F.Supp. 2d 66 (D.Conn. 2005); PIRA, Pub. L. No. 109-177, 120 Stat. 195 (2006); USA Patriot Act Additional Reauthorizing Amendments Act of 2006 (ARAA) Pub. L. No. 109-178, 120 Stat. 278 (2006). The ACLU is still litigating the constitutionality of the gag order provisions in the USA PATRIOT Improvement and Reauthorization Act of 2005. See Press Release, American Civil Liberties Union, ACLU Asks Appeals Court to Affirm Striking Down Patriot Act ‘National Security Letter’ Provision (Mar. 14, 2008) (on file with author), available at <http://www.aclu.org/safefree/nationalsecurityletters/34480prs20080314.html>.

33 2008 NSL Report, *supra* note 26, at 11, 124.

34 2008 NSL Report, *supra* note 26, at 127.

35 2008 NSL Report, *supra* note 26, at 81, 88.

36 Letter from Brian Benczkowski, Principal Deputy Assistant Attorney General, United States Department of Justice, to Nancy

Pelosi, Speaker, United States House of Representatives (Apr. 30, 2008) (on file with author), *available at* <http://www.fas.org/irp/agency/doj/fisa/2007rept.pdf>.

37 2008 Section 215 Report, *supra* note 26, at 68.

38 2008 Section 215 Report, *supra* note 26, at 72.

39 2008 Section 215 Report, *supra* note 26, at 73.

40 2008 Section 215 Report, *supra* note 26, at 67.

41 2008 Section 215 Report, *supra* note 26, at 72.

42 2008 Section 215 Report, *supra* note 26, at 72.

43 2008 Section 215 Report, *supra* note 26, at 71 n.63.

44 2008 Section 215 Report, *supra* note 26, at 73.

45 2008 Section 215 Report, *supra* note 26, at 72-73.

46 2008 Section 215 Report, *supra* note 26, at 43.

47 2008 Section 215 Report, *supra* note 26, at 45-47.

48 2008 Section 215 Report, *supra* note 26, at 47.

49 *See, Foreign Intelligence Surveillance Act: Closed Hearing Before the H. Permanent Select Comm. on Intelligence*, 110th Cong. (Sept. 6, 2007) (Statement of Kenneth Wainstein, Assistant Attorney General, National Security Division, U.S. Dep't of Justice), *available at* http://www.fas.org/irp/congress/2007_hr/090607wainstein.pdf.

50 *See Doe v. Ashcroft*, 334 F.Supp. 2d 471 (S.D.N.Y. 2004); *Doe v. Gonzales*, 500 F.Supp. 2d 379 (S.D.N.Y. 2007); *Doe v. Gonzales*, 386 F. Supp. 2d 66 (D.Conn. 2005). The ACLU is still litigating the constitutionality of the gag order provisions in the USA PATRIOT Improvement and Reauthorization Act of 2005. *See*, Press Release, American Civil Liberties Union, ACLU Asks Appeals Court to Affirm Striking Down Patriot Act 'National Security Letter' Provision (Mar. 14, 2008) (on file with author), *available at* <http://www.aclu.org/safefree/nationalsecurityletters/34480prs20080314.html>.

51 PIRA, *supra* note 17.

52 *Doe v. Gonzales*, 500 F.Supp.2d 379, 25 A.L.R. Fed. 2d 775 (S.D.N.Y. 2007).

53 *Doe v. Mukasey*, No. 07-4943-cv (2nd Cir. Dec. 15, 2008), *available at* http://www.aclu.org/pdfs/safefree/doevmukasey_decision.pdf.

54 *Library Connection v. Gonzales*, 386 F.Supp.2d 66, 75 (D.Conn. 2005).

55 *See Joint Administrative Motion to Unseal Case, Internet Archive v. Mukasey*, No. 07-6346-CW (N.D. Cal May 1, 2008), *available at* https://www.aclu.org/pdfs/safefree/internetarchive_motionounseal_20080501.pdf.

56 *Id.* at 3.

57 National Security Act of 1947, 50 U.S.C. §436.

58 Right to Financial Privacy Act, 12 U.S.C. §4314.

59 Fair Credit Reporting Act, 15 U.S.C. §1681v.

60 *See* National Security Act of 1947, 50 U.S.C. §436; Right to Financial Privacy Act, 12 U.S.C. §4314; Fair Credit Reporting Act, 15 U.S.C. §1681v; and PIRA, Pub. L. No. 109-177, §116, 120 Stat. 192 (2006), codified at 18 U.S.C. §2709.

61 Pub. L. No. 104-132, 110 Stat. 1214 (1996).

62 § 2339A. Providing material support to terrorists

(a) Offense. – Whoever provides material support or resources or conceals or disguises the nature, location, source, or ownership of material support or resources, knowing or intending that they are to be used in preparation for, or in carrying out, a violation of section 32, 37, 81, 175, 229, 351, 831, 842(m) or (n), 844(f) or (i), 930(c), 956, 1114, 1116, 1203, 1361, 1362, 1363, 1366, 1751, 1992, 1993, 2155, 2156, 2280, 2281, 2332, 2332a, 2332b, 2332f, or 2340A of this title, section 236 of the Atomic Energy Act of 1954 (42 U.S.C. 2284), or section 46502 or 60123(b) of title 49, or in preparation for, or in

carrying out, the concealment of an escape from the commission of any such violation, or attempts or conspires to do such an act, shall be fined under this title, imprisoned not more than 15 years, or both, and, if the death of any person results, shall be imprisoned for any term of years or for life.

(b) Definition. – In this section, the term “material support or resources” means currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials.

§ 2339B. Providing material support or resources to designated foreign terrorist organizations

(a) Prohibited activities. –

(1) Unlawful conduct. – Whoever, within the United States or subject to the jurisdiction of the United States, knowingly provides material support or resources to a foreign terrorist organization, or attempts or conspires to do so, shall be fined under this title or imprisoned not more than 15 years, or both, and, if the death of any person results, shall be imprisoned for any term of years or for life. . . .

(g) Definitions. – As used in this section . . .

(4) the term “material support or resources” has the same meaning as in section 2339A; . . .

(6) the term “terrorist organization” means an organization designated as a terrorist organization under section 219 of the Immigration and Nationality Act.

63 66 Stat. 163, § 219, as amended, 8 U.S.C.A. §§ 1101 et seq. As noted, 18 U.S.C. §§ 2339A and 2339B are not the only statutes pertaining to material support. In addition, the criminal liability provisions of the International Emergency Economic Powers Act (IEEPA), permit the designation of “specially designated terrorists” and “specially designated global terrorists” and give the President authority to regulate, prohibit or prevent any form of economic transaction that provides services to benefit terrorists. 50 U.S.C.A. § 1705 (2007).

64 PATRIOT Act, *supra* note 1, at §805(a)(2); 18 U.S.C. §§ 2339A(b) and 2339B(g)(4).

65 IRTPA, Pub. L. No. 108-458, 118 Stat. 3638 (2004).

66 *See Humanitarian Law Project v. Gonzales*, 380 F.Supp.2d, 1134, 1142-48, (C.D.Cal 2005).

67 *See* Brief for American Civil Liberties Union as Amicus Curiae Supporting Plaintiffs-Appellees, *HLP v. Gonzales*, No. 05-56753, 05-56846 (9th Cir. filed May 19, 2006), *available at* http://www.aclu.org/images/general/asset_upload_file394_25628.pdf.

68 *Implementation of the USA Patriot Act: Prohibition of Material Support Under Sections 805 of the USA Patriot Act and 6603 of the Intelligence Reform and Terrorism Prevention Act of 2004: Hearing Before the H. Subcomm. on Crime, Terrorism and Homeland Security of the H. Comm. on the Judiciary*, 109th Cong. 23-28 (2005) (Written statement of Ahilan T. Arulanantham, Staff Attorney, ACLU of Southern California), *available at* <http://www.aclu.org/safefree/general/17536leg20050510.html>; *See also*, Ahilan T. Arulanantham, *A Hungry Child Knows No Politics: A Proposal for Reform of the Laws Governing Humanitarian Relief and ‘Material Support’ of Terrorism*, American Constitution Society (June 2008), *available at* <http://www.acslaw.org/files/Arulanantham%20Issue%20Brief.pdf>.

69 *Implementation of the USA Patriot Act: Prohibition of Material Support Under Sections 805 of the USA Patriot Act and 6603 of the Intelligence Reform and Terrorism Prevention Act of 2004: Hearing Before the H. Subcomm. on Crime, Terrorism and Homeland Security of the H. Comm. on the Judiciary*, 109th Cong. 26 (2005) (Written statement of Ahilan T. Arulanantham, Staff Attorney, ACLU of Southern California),.

70 PIRA, *supra* note 17, at §104.

71 *Foti v. City of Menlo Park*, 146 F.3d 629, 638 (9th Cir. 1998).

72 Maureen O’Hagan, *A Terrorism Case that went Awry*, SEATTLE TIMES, Nov. 22, 2004, *available at* http://seattletimes.nwsource.com/html/localnews/2002097570_sami22m.html.

73 *See Scales v. United States*, 367 U.S. 203, 224-25 (1961).

74 *United States v. Al-Arian*, 308 F.Supp. 2d 1322, 1337 (M.D.Fl 2004).

75 Robert M. Chesney, *Federal Prosecution of Terrorism-Related Offenses: Conviction and Sentencing Data of the “Soft-Sentence” and “Data-Reliability” Critiques*, 11 LEWIS & CLARK L. REV. 837 (2007).

76 BUREAU OF JUSTICE STATISTICS, COMPENDIUM OF FEDERAL JUSTICE STATISTICS, 2001, U.S. DEPARTMENT OF JUSTICE OFFICE OF JUSTICE PROGRAMS (Nov. 2003), BUREAU OF JUSTICE STATISTICS, COMPENDIUM OF FEDERAL JUSTICE STATISTICS, 2002, U.S. DEPARTMENT OF JUSTICE OFFICE OF JUSTICE PROGRAMS (Sept. 2004), BUREAU OF JUSTICE STATISTICS, COMPENDIUM OF FEDERAL JUSTICE STATISTICS, 2003, U.S. DEPARTMENT OF JUSTICE OFFICE OF JUSTICE PROGRAMS (undated), BUREAU OF JUSTICE STATISTICS, COMPENDIUM OF FEDERAL JUSTICE STATISTICS, 2004, U.S. DEPARTMENT OF JUSTICE OFFICE OF JUSTICE PROGRAMS (Dec. 2006), http://fjsrc.urban.org/fjs.cfm?p=pubs_ann_rpt&t=h&a=compendium.

77 Chesney, *supra* note 75, at 885.

78 Chesney, *supra* note 75, at 886.

79 The ACLU filed an *amicus curiae* brief on behalf of Plaintiffs. See Brief for American Civil Liberties Union as Amicus Curiae Supporting Plaintiffs-Appellees, Humanitarian Law Project v. Gonzales, No. 05-56753, 05-56846 (9th Cir. filed May 19, 2006), available at http://www.aclu.org/images/general/asset_upload_file394_25628.pdf.

80 *Humanitarian Law Project v. Mukasey*, 509 F.3d 1122 (9th Cir. 2007).

81 PATRIOT Act, *supra* note 1, at §411, codified at 8 U.S.C. §1182(a)(3)(B)(i)(VI).

82 PATRIOT Act, *supra* note 1, at §411, codified at 8 U.S.C. §1182(a)(3)(B)(i)(VI).

83 *American Academy of Religion v. Chertoff*, No. 06 CV 588(PAC), 2007 WL 4527504 (S.D.N.Y.).

84 See *American Academy of Religion v. Chertoff*, 463 F.Supp.2d 400 (S.D.N.Y. Jun. 23, 2006); *American Academy of Religion v. Chertoff*, No. 06 CV 588(PAC), 2007 WL 4527504 (S.D.N.Y.).

85 See REAL ID Act, Pub. L. No. 109-13, Div. B, 119 Stat. 231 (May 11, 2005).

86 PATRIOT Act, *supra* note 1, at §218.

87 PATRIOT Act, *supra* note 1, at §218.

88 *Mayfield v. U.S.*, 504 F.Supp.2d 1023 (D.Or. Sep 26, 2007). The ACLU filed an *amicus curiae* brief on behalf of Plaintiffs. See brief for American Civil Liberties Union as Amicus Curiae Supporting Plaintiffs, *Mayfield v. U.S.*, No. 07-35865 (9th Cir. filed March 14, 2008), available at http://www.aclu.org/images/asset_upload_file16_34495.pdf.

89 Eric Lichtblau, *Ashcroft Mocks Librarians and Others Who Oppose Parts of Counterterrorism Law*, N.Y. TIMES, Sept. 16, 2003, available at <http://query.nytimes.com/gst/fullpage.html?res=9D00E4D8163AF935A2575AC0A9659C8B63>.

EXHIBIT 9

Guidelines for Completing the DS 160 Non Immigrant Visa Application

General Information

- The DS-160 is an online form that must be completed prior to scheduling a visa interview.
- The application must be completed in English.
- A page-by-page summary of the DS-160 questions is provided below. Before you fill out the online form, make sure you have all the necessary information needed to complete the form. For IYLEP visa applications, there is specific information that needs to be included in the DS-160. This information is provided below (in BLUE text) next to the corresponding fields. **Please follow these directions when completing your DS-160.**
- Complete all fields. Except for those marked “optional”, all fields are required information. If there is a field that does not apply to you, you may check the box “Does Not Apply” when it is an option. You will not be able to move to the next page until you have completed the required fields.

Record Your Application ID!

If there is no activity for 20 minutes or more in the process of completing the online application, your session will expire. You will have the ability to retrieve your application if you encounter a time-out, system error, or if you wish to complete your application at a later time with your Application ID.

IMPORTANT! Record the Application ID displayed on the top right-hand corner (circled in yellow below) as soon as you begin the application process! You must have the Application ID and the answer to the security question that you select on the first page to retrieve your application. It is very common for applicants to encounter at least one time-out or system error while completing the DS-160.



Your application will be automatically saved each time you click the “Next” button. You will be able to retrieve your unsubmitted application for the next 30 days. To complete your application after 30 days, you can permanently save the application to a disk or to your hard drive. Click the “Save” button at the bottom of the last page you have completed and follow the instructions to save the application data to a file.

When you have finished and submitted your DS 160 form, save and print the confirmation page. You will need to submit it with the rest of the documents required for visa interview.

Getting Started

Access the DS-160 at <https://ceac.state.gov/genniv/>

- Step 1. Click “Start Application”
- Location where you will be submitting your application: Select BAGHDAD, IRAQ
- Click the button below to test your photo: This is optional—you can move directly to Step 2
- Step 2. Select “Start a New Application”

1. Personal Information

Note: Personal Information MUST match passport!

| Personal Information Part 1 | |
|--|---|
| Surnames | Include all names listed in passport |
| Given names | Include all names listed in passport |
| Full Name in Native Alphabet | Type your name in Arabic, if you are unable to type in your name in Arabic, check the "Does Not Apply" box. |
| Have you ever used other names (i.e., maiden, religious, professional, alias, etc.)? | |
| <i>If YES, provide other names used</i> | |
| Sex | |
| Marital Status | |
| Date of birth | |
| City of Birth | |
| State/ Province of Birth | |
| Country of Birth | |

◀ Back: Getting Started
Save
Next: Personal 2 ▶

| Personal Information Part 2 | |
|---|---|
| Nationality | |
| Do you hold or have you held a nationality other than the one you have indicated above? | |
| National Identification number: | Enter your Iraqi Jensiya number. If you do not have a Jensiya number, check "Does Not Apply." |
| U.S. Social Security Number | Check "Does Not Apply" |
| U.S. Taxpayer ID | Check "Does Not Apply" |

◀ Back: Personal 1
Save
Next: Address and Phone ▶

| Address and Phone Information | |
|--|--|
| Street Address | |
| City | |
| State/Province | |
| Postal Zone/ZIP Code | |
| Country | |
| Is your Mailing Address the same as your Home Address? | |
| Home Phone Number | |
| Work Phone Number | |
| Work Fax Number | |
| Mobile Phone Number | |
| Email Address | |

◀ Back: Personal
Save
Next: Passport ▶

2. Passport and Travel Information

| Passport Information | |
|---|--|
| Passport Number | Enter the passport number as it appears in your passport |
| Passport Book Number | Check "Does Not Apply" |
| Country/Authority that Issued Passport | |
| Where Was Passport Issued? | |
| <input type="radio"/> City | |
| <input type="radio"/> State/Province *If shown on passport | |
| <input type="radio"/> Country | |
| Issuance Date | |
| Expiration Date | |
| Have you ever lost a passport or had one stolen? | |
| <div style="display: flex; justify-content: space-between; align-items: center;"> ◀ Back: Address and Phone Save Next: Travel ▶ </div> | |

| Travel Information | |
|---|---|
| Are you principal applicant? | Select YES |
| Purpose of Trip to U.S. | Select: Exchange Visa (J) |
| Have you made specific travel plans? | Select NO |
| Intended date of Arrival | Enter the date three days before the start of the program |
| Intended length of stay in U.S. | |
| Address where you will stay in the U.S. | |
| <input type="radio"/> Street Address (line 1) | Enter the address reflecting the site of activity |
| <input type="radio"/> Street Address (line 2) | |
| <input type="radio"/> City: | |
| <input type="radio"/> State: | |
| <input type="radio"/> Zip Code: | |
| Person/Entity Paying for Your Trip | Select: "COMPANY/ORGANIZATION" |
| <input type="radio"/> Name of Company or Organization Paying for Trip | Enter: U.S. Embassy Baghdad, Iraq |
| <input type="radio"/> Telephone Number | Enter: 1-240-553-0581 |
| <input type="radio"/> Relationship to You | Select "Other" |
| Is the Address of the party paying for you trip the same as your Home or Mailing Address? | Select NO |
| Address of Company or Organization Paying | |
| Street Address (line 1): | Enter: U.S. Embassy Baghdad |
| Street Address (Line 2): | Enter: Al-Kindi Street, International Zone |
| City: | Enter: Baghdad |
| State/ Province: | |
| Postal Zone/Zipcode: | Enter: 09870 |
| Country | Select: Iraq |
| <div style="display: flex; justify-content: space-between; align-items: center;"> ◀ Back: Passport Save Next: Travel Companions ▶ </div> | |

| Travel Companions | |
|---|-----------|
| Are there other persons traveling with you? | Select NO |
| ◀ Back: Travel | Save |
| Next: Previous U.S. Travel ▶ | |

| Previous U.S. Travel | |
|---|------|
| Have you ever been in the U.S.? | |
| <i>If YES, answer questions A-B.</i> | |
| <i>If NO, skip questions A-B.</i> | |
| A. Provide date of arrival & length of stay for last five visits | |
| B. Do you or did you ever hold a U.S. Driver's License? (provide license # and state of issue if applicable) | |
| Have you ever been issued a U.S. Visa? | |
| <i>If YES, answer questions C-H.</i> | |
| <i>If NO, skip questions C-H.</i> | |
| C. Enter date last visa was issued and visa number (if known) | |
| D. Are you applying for the same type of visa? | |
| E. Are you applying in the same country where the visa above was issued and is this country your principal country of residence? | |
| F. Have you been ten-printed (provided fingerprints for all ten of your fingers)? | |
| G. Has your U.S. Visa ever been lost or stolen? | |
| H. Has your U.S. Visa ever been cancelled or revoked? | |
| Have you ever been refused a U.S. Visa, been refused admission to the U.S., or withdrawn your application for admission at the point of entry? | |
| <i>If YES, provide explanation</i> | |
| ◀ Back: Travel Companions | Save |
| Next: U.S. Contact ▶ | |

| U.S. Point of Contact Information | |
|--|---|
| Contact Person or Organization in the United States | |
| Surnames: | Enter: Khalil |
| Given Names: | Enter: Hiba |
| Organization Name | Enter: World Learning |
| Relationship to you | Choose "OTHER" |
| Address/Phone Number of Point of Contact: | |
| Street Address (line 1): | Enter: World Learning |
| Street Address (Line 2): | Enter: 1015 15 th Street, NW , 7 th floor |
| City: | Enter: Washington |
| State/ Province: | Select: District of Columbia |
| Postal Zone/Zipcode: | Enter: 20005 |
| Email Address: | check "Does Not Apply" |
| ◀ Back: Previous U.S. Travel | Save |
| Next: Family ▶ | |

3. Family Information

| Family Information: Relatives | |
|---------------------------------------|---|
| Father's Full Name and Date of Birth: | Enter full information even if father is deceased |
| Surnames | |
| Given Names | |


| |
|--|
| Date of Birth |
| Is your father in the U.S.? |
| Mother's Full Name and Date of Birth: Enter full information even if mother is deceased |
| Surnames |
| Given Names |
| Date of Birth |
| Is your mother in the U.S.? |
| Do you have any immediate relatives (fiancé/fiancée, spouse, children, or siblings) not including parents, in the United States? |
| If YES, provide name, relationship, city in U.S. for each relative |
| Do you have any other relatives in the United States? |
| ◀ Back: U.S. Contact Save Next: Spouse ▶ |

| | |
|--|---|
| Family Information: Spouse | |
| Spouse's Full Name | Enter current spouse information. If divorced, enter previous spouse information. |
| Spouse's Surnames | |
| Spouse's Given Names | |
| Spouse's Date of Birth | |
| Spouse's Nationality | |
| Spouse's Place of Birth: | |
| City | |
| Country | |
| Spouse's Address | Select: "Same as Applicant's Home Address" |
| ◀ Back: Relatives Save Next: Work/Education/Training ▶ | |

4. Work/Education/Training Information

| | |
|--|---|
| Present Work/Education/Training Information | |
| Primary Occupation | Provide the following information concerning your current employment or education. |
| Present Employer or School Name | |
| Present Employer or School Address | |
| Street Address | |
| City | |
| State/ Province | |
| Postal Zone/ Zip Code | |
| Country | |
| Monthly salary in local currency (if employed): | Enter your salary before deductions or an estimate of your average earnings for a month. If you are a business owner, you should enter an average amount of net income you receive from the business after expenses. If you receive a pension, enter the amount of the pension. |
| Briefly describe your duties | |
| ◀ Back: Family Save Next: Work/Education: Previous ▶ | |

| Previous Work/Education/Training Information | |
|---|---|
| Were you previously employed? | Provide employment information for the last five years, if applicable. Add more entries until a span of 5 years has been recorded |
| <i>If YES, enter Employer/ Employment Information</i> | |
| <input type="checkbox"/> Employer Name | |
| <input type="checkbox"/> Employer Street Address | |
| <input type="checkbox"/> City | |
| <input type="checkbox"/> State/ Province | |
| <input type="checkbox"/> Postal Zone/ Zip Code | |
| <input type="checkbox"/> Country | |
| <input type="checkbox"/> Telephone Number | |
| <input type="checkbox"/> Job Title | |
| <input type="checkbox"/> Supervisor's Surname | |
| <input type="checkbox"/> Supervisor's Given Names | |
| <input type="checkbox"/> Employment Date From | MUST include month and year |
| <input type="checkbox"/> Employment Date To | MUST include month and year |
| <input type="checkbox"/> Briefly describe your duties: | (Just a sentence or two) |
| Have you attended any educational institutions other than elementary schools? | |
| <i>If YES, provide the following information on all educational institutions you have attended, not including elementary schools.</i> | |
| <input type="checkbox"/> Name of Institution | |
| <input type="checkbox"/> Street Address | |
| <input type="checkbox"/> City | |
| <input type="checkbox"/> State/ Province | |
| <input type="checkbox"/> Postal Zone/ Zip Code | |
| <input type="checkbox"/> Country | |
| <input type="checkbox"/> Course of Study | |
| <input type="checkbox"/> Date of Attendance From: | |
| <input type="checkbox"/> Date of Attendance To: | |

◀ Back: Work/Education: Present
 Save
Next: Work/Education: Additional ▶

| Additional Work/Education/Training Information | |
|--|---|
| Do you belong to a clan or tribe? | |
| <i>If YES, provide clan or tribe name</i> | |
| Have you traveled to any countries within the last five years? | Include any travel outside of your home country, including travel to the U.S. |
| <i>If YES, provide a list of countries visited</i> | |
| Have you belonged to, contributed to, or worked for any professional, social, or charitable organization? | |
| <i>If YES, provide a list of organizations</i> | |
| Do you have any specialized skills or training, such as firearms, explosives, nuclear, biological, or chemical experience? | |
| Have you ever served in the military? | |

| |
|--|
| <i>If YES, provide the following information:</i> |
| <input type="radio"/> Name of country (where you performed military service) |
| <input type="radio"/> Branch of service |
| <input type="radio"/> Rank/ Position |
| <input type="radio"/> Military Specialty |
| <input type="radio"/> Date of Service From |
| <input type="radio"/> Date of Service To |
| Have you ever served in, been a member of, or been involved with a paramilitary unit, vigilante unit, rebel group, guerrilla group, or insurgent organization? |
| <i>If YES, Explain</i> |

◀ Back: Work/Education: Previous

Save

Next: Security and Background ▶

5. Security and Background

| |
|--|
| Medical and Health Information |
| Do you have a communicable disease of public health significance such as tuberculosis (TB)? |
| <i>If YES, Explain</i> |
| Do you have a mental or physical disorder that poses or is likely to pose a threat to the safety or welfare of yourself or others? |
| <i>If YES, Explain</i> |
| Are you or have you ever been a drug abuser or addict? |
| <i>If YES, Explain</i> |

◀ Back: Work/Education/Training

Save

Next: Criminal ▶

| | |
|---|--|
| Criminal Information | |
| Have you ever been arrested or convicted for any offense or crime, even though subject of a pardon, amnesty, or other similar action? | Include all arrests or detentions, including those at the border and by Customs and Border Patrol. |
| <i>If YES, Explain</i> | |
| Have you ever violated, or engaged in a conspiracy to violate, any law relating to controlled substances? | |
| <i>If YES, Explain</i> | |
| Are you coming to the United States to engage in prostitution or unlawful commercialized vice or have you been engaged in prostitution or procuring prostitutes within the past 10 years? | |
| <i>If YES, Explain</i> | |
| Have you ever been involved in, or do you seek to engage in, money laundering? | |
| <i>If YES, Explain</i> | |


◀ Back: Medical and Health

Save

Next: Security ▶

| |
|--|
| Security Information |
| Do you seek to engage in espionage, sabotage, export control violations. Or any other illegal activity while in the United States? |
| Do you seek to engage in terrorist activities while in the U.S. or have you ever engaged in terrorist activities? |

| |
|---|
| Have you ever or do you intend to provide financial assistance or other support to terrorists or terrorist organizations? |
| Are you a member or representative of a terrorist organization? |
| Have you ever ordered, incited, committed, assisted, or otherwise participated in genocide? |
| Have you ever committed, ordered, incited, assisted or otherwise participated in torture? |
| Have you committed, ordered, incited, assisted, or otherwise participated in extrajudicial killings, political killings, or other acts of violence? |
| Have you, while serving as a government official, been responsible for or directly carried out, at any time, particularly severe violations of religious freedom? |

[◀ Back: Criminal](#)
 Save
[Next: Immigration Law Violations ▶](#)

Immigration Law Violations

| |
|--|
| Have you ever sought to obtain or assist others to obtain a visa, entry into the U.S., or any other United States Immigration benefit by fraud or willful misrepresentation or other unlawful means? |
|--|

[◀ Back: Security](#)
 Save
[Next: Miscellaneous ▶](#)

Miscellaneous Information

| |
|--|
| Have you ever withheld custody of a U.S. citizen child outside the U.S. from a person granted legal custody by a U.S. court? |
| Have you voted in the United States in violation of any law or regulation? |
| Have you ever renounced United States citizenship for the purpose of avoiding taxation? |

[◀ Back: Immigration Law Violations](#)
 Save
[Next: Student/Exchange Visa ▶](#)

Additional Point of Contact Information

List at least two contacts (One Embassy contact, and one Iraqi contact) who can verify the information that you have provided on this application. For the Iraqi contact, do not list immediate family members or other relatives.

| | |
|--------------------|--|
| Contact #1 | Enter Cultural Affairs Youth Exchanges Specialist for first contact information |
| ○ Surnames | Enter: Chiriac |
| ○ Given names | Enter: Natalia |
| ○ Street Address | Enter: U.S. Embassy Baghdad, Al-Kindi Street, International Zone |
| ○ City | Enter: Baghdad |
| ○ State/Province | Leave it blank |
| ○ Zip | 09870 |
| ○ Country | Iraq |
| ○ Telephone Number | 0770 443 3171 |
| ○ Email Address | ChiriacNV@state.gov |
| Contact #2 | Enter Iraqi contact for second contact information (do not list immediate family members or other relatives) |
| ○ Surnames | |
| ○ Given names | |
| ○ Street Address | Postal office box numbers are unacceptable. MUST at least provide city, country, phone |
| ○ City | |
| ○ State/Province | |
| ○ Zip | |
| ○ Country | |

| |
|--|
| <input type="radio"/> Telephone Number |
| <input type="radio"/> Email Address |

[◀ Back: Security and Background](#) | [Save](#) | [Next: SEVIS ▶](#)

6. SEVIS Information

| SEVIS | |
|-------------------------------------|---|
| Enter SEVIS ID | On DS 2019 form or given to you in an e-mail. |
| Do you intend to study in the U.S.? | Select NO |

[◀ Back: Additional Contact](#) | [Save](#) | [Next: PHOTO ▶](#)

Note: Provide Program Code when asked by the application. You will be provided with the Program Code by e-mail.

7. Upload Photo

If you have a photo, go ahead and follow upload instructions;

If you don't have a digital photo that meets the requirements, you can bypass this step. You will still need to [browse](#) and [submit](#) an image (you can use any .jpg file), even though it is not the photo you will use. You will receive an error message, and that is okay. An acceptable photo will be taken at the time of the visa interview by Consular Section staff.

8. Verify Information

Make sure you verify all information and edit as necessary. In order for changes made from the review page to save, use the buttons at the bottom of each page to navigate, not the browser's back/forward buttons.

9. Sign and Submit

| Sign and Submit | |
|---|--|
| Did anyone assist you in filling out this application? | |
| <i>If YES, provide the following information on the preparer:</i> | |
| <input type="radio"/> Surnames | |
| <input type="radio"/> Given names | |
| <input type="radio"/> Organization Names | |
| <input type="radio"/> Address | |
| <input type="radio"/> Street Address | |
| <input type="radio"/> City | |
| <input type="radio"/> State/Province | |
| <input type="radio"/> Zip | |
| <input type="radio"/> Country | |
| <input type="radio"/> Relationship to you | |
| E-Signature | Enter your passport number Enter the code you see on the screen |
| Click Sign and Submit Application | |

9. Print Confirmation Page

- 1. Print confirmation page and bring to interview.** Bring only the confirmation page, not the whole document!
- 2. Send the electronic version of the confirmation page to your local coordinator.**

EXHIBIT 10



DS-160 NONIMMIGRANT VISA APPLICATION FORM

U.S. EMBASSY KINGSTON, JAMAICA

A COMPLETE STEP-BY-STEP INSTRUCTIONAL
GUIDE

INTRODUCTION

All nonimmigrant visa applicants must complete the **DS-160 Electronic Visa Application Form** online.

The information that you submit can only be viewed by you and the U.S. Embassy's consular staff.

You must answer every question truthfully. **Errors or omissions could lead to the denial of your visa application.**

This guide will help you complete the DS-160 form. Some applicants may be required to answer additional questions not presented in this guide because of their purpose of travel or other personal circumstances.



BEFORE YOU BEGIN

Before you begin completing the DS-160, gather the following items:

- Passport and planned itinerary;
- Employment history;
- Digital photograph;
- Contact information;
- Travel history.

Make sure your photograph meets the following requirements:

- Less than six months old
- 2 inches by 2 inches (5 by 5 cm)
- Plain, light background
- Full-face view, with the applicant facing the camera directly
- For more detailed guidelines, visit <http://travel.state.gov/visa/guide/guide>.



GETTING STARTED

Access the DS-160 form at <https://ceac/state/gov/genniv/>

Read the instructions carefully and select the country in which you are applying.

The form will take approximately 45 minutes to complete. It will time out after 20 minutes of no activity. **Do not wait until you have completed the entire form to save it.**

If you do not save your data, you will have to restart the process if the form times out or if you experience problems with your Internet connection.



After entering your location, select “Option A” if you are starting a new online application, “Option B” to upload an application that was saved previously or “Option C” to retrieve your saved application.

Select an option from one of the boxes below.

Option A - Start a New Online Application

To start your application, click the button below:

Start a New Application

Option B - Upload a Previously Saved Application Using a File


To continue an application you have already started that is saved on your computer, or to start a new application using data you have already entered and saved on your computer to complete a new application, click the button below:

Upload a Previous Application

Option C - Retrieve Application Using an Application ID

To continue an application you have already started and would like to continue; to view your confirmation page for an application you have completed; to correct an error on a completed application after a consular officer has reopened and unlocked your application; or to start a new application using data you have already entered to complete a new application, click the button below:

Retrieve Application



JA 1427

Next, you will see the screen to the right. Answer the security question, then print and save this sheet. You will need it if you have to retrieve your DS-160 form at a later date. Then, click “Continue.”

Application Information

Please record your Application ID in a safe and secure place.

If there are technical issues with the system, or you want to complete your application some other time, you can save your work and later, start where you left off. In order to access your application later, however, you will need: (1) your Application ID, and (2) the answer to the security question that you will choose on this page.



Your Application ID is:
AA0025PRUP

Date
23-FEB-2012

[Print Application ID](#)

To choose a security question, pick the one you like the best from the dropdown list, type your answer to that question in the box below, and click “Continue.” Remember: In order to access your application later, you will need to know the answer **exactly as you wrote it on this page**.

You can also use your Application ID and security question to retrieve your Confirmation Page after you have submitted your application, or to use your previously provided application information to complete a new application at a later date.

Electronically submitting your DS-160 online application is only the first step in the visa application process. Once you have electronically submitted your DS-160 online application, you must contact the embassy or consulate at which you wish to apply to confirm whether you need to be interviewed by a consular officer, and to schedule an interview. You can find a list of U.S. embassies and consulates [here](#), with links to their websites where you can find information about scheduling a visa interview appointment. If the embassy or consulate at which you apply informs that you must have a visa interview, the visa application process cannot be completed until you appear for an interview with a consular officer.

Security Question 

WHAT IS THE GIVEN NAME OF YOUR MOTHER'S MOTHER?

Answer

Continue

JA 1428

If you are uploading a previously saved application, locate the file (.dot format) by clicking “Browse” and selecting the previously saved application file. Next, answer the security questions to validate that the correct file has been selected, then click ‘Upload Data’. Then, click the ‘Next’ button at the bottom of each page until you reach the last completed page. Then, continue the application process.

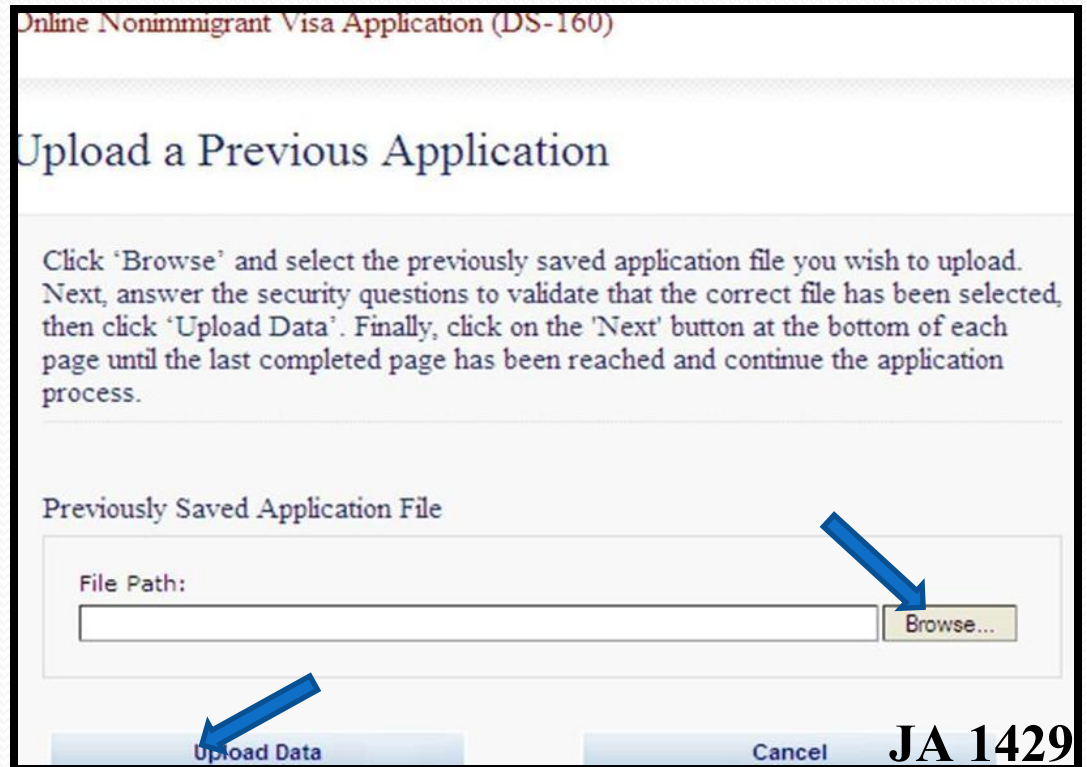
Online Nonimmigrant Visa Application (DS-160)

Upload a Previous Application

Click ‘Browse’ and select the previously saved application file you wish to upload. Next, answer the security questions to validate that the correct file has been selected, then click ‘Upload Data’. Finally, click on the ‘Next’ button at the bottom of each page until the last completed page has been reached and continue the application process.

Previously Saved Application File

File Path:



JA 1429

At this time, you may test the upload of your digital photo.

If you choose the option to review the photo standards guide, **you will exit the DS-160** and will have to begin the process again after reviewing the photo guidelines.



Entering Personal Information:

Enter your full name (first, middle and last) in English, exactly as it appears in your passport.

You will also be asked to enter your full name in your native alphabet.

Do **not** enter “Nee” and your maiden name in the surname field, even if it is in your passport.

NOTE: Data on this page must match the information as it is written in your passport.

Surnames

(e.g., FERNANDEZ GARCIA)

Given Names

(e.g., JUAN MIGUEL)

Full Name in Native Alphabet

Does Not Apply

Help: Surnames
Enter all surnames as listed in your passport. If only one name is listed in your passport, enter that Surname.

Help: Given Names
If your passport does not include a given name, please enter 'FNU' in Given Names.



Answer “Yes” if you have used other names in your lifetime, such as a maiden name, religious name, professional name, etc. Also include variations in the spelling of your name here. Please be sure that ALL prior names are included. Failure to do so may delay the processing of your application.

| | |
|---|---|
| <p>Q: Have you ever used other names (i.e., maiden, religious, professional, alias, etc.)?</p> <p>A: <input type="radio"/> Yes <input type="radio"/> No</p> | <p>Help: Other Names</p> <p>Other names used include your maiden name, religious name, professional name, or any other names which are known by or have been known by in the past.</p> |
|---|---|

Indicate your sex and marital status.

| | |
|--|--|
| <p>Sex</p> <p><input type="radio"/> Male <input type="radio"/> Female</p> | <p>Marital Status ⓘ</p> <p>-SELECT ONE-</p> |
|--|--|



JA 1432

Enter your date and place of birth. If the day or month is unknown, enter the information as shown in your passport.

Date and Place of Birth

Date of Birth ⓘ

(Format: DD-MMM-YYYY)

City of Birth

State/Province of Birth

Does Not Apply

Country of Birth
- SELECT ONE -

Help: Date of Birth
If day or month is unknown, enter as shown in passport.

Help: Country of Birth
The name of the country should be the name that is currently in use for the place where you were born.



JA 1433

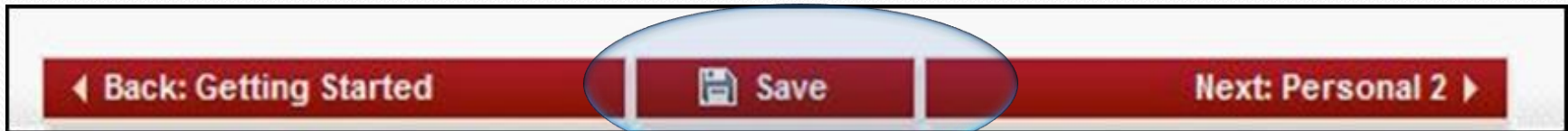
Fill in nationality and national identification data fields. Click “Does Not Apply” if you do not have a national identification number, U.S. Social Security Number, or U.S. Taxpayer ID Number.

| | |
|--|--|
| <p>Nationality - SELECT ONE -</p> | |
| <p>Q: Do you hold or have you held a nationality other than the one you have indicated above?</p> <p>A: <input type="radio"/> Yes <input type="radio"/> No</p> | <p>Help: Nationality</p> <p>The name of the country should be the name that is currently in use for the place where you were born.</p> |
| <p>National Identification Number</p> <input type="text"/> | |
| <p><input type="checkbox"/> Does Not Apply</p> | |
| <p>U.S. Social Security Number</p> <input type="text"/> - <input type="text"/> - <input type="text"/> | |
| <p><input type="checkbox"/> Does Not Apply</p> | |
| <p>U.S. Taxpayer ID Number</p> <input type="text"/> | |
| <p><input type="checkbox"/> Does Not Apply</p> | |
| | <p>Help: Identification Numbers</p> <p>If you do not have a National Identification Number, U.S. Social Security Number, or U.S. Taxpayer ID Number, then check 'Does Not Apply'.</p> |



JA 1434

To avoid losing data, **save your application after completing each section** of the DS-160. Click the “Save” button on the red toolbar at the bottom of the screen, then select either “Save Application to File” or “Continue Application” on the Save Confirmation page. If you choose “Save Application to File,” you will need to save your application to your computer and/or media storage device.



JA 1435

Save Confirmation

You have saved your application for your current session. Once you close the CEAC application browser window, you will not be able to retrieve the saved data.

If you plan on being away from the online application for more than 20 minutes, please click the 'Save Application to File' button below to save your application data to a file that you can retrieve at a later time. Then click the 'Save' button on the File Download window. Identify a place on your computer to save the application file, browse to that location, and click the 'Save' button on the Save As window. The system will download your application to the specified location. Once the download is complete, click 'Close' to return to this page. When you wish to retrieve and use your saved application, follow the instructions provided on the Getting Started page to upload your saved application file.

Choose one of the following options:

Save Application to File

Continue Application

Exit Application

Address and Phone Information:

Enter your current home address.

The DS-160 does not accept (/) as a valid character. For addresses that contain (/), please use (-) instead. Example: 191/2 Spanish Town Road should be written as 191-2 Spanish Town Road.

Home Address

Street Address (Line 1)

Street Address (Line 2) **Optional*

City

State/Province
 Does Not Apply

Postal Zone/ZIP Code
 Does Not Apply

Country



JA 1437

Answer “Yes” if your “Home Address” is the same as your “Mailing Address.” Your mailing address should be the address to which your passport will be sent if you are granted a visa.

Mailing Address

Q: Is your Mailing Address the same as your Home Address?(This is the address to which your passport will be sent if you qualify for a visa).

A: Yes No

Provide your home, work, fax and mobile/cell phone numbers, as applicable. If you leave a phone number blank, check “Does Not Apply.”

Phone

Home Phone Number

Work Phone Number
 Does Not Apply

Work Fax Number
 Does Not Apply

Mobile/Cell Phone Number
 Does Not Apply



Enter your email address. It is important that you provide an email address in case we must contact you before your interview. If you do not have an email address, click “Does Not Apply.”

| |
|--|
| <p>Email Address</p> <p>Email Address</p> <input type="text"/> <p>(e.g., emailaddress@example.com)</p> <input type="checkbox"/> Does Not Apply |
|--|



JA 1439

Passport Information:

Enter your passport number and passport book number, if applicable. Note: The passport book number is commonly called the inventory control number. You may or may not have a passport book number on your passport. If your passport does not have a passport book number, click “Does Not Apply.”

Enter the Country/Authority that issued your passport and the city, state/province, and country in which your passport was issued.

The screenshot shows a web form for entering passport information. It includes the following fields and sections:

- Passport Number:** A text input field.
- Passport Book Number:** A text input field with a checkbox labeled "Does Not Apply".
- Country/Authority that Issued Passport:** A dropdown menu currently showing "- SELECT ONE -".
- Where was the Passport Issued?:** A light blue shaded section containing:
 - City:** A text input field.
 - State/Province *If shown on passport:** A text input field.
 - Country:** A dropdown menu currently showing "- SELECT ONE -".
- Help: Passport Number:** A text block explaining that the user should enter information on a valid, unexpired passport or other valid documentation to establish identity and nationality.
- Help: Passport Book Number:** A text block explaining that the Passport Book Number is commonly called the inventory control number and may vary depending on the country that issued the passport.

Enter your passport's issuance and expiration dates. In most cases your passport must be valid for at least **six months** beyond your visa application date and beyond your arrival date in the U.S.

Answer "Yes" if you have ever had a lost or stolen passport.

| | | |
|---|---|--|
| Issuance Date ⓘ <input type="text"/> <input type="text"/> <input type="text"/> (Format: DD-MMM-YYYY) | Expiration Date ⓘ <input type="text"/> <input type="text"/> <input type="text"/> (Format: DD-MMM-YYYY) | Help: Expiration Date In most cases your passport must have at least six months of validity beyond the date of your visa application and/or your arrival in the United States. |
| Q: Have you ever lost a passport or had one stolen? | | |
| A: <input type="radio"/> Yes <input type="radio"/> No | | |



JA 1441

Principal Applicant Question:

Answer “No” if someone else is completing the DS-160 on your behalf or if you are accompanying your spouse or parent who is going to work, study or get married in the U.S. All other applicants should answer “Yes.”

Q: Are you the principal applicant?

A: Yes No

Help: Principal Applicant

All visitors for business or pleasure are principal applicants, even if you are traveling with your family. If you are coming to the United States in a category of visa that permits you to work, study, or get married, you are the principal applicant. You

Q: Are you the principal applicant?

A: Yes No

Answer the additional question:

Surnames of Principal Applicant

Given Names of Principal Applicant

Principal Applicant's Purpose of Trip to U.S. ⓘ

+ Add Another - Remove

Purpose of Travel:

Select your purpose of travel to the U.S. from the dropdown menu. If you do not see the appropriate purpose of travel, select “Other” for more options. Remember: If you are applying for an employment authorization visa, do not choose B1 or B1/B2.

If you are applying for two different types of visas (for example, C1/D and B1/B2) you must complete two separate DS-160 applications.



Q: Are you the principal applicant?

A: Yes No

Answer the additional question:

Purpose of Trip to U.S. [?](#)
OTHER

Other - Specify [?](#)
CREWMEMBER IN TRANSIT TO JOIN VESSEL

+ Add Another - Remove

Purpose of Trip to U.S. [?](#)
OTHER

Other - Specify [?](#)
CREWMEMBER (D)

+ Add Another - Remove

Purpose of Trip to U.S. [?](#)
BUSINESS/PERSONAL TRAVEL (B1, B2)

+ Add Another - Remove



Enter your intended date of arrival and length of stay in the U.S. If you are unsure of your exact travel plans, provide your best estimate.



The screenshot shows a form section with two main input areas. The first is labeled "Intended Date of Arrival" with a blue information icon. It contains three dropdown menus for day, month, and year, with a note "(Format: DD-MMM-YYYY)". The second is labeled "Intended Length of Stay in U.S." with a blue information icon, featuring a dropdown menu currently set to "-SELECT ONE-". To the right of these inputs is a "Help: Arrival Plans" section with the text: "If you are unsure of your travel plans, please provide an estimate."

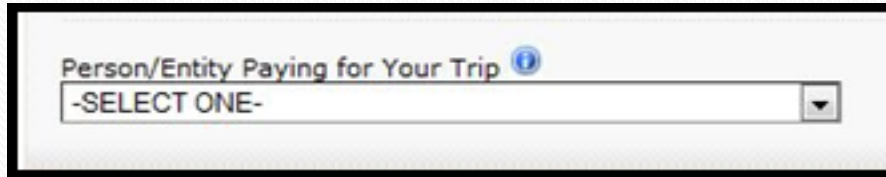
Enter the address where you will stay while in the U.S. If you are staying at a hotel, please include the hotel's name.



The screenshot shows a form titled "Address Where You Will Stay in the U.S.". It includes several input fields: "Street Address (Line 1)", "Street Address (Line 2) *Optional", "City", "State" (a dropdown menu set to "- SELECT ONE -"), and "ZIP Code (if known)" with a note "(e.g., 12345 or 12345-1234)".



Enter information about the person or organization paying for your travel to the U.S.



Person/Entity Paying for Your Trip ⓘ
-SELECT ONE-

If you are not paying for your trip, you will be asked to enter more information about your sponsor:



Person/Entity Paying for Your Trip ⓘ
OTHER PERSON

Provide the following information:

Surnames of Person Paying for Trip
(e.g., FERNANDEZ GARCIA)

Given Names of Person Paying for Trip
(e.g., JUAN MIGUEL)

Telephone Number

Email Address
(e.g., emailaddress@example.com) Does Not Apply

Relationship to You ⓘ
- SELECT ONE -

Q: Is the address of the party paying for your trip the same as your Home or Mailing Address?
A: Yes No



Are there other persons traveling with you?

Answer “Yes” if you are traveling with family, a tour group, performing group, or athletic team. If you answer “Yes”, you will be asked whether you are part of a group or organization. If so, enter the group name. If you are not part of a group, list your companions’ names and relationships to you.

Persons traveling with you

Q: Are there other persons traveling with you?

A: Yes No

Help: Traveling with Others

You should answer Yes to this question if you are traveling with family, as part of an organized tour, or as part of a performing group or athletic team. You do not need to list individuals who are traveling with you for the purposes of employment with the same employer.

Q: Are you traveling as part of a group or organization?

A: Yes No

Enter person(s) traveling with you

Surnames of Person Traveling With You

Given Names of Person Traveling With You

Relationship with Person ⓘ

- SELECT ONE -

+ Add Another - Remove

Q: Are you traveling as part of a group or organization?

A: Yes No

Enter the name of the group you are traveling with

Group Name

If you are traveling with more than one individual, click “Add Another” to add additional companions.

JA 1446

Previous U.S. Travel Information

Honestly answer the following three Yes or No questions:

Q: Have you ever been in the U.S.?

A: Yes No

Q: Have you ever been issued a U.S. Visa?

A: Yes No

Q: Have you ever been refused a U.S. Visa, been refused admission to the United States, or withdrawn your application for admission at the point of entry?

A: Yes No



If you have been in the U.S. before, you will be asked to provide information about your last five U.S. visits and information about whether you have had a U.S. driver's license. Answer these questions as accurately as possible. If you do not remember your exact travel date, you may provide an estimate.

Q: Have you ever been in the U.S.?

A: Yes No

Provide information on your last five U.S. visits:

Date of Arrival ⓘ

(Format: DD-MMM-YYYY)

Length of Stay ⓘ

[+ Add Another](#) [- Remove](#)

Q: Do you or did you ever hold a U.S. Driver's License?

A: Yes No



JA 1448

Contact in the United States:

Enter the name and contact information for an individual in the U.S who knows you and can verify your identity. If you do not personally know anyone in the U.S., you may enter the name of your hotel or the name of the company for which you will work in the U.S.

Contact Person or Organization in the United States

Contact Person

Surnames

Given Names

Do Not Know

Organization Name

Do Not Know

Relationship to You ⓘ

Address and Phone Number of Point of Contact

U.S. Street Address (Line 1)

U.S. Street Address (Line 2) *Optional

City

State

ZIP Code (if known)

(e.g., 55555 or 55555-5555)

Phone Number

(e.g., 555-555-5555)

Email Address

(e.g., emailaddress@example.com) Does Not Apply

JA 1449

Family Information:

Enter your parents' full names and dates of birth. If you do not know this information, check "Do Not Know." Also answer the Yes/No question about whether your parents are in the U.S.

Father's Full Name and Date of Birth

Surnames

(e.g., Hernandez Garcia) Do Not Know

Given Names

(e.g., Juan Miguel) Do Not Know

Date of Birth ⓘ
 Do Not Know
(Format: DD-MMM-YYYY)

Q: Is your father in the U.S.?
A: Yes No

Mother's Full Name and Date of Birth

Surnames

(e.g., Hernandez Garcia) Do Not Know

Given Names

(e.g., Juanita Miguel) Do Not Know

Date of Birth ⓘ
 Do Not Know
(Format: DD-MMM-YYYY)

Q: Is your mother in the U.S.?
A: Yes No

Do you have immediate relatives in the United States?

Answer yes if you have a fiancé(e), spouse, child, or sibling in the United States. If you answer Yes, enter the additional details, as requested. If you have multiple immediate relatives in the U.S., click “Add Another” to enter additional information.

Q: Do you have any immediate relatives, not including parents, in the United States?

A: Yes No

An arrow points from the 'Yes' radio button to the right-hand form.

Provide the following information:

Surnames

Given Names

Relationship to You ⓘ
- SELECT ONE -

Relative's Status ⓘ
- SELECT ONE -

[+ Add Another](#) [- Remove](#)

Click “Add Another” to include details if you have more than one immediate family member in the U.S.

If applicable, enter your current husband/wife's full name, including maiden name for wife. If you are divorced, please also enter your previous spouse's information.

Spouse's Full Name (include Maiden Name)

Spouse's Surnames

Spouse's Given Names

Spouse's Date of Birth ⓘ

(Format: DD-MMM-YYYY)

Spouse's Nationality
- SELECT ONE -

D



Spouse's Place of Birth

City

Country
- SELECT ONE -

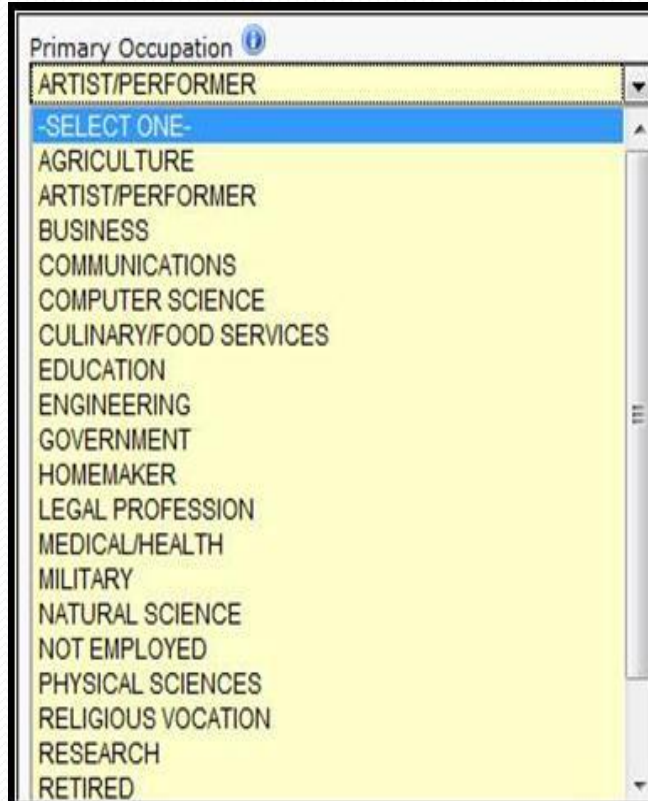
Spouse's Address ⓘ
- SELECT ONE -

Work, Education and Training Background:

Select your primary occupation field from the drop-down list.



Primary Occupation ⓘ
-SELECT ONE-



Primary Occupation ⓘ

- ARTIST/PERFORMER
- SELECT ONE-
- AGRICULTURE
- ARTIST/PERFORMER
- BUSINESS
- COMMUNICATIONS
- COMPUTER SCIENCE
- CULINARY/FOOD SERVICES
- EDUCATION
- ENGINEERING
- GOVERNMENT
- HOMEMAKER
- LEGAL PROFESSION
- MEDICAL/HEALTH
- MILITARY
- NATURAL SCIENCE
- NOT EMPLOYED
- PHYSICAL SCIENCES
- RELIGIOUS VOCATION
- RESEARCH
- RETIRED



Provide your employer's address and additional employment details, as required.

Present employer or school address:

Street Address (Line 1)

Street Address (Line 2) **Optional**

City

State/Province
 Does Not Apply

Postal Zone/ZIP Code
 Does Not Apply

Country

Monthly Salary in Local Currency (if employed)
 Does Not Apply

Briefly describe your duties:



JA 1454

Answer the Yes/No question about previous employment. If you were previously employed, provide your employment information for the last 5 years. Click “Add Another” to enter additional employment history.

Q: Were you previously employed?

A: Yes No

Employer/Employment Information:

Employer Name

Employer Street Address (Line 1)

Employer Street Address (Line 2) **Optional*

City

State/Province

Does Not Apply

Postal Zone/ZIP Code

Does Not Apply

Country
- SELECT ONE -

Telephone Number

Job Title

Supervisor's Surname

Supervisor's Given Names

Employment Date From ⓘ

(Format: DD-MMM-YYYY)

Employment Date To ⓘ

(Format: DD-MMM-YYYY)

Briefly describe your duties:

[+ Add Another](#) [- Remove](#)



Answer the Yes/No question about attending educational institutions other than elementary schools (such as high schools, universities, graduate schools, technical schools, etc.). Provide the requested information about schools that you attended.

For middle school and high school courses of studies, please indicate “academic” or “vocational.” For all other educational levels, provide your major or concentration.

Q: Have you attended any educational institutions other than elementary schools?

A: Yes No

Name of Institution

Street Address (Line 1)

Street Address (Line 2) **Optional*

City

State/Province
 Does Not Apply

Postal Zone/ZIP Code
 Does Not Apply

Country
- SELECT ONE -

Course of Study

Date of Attendance From
(Format: DD-MMM-YYYY)

Date of Attendance To
(Format: DD-MMM-YYYY)

Help: Course of Study
For middle school/junior high or high school course of study please indicate "Academic" or "Vocational." For all other educational levels please indicate your major or concentration.

Answer the remaining Yes/No questions about work, education and training. Please provide complete and accurate information if you are asked to provide an explanation.

Q: Do you belong to a clan or tribe?

A: Yes No

Q: Have you traveled to any countries within the last five years?

A: Yes No

Q: Have you belonged to, contributed to, or worked for any professional, social, or charitable organization?

A: Yes No

Q: Do you have any specialized skills or training, such as firearms, explosives, nuclear, biological, or chemical experience?

A: Yes No

Q: Have you ever served in the military?

A: Yes No

Q: Have you ever served in, been a member of, or been involved with a paramilitary unit, vigilante unit, rebel group, guerrilla group, or insurgent organization?

A: Yes No

If you indicate that you have traveled abroad in the past five years, you will be asked to list the countries you visited. Be sure to enter all countries that you have visited in the last five years, not only your most recent trip.

Q: Have you traveled to any countries within the last five years?

A: Yes No

Provide a List of Countries Visited

Countries
- SELECT ONE -

[+ Add Another](#) [- Remove](#)



JA 1458

Security and Background Information:

Answer “Yes” or “No” to the health questions. Provide complete, accurate and honest explanations in the box(es) provided for any question(s) to which you respond “Yes.”

Q: Do you have a communicable disease of public health significance such as tuberculosis (TB)?

A: Yes No

Q: Do you have a mental or physical disorder that poses or is likely to pose a threat to the safety or welfare of yourself or others?

A: Yes No

Q: Are you or have you ever been a drug abuser or addict?

A: Yes No

Explain

Answer “Yes” or “No” to the questions about your criminal history. Provide complete, accurate and honest explanations in the box(es) provided for any question(s) to which you respond “Yes.”

Q: Have you ever been arrested or convicted for any offense or crime, even though subject of a pardon, amnesty, or other similar action?

A: Yes No

Q: Have you ever violated, or engaged in a conspiracy to violate, any law relating to controlled substances?

A: Yes No

Q: Are you coming to the United States to engage in prostitution or unlawful commercialized vice or have you been engaged in prostitution or procuring prostitutes within the past 10 years?

A: Yes No

Q: Have you ever been involved in, or do you seek to engage in, money laundering?

A: Yes No

Explain

Answer “Yes” or “No” to the security questions. Please provide complete, accurate and honest explanations in the box(es) provided for any question(s) to which you respond “Yes.”

Q: Do you seek to engage in espionage, sabotage, export control violations, or any other illegal activity while in the United States?

A: Yes No

Q: Do you seek to engage in terrorist activities while in the United States or have you ever engaged in terrorist activities?

A: Yes No

Q: Have you ever or do you intend to provide financial assistance or other support to terrorists or terrorist organizations?

A: Yes No

Q: Are you a member or representative of a terrorist organization?

A: Yes No

Explain

Q: Have you ever ordered, incited, committed, assisted, or otherwise participated in genocide?

A: Yes No

Q: Have you ever committed, ordered, incited, assisted, or otherwise participated in torture?

A: Yes No

Q: Have you ever committed, ordered, incited, assisted, or otherwise participated in extrajudicial killings, political assassinations, or other acts of violence?

A: Yes No

Q: Have you, while serving as a government official, been responsible for or directly carried out, at any time, particularly severe violations of religious freedom?

A: Yes No

Answer “Yes” or “No” to the immigration violation question. Then, click the “Next” button at the bottom of the screen and answer “Yes” or “No” to the miscellaneous security questions. Please provide complete, accurate and honest explanations in the box(es) provided for any question(s) to which you respond “Yes.”

Q: Have you ever sought to obtain or assist others to obtain a visa, entry into the United States, or any other United States immigration benefit by fraud or willful misrepresentation or other unlawful means?

A: Yes No



Explain



Q: Have you ever withheld custody of a U.S. citizen child outside the United States from a person granted legal custody by a U.S. court?

A: Yes No

Q: Have you voted in the United States in violation of any law or regulation?

A: Yes No

Q: Have you ever renounced United States citizenship for the purpose of avoiding taxation?

A: Yes No

Questions for Students and Exchange Visitors:

If you are applying for a Student or Exchange Visitor visa (F, M, or J), you will be asked to provide at least two contacts in your country of residence who can verify the information in your DS-160. Please do **not** list immediate family members or other relatives.

Surnames

Given Names

Street Address (Line 1)

Street Address (Line 2) **Optional*

City

State/Province
 Does Not Apply

Postal Zone/ZIP Code
 Does Not Apply

Country
- SELECT ONE -

Telephone Number
 Does Not Apply

Email Address
 Does Not Apply
(e.g., emailaddress@example.com)

Add Another Remove

JA 1463

If you are applying for a Student or Exchange Visitor visa, please provide your SEVIS number.

SEVIS ID

(e.g., N0123456789)

Q: Do you intend to study in the U.S.?

A: Yes No

If you are applying for a Student or Exchange Visitor visa, you will be asked to provide additional information about the institution where you intend to study, including name, address, course of study, etc.

Q: Do you intend to study in the U.S.?

A: Yes No

Provide additional information below:

Name of School

Course of Study

Street Address (Line 1)

Street Address (Line 2) *Optional

City

State
- SELECT ONE -

Postal Zone/ZIP Code

(e.g., 12345 or 12345-1234)

Uploading Photo:

It is now time to upload your photo. Click the "Upload Your Photo" button to access the DS-160 photo submission system.



Click "Browse" to locate your photo file.



JA 1465

After you have selected the image (.JPG file type only), click "Upload Selected Photo".

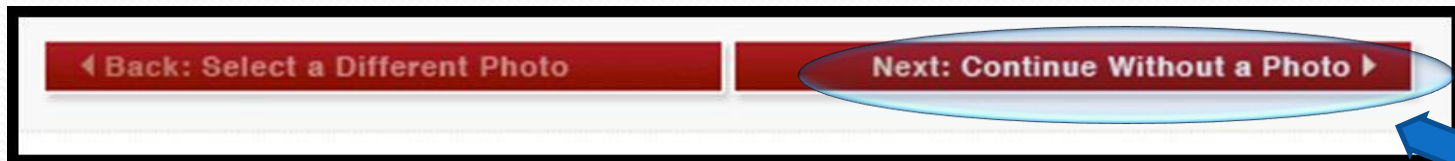
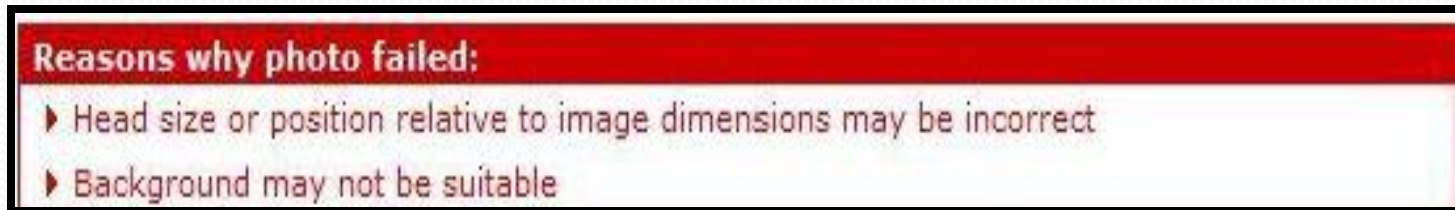


If the system verifies the photo is acceptable, you will return to the "Confirm Photo" screen in order to continue the application process.



JA 1466

If your photo does not meet the requirements, you will see an error message. Click “Continue Without a Photo” to continue the application. Additional instructions will be provided when you return to the visa application.



If your photo did not meet the requirements, click "Choose a Different Photo" to upload another image OR click "Next" to move to the "Review" portion of the DS-160. If you choose to continue without a photo, you **MUST** bring a photo that meets the standard photo guidelines to your visa interview appointment.



PHOTO INFORMATION FOR ALL APPLICANTS:

All applicants, even those who were successful in uploading digital photos, are asked to bring a photo that meets the standard photo guidelines to the Embassy on the interview date, in the event there is an issue with the uploaded photo.

Review Your Information:

You will now have a chance to review and edit all the information you have entered in the DS-160.

Review all your responses carefully. You cannot make changes after submitting your application.

To edit your responses, click the “Edit Information” link in the appropriate section.

Remember: You are responsible for ALL information in your DS-160.

Nonimmigrant Visa Application

Travel Information

[Print](#)

| | | |
|--|---|---|
| Principal Applicant? | YES | Edit Travel Information |
| <input type="checkbox"/> Purpose of Your Trip to U.S. | | |
| <input checked="" type="checkbox"/> Specific Travel Plan? | YES | |
| <input checked="" type="checkbox"/> The Location you plan to visit in the U.S. | | |
| Address where you will stay in the U.S.: | 222 MAIN STREET LONG BEACH, CALIFORNIA | |
| Person/Entity Paying for Your Trip: | SELF | |

Other Persons Traveling with You: YES [Edit Travel Companions Information](#)

Have you ever been in the U.S.? YES [Edit Previous U.S. Travel Information](#)

Do you or did you hold a U.S. Driver's License? NO

Have you ever been issued a U.S. Visa? YES

Have you ever been refused a U.S. Visa, been refused admission to the United States, or withdrawn your application for admission at the point of entry? NO

← Back: Personal/Address Save Next: U.S. Contact →

JA 1469

Sign and Submit Your Application:

Read the e-Signature statement carefully before dating, electronically signing, and submitting your DS-160. Enter your passport number and the code, then click “Sign and Submit Application”.



The screenshot shows the "E-Signature" section of a web form. At the top, it says "E-Signature". Below that is a certification statement: "I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct." There are two input fields: "Enter your passport number:" and "Enter the code as shown:". To the right of the second field is a black box containing the white alphanumeric code "W2VXH" and a small circular icon with a question mark. Below the input fields, there is a red instruction: "Click the button below to electronically sign your application:". At the bottom of the section is a blue button labeled "Sign and Submit Application".

By clicking "Sign and Submit Application", you certify that all information in your DS-160 is complete and true.

Print Your Confirmation Page:

You **MUST** print the confirmation page with a clear, legible barcode. Bring the printed confirmation page to your visa interview, along with your passport and any other required documents. You may print a copy of the entire, completed DS-160 for your records, but you do not have to bring it to your interview.

Whether your photo was uploaded or not, you **MUST** bring a physical photo of yourself that meets the standard photo guidelines to your visa interview. We cannot accept digital photos on the day of your interview.





Print Confirmation

Online Nonimmigrant Visa Application (DS-160)

Confirmation

This confirms the submission of the Nonimmigrant visa application for:

| | | | |
|--|--------------------|---------------------------|---|
|  | Name Provided: | Test, Test |  |
| | Date Of Birth: | Test | |
| | Place of Birth: | ST ANDREW, JAMAICA | Test |
| | Gender: | Female | |
| | Nationality: | JAMAICA | |
| | Passport Number: | Test | Location Selected: KNG U.S. Embassy, Kingston 142 Old Hope Road Kingston 6, Jamaica |
| | Purpose of Travel: | BUSINESS/PERSONAL (B1/B2) | |
| | Completed On: | 13 FEB 2012 | |
| | Confirmation No: | AA0024H3T3 | |
| | Version 01.01.00 | | |
| THIS IS NOT A VISA | | | |

NOTE: Your confirmation page will look like this if the photo is uploaded.

YOU MUST BRING this confirmation page and the following document(s) with you to the Application Service Center:

Passport

You may also provide any additional documents you feel will support your case.

YOU MUST SUBMIT this confirmation page with a clear and legible barcode at the time of your interview. If you do not have access to a printer at this time, select the option to email your confirmation page to an email address. You may print or email your application for your own records. **YOU DO NOT** need to submit the application at the time of the interview.

Please note that you will be required to provide proof that you have paid the visa application fee and any other fees associated with your application. There may be other fees associated with the visa application process. Please check your country's [Reciprocity Schedule](#) for any other fees you may owe.

If you have further questions, or to find out how to contact the Consular Post, please go to <http://kingston.usembassy.gov> or <http://travel.state.gov>.

NOTE: The photo you have submitted with your visa application did not meet the quality standards specified in the instructions on photo submission for visa applicants. Please have new photos taken, specifically following the photo guideline instructions on <http://travel.state.gov>.

NOTE: Unless exempt from an interview, you will be required to sign your application by providing a biometric signature, i.e. your fingerprint before a consular officer. By providing this biometric signature you are certifying under penalty of perjury that you have read and understood the questions in your nonimmigrant visa application and that all statements that appear in your nonimmigrant visa application have been made by you and are true and complete to the best of your knowledge and belief. Furthermore at the time of your interview, you will be required to certify under penalty of perjury that all statements in your application and those made during your interview are true and complete to the best of your knowledge and belief.



Print Confirmation

Online Nonimmigrant Visa Application (DS-160)

Confirmation

This confirms the submission of the Nonimmigrant visa application for:

| | | | |
|--|---------------------------|---------------------------|-------------------------------|
| | Name Provided: | Test, Test | |
| | Date Of Birth: | Test | |
| | Place of Birth: | ST ANDREW, JAMAICA | Test |
| | Gender: | Female | Location Selected: |
| | Nationality: | JAMAICA | KNG |
| | Passport Number: | Test | U.S. Embassy, Kingston |
| | Purpose of Travel: | BUSINESS/PERSONAL (B1/B2) | 142 Old Hope Road |
| | Completed On: | 13 FEB 2012 | Kingston 6, Jamaica |
| | Confirmation No: | AA0024H3T | Version 01.01.00 |
| | THIS IS NOT A VISA | | |

NOTE: Your confirmation page will look like this if you were not able to upload a photo.

YOU MUST BRING this confirmation page and the following document(s) with you to the Application Service Center:

Passport

You may also provide any additional documents you feel will support your case.

YOU MUST SUBMIT this confirmation page with a clear and legible barcode at the time of your interview. If you do not have access to a printer at this time, select the option to email your confirmation page to an email address. You may print or email your application for your own records. **YOU DO NOT** need to submit the application at the time of the interview.

Please note that you will be required to provide proof that you have paid the visa application fee and any other fees associated with your application. There may be other fees associated with the visa application process. Please check your country's [Reciprocity Schedule](#) for any other fees you may owe.

If you have further questions, or to find out how to contact the Consular Post, please go to <http://kingston.usembassy.gov> or <http://travel.state.gov>.

NOTE: The photo you have submitted with your visa application did not meet the quality standards specified in the instructions on photo submission for visa applicants. Please have new photos taken, specifically following the photo guideline instructions on <http://travel.state.gov>.

NOTE: Unless exempt from an interview, you will be required to sign your application by providing a biometric signature, i.e. your fingerprint before a consular officer. By providing this biometric signature you are certifying under penalty of perjury that you have read and understood the questions in your nonimmigrant visa application and that all statements that appear in your nonimmigrant visa application have been made by you and are true and complete to the best of your knowledge and belief. Furthermore at the time of your interview, you will be required to certify under penalty of perjury that all statements in your application and those made during your interview are true and compete to the best of your knowledge and belief.

JA 1473

Family and Group Option:

On the “Thank You” page you will see an option to create a family or group application.

When you select this option, certain information from your application will automatically be imported to and displayed on a new application.

You will still need to create an application for each family member traveling with you or for each individual within the group.



Other Required Documentation for Interviews:

Certain visa categories require additional documentation aside from the DS-160. Standard required supplemental forms include:

- Students (F/M visa): Form I-20 and SEVIS Receipt;
- Exchange Visitors (J visa): DS-2019 and SEVIS Receipt;
- Temporary Workers, Artists, Athletes (H, O or P visas): Form I-797 and other documents related to your employment;
- Blanket L-1 Applicants: Form I-129S;
- Diplomats and Officials (A, G or NATO visas): Diplomatic Note;
- Treaty Trader/Treaty Investor (E visa): Form DS-156E;
- Domestic Worker, Employment contracts (B1, A3, G5 visa), crew (C1/D visa), and journalists (I visa): A letter from the employer verifying details of employment, and a letter from the inviting organization in the U.S., if applicable.

Important Reminders:

The DS-160 form is not a visa. In nearly all cases, applicants must appear at the Embassy for a visa interview to complete the application process.

Please arrive 15 minutes before your scheduled interview. If you arrive more than 30 minutes early, you will be asked to wait outside the Embassy. If you arrive more than 15 minutes late, you will not be allowed to enter the Embassy, and you will have to make a new appointment.

For information about the application process, visit <http://kingston.usembassy.gov>.

To schedule an appointment, visit <http://www.usvisa-jamaica.com/>.



EXHIBIT 12

INTELLIGENCE ASSESSMENT



(U//FOUO) Most Foreign-born, US-based Violent Extremists Radicalized after Entering Homeland; Opportunities for Tailored CVE Programs Exist

1 March 2017



**Homeland
Security**

Office of Intelligence and Analysis

IA-0091-17

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**Homeland
Security**

Office of Intelligence and Analysis



INTELLIGENCE ASSESSMENT

1 March 2017

(U//FOUO) Most Foreign-born, US-based Violent Extremists Radicalized after Entering Homeland; Opportunities for Tailored CVE Programs Exist

(U//FOUO) Prepared by the Office of Intelligence and Analysis (I&A). Coordinated with CBP, the Department of State, ICE, NCTC, and USCIS.

(U) Scope

(U//FOUO) This Assessment examines the immigration history and radicalization of 88 foreign-born, US-based persons who participated in a terrorism-related activity inspired by at least one named foreign terrorist organization (FTO).^{*} All examined individuals primarily resided in the United States either at the time of their involvement in a terrorism-related activity or prior to their travel to join an FTO. The list of individuals included in this study was derived from academic and government sources, including a Department of Justice (DOJ) list of unsealed international terrorism and terrorism-related cases. The terrorism-related activities these individuals engaged in were identified in US Government sources or reliable media reporting. These activities include conducting or attempting to conduct an attack in the United States, traveling or attempting to travel from the United States to join an FTO overseas, and providing funds, goods, or logistical assistance to support an FTO. All individuals examined in our study were indicted or killed between March 2011—the start of the Syrian conflict—and December 2016. Individuals who were minors at the time of their indictment or death were not included. Our review did not consider classified or non-disseminated investigative information.

(U//FOUO) This Assessment identifies several factors, some of which are constitutionally protected activity, which we assess contributed to the radicalization of foreign-born, US-based violent extremists mentioned in this report. None of these factors should be viewed as definitive indicators of radicalization to violence absent corroborative information revealing a link to violence or terrorism. This Assessment is intended to inform federal, state, local, tribal, and territorial counterterrorism, law enforcement, and countering violent extremism (CVE) officials, as well as immigrant screening and vetting officials on trends of foreign-born individuals engaged in terrorism activity in the Homeland. It also provides an overview of opportunities to prevent and detect future violent extremist radicalization. The information cutoff date is 31 December 2016.

(U) Key Judgments

(U//FOUO) We assess that most foreign-born, US-based violent extremists likely radicalized several years after their entry to the United States, limiting the ability of screening and vetting officials to prevent their entry because of national security concerns. We base this assessment on our findings that nearly half of the foreign-born, US-based violent extremists examined in our dataset were less than 16 years old when they entered the country and that the majority of foreign-born individuals resided in the United States for more than 10 years before their indictment or death. A separate DHS study that found recent foreign-born US violent extremists began radicalizing, on average, 13 years after their entry to the United States further supports our assessment.

(U//FOUO) We assess nearly all parents who entered the country with minor-age children likely did not espouse a violent extremist ideology at the time they entered or at any time since, suggesting these foreign-born individuals were likely not radicalized by their parents before or after their arrival in the Homeland. We base this judgment on their admissions to the United States by screening and vetting agencies who review all available derogatory information, our review of press interviews of parents after their child was arrested or killed, and the lack of arrests of the parents since their entry.

^{*} *(U//FOUO)* DHS defines radicalization as the process through which an individual changes from a nonviolent belief system to a belief system that includes the willingness to actively advocate, facilitate, or use unlawful violence as a method to effect societal or political change.

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material support to ISIS as a group, according to DOJ criminal complaints.^{9,10}

- » (U//FOUO) In 2012, two individuals born in Uzbekistan were arrested for providing material support to the Islamic Jihad Union, according to DOJ criminal complaints.^{11,12} Separately, four Uzbekistan-born individuals were arrested in 2015 for providing material support to ISIS, according to a DOJ criminal complaint and superseding indictment.^{13,14} These two groups comprised six of the nine individuals in our dataset who were born in Uzbekistan.
- » (U//FOUO) All seven individuals born in Bosnia were associates of each other. Six were arrested in 2015 for providing material support to ISIS and one died in 2014 after successfully joining ISIS in Syria, according to DOJ criminal complaints and a press report.^{15,16}
- » (U//FOUO) Two of the seven violent extremists in our dataset who were born in Pakistan were brothers who plotted together to provide material support to al-Qa'ida in the Arabian Peninsula (AQAP), according to a DOJ indictment.¹⁷

(U//FOUO) We assess nearly all parents who entered the country with minor-age children likely did not espouse a violent extremist ideology at the time they entered or at any time since, suggesting these foreign-born individuals were likely not radicalized by their parents before or after their arrival in the Homeland. We base this judgment on their admissions to the United States by screening and vetting agencies who review all available derogatory information, our review of press interviews of parents after their child was arrested or killed, and the lack of arrests of the parents since their entry.

- » (U//FOUO) Two months before Somali immigrant Abdirizak Warsame^{USPER} was arrested for conspiring to provide material support to ISIS, his mother lectured other parents about the importance of talking with their children about risks stemming from adhering to a violent extremist ideology and the need to work with the FBI, according to press reporting.¹⁸ Warsame was sentenced to 30 months in prison in November 2016 because of his attempt to travel to Syria to join ISIS, according to a press report.¹⁹
- » (U//FOUO) Harlem Suarez's^{USPER} family was surprised by his arrest for plotting an attack in support of ISIS in 2015, according to a press report.²⁰ The family described Suarez, who was born in Cuba, as curious and unable to hurt anything, according to the same report.²¹ Suarez is currently awaiting trial, according to another press report.²²
- » (U//FOUO) Jose Pimentel's^{USPER} mother publicly apologized to the City of New York after his arrest in 2011, saying she was disappointed with her son's actions, according to multiple press reports.^{23,24,25} Pimentel—who immigrated from the Dominican Republic with his family when he was five—was sentenced to 16 years in prison after pleading guilty in February 2014 to terrorism charges related to plotting to conduct an attack in the Homeland, according to a separate press report.²⁶

(U//FOUO) Similar Radicalization Factors among Native- and Foreign-born US Violent Extremists

(U//FOUO) Our review of 116 native-born US violent extremists, who were publicly identified as having been arrested or killed between March 2011 and December 2016, showed that many had similar experiences and grievances to the 88 foreign-born violent extremists we examined. We assess that these experiences and grievances probably in part contributed to the radicalization of some native- and foreign-born, US-based violent extremists and included perceived injustices against Muslims in the Homeland and abroad because of US policies, feelings of anger and isolation, and witnessing violence as a child. The lack of extensive open source information detailing some of these US violent extremists' radicalization histories prevented us from identifying motivating factors for all individuals examined in our dataset.

- » (U//FOUO) Native-born brothers Nader Saadeh^{USPER} and Alaa Saadeh^{USPER}—who both pleaded guilty after their arrest in 2015 for providing material support to ISIS—believed the United States oppressed its own people and failed to protect Muslims, according to DOJ criminal complaints.^{27,28} Similarly, Ibrahim Mohammad^{USPER}, born in the UAE and arrested in 2015 for providing material support to AQAP, believed the United States was actively at war with Islam, according another DOJ criminal complaint.²⁹
- » (U//FOUO) Native-born Josh Van Haften^{USPER}, who is awaiting his trial for attempting to travel overseas to join ISIS, became isolated from his peers after a sexual assault required him to register as a sex offender, according to press reporting.³⁰ He was told to leave his housing because he was a sex offender, and he was never able to have a romantic relationship, according to a press interview with Van Haften's mother and her partner.³¹ The FBI assesses isolation to be one of many factors in Van Haften's radicalization, but not the primary one. Similarly, the now-deceased foreign-born former editor of AQAP's Inspire magazine, Samir Khan, and now-deceased ISIS foreign fighter Abdullah Ramo Pazara felt isolated or different from their communities and peers, according to multiple press reports.^{32,33,34}
- » (U//FOUO) At least five foreign-born US violent extremists were exposed to violence or substance abuse as children, according to a review of available press reporting.³⁵⁻³⁹ We judge, however, there are likely additional individuals included in our dataset who were also exposed to violence during their childhood, based on our finding that 41 foreign-born US violent extremists in our dataset entered the United States as a refugee, asylee, or child of a refugee or asylee.

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(U//FOUO) CVE Opportunities to Prevent Radicalization of Foreign-born, US-based Individuals

(U//FOUO) We assess that the integration and mentoring services provided by federal, state, and private sector entities to refugees and asylees offer an opportunity to help foreign-born US residents adjust to their new communities and raise their awareness of and resistance to violent extremist narratives and recruiters, and likely increase their resistance to radicalization. Immigrants not entering the United States as refugees or asylees must prove their ability to provide basic needs for themselves before arriving in the United States, and thus they would not be eligible to receive many of these healthcare, housing, employment, and education services; however, there are many programs available to all immigrants to assist with integration into US society.

- » (U) There are a variety of federal, state, local, and nongovernmental programs aimed at helping refugees and asylees integrate into US society by addressing their basic healthcare, housing, employment, and education needs.⁴⁰ Additionally, USCIS, through its Citizenship and Integration Grant Program, as of September 2016 awarded \$63 million through 308 competitive grants in 37 states to help immigrants prepare and apply for US citizenship, according to USCIS.⁴¹
- » (U) Many nonprofit organizations engage with immigrant communities, including a Georgia-based nonprofit that serves the cultural, psychological, and social-economic needs of refugees and immigrants in Atlanta, according to their website.⁴²

(U//FOUO) The experiences and grievances we assessed as common within these individuals present opportunities for CVE programs focused on integration and mentorship. Such programs could address adolescent immigrants' feelings of isolation, anger, and depression caused by immigration experiences—which could in turn reduce the ability of FTOs to exploit these feelings for recruitment. Program administrators would be positioned to assist adolescents if the administrators are made aware of common radicalization vulnerabilities and behavioral indicators, as well as effective counter-narratives to challenge FTO messaging.

- » (U//FOUO) Guled Omar^{USPER}, who was sentenced in 2016 for attempting travel overseas to join ISIS, claimed in a December 2016 press interview that after his older brother traveled to Somalia in 2007 to join al-Shabaab, he was shunned and isolated from the Somali-American community in Minneapolis, which led to his depression, drug use, and taunting by peers.⁴³
- » (U) Successful programs for adolescent immigrants could include convening youth from varying cultural backgrounds to promote cultural understanding and providing opportunities to counter anti-immigrant attitudes in mainstream culture, according to research published by a State University of New York at Albany^{USPER} program called Voices for Change: Immigrant Women and State Policy.⁴⁴ Separately, the Department of Health and Human Services' Child Welfare Information Gateway offers online resources for immigrant youth, including a guide on living in America, educational and safety resources for parents, and a handbook for raising children in a new country.⁴⁵

(U//FOUO) We also judge that open discussions with community and religious centers about overseas conflicts and ways that violent extremists may use religion to justify their actions would likely help dissuade some foreign-born, US-based individuals who are seeking answers to their questions from relying exclusively on research conducted online, which is often dominated by FTO messaging that offers only a violent extremist perspective.

- » (U//FOUO) Some individuals in our dataset who became interested in conflict zones or their religion sought to educate themselves on the Internet—where they encountered videos and literature espousing violent extremist ideology—rather than their local religious or community leaders, according to press reporting.^{46,47} Somali-Americans Abdi Nur^{USPER} and Guled Omar—who have since been indicted for attempting to provide material support to ISIS—were asked to leave their respective mosques because of their expressions of violent extremist beliefs, which, in effect, pushed their research underground, where they turned to the Internet and had their nascent violent extremist views reinforced, according to a press report.⁴⁸ Abdi Nur was indicted on conspiracy charges for providing material support to ISIS in 2014, according to a DOJ press release.⁴⁹
- » (U//FOUO) Abdizirak Warsame stated in his court appearance that he was always listening to one side, referring to the “radical” messages he saw online, according to a press report. Warsame claimed that at the time he did not realize innocent people were being killed, according to the same report, which was likely a reference to terrorists' targeting of civilians.⁵⁰

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(U//FOUO) Most Foreign-born, US-based Violent Extremists Probably Radicalize After Entering the Homeland

(U//FOUO) I&A examined the immigration history and radicalization activities of 88 foreign-born, US-based violent extremists who were indicted or killed as a result of their participation in a terrorism related activity inspired by at least one foreign terrorist organization between March 2011 and December 2016. We based this study primarily on DHS immigration records, publicly available court documents and reliable press reporting. Nearly half of the foreign-born violent extremists in our dataset entered the United States when they were under the age of 16 and a majority remained in the United States for over ten years before their indictment or death, suggesting most foreign-born, US-based violent extremists likely radicalized after entering the Homeland.

(U//FOUO) DHS defines radicalization as the process through which an individual changes from a non-violent belief system to a belief system that includes the willingness to actively advocate, facilitate, or use unlawful violence as a method to effect societal or political change.

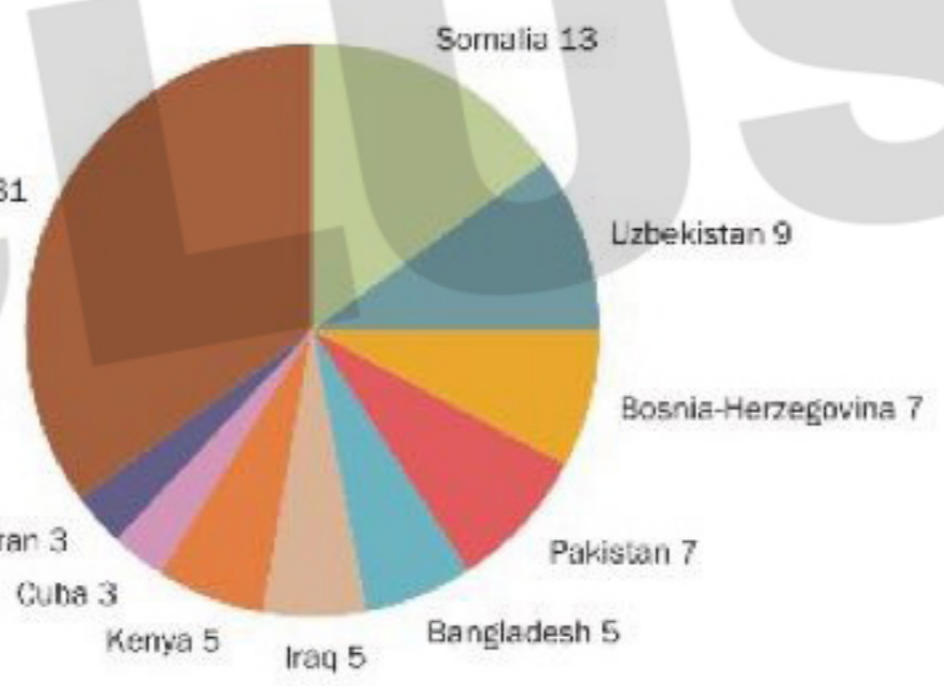
(U) AGE OF ENTRY OF FOREIGN-BORN VIOLENT EXTREMISTS



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



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

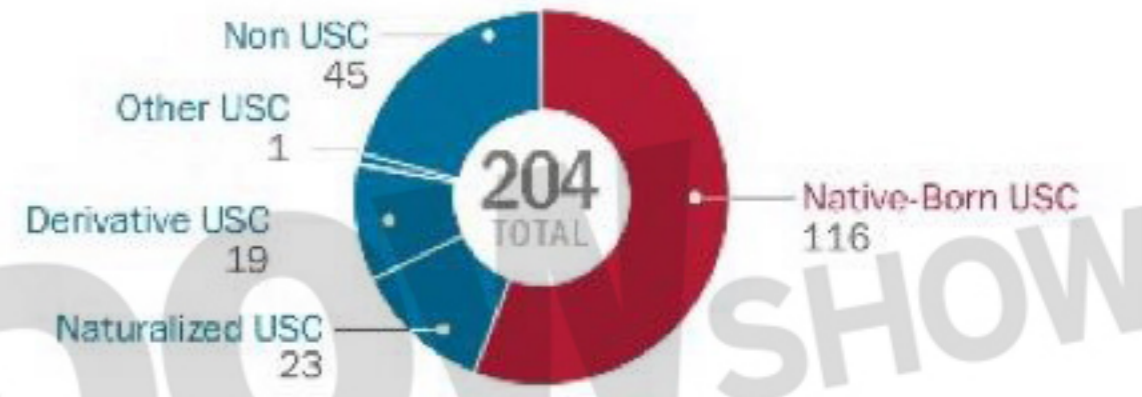


†† (U//FOUO) Either one or two individuals were born in each of the following 24 countries: Albania, Afghanistan, Australia, Dominican Republic, Egypt, Ethiopia, India, Israel, Kazakhstan, Kuwait, Kyrgyzstan, Lebanon, Mexico, Morocco, Philippines, Russia, Saudi Arabia, Sierra Leone, Sudan, Syria, Turkey, United Arab Emirates, Yemen, Yugoslavia.

(U//FOUO) For the purposes of this graphic, we compared our findings on foreign born US-based violent extremists with those of 116 native-born US-based violent extremists indicted or killed during the same time period. We found that many native and foreign-born US-based violent extremists had similar experiences and grievances that may have contributed, in part, to their radicalization, including perceived injustice against Muslims, grievances against the United States, and feelings of anger and isolation.[†]

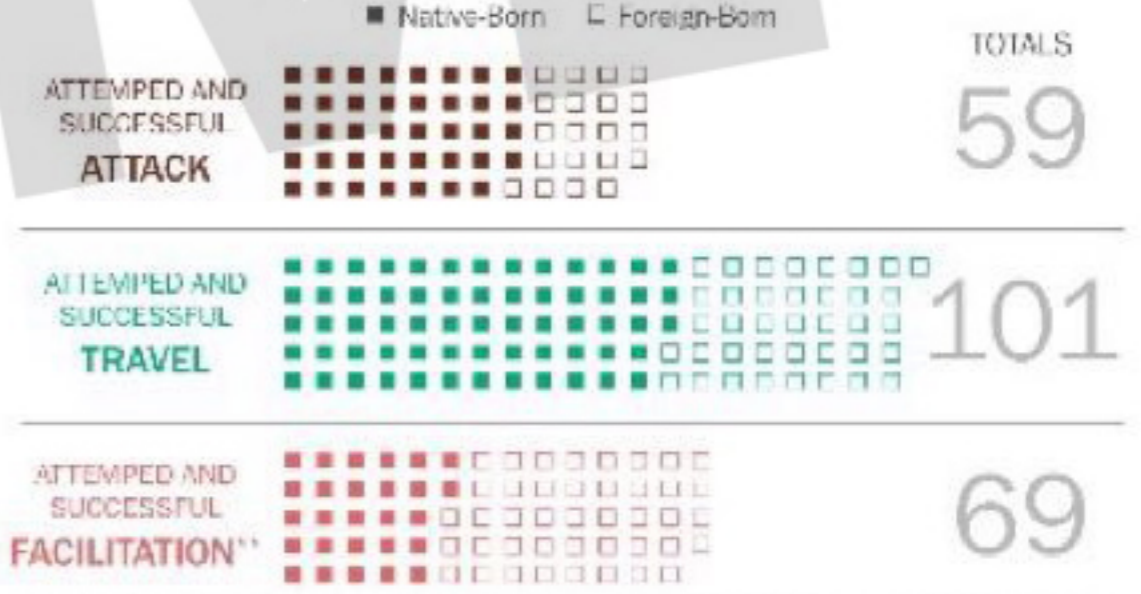
† (U//FOUO) These factors alone do not indicate an individual has radicalized to violence.

(U) NATIVE- AND FOREIGN-BORN VIOLENT EXTREMISTS US CITIZENSHIP (USC) STATUS AT TIME OF INDICTMENT OR DEATH[‡]



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

(U) TERRORISM-RELATED ACTIVITIES OF NATIVE- AND FOREIGN-BORN VIOLENT EXTREMISTS[§]



*‡ (U//FOUO) Numbers include individuals who participated or were interested in more than one activity.
 ** (U//FOUO) Facilitation activities include financial or logistical support, and terrorist recruitment.*

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(U) Source Summary Statement

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

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

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

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

(U//FOUO) We have **moderate confidence** that open discussions with community and religious centers about overseas conflicts and ways violent extremists may use religion to justify their actions would likely help dissuade some foreign-born, US-based individuals from relying exclusively on Internet research. Our assessment is based on an analysis of current CVE programs and grievances cited by the individuals in our dataset to determine whether these programs would likely address the radicalization factors of these individuals. The inherent challenges involved in proving that CVE efforts have successfully countered radicalization of violent extremists or possible radicalization of vulnerable individuals limit our confidence in this assessment.

(U) Report Suspicious Activity

(U) To report suspicious activity, law enforcement, Fire-EMS, private security personnel, and emergency managers should follow established protocols; all other personnel should call 911 or contact local law enforcement. Suspicious activity reports (SARs) will be forwarded to the appropriate fusion center and FBI Joint Terrorism Task Force for further action. For more information on the Nationwide SAR Initiative, visit <http://nsi.ncirc.gov/resources.aspx>.

(U) Tracked by: HSEC-8.1, HSEC-8.2, HSEC-8.3, HSEC-8.5

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EXHIBIT 13



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JANUARY 25, 2017 3:31PM

Little National Security Benefit to Trump's Executive Order on Immigration

By ALEX NOWRASTEH

Tomorrow, President Trump is expected to sign an executive order enacting a 30-day suspension of all visas for nationals from Iraq, Iran, Libya, Somalia, Sudan, Syria, and Yemen. Foreigners from those seven nations have killed zero Americans in terrorist attacks on U.S. soil between 1975 and the end of 2015. Six Iranians, six Sudanese, two Somalis, two Iraqis, and one Yemini have been convicted of attempting or carrying out terrorist attacks on U.S. soil. Zero Libyans or Syrians have been convicted of planning a terrorist attack on U.S. soil during that time period.

Many other foreigners have been convicted of terrorism-related offenses that did not include planning a terrorist attack on U.S. soil. One list released by Senator Jeff Sessions (R-AL) details 580 terror-related convictions since 9/11. This incomplete list probably influenced which countries are temporarily banned, and likely provided justification for another section of Trump's executive order, which directs the Department of Homeland Security (DHS) to release all information on foreign-born terrorists going forward, and requires additional DHS reports to study foreign-born terrorism.

I exhaustively evaluated Senator Sessions' list of convictions based on publicly available data and discovered some startling details.

First, 241 of the convictions (42 percent) were not for terrorism offenses.

Senator Sessions puffed his numbers by including "terrorism-related convictions," a nebulous category that includes investigations that begin due to a terrorism tip but then end in non-terrorism convictions. My favorite examples of this are the convictions of Nasser Abuali, Hussein Abuali, and Rabi Ahmed. An informant told the FBI that the trio tried to purchase a rocket-propelled grenade launcher, but the FBI found no evidence supporting the accusation. The three individuals were instead convicted of receiving two truckloads of stolen cereal. That is a crime but it is not terrorism.

Second, only 40 of the 580 convictions (6.9 percent) were for foreigners planning a terrorist attack on U.S. soil. Seeking to join a foreign terrorist group overseas, material support for a foreign terrorist, and seeking to commit an act of terror on foreign soil account for 180 of the 580 convictions (31 percent). Terrorism on foreign soil is a crime, should be a crime, and those convicted of these offenses should be punished severely but the government cannot claim that these convictions made America safe again because these folks were not targeting U.S. soil.

Third, 92 of the 580 convictions (16 percent) were for U.S. born citizens. No change in immigration law, visa limitations, or more rigorous security checks would have stopped them.

The executive order includes national security exemptions to be made on a case-by-case basis. The President reserves the option to ban the entry of nationals from additional countries in the future based on a national security risk report written by DHS. Furthermore, the Secretaries of State and Homeland Security can recommend visa bans for nationals from additional countries at any time.

In addition to the visa restrictions above, Trump's executive order further cuts the refugee program to 50,000 annually, indefinitely blocks all refugees from Syria, and suspends all refugee admissions for 120 days. This is a response to a phantom menace. From 1975 to the end of 2015, 20 refugees have been

convicted of attempting or committing terrorism on U.S. soil, and only three Americans have been killed in attacks committed by refugees—all in the 1970s. Zero Americans have been killed by Syrian refugees in a terrorist attack on U.S. soil. The annual chance of an American dying in a terrorist attack committed by a refugee is one in 3.6 *billion*. The other 17 convictions have mainly been for aiding or attempting to join foreign terrorists.

President Trump tweeted earlier this week that executive orders were intended to improve national security by reducing the terrorist threat. However, a rational evaluation of national security threats is not the basis for Trump’s orders, as the risk is fairly small but the cost is great. The measures taken here will have virtually no effect on improving U.S. national security.

Topics: [International Economics, Development & Immigration](#)

Tags: [Trump](#), [executive order](#), [terrorism](#), [immigration](#), [immigrants](#), [ban](#), [Muslim](#), [refugees](#)



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EXHIBIT 14

Opinions

The basic premise of Trump's travel ban is wrong

By David Bier September 26

David Bier is an immigration policy analyst at the Cato Institute.

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.

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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.

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There is only one post that 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.

Read more on this topic:

[The Post’s View: Trump’s new travel ban still has no justification](#)

[Jennifer Rubin: New travel ban implicitly concedes previous ones were ludicrous](#)

[Ilya Somin: Trump’s newest travel ban order has many of the same flaws as the old](#)

David Bier is an immigration policy analyst at the Cato Institute. [Follow @David_J_Bier](#)

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

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| EBLAL ZAKZOK, <i>et al.</i> , |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | No. 1:17-cv-02969-TDC |
| |) | |
| DONALD TRUMP, in his official capacity |) | |
| as President of the United States, <i>et al.</i> , |) | |
| |) | |
| Defendants. |) | |
| _____ |) | |

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. 36 and 37, 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

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