CASE NO. 17-35105

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

STATE OF WASHINGTON, *et al.*,
Appellants

v.

DONALD J. TRUMP, PRESIDENT, *et al.,*
Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON,
CASE NO. 2:17-cv-00141-JLR

BRIEF OF AMICUS CURIAE FREEDOM WATCH, INC., IN SUPPORT OF EN BANC REVIEW OF APPELLANTS-DEFENDANTS EMERGENCY MOTION FOR STAY PENDING APPEAL

ORAL ARGUMENT REQUESTED

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February 15, 2017

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FRAP RULE 26.1 AND FRAP 29(a)(4)(E)) DISCLOSURE STATEMENT

Freedom Watch, Inc. is a 501(c)(3) not-for-profit organization, with no parent corporation and no publicly traded stock.

In compliance with Federal Rules of Appellate Procedure ("FRAP") Rule 29(a)(4)(E), Freedom Watch, Inc. further states that this brief was authored by counsel for Freedom Watch, without the involvement of counsel for any party in this matter. No party or counsel for such party contributed money that was intended to fund preparing or submitting this brief. No person other than the Amicus or its counsel contributed money that was intended to fund preparing or submitting this brief.

Dated: February 15, 2017

/s/ Larry Klayman
Larry Klayman
Counsel for Amicus Curiae
FREEDOM WATCH, INC.

STATEMENT OF INTEREST OF AMICUS CURIAE

Amicus Curiae Freedom Watch, Inc. hereby respectfully submits this brief to assist the Court and the ends of justice pursuant to the FRAP Rule 29.[1] Counsel for the Appellants and Appellees have graciously offered their consent to this filing and therefore pursuant to FRAP Rule 29 and Circuit Rule 29, on the direction of said rules, a separate motion for leave to file this brief is not required.

Freedom Watch is a public interest group dedicated to preserving freedom, pursuing individual rights and civil liberties, preserving the rule of law and public confidence in the courts, and fighting for ethics in government and the judicial system, as well as investigating and prosecuting government corruption and abuse. As part of its goal to remain constant to the principles of the Founding Fathers, Freedom Watch is dedicated to ensuring the rights of all citizens through action, frequently with legal cases and other means.

Previously, Freedom Watch filed an Amicus Curiae brief before the U.S. Supreme Court in a related case, *Arizona v. United States,* 567 U.S. __, 132 S.Ct. 2492 (2012) which addressed some of the legal issues and considerations implicated here. Similarly, Freedom Watch filed Amicus Curiae briefs before the U.S. Supreme Court and the U.S. District Court for the Southern District of Texas

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[1] The brief was amended and shortened somewhat on the Clerk's direction as to format and a new Section D has been added ahead of approval being granted.

in *Texas v. United States*, 787 F.3d 733 (5th Cir. 2015), and brought a parallel case *Arpaio v. Obama* , in a petition before the U.S. Supreme Court as Case No. 15-643, including a petition for writ of certiorari in the U.S. Supreme Court concerning somewhat similar issues regarding President Barack Obama's authority to disregard federal law on immigration by Executive Order.

With the majority of the country's citizens demanding the integrity of the rule of law, enforcement of our nation's immigration laws, protection of the country's borders, and defense of their families, communities, and nation against terrorist threats, Freedom Watch is required to speak on behalf of those unable to do so. As such, consistent with its mission, Freedom Watch seeks to provide the means and mechanism to protect American citizens' rights in this matter of great public interest and to uphold our constitutional system of separation of powers and the rule of law.

I. SUMMARY OF ARGUMENT

> "***[W]hile the Constitution protects against invasions of individual rights, it is not a suicide pact.***" *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 160, 83 S.Ct. 554, 563, 9 L.Ed.2d 644 (1963). *The Constitution's due process guarantees call for no more than what has been accorded here: a statement of reasons and an opportunity for a prompt postrevocation hearing*.

Haig v. Agee, 453 U.S. 280, 310, 101 S.Ct. 2766, 69 L.Ed.2d 640 (1981) (emphases added); *Accord, Kennedy v. Rusk v. Cort*, 372 U.S. 144, 83 S.Ct. 554, 9 L.Ed.2d 644 (1963).

This Court and the nation have been dragged into a constitutional crisis at break-neck speed, while leaving the nation unprotected from infiltration by terrorists. On January 27, 2017, President Donald Trump issued an Executive Order **"Protecting the Nation from Foreign Terrorist Entry into the United States,**" ("Executive Order"), 82 Fed. Reg. 8,977, attached as Exhibit A.

> "**We want to ensure that we are not admitting into our country the very threats our soldiers are fighting overseas.**"

-- Verbal statement by the President Trump, upon signing the Executive Order officially announcing its purpose.[2]

Amicus Curiae Freedom Watch respectfully offers its analysis for the benefit

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[2] Ken Thomas, "Trump Orders Strict New Refugee Screening, Citing Terrorists," Associated Press, January 27, 2017, accessible at: http://bigstory.ap.org/article/889887c9c328423b955920f4d7465e54/trump-expected-sign-directive-halting-refugee-flows-us

of this Court pursuant to FRAP Rule 29.

Now before the Court is Appellants' motion for a stay of the Temporary Restraining Order ("TRO") from the U.S. District Court for the District of Washington ("District Court.") Appellants seek a stay of a stay. But defects in the TRO demonstrate that the TRO should be stayed, being deficient on the merits.

En Banc review is warranted of the Per Curiam Order on February 9, 2017, of a three-judge panel ("Panel") of the U.S. Court of Appeals for the Ninth Circuit ("Ninth Circuit"). The Panel has restrained the core, constitutionally-established role of the President of the United States as head of the nation's foreign policy, international relations, national security, national defense, commander-in-chief, and head of the executive branch.

First, the Appellees do not have standing under *parens patriae*. Despite claiming that public universities are agencies of their States, the universities are actually claiming temporary inconvenience *by others*, not themselves. Further, as the Panel admits, the Executive Order provides for a waiver. Anyone affected who is not a threat to the country may receive a waiver. According to news reports, everyone detained in transit has already received such a waiver.

Also, in this constitutional crisis, unfolding at astonishing and dangerous speed, the courts have substituted their own national security judgments and factual analyses in place of the President's and the Congress' unique authority

under the Constitution. Specifically, to balance the harms for the TRO, the Honorable James L. Robart and the Panel decided for themselves that seven failed states -- hot beds of terrorism and lacking trustworthy records -- do not represent any real danger to U.S. families and communities. Such military, foreign policy, and national security analysis is not within the capabilities of the courts. The President is briefed by an extensive system of intelligence agencies.[3] This Court does not have regular access to those intelligence resources.

Moreover, the District Court and Panel were in error: Judge Robart inaccurately argued in the hearing that no terrorist attack had -- so far -- resulted from aliens entering from the seven failed states and Iran.[4] First, this demonstrates the lack of expertise of the courts. Aliens from the world's seven most dangerous countries may recruit for, train, incite, finance, organize, support, plan, and help implement terrorist attacks regardless of whether they personally deliver the bomb. The Panel erroneously assumed that terrorist threats are presented only by those who push the button.[5]

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[3] Justin Fishel and John Santucci, "Trump Receives 1st Presidential Daily Brief," ABC News, November 15, 2016, accessible at: http://abcnews.go.com/Politics/trump-receives-presidential-daily/story?id=43554271

[4] Regrettably, Appellants' counsel stated he was unprepared to address the question on short notice. A slower, more-circumspect examination of these issues is necessary.

[5] Jessica Vaughn, "Study Reveals 72 Terrorists Came From Countries Covered by Trump Vetting Order," Center for Immigration Studies, February 11,

Second, the claim is false:

> Since 9/11, 72 individuals from the seven mostly Muslim countries covered by President Trump's "extreme vetting" executive order have been convicted of terrorism, bolstering the administration's immigration ban. According to a report out Saturday, at least 17 claimed to be refugees from those nations, three came in as "students," and 25 eventually became U.S. citizens.[6]

Thus, the balance of the equities and harms cannot sustain a TRO.

Moreover, the Ninth Circuit *en banc* should dismiss the case by the Appellees as a non-justiciable "political question." The District Court lacks Article III jurisdiction, and dismissal is mandatory. The question is textually committed to the President and the Congress, and there are no legally-cognizable standards available for a court to apply in substituting a court's judgment on national security threats in place of the Commander-in-Chief's judgment.

Moreover, neither the Appellees nor the foreign college students they complain for will suffer irreparable harm. Financial loss is, by definition, recoverable. However, loss of life from a terrorist attack is the very essence of irreparable harm. The Panel ignored the irreparable harm from terrorist attacks and erroneously found irreparable harm that is compensable by money damages.

2017, accessible at: http://cis.org/vaughan/study-reveals-72-terrorists-came-countries-covered-trump-vetting-order

[6] Paul Bedard, "Report: 72 convicted of terrorism from 'Trump 7' mostly Muslim countries," The Washington Examiner, February 11, 2017, accessible at: http://www.washingtonexaminer.com/report-72-terrorists-came-from-7-muslim-countries-trump-targeted/article/2614582

II. ARGUMENT

A. APPELLEE STATES WILL NOT PREVAIL ON THE MERITS

Appellants seek *a stay of a stay* (TRO). Appellants' request for a stay of the TRO must meet the requirements for an injunction, stay, or TRO. Appellants must show that they have a substantial likelihood of success in vacating the TRO.

But where the February 3, 2017, TRO is fatally flawed, which it is, the Appellants are likely to prevail in vacating it, because of its flaws. Flaws in the TRO establish that the Appellants are entitled to a stay of the deficient TRO.

The TRO is fatally flawed because it does not even attempt to show that the Plaintiff States have any chance of succeeding in their lawsuit in the end. To obtain a TRO, the Appellees must have established (1) a likelihood of success on the merits; (2) that irreparable harm is likely in the absence of preliminary relief; (3) that the balance of equities tips in the movant's favor; and 4) that an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20, 129 S. Ct. 365, 172 L. Ed. 2d 249 (2008); Fed. R. Civ. P. 65(b)(1); *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n. 7 (9th Cir. 2001).

> A preliminary injunction is an extraordinary remedy never awarded as of right. *Munaf,* 553 U.S., at 689-690, 128 S.Ct., at 2218–2219. In each case, courts "must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief." *Amoco Production Co.,* 480 U.S., at 542, 107 S.Ct. 1396. "In exercising their sound discretion, courts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of injunction." *Romero–Barcelo,* 456 U.S.,

at 312, 102 S.Ct. 1798; see also *Railroad Comm'n of Tex. v. Pullman Co.,* 312 U.S. 496, 500, 61 S.Ct. 643, 85 L.Ed. 971 (1941).

Winter v. Natural Res. Def. Council, Inc., 555 U.S. at 24.

B. STANDING

As the Panel stated in its Per Curiam Order page 8:

> We have an independent obligation to ascertain our jurisdiction, *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 514 (2006), and we consider the Government's argument de novo, *see, e.g.*, *Hajro v. U.S. Citizenship & Immigration Servs.*, 811 F.3d 1086, 1098 (9th Cir. 2016). We conclude that the States have made a sufficient showing to support standing, at least at this preliminary stage of the proceedings.

First, even though the Appellees argue that public universities are agencies of the Plaintiff States, nevertheless they are still claiming the interests of others inconvenienced in traveling to the universities.

> In *Massachusetts v. Mellon*, 262 U.S. 447, 43 S.Ct. 597, 67 L.Ed. 1078, the Court held a State lacked standing to challenge, as *parens patriae*, a federal grant-in-aid program under which the Federal Government was allegedly usurping powers reserved to the States. It was said in Mellon:
>
> ***'[T]he citizens of Massachusetts are also citizens of the United States.*** It cannot be conceded that a State, as *parens patriae*, may institute judicial proceedings to protect citizens of the United States from the operation of the statutes thereof. While the State, under some circumstances, may sue in that capacity for the protection of its citizens (*Missouri v. Illinois*, 180 U.S. 208, 241, 21 S.Ct. 331, 45 L.Ed. 497), it is no part of its duty or power to enforce their rights in respect of their relations with the Federal Government.

Commonwealth of Massachusetts v. Laird, 400 U.S. 886, 887, 91 S.Ct. 128, 27 L.Ed.2d 140 (1970) (dissenting opinion) (emphasis added).

A "State does not have standing as *parens patriae* to bring an action ***against the Federal Government***" on behalf of its citizens. *Alfred L. Snapp & Son v. Puerto Rico ex rel. Barez,* 458 U.S. 592, 610 n.16 (1982) (emphasis added); *Massachusetts v. Mellon*, 262 U.S. 447, 485-86 (1923). Also, *Massachusetts v. EPA*, 549 U.S. 497 (2007), involved allegations that Massachusetts was losing land along its coastline to rising oceans. 549 U.S. at 522. The Court deemed it "of critical importance" that Congress had authorized the exact type of challenge the State brought. *Id.* at 516.

Those affected are the United States' citizens as well as the States'. Even a noted case on amnesty for illegal aliens, *Texas v. United States,* agrees:

> The court also considered but ultimately did not accept the notions that Texas could sue as *parens patriae* on behalf of citizens facing economic competition from DAPA beneficiaries and that the state had standing based on the losses it suffers generally from illegal immigration.

Texas v. United States of America, 809 F.3d 134 (5th Cir. November 9, 2015) (Appeal No. 15-40238).

Second, aliens cannot have standing in U.S. courts for the denial of rights they do not have. Since no one has a right to enter the United States who is not a U.S. citizen, *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 73 S.Ct. 625, 97 L.Ed. 956 (1953); *Zadvydas v. Davis Et Al*., 533 U.S. 678 (2001), aliens kept out have suffered no legal damages because they have no right of entry.

Third, any alien who is not a terrorist threat is eligible for a waiver. As the

Per Curiam Order admits on page 4:

> Sections 3(g) and 5(e) of the Executive Order allow the Secretaries of State and Homeland Security to make case-by-case exceptions to these provisions "when in the national interest." 82 Fed. Reg. 8,978-80. Section 5(e) states that situations that would be in the national interest include "when the person is a religious minority in his country of nationality facing religious persecution." 82 Fed. Reg. 8,979. The Executive Order requires the Secretaries of State and Homeland Security and the Director of National Intelligence to evaluate the United States' visa, admission, and refugee programs during the periods in which entry is suspended. 82 Fed. Reg. 8,977-80.

Anyone who is not a threat is not harmed because they can receive a waiver.

Note that the waiver provides due process: notice and a hearing.

C. PRESIDENT'S POWER TO REGULATE ENTRY INTO THE UNITED STATES IS CLEAR AND ALMOST UNLIMITED

As is now well-known, we start with the congressional legislation that confirms the President's authority in 8 U.S. Code § 1182(f), Section 212(f) of the Immigration and Naturalization Act:

> (f) Whenever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate.

And, of course, even without the benefit of legislation, the President has inherent constitutional authority over foreign policy. *See, e.g., Zivotofsky v. Kerry*, 576 U.S. ___, 135 S. Ct. 2076, 2083-84 (2015). Of course that power is at its

zenith when Congress by statute has agreed by legislation, as is true here. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U. S. 579 (1952). *see also, e.g., Harisiades v. Shaughnessy*, 342 U.S. 580, 588 (1952) (recognizing that control over immigration is an integral part of Article II authorities "in regard to the conduct of foreign relations [and] the war power").

Yet the Panel completely ignored the statute that gives the President the clear and unfettered authority to issue the Executive Order under 8 U.S.C. § 1182(f). In fact, the Panel was effectively trying to enjoin the statute, not the Executive Order.

D. COURTS MAY NOT LOOK "BEHIND" THE CLEAR TEXT AT CAMPAIGN STATEMENTS

The Appellees claims are foreclosed by *Kleindienst v. Mandel*, 408 U.S. 753, 762 (1972), which is logically identical. Like the universities here, plaintiffs invited an avowed communist so that they could hear his lectures:

> We hold that when the Executive exercises this power negatively on the basis of a facially legitimate and bona fide reason, ***the courts will neither look behind the exercise of that discretion, nor test it by balancing its justification against the First Amendment interests of those who seek personal communication with the applicant***.

Kleindienst, 408 U.S. at 769-770 (emphasis added). And furthermore:

> The case, therefore, comes down to the narrow issue whether the First Amendment confers upon the appellee professors, because they wish to hear, speak, and debate with Mandel in person, the ability to determine that Mandel should be permitted to enter the country or, in

> other words, to compel the Attorney General to allow Mandel's admission.

Id.

> It is clear that Mandel personally, as an unadmitted and nonresident alien, had no constitutional right of entry to this country as a nonimmigrant or otherwise. United States ex rel. *Turner v. Williams*, 194 U.S. 279, 292, 24 S.Ct. 719, 723, 48 L.Ed. 979 (1904); *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 542, 70 S.Ct. 309, 312, 94 L.Ed. 317 (1950); *Galvan v. Press*, 347 U.S. 522, 530—532, 74 S.Ct. 737, 742—743, 98 L.Ed. 911 (1954); see *Harisiades v. Shaughnessy*, 342 U.S. 580, 592, 72 S.Ct. 512, 520, 96 L.Ed. 586 (1952)."

408 U.S. at 762. Moreover:

> "It is not within the province of the judiciary to order that foreigners who have never been naturalized, nor acquired any domicile or residence within the United States, nor even been admitted into the country pursuant to law, shall be permitted to enter, in opposition to the constitutional and lawful measures of the legislative and executive branches of the national government. As to such persons, the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, *are due process of law*."12 (emphasis added).

Nishimura Ekiu v. United States, 142 U.S. 651, 660 (1892) (emphasis in original).

Thus, although the Appellees have ripped President Trump's campaign statements out of context, only the clear text of the Executive Order may be considered. The President has presented "facially legitimate and bona fide reason" within his core authority of national security. That is conclusive.

E. STRAW-MAN ARGUMENT OF RELIGIOUS DISCRIMINATION

Appellees would have us believe that the Trump Administration seeks to

discriminate against Muslims -- *but only for 90 days* -- and then only from the world's seven most dangerous countries in terms of terrorism. Of the world's 49 Muslim-majority countries,[7] the Executive Order leaves 42 unaffected.[8]

The Muslim nation of Kuwait has also banned entry into Kuwait from five (5) of the same seven (7) countries.[9] The issue is the risk of terrorism, not religion.

Most Muslim-majority countries in the Middle East have accepted ***zero*** -- none -- of these affected refugees.[10] Even fabulously-wealthy Muslim-majority nations like Saudi Arabia and the United Arab Emirates refuse to trust these Muslim refugees into their own countries,[11] where they share common languages,

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[7] "Muslim-Majority Countries Comprising the Islamic World," Center for the Education of Women, University of Michigan, accessible at: http://www.cew.umich.edu/muslim_majority ; The Pew Research Center identifies 49 countries: "The Future of the Global Muslim Population: Muslim-Majority Countries," Pew Research Center, January 27, 2011, accessible at: http://www.pewforum.org/2011/01/27/future-of-the-global-muslim-population-muslim-majority/

[8] Counts vary as 49 to 51 or 52 Muslim-majority nations by various reports.

[9] "After Trump, Now Kuwait Bans 5 Muslim-Majority Countries, Including Pakistan," NDTV, February 2, 2017, accessible at: http://www.ndtv.com/world-news/kuwait-bans-5-muslim-majority-countries-including-pakistan-1655311

[10] Richard Pollock, "Persian Gulf Muslim States Have Accepted No Syrian Refugees," Daily Caller, November 24, 2015, accessible at: http://dailycaller.com/2015/11/24/persian-gulf-muslim-states-have-accepted-no-syrian-refugees/

[11] Ishaan Tharoor, "The Arab World's Wealthiest Nations Are Doing Next to Nothing for Syria's Refugees," The Washington Post, September 4, 2015, accessible at: https://www.washingtonpost.com/news/worldviews/wp/2015/09/04/the-arab-worlds-wealthiest-nations-are-doing-next-to-nothing-for-syrias-refugees/?utm_term=.b13685bd30b6

cultures, social structures, familiar social support institutions, food, methods, and religions, because of the risk of letting terrorists into their countries.

As now-President Trump stated on the campaign trail, as reported by CNN: **"I LOVE THE MUSLIMS. I THINK THEY'RE GREAT PEOPLE,"** [12] proclaimed candidate Donald Trump. Further: "They [townhall attendees] asked whether the billionaire businessman would consider putting a Muslim in his Cabinet or on his ticket. '**Oh, absolutely, no problem with that.**' Trump responded. '**Would I consider putting a Muslim-American in my Cabinet? Absolutely no problem with that.**'"[13]

Appellees ripped Trump's campaign statements out of context. Clearly, Trump was referring, if very loosely, to Syrian refugees, which was the topic.

F. COURT USURPING PRESIDENTIAL ROLE: EXECUTIVE ORDER TARGETS "FAILED STATES" PLUS TERRORIST SPONSOR, HOSTILE IRAN, NOT ISLAM

The Executive Order suspended entry into the country of aliens from Iran, Libya, Somalia, Sudan, Yemen, ***Iraq, and Syria***. Of course, terrorist ISIS stands for "the Islamic State ***of Iraq and Syria***." Thus, 2 of the 7 are nations in which the United States is actively in a hot war with ISIS right now. As the Panel admits at

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[12] MJ Lee and Noah Gray, "**Trump to CNN: 'I love the Muslims**,'" CNN, September 20, 2015, accessible at: http://www.cnn.com/2015/09/19/politics/donald-trump-muslims-controversy/index.html

[13] *Id.*

pages 3-4 of its Per Curiam Order:

> It asserts, "Deteriorating conditions in certain countries due to war, strife, disaster, and civil unrest increase the likelihood that terrorists will use any means possible to enter the United States. The United States must be vigilant during the visa-issuance process to ensure that those approved for admission do not intend to harm Americans and that they have no ties to terrorism." *Id.*

The Executive Order covers only those countries identified, during the Obama Administration, pursuant to 8 U.S.C. § 1187(a)(12). Trump ordered (emphasis added):

> I hereby proclaim that the immigrant and nonimmigrant entry into the United States of aliens ***from countries referred to in section 217(a)(12) of the INA, 8 U.S.C. 1187(a)(12)***, would be detrimental to the interests of the United States, and I hereby suspend entry into the United States, as immigrants and nonimmigrants, of such persons for 90 days from the date of this order (excluding those foreign nationals traveling on diplomatic visas, North Atlantic Treaty Organization visas, C-2 visas for travel to the United Nations, and G-1, G-2, G-3, and G-4 visas).

The Appellees misrepresent this case as being about religion, and even if it were this is irrelevant, as there is not right for foreign aliens of any race, religion, ethnicity, national origin or sexual preference to enter the United States, if he or she is not a citizen or permanent resident.

The seven countries are selected not because they are Muslim, but because those "failed states" are in chaos (and Iran is implacably hostile and a state sponsor of terrorism), such that documents and records related to a person seeking entry

into the United States cannot be trusted. Records about potential entrants necessary to investigate and screen entrants for national security purposes are either non-existent or incomplete or worse commonly forged or falsified due to rampant corruption of officials, poverty-stricken bureaucrats, threats of violence or intimidation against bureaucrats, or terrorist infiltration of governments. [14]

Governmental records, police reports, identity papers, etc., from the seven nations are easily forged or official governmental records falsified.[15] Even the starting point of a refugee's actual identity is unreliable.[16]

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[14] Testimony of Secretary of Homeland Security John Kelly, Homeland Security Committee, U.S. House of Representatives, April 7, 2017, accessible on C-SPAN at: https://www.c-span.org/video/?423321-1/homeland-security-secretary-john-kelly-testifies-us-border-security&live

[15] Chuck Ross, " FBI Director Admits US Can't Vet All Syrian Refugees For Terror Ties [VIDEO]," The Daily Caller, accessible at: http://dailycaller.com/2015/10/21/fbi-director-admits-us-cant-vet-all-syrian-refugees-for-terror-ties-video/; Jerry Markon, "Senior Obama officials have warned of challenges in screening refugees from Syria," The Washington Post, November 17, 2015, accessible at: https://www.washingtonpost.com/news/federal-eye/wp/2015/11/17/senior-obama-officials-have-warned-of-challenges-in-screening-refugees-from-syria/?utm_term=.bc0746040762

[16] *Id.;* Director of the Federal Bureau of Investigation James Comey stated: "We can query our databases until the cows come home, but nothing will show up because we have no record of that person…You can only query what you have collected." And: FBI Assistant Director Michael Steinbach said that "the concern in Syria is that we don't have the systems in places on the ground to collect the information… All of the data sets, the police, the intel services that normally you would go and seek that information [from], don't exist." Kelly Riddell, "FBI director warns of coming "terrorist diaspora," as Democrats push for more Syrian refugees," The Washington Times, September 28, 2016, accessible at: http://www.washingtontimes.com/news/2016/sep/28/james-comey-warns-coming-terrorist-diaspora-democr/

G. NONJUSTICIABLE POLITICAL QUESTION

Several ingredients necessary to the TRO analysis are political questions which are non-justiciable: Whether there is irreparable harm, the balance of equities (harm), the supposed motivation, and whether the threats of terrorism justify inconvenience to aliens depend upon whether the courts should usurp the authority of the President and the Congress over international relations, foreign policy, national security, and the President's role as Commander-in-Chief.

> It is well established that the federal courts will not adjudicate political questions. *See, e.g., Coleman v. Miller*, 307 U.S. 433, 59 S.Ct. 972, 83 L.Ed. 1385 (1939); *Oetjen v. Central Leather Co.*, 246 U.S. 297, 38 S.Ct. 309, 62 L.Ed. 726 (1918). In *Baker v. Carr, supra,* we noted that political questions are not justiciable primarily because of the separation of powers within the Federal Government. After reviewing our decisions in this area, we concluded that on the surface of any case held to involve a political question was at least one of the following formulations:
>
> > 'a textually demonstrable constitutional commitment of the issue to a co-ordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due co-ordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.' 369 U.S., at 217, 82 S.Ct., at 710.

Powell v. Cormack, 395 U.S. 486, 518-519, 89 S.Ct. 1944, 23 L.Ed.2d 491 (1969)

Under the political question doctrine, the District Court lacks Article III jurisdiction, and dismissal is mandatory. The question is textually committed under our nation's Constitution to the President and the Congress, and there are no legally-cognizable standards available for a court to apply in substituting a court's judgment on national security threats in place of the Commander-in-Chief's judgment. The courts are not a forum in which competing litigants can present their preferred excerpts from classified intelligence briefings and the court can render a decision on whether a threat of terrorism does or does not rise to the level of constituting irreparable harm by entrants from this or that country.

The TRO directly cripples the President's core constitutional roles in areas and in ways that courts are not qualified to second guess by courtroom debates over classified intelligence reports.

H. SEVERABILITY OF THE EXECUTIVE ORDER

The Panel was concerned about the role of the Judiciary in rewriting the Executive Order.

Arguably, as the Appellants contend, the Executive Order does not apply on its terms to so-called green card owners or lawful permanent residents. Since it is doubtful that the Executive Order was ever intended to apply to those persons at all, it is possible to sever consideration of those persons from the rest of the Executive Order.

Similarly, can holders of existing visas be severed from the remainder? By way of analogy to statutes, where there are few precedents on executive orders, this Executive Order is severable when:

> "[A] court should refrain from invalidating more of the statute than is necessary. . . . '[W]henever an act of Congress contains unobjectionable provisions separable from those found to be unconstitutional, it is the duty of this court to so declare, and to maintain the act in so far as it is valid.' " *Regan v. Time, Inc.*, 468 U.S. 641, 652, 104 S.Ct. 3262 3268, 82 L.Ed.2d 487 (1984) (plurality opinion), quoting *El Paso & Northeastern R. Co. v. Gutierrez*, 215 U.S. 87, 96, 30 S.Ct. 21, 24, 54 L.Ed. 106 (1909). The standard for determining the severability of an unconstitutional provision is well established: " 'Unless it is evident that the Legislature would not have enacted those provisions which are within its power, independently of that which is not, the invalid part may be dropped if what is left is fully operative as a law.' " *Buckley v. Valeo*, 424 U.S. 1, 108, 96 S.Ct. 612, 677, 46 L.Ed.2d 659 (1976) (per curiam), quoting *Champlin Refining Co. v. Corporation Comm'n of Oklahoma*, 286 U.S. 210, 234, 52 S.Ct. 559, 564, 76 L.Ed. 1062 (1932). *Accord: Regan v. Time, Inc.*, 468 U.S., at 653, 104 S.Ct., at 3269; *INS v. Chadha*, 462 U.S., at 931-932, 103 S.Ct., at 2773-2774; *United States v. Jackson*, 390 U.S. 570, 585, 88 S.Ct. 1209 1218, 20 L.Ed.2d 138 (1968).

Alaska Airlines, Inc v. Brock, 480 U.S. 678, 684-685, 107 S.Ct. 1476, 94 L.Ed.2d 661 (1987).

I. 8 U.S.C. § 1152(a)(1)(A) DID NOT REPEAL 8 U.S.C. § 1182(f)

The Appellees hang their case on seeking to undercut 8 U.S.C. § 1182(f) by setting up a conflict with 8 U.S.C. § 1152(a)(1)(A), as tying the President's hands.[17] Whereas 8 U.S.C. § 1182(f) explicitly names the President as having

[17] Amicus Curiae has not found appellate precedents interpreting 18 U.S.C. § 1182(f) -- only unrelated cases involving § 1182(a).

authority, 8 U.S.C. § 1152(a)(1)(A) does not address the President's authority.

However, a repeal or partial repeal should not be lightly assumed.

> It is well settled, however, that repeals by implication are not favored, see, e.g., *TVA v. Hill*, 437 U.S. 153, 189, 98 S.Ct. 2279 2299, 57 L.Ed.2d 117 (1978), and will not be found unless an intent to repeal is " 'clear and manifest.' " *United States v. Borden Co.*, 308 U.S. 188, 198, 60 S.Ct. 182, 188, 84 L.Ed. 181 (1939) (quoting *Red Rock v. Henry*, 106 U.S. 596, 602, 1 S.Ct. 434, 439, 27 L.Ed. 251 (1883)). Nothing in the language of these two provisions suggests the existence of the " ' "irreconcilable conflict," ' " *Kremer v. Chemical Construction Corp.*, 456 U.S. 461, 468, 102 S.Ct. 1883 1890, 72 L.Ed.2d 262 (1982) (citations omitted), from which an intent to repeal may be inferred.

Rodriguez v. United States, 480 U.S. 522, 107 S.Ct. 1391, 94 L.Ed.2d 533 (1987)

Moreover, the federal courts recognize well-established rules harmonizing interpretation of amendments or subsequent enactments.

> [W]e presume that Congress is aware of the legal context in which it is legislating. See *Cannon v. Univ. of Chicago.*, 441 U.S. 677, 696-97, 99 S.Ct. 1946, 60 L.Ed.2d 560 (1979) ("It is always appropriate to assume that our elected representatives, like other citizens, know the law. . . ."); *United States v. LeCoe*, 936 F.2d 398, 403 (9th Cir.1991) ("Congress is, of course, presumed to know existing law pertinent to any new legislation it enacts.").

Abrego Abrego v. The Dow Chemical Co., 443 F.3d 676, 687-686 (9th Cir., 2006)

> "We also 'presume that when Congress amends a statute, it is knowledgeable about judicial decisions interpreting the prior legislation,' *Porter v. Bd. of Trs. of Manhattan Beach Unified Sch. Dist*., 307 F.3d 1064, 1072 (9th Cir. 2002) ....

U.S. v. Alvarez-Hernandez, 478 F.3d 1060, 1065-1066 (9th Cir. 2007).

Therefore, we must interpret the later-enacted 8 U.S.C. § 1152(a)(1)(A) as consistent with the President's authority under 8 U.S. Code § 1182(f). Congress did not intend to retract any authority from the President to conduct foreign policy. At least we must presume so under rules of statutory construction.

J. APPELLEES' RELIANCE ON 8 U.S.C. § 1152(a)(1)(A) MISPLACED

> Or perhaps, as was the case in *Clinton v. City of New Yor*k, 524 U.S. 417, 429, 118 S.Ct. 2091, 141 L.Ed.2d 393 (1998), the statutory context makes that intention clear, because any other reading of "individual" would lead to an " 'absurd' " result Congress could not plausibly have intended.

Mohamad v. Palestinian Auth., 132 S. Ct. 1702, 182 L.Ed.2d 720 (2012)

8 U.S.C. § 1152(a)(1)(A) places both national origin and religion on the same footing. It would lead to an absurd result -- which must be avoided -- to interpret 8 U.S.C. § 1152(a)(1)(A) as prohibiting the President from basing his actions under 8 U.S.C. § 1182(f) on national origin (like religion). So, it would produce an "absurd result" to interpret 8 U.S.C. § 1152(a)(1)(A) as limiting the President's 8 U.S.C. § 1182(f) authority.

Moreover, subparagraph § 1152(a)(1)(A) concerns the allocation of immigration among various countries, not the power of the President.

K. IRREPARABLE HARM SUPPORTS THE EXECUTIVE ORDER, NOT THE APPELLEES

The Appellees cannot show irreparable harm or even any legally-cognizable

harm, including because the Executive Order and surrounding law allows each potential visitor, entrant, or immigrant to obtain an individual, case-by-case waiver (quoted in Section B, *supra*). Apparently 100% of all affected travelers have in fact received waivers.[18]

As the Panel admits on Page 10 of the Per Curiam Order: "The University of Washington has already incurred the costs of visa applications for those interns and will lose its investment if they are not admitted." The loss of an "investment" or "costs" are not irreparable harm. Therefore, the TRO must fail.

The definition of irreparable harm is that there is no adequate remedy at law. *See, generally,* Black's Law Dictionary Free Online Legal Dictionary 2nd Ed ("Irreparable Damage"); *Alexander v. Americans United Inc.*, 416 U.S. 752, 761-762, 94 S.Ct. 2053, 40 L.Ed.2d 518 (1974); *Beacon Theaters, Inc v. Westover*, 359 U.S. 500, 507, 79 S.Ct. 948, 3 L.Ed.2d 988 (1959); *Pulliam v. Allen*, 466 U.S. 522, 537, 104 S.Ct. 1970, 80 L.Ed.2d 565 (1984) (rendered obsolete on a different issue not relevant here). Irreparable harm must be an injury that cannot be compensated by money damages.

On the other side of the balance of harm, there is irreparable harm to the national security of the United States. The presidential finding in the Executive

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[18] "Travelers Detained Due To Trump Travel Ban Released, Attorneys Say," January 28, 2017, CBS News Chicago Channel 2, accessible at: http://chicago.cbslocal.com/2017/01/28/travelers-detained-due-to-trump-travel-ban-released-attorneys-say/

Order is that the recent status quo of lax foreign policy, lax enforcement and a careless lack of concern for the safety of the American people has increasingly spawned death, violence, and destruction on U.S. soil in recent years. Actual recent terrorist attacks in San Bernadino, California,[19] Boston, Massachusetts,[20] Orlando, Florida, and Garland, Texas, [21] and Ft. Lauderdale International Airport[22] in addition to earlier incidents such as the first and second terrorist attacks at the World Trade Center on February 26, 1993 and September, 11, 2001.

Thus, the danger to the national security clearly outweighs temporary delays in travel by persons from the world's seven most dangerous countries in terms of terrorist activity directed against the United States.

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[19] Michael S. Schmidt and Richard Perez-Pena, "F.B.I. Treating San Bernardino Attack as Terrorism Case," New York Times, December 4, 2015, accessible at: https://www.nytimes.com/2015/12/05/us/tashfeen-malik-islamic-state.html

[20] "Russia warned U.S. about Boston Marathon bomb suspect Tsarnaev: report," Reuters, March 25, 2014, accessible at: http://www.reuters.com/article/us-usa-explosions-boston-congress-idUSBREA2P02Q20140326

[21] Jim Sciutto, Pamela Brown, Paul Cruic, "ISIS claims responsibility for Texas shooting but offers no proof," CNN, May 5, 2015, accessible at: http://www.cnn.com/2015/05/05/us/garland-texas-prophet-mohammed-contest-shooting/; Jim Sciutto, Pamela Brown, Paul Cruic, CNN, May 5, 2015, accessible at: http://www.cnn.com/2015/05/05/politics/texas-attack-terror-tweets/index.html

[22] Greg Pallone, "FBI: Airport gunman traveled to Florida for massacre," Fox News Channel 13 of Orlando, Florida, January 7, 2017, accessible at: http://www.mynews13.com/content/news/cfnews13/news/article.html/content/news/articles/cfn/2017/1/7/fort_lauderdale_airp.html

L. COURT SHOULD CONSOLIDATE MULTI-DISTRICT LITIGATION: FORUM NON CONVENIENS AND JUDGE SHOPPING

According to news reports, lawsuits have been filed on this exact same topic in many federal circuits.[23] Under the doctrines of forum *non conveniens* and venue under 28 U.S. Code § 1391, the Appellees' case should be dismissed and transferred to the District of Columbia. *Piper Aircraft Co. v. Reyno*, 454 U.S. 235 (1981). The Defendants are all in the District of Columbia, along with most of the evidence and witnesses. All of the events at issue occurred or are occurring in the District of Columbia. All cases should be consolidated under 28 U.S. Code § 1407.

III. CONCLUSION

The Appellees, Plaintiff States, have set up a constitutional crisis, crippling the President of the United States as Commander in Chief and head of international relations, from carrying out his Constitutional duties under Article II. The U.S. Constitution was developed and ratified largely due to our Founders' realization that in international relations and national defense a single national leader must be free to act for the nation. This is obviously true for the presidency.

Emergency treatment and prompt action on these matters is appropriate. Increasingly-frequent terrorist attacks have been occurring on U.S. soil in response to the spread of radical Islamic terrorism and the rise of the Islamic State of Iraq

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[23] Matt Pearce, "Trump has been sued more than 60 times since becoming president: A partial survey," The New York Times, February 11, 2017, accessible at: http://www.latimes.com/nation/la-na-trump-lawsuits-20170210-story.html

and Syria (ISIS) styling itself as the re-establishment of an Islamic Caliphate dedicated, in the minds of ISIS, to conquer the entire Earth without exception.

The people who live and work in this circuit, no less than any other large U.S. city as an inviting "soft target," primarily Jews and Christians, are in imminent danger of sworn enemies of the United States of America, enemies who believe in their own minds -- however much we might view things differently ourselves -- that their eternal destiny is contingent upon their murder of Americans to further their religious beliefs. In the case of Islam, this, according to the Quran, is the elimination of "infidels" in the name of Allah.

The U.S. Government, of course, cares not why people want to kill us, only that they do. The question is not religion but threats to the nation.

Even if the government focused on areas of high-risk concentrated in Islamic affiliation based upon actual facts on the ground, this would obviously be constitutional and legal. Some decades ago, Catholic versus Protestant violence and actual terrorism in Northern Ireland presented a genuine danger.[24] Many would rightly say that the violence and terrorism did not represent either Catholic or Protestant religious traditions, yet the violence was real all the same.

Now, wishing away the actual, fact-based high concentration of violence and

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[24] Bryan Coll, "Terror Returns to Northern Ireland," TIME Magazine, March 8, 2009, accessible at: http://content.time.com/time/world/article/0,8599,1883723,00.html?iid=sr-link1

terrorism directed against the United States, Christians, and Jews does not transform defending our families and our country against attacks into religious discrimination. Discriminating between visitors who represent threats of violence from those who are benign is one of the core duties of the President and the entire U.S. Government. Terrorists attacking Americans keep insisting that they are doing so in the name of Islam, and our hapless officials keep pretending otherwise. Addressing threats where they are actually found is not religious discrimination.

Terrorist supporters and agents from the seven dangerous countries may not be the gunmen or bombers who end up in the news. They may also be the ones who train, recruit, equip, and finance others. Agent provocateurs who radicalize home-grown terrorists are flooding into our country. All need to be thoroughly vetted before they are permitted entry into the United States. The President's Executive Order merely places a temporary 90 day moratorium on immigration as the new administration develops a truly functional means of this required vetting, in the interests of national security.

Dated: February 15, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing motion and proposed brief will be delivered electronically on February 15, 2017, to counsel for Plaintiffs and Defendants through the District's Electronic Case Filing system.

/s/ Larry Klayman, Esq.
Larry Klayman, Esq.
FREEDOM WATCH, INC.

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief is in Times New Roman in 14 point font size, and totals 6,478 words, including the Statement of Interest of Amicus Curiae, in keeping with FRAP 29 and Circuit Rules.

Pursuant to the Court's Supplemental Briefing Order of February 10, 2017, the briefing on *en banc* review was set at 14,000 words, higher than the normal 4,200 words permitted by the rules typically. Following the rules' direction that an *Amicus Curiae* brief be one-half of the number of words of a principal brief, the *Amicus Curiae* understands that 7,000 words are available for its brief.

/s/ Larry Klayman, Esq.
Larry Klayman, Esq.
FREEDOM WATCH, INC.

CERTIFICATE OF FILING BY CONSENT

I hereby certify that counsel for the Appellees and Appellants have given their consent in writing (by email) to the filing of this Amicus Curiae brief.

/s/ Larry Klayman, Esq.
Larry Klayman, Esq.
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EXHIBIT A

Briefing Room

Speeches & Remarks

Press Briefings

Statements & Releases

Presidential Actions

Executive Orders

Presidential Memoranda

Proclamations

Related OMB Material

Budgetary Impact Analysis Memorandum

Statements of Administration Policy

Legislation

Nominations & Appointments

Disclosures

The White House

Office of the Press Secretary

For Immediate Release January 27, 2017

EXECUTIVE ORDER: PROTECTING THE NATION FROM FOREIGN TERRORIST ENTRY INTO THE UNITED STATES

EXECUTIVE ORDER

- - - - - - -

Protecting the Nation from Foreign Terrorist Entry into the United States

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

protect the American people from terrorist attacks by foreign nationals admitted to the United States, it is hereby ordered as follows:

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

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

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

different from their own) or those who would oppress Americans of any race, gender, or sexual orientation.

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

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

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

(c) To temporarily reduce investigative burdens on relevant agencies during the review period described in subsection (a) of this section, to ensure the proper review and maximum utilization of available resources for the screening of foreign nationals, and to ensure that adequate standards are established to prevent infiltration by foreign terrorists or criminals, pursuant to section 212(f)

of the INA, 8 U.S.C. 1182(f), I hereby proclaim that the immigrant and nonimmigrant entry into the United States of aliens from countries referred to in section 217(a)(12) of the INA, 8 U.S.C. 1187(a)(12), would be detrimental to the interests of the United States, and I hereby suspend entry into the United States, as immigrants and nonimmigrants, of such persons for 90 days from the date of this order (excluding those foreign nationals traveling on diplomatic visas, North Atlantic Treaty Organization visas, C-2 visas for travel to the United Nations, and G-1, G-2, G-3, and G-4 visas).

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

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

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

(g) Notwithstanding a suspension pursuant to subsection (c) of this section or pursuant to a Presidential proclamation described in subsection (e) of this

section, the Secretaries of State and Homeland Security may, on a case-by-case basis, and when in the national interest, issue visas or other immigration benefits to nationals of countries for which visas and benefits are otherwise blocked.

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

Sec. 4. Implementing Uniform Screening Standards for All Immigration Programs. (a) The Secretary of State, the Secretary of Homeland Security, the Director of National Intelligence, and the Director of the Federal Bureau of Investigation shall implement a program, as part of the adjudication process for immigration benefits, to identify individuals seeking to enter the United States on a fraudulent basis with the intent to cause harm, or who are at risk of causing harm subsequent to their admission. This program will include the development of a uniform screening standard and procedure, such as in-person interviews; a database of identity documents proffered by applicants to ensure that duplicate documents are not used by multiple applicants; amended application forms that include questions aimed at identifying fraudulent answers and malicious intent; a mechanism to ensure that the applicant is who the applicant claims to be; a process to evaluate the applicant's likelihood of becoming a positively contributing member of society and the applicant's ability to make contributions to the national interest; and a mechanism to assess whether or not the applicant has the intent to commit criminal or terrorist acts after entering the United States.

(b) The Secretary of Homeland Security, in conjunction with the Secretary of State, the Director of National Intelligence, and the Director of the Federal

Bureau of Investigation, shall submit to the President an initial report on the progress of this directive within 60 days of the date of this order, a second report within 100 days of the date of this order, and a third report within 200 days of the date of this order.

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

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

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

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

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

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

(g) It is the policy of the executive branch that, to the extent permitted by

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

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

Sec. 7. Expedited Completion of the Biometric Entry-Exit Tracking System. (a) The Secretary of Homeland Security shall expedite the completion and implementation of a biometric entry-exit tracking system for all travelers to the United States, as recommended by the National Commission on Terrorist Attacks Upon the United States.

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

Sec. 8. Visa Interview Security. (a) The Secretary of State shall immediately suspend the Visa Interview Waiver Program and ensure compliance with section

222 of the INA, 8 U.S.C. 1222, which requires that all individuals seeking a nonimmigrant visa undergo an in-person interview, subject to specific statutory exceptions.

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

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

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

(i) information regarding the number of foreign nationals in the United States who have been charged with terrorism-related offenses while in the United

States; convicted of terrorism-related offenses while in the United States; or removed from the United States based on terrorism-related activity, affiliation, or material support to a terrorism-related organization, or any other national security reasons since the date of this order or the last reporting period, whichever is later;

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

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

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

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

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

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

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

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

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

DONALD J. TRUMP

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America First Foreign Policy
Bringing Back Jobs And Growth
Making Our Military Strong Again
Standing Up For Our Law Enforcement Community
Trade Deals That Work For All Americans

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Presidents
First Ladies
The Vice President's Residence & Office
Eisenhower Executive Office Building
Camp David
Air Force One
Our Government
The Executive Branch
The Legislative Branch
The Judicial Branch
The Constitution
Federal Agencies &

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Elections & Voting
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