

The Honorable James L. Robart

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

STATE OF WASHINGTON and
STATE OF MINNESOTA,

No. 2:17-cv-00141 (JLR)

Plaintiffs,

v.

**NOTICE OF FILING
OF EXECUTIVE ORDER**

DONALD TRUMP, in his official capacity as
President of the United States; U.S.
DEPARTMENT OF HOMELAND
SECURITY; JOHN F. KELLY, in his official
capacity as Secretary of the Department of
Homeland Security; REX W. TILLERSON, in
his official capacity as Secretary of State; and
the UNITED STATES OF AMERICA,

Defendants.

Defendants hereby provide Notice that, on March 6, 2017, the President signed an Executive Order titled “Protecting the Nation from Foreign Terrorist Entry into the United States” (“New Executive Order,” submitted herewith as Exhibit A). The New Executive Order, by its own terms, will not take effect until March 16, 2017. *See* New Executive Order § 14. It revokes Executive Order No. 13,769, *see id.* § 13, which has been the subject of litigation in this case. As explained below, the New Executive Order sets forth policies substantially different from the policies in Executive Order No. 13,769. Accordingly, the Government is preparing to enforce the provisions of this New Executive Order beginning on its effective date.

BACKGROUND

On January 27, 2017, the President issued Executive Order No. 13,769, titled “Protecting the Nation From Foreign Terrorist Entry Into the United States.” *See* 82 Fed. Reg. 8977 (Jan. 27, 2017). Plaintiffs filed this lawsuit challenging that Executive Order on January 30, 2017. *See* Compl. ¶ 1 (ECF No. 1). On February 3, 2017, this Court enjoined certain sections of that Executive Order. *See* ECF No. 52. Specifically, the Court clarified that the phrase “Executive Order” referred to the January 27, 2017 Executive Order, *see id.* at 2, and then enjoined defendants from the following:

- (a) Enforcing Section 3(c) of the Executive Order;
- (b) Enforcing Section 5(a) of the Executive Order;
- (c) Enforcing Section 5(b) of the Executive Order or proceeding with any action that prioritizes the refugee claims of certain religious minorities;
- (d) Enforcing Section 5(c) of the Executive Order;
- (e) Enforcing Section 5(e) of the Executive Order to the extent Section 5(e) purports to prioritize refugee claims of certain religious minorities.

Id. at 5 ¶ 1.

The Government appealed this Court’s injunction to the United States Court of Appeals for the Ninth Circuit, and also sought a stay of this Court’s injunction. *See Washington v. Trump*, Case No. 17-35105 (9th Cir. Feb. 4, 2017), ECF No. 14. A panel of the Ninth Circuit denied the Government’s motion to stay, and issued a written opinion declining to narrow the scope of this Court’s February 3, 2017 Order. *See Washington v. Trump*, 847 F.3d 1151 (9th Cir. 2017). In doing so, the Ninth Circuit explained that it is “not our role to try, in effect, to rewrite the Executive Order” because “[t]he political branches are far better equipped to make appropriate distinctions.” *Id.* at 1167. Following the Ninth Circuit’s ruling and guidance, the President has now replaced Executive Order No. 13,769 with a new, substantially revised Executive Order that

1 also expressly revokes the prior Executive Order. The New Executive Order clarifies and
2 narrows the scope of Executive action regarding immigration, extinguishes the need for emergent
3 consideration, and eliminates the potential constitutional concerns identified by the Ninth Circuit.
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5 **SUMMARY OF KEY PROVISIONS OF THE NEW EXECUTIVE ORDER**

6 Relevant to the issues before the Court, the New Executive Order (i) suspends entry for
7 90 days of certain foreign nationals from six of the seven countries designated in Executive Order
8 No. 13,769 who do not hold valid visas; (ii) creates a case-by-case waiver process that is
9 integrated into the visa application and admission processes; (iii) creates a 120-day suspension
10 of certain aspects of the U.S. Refugee Admissions Program, which does not apply to refugee
11 applicants who already have been formally scheduled for transit, and also allows for case-by-
12 case waivers; and (iv) contains additional explanations in support of the promulgated policy.
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14 Critically, the New Executive Order accounts for the concerns identified by this Court
15 and the Ninth Circuit regarding the potential due process claims of individuals affected by the
16 prior Executive Order. *See Washington*, 847 F.3d at 1164-67 (identifying potential due process
17 claims arising from Executive Order 13,769). The New Executive Order's suspension of entry
18 provision *does not apply to lawful permanent residents. Nor does that provision apply to any*
19 *person who holds a valid visa* on the date the New Executive Order takes effect or who held a
20 valid visa as of 5:00 p.m. Eastern Standard Time on the date of issuance of Executive Order
21 13,769. For example, the provision does not apply to nonimmigrant visaholders who have been
22 in the United States but temporarily departed or wish to temporarily depart, or to visaholders who
23 have never before set foot in the United States. Further, the New Executive Order sets out waiver
24 procedures for those without visas who may seek to come to the United States due to a
25 relationship with a U.S. resident or an institution.
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1 **1. The New Executive Order’s 90-Day Suspension of Entry Applies to Aliens with**
 2 **No Material Connection to the United States.**

3 Like Executive Order No. 13,769, the New Executive Order temporarily suspends the
 4 entry of foreign nationals from certain countries in order to allow the Government to review its
 5 screening and vetting procedures. *See* New Executive Order § 2(c). Unlike the prior Executive
 6 Order, however, the New Executive Order no longer suspends the entry of foreign nationals from
 7 Iraq. Moreover, for those countries to which the suspension does apply, the New Executive
 8 Order is substantially narrower in scope and contains robust waiver provisions.
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10 **a. The Suspension of Entry No Longer Applies to Nationals of Iraq.**

11 Executive Order No. 13,769 suspended, for a period of 90 days from the effective date of
 12 that Order, the entry of certain nationals of the seven countries referred to in Section 217(a)(12)
 13 of the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101 et seq.: Iran, Iraq, Libya,
 14 Somalia, Sudan, Syria, and Yemen. 8 U.S.C. § 1187(a)(12).
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16 Iraq, however, presents a “special case.” New Executive Order § 1(g). Unlike the other
 17 six countries, there exists a close cooperative relationship between the United States and the Iraqi
 18 government, a strong United States diplomatic presence in Iraq, a significant presence of United
 19 States forces in Iraq, and a commitment by Iraq to combat the Islamic State of Iraq and Syria
 20 (“ISIS”). *See id.* And notably, since Executive Order No. 13,769 was issued, “the Iraqi
 21 government has expressly undertaken steps to enhance travel documentation, information
 22 sharing, and the return of Iraqi nationals subject to final orders of removal.” *Id.* Accordingly,
 23 the suspension of entry provisions no longer apply to Iraqi foreign nationals. *See id.* §§ 1(f), (g).¹
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26 _____
 27 ¹ Although the temporary suspension no longer applies to Iraqi foreign nationals, the New Executive Order states
 28 that Iraq is still host to an ongoing conflict that has impacted the Iraqi government’s capacity to secure its borders
 and to identify fraudulent travel documents. *See* New Executive Order § 1(g). Accordingly, the New Executive
 Order notes that “[d]ecisions about issuance of visas or granting admission to Iraqi nationals should be subjected to
 additional scrutiny to determine if applicants have connections with ISIS or other terrorist organizations, or

1 **b. The Suspension of Entry Applies to Certain Nationals of Iran, Libya,**
2 **Somalia, Sudan, Syria, and Yemen.**

3 As to the six countries other than Iraq identified under Section 217(a)(12) of the INA—
4 Iran, Libya, Somalia, Sudan, Syria, and Yemen—the suspension of entry provisions differ
5 substantially from those contained in Executive Order No. 13,769.

6 The New Executive Order’s suspension of entry applies only to nationals of these six
7 countries who are outside the United States on the New Executive Order’s effective date of
8 March 16, 2017, do not have a valid visa on that date, and did not have a valid visa as of 5:00
9 p.m. Eastern Standard Time on January 27, 2017. *See* New Executive Order § 3(a). The
10 suspension of entry *excludes*: (1) lawful permanent residents; (2) any foreign national admitted
11 to or paroled into the United States on or after the New Executive Order’s effective date; (3) any
12 individual who has a document other than a visa, valid on the effective date of the New Executive
13 Order or issued anytime thereafter, that permits the individual to travel to the United States and
14 seek entry or admission, such as an advance parole document; (4) any dual national traveling on
15 a passport not issued by one of the six designated countries; (5) any foreign national traveling on
16 diplomatic, diplomatic-type, or other specified visas; and (6) any foreign national who has been
17 granted asylum, any refugee already admitted to the United States, or any individual granted
18 withholding of removal, advance parole, or protection under the Convention Against Torture.
19 *See id.* § 3(b).

20 These limits and exclusions accommodate concerns cited by the Ninth Circuit and the
21 States to justify the temporary emergency relief issued with respect to the prior Executive Order.
22 *See Washington*, 847 F.3d at 1166 (discussing potential due process rights of “persons who are
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otherwise pose a risk to either national security or public safety.” *Id.* Section 4 of the New Executive Order provides further guidance in that respect.

1 in the United States”); States’ Stay Br. (ECF No. 28-1) at 10 (ECF No. 28-1) (9th Cir. 17-35105)
2 (filed Feb. 6, 2017) (“This case, by contrast, involves longtime residents who are here and have
3 constitutional rights.”). Indeed, the New Executive Order does not apply to groups the Ninth
4 Circuit asserted may potentially have due process rights impacted by the prior Executive Order.
5 The New Executive Order does not affect the ability of individuals—whether lawful permanent
6 residents or nonimmigrant visaholders—who are lawfully in the United States on the effective
7 date to leave the country to travel and later return. *See Washington*, 847 F.3d at 1165-66. Further,
8 the New Executive Order will *not* result in the revocation or cancellation of valid visas or create
9 an emergent situation whereby visaholders abroad are prevented from entering the United States
10 based on the New Executive Order. *See id.* at 1157.

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13 **c. The Suspension of Entry Is Subject to a Robust Waiver Provision.**

14 The New Executive Order contains a robust and self-executing waiver provision that is
15 integrated into the visa approval and admission processes, and provides an opportunity for
16 individualized exceptions from the application of Section 2(c) of the Order in all cases. *See New*
17 *Executive Order* § 3(c). Thus, foreign nationals of the six countries who do not possess a visa
18 may still seek a waiver allowing the issuance of a visa or the permission of entry into the United
19 States. That case-by-case process plainly satisfies any possible due process requirements that
20 would exist with respect to the interest of a U.S. citizen or entity in seeking the entry of a foreign
21 national. *See Kleindeinst v. Mandel*, 408 U.S. 753, 769 (1972) (in case asserting First
22 Amendment right to have alien enter the United States, explaining that the “waiver decision has,
23 properly, been placed in the hands of the Executive”); *cf. Washington*, 847 F.3d at 1166 (citing
24 *Kleindeinst* and noting the “potential claims regarding possible due process rights” of “applicants
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1 who have a relationship with a U.S. resident or an institution that might have rights of its own to
2 assert”).

3 The New Executive Order includes a nonexhaustive list of circumstances when waivers
4 “could be appropriate,” which will guide agencies in addressing circumstances where the national
5 interest would be served by a waiver. Waivers may be appropriate when:
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- 7 (i) the foreign national has previously been admitted to the United States
8 for a continuous period of work, study, or other long-term activity, is
9 outside the United States on the effective date of the Order, seeks to
10 reenter the United States to resume that activity, and denial of reentry
11 during the suspension period would impair that activity;
- 12 (ii) the foreign national has previously established significant contacts with
13 the United States but is outside the United States on the effective date of
14 the Order for work, study, or other lawful activity;
- 15 (iii) the foreign national seeks to enter the United States for significant
16 business or professional obligations and the denial of entry during the
17 suspension period would impair those obligations;
- 18 (iv) the foreign national seeks to enter the United States to visit a close
19 family member (e.g., a spouse, child, or parent) who is a United States
20 citizen, lawful permanent resident, or alien lawfully admitted on a valid
21 nonimmigrant visa, and the denial of entry during the suspension period
22 would cause undue hardship;
- 23 (v) the foreign national is an infant, a young child or adoptee, an individual
24 needing urgent medical care, or someone whose entry is otherwise
25 justified by the special circumstances of the case;
- 26 (vi) the foreign national has been employed by, or on behalf of, the United
27 States Government (or is an eligible dependent of such an employee)
28 and the employee can document that he or she has provided faithful and
valuable service to the United States Government;
- (vii) the foreign national is traveling for purposes related to an international
organization designated under the International Organizations
Immunities Act (IOIA), 22 U.S.C. § 288 *et seq.*, traveling for purposes
of conducting meetings or business with the United States Government,
or traveling to conduct business on behalf of an international
organization not designated under IOIA;

- 1 (viii) the foreign national is a landed Canadian immigrant who applies for
2 admission at a land border port of entry or a preclearance location
3 located in Canada; or
4 (ix) the foreign national is traveling as a United States Government-
5 sponsored exchange visitor.

6 *See* New Executive Order § 3(c). These circumstances for waivers ensure an appropriate process
7 is provided—integrated into the normal visa and admission processes—even in circumstances
8 where the law plainly creates no right of entry. *See Washington*, 847 F.3d at 1169 (expressing
9 concern that waiver process provide more guidance as to “how would the ‘national interest’ be
10 determined, who would make that determination, and when”).

11 **2. The New Executive Order Suspends Certain Refugee Operations for 120 Days.**

12 Section 6 of the New Executive Order suspends travel into the United States under the
13 U.S. Refugee Admission Program and decisions on applications for refugee status for a period
14 of 120 days. During the suspension period, the Government will review the refugee application
15 and adjudication processes to determine what additional procedures should be used to ensure that
16 individuals seeking admission as refugees do not pose a threat to the security and welfare of the
17 United States, and to implement such additional procedures. *See* New Executive Order § 6(a).
18 The New Executive Order’s suspension does not apply to refugee applicants who were formally
19 scheduled for transit by the Department of State before the March 16, 2017 effective date of the
20 New Executive Order. *See id.*

21 Like the 90-day suspension, the 120-day suspension includes a waiver provision that
22 allows the Secretaries of State and Homeland Security to admit refugees on a case-by-case basis.
23 *See id.* § 6(c). The New Executive Order identifies specific circumstances in which waivers may
24 be warranted, including where the admission of the individual would allow the United States to
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1 conform its conduct to a pre-existing international agreement or denying admission would cause
2 undue hardship. *See id.*

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4 **3. The New Executive Order Omits Two Provisions Included in Executive Order
No. 13,769 Regarding Refugee Admissions.**

5 **a. The New Executive Order Does Not Prioritize Refugees Who Practice
6 Minority Religions.**

7 Executive Order No. 13,769 contained a provision that, upon the resumption of the U.S.
8 Refugee Admission Program, would have prioritized refugee claims made by individuals on the
9 basis of religious-based persecution if the individual practiced a minority religion in the
10 individual's country of nationality. *See* Exec. Order No. 13,769 § 5(b). The prior Executive
11 Order also provided for the possibility of a waiver of the temporary suspension provisions on a
12 case-by-case basis including, but not limited to, circumstances where an individual refugee is a
13 religious minority. *See id.* § 5(e). The New Executive Order advises that these provisions were
14 not motivated by animus toward any religion; to the contrary, they would have applied to
15 persecuted religious minority groups in any nation, including nations in which practitioners of
16 Islam are a minority, and also to minority sects within a religion facing religious persecution.
17 *See* New Executive Order § 1(b)(iv). Nonetheless, the New Executive Order no longer contains
18 any provisions concerning refugees who practice minority religions.
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21 **b. The New Executive Order Contains No Provision Specific to Refugees
22 from Syria.**

23 Executive Order No. 13,769 contained a provision that suspended the entry of Syrian
24 refugees until the President determined that sufficient changes were made to the U.S. Refugee
25 Admission Program that would ensure that the admission of those refugees was consistent with
26 the national interest. *See* Exec. Order No. 13,769 § 5(c). The New Executive Order does not
27 contain any provision specifically affecting Syrian refugees.
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1 **4. The New Executive Order Explains in Detail the Basis for the Policy It**
2 **Announces.**

3 The New Executive Order provides a detailed explanation on the importance of
4 improving vetting protocols and procedures associated with the visa-issuance process and the
5 U.S. Refugee Admission Program, including the necessity of temporarily suspending narrow
6 aspects of both of those programs while a review of those vetting protocols and procedures takes
7 place.

8 As explained in the New Executive Order, the six countries that are subject to its
9 suspension of entry (and were also subject to Executive Order No. 13,769) were selected because
10 they “had already been identified as presenting heightened concerns about terrorism and travel
11 to the United States” and had been referred to in, or designated under, Section 217(a)(12) of the
12 INA, 8 U.S.C. § 1187(a)(12). *See* New Executive Order § 1(b)(i). Specifically, Syria is
13 identified in the statutory text of the INA; Iran, Syria, and Sudan have been identified as state
14 sponsors of terrorism for purposes of applying the INA; and Libya, Somalia, and Yemen have
15 been designated as countries of concern by the Secretary of Homeland Security, in consultation
16 with the Secretary of State and the Director of National Intelligence, for purposes of applying the
17 INA, based on consideration of three statutory factors related to terrorism and national security.
18 *See id.* (citing 8 U.S.C. § 1187(a)(12)). The New Executive Order also makes clear that the
19 President exercised his statutory and constitutional authority after having “determined that, for a
20 brief period of 90 days, while existing screening and vetting procedures were under review, the
21 entry into the United States of certain aliens from [these countries] -- each afflicted by terrorism
22 in a manner that compromised the ability of the United States to rely on normal decision-making
23 procedures about travel to the United States -- would be detrimental to the interests of the United
24 States.” *Id.* § 1(b)(ii).

1 More specifically, the New Executive Order explains that, currently, the entry of nationals
2 from these countries “warrant[s] additional scrutiny in connection with our immigration policies
3 because the conditions in these countries present heightened threats.” *Id.* § 1(d). “Each of these
4 countries is a state sponsor of terrorism, has been significantly compromised by terrorist
5 organizations, or contains active conflict zones.” *Id.* “Any of these circumstances diminishes
6 the foreign government’s willingness or ability to share or validate important information about
7 individuals seeking to travel to the United States.” *Id.* Moreover, the “significant presence” of
8 terrorist organizations in these countries “increases the chance that conditions will be exploited
9 to enable terrorist operatives or sympathizers to travel to the United States.” *Id.* “[O]nce foreign
10 nationals from these countries are admitted to the United States, it is often difficult to remove
11 them, because many of these countries typically delay issuing, or refuse to issue, travel
12 documents.” *Id.*

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15 The New Executive Order also addresses some of the specific risks presented by each of
16 the six countries, *see* New Executive Order § 1(e):

- 17 • Iran has been designated as a state sponsor of terrorism since 1984 and does not
18 cooperate with the United States in counterterrorism efforts. *Id.* § 1(e)(i). Iran
19 continues to support terrorist groups, and has been linked to support for al-Qa’ida. *Id.*
- 20 • Libya is an active combat zone wherein security and law enforcement functions are
21 provided in many parts of the country by armed militias rather than state institutions;
22 violent extremist groups, including ISIS, have exploited these conditions to expand
23 their presence in the country. *Id.* § 1(e)(ii). Moreover, the Libyan government is
24 unable to secure thousands of miles of its land and maritime borders, enabling the
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1 illicit flow of weapons and foreign terrorist fighters, and the United States Embassy
2 in Libya suspended its operations in 2014. *Id.*

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- 4 • Portions of Somalia have been a “terrorist safe haven,” and the country lacks the
5 capacity to investigate suspected terrorists. *Id.* § 1(e)(iii). The country “has porous
6 borders, and most countries do not recognize Somali identity documents.” *Id.*
 - 7 • Sudan has been designated as a state sponsor of terrorism, has provided safe havens
8 for al-Qa’ida and other terrorist groups, and continues to have terrorist groups
9 (including elements of al-Qa’ida and ISIS) active in the country. *Id.* § 1(e)(iv).
 - 10 • The Syrian government is engaged in an ongoing conflict with ISIS (which uses Syria
11 as its base) for control of portions of the country and supports other terrorist groups,
12 including permitting travel of extremists through its territory to enter Iraq. *Id.*
13 § 1(e)(v). The United States Embassy in Damascus suspended its operations in 2012,
14 and Syria does not cooperate with the United States’ counterterrorism efforts. *Id.*
 - 15 • In Yemen, both ISIS and al-Qa’ida in the Arabian Peninsula are active, and have
16 carried out hundreds of attacks. *Id.* § 1(e)(vi). Yemen has porous borders susceptible
17 to weapons smuggling. *Id.* The Department of State suspended embassy operations
18 and embassy staff were relocated out of the country in 2015, and Yemen has been
19 unable to cooperate fully with the United States’ counterterrorism efforts. *Id.*

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22 In view of these conditions, the President concluded that, “until the assessment of current
23 screening and vetting procedures required by” the New Executive Order is completed, “the risk
24 of erroneously permitting entry of a national of one of these countries who intends to commit
25 terrorist acts or otherwise harm the national security of the United States is unacceptably high,”
26 and a “temporary pause” on such entry is therefore necessary. *See id.* § 1(f).

1 As for the suspension of certain refugee operations for 120 days, the New Executive
2 Order explains that “[t]errorist groups have sought to infiltrate several nations through refugee
3 programs,” and that “some of those who have entered the United States through our immigration
4 system”—including “individuals who first entered the country as refugees”—“have proved to be
5 threats to our national security.” *Id.* § 1(b)(iii), (h). The New Executive Order cites specific
6 examples and notes a report that “more than 300 persons who entered the United States as
7 refugees are currently the subjects of counterterrorism investigations by the Federal Bureau of
8 Investigation.” *Id.* § 1(h). Accordingly, the New Executive Order explains that the 120-day
9 pause in certain refugee operations will permit the United States “to determine what additional
10 procedures should be used to ensure that individuals seeking admission as refugees do not pose
11 a threat to the security and welfare of the United States,” and to implement such procedures. *Id.*
12 § 6(a).

15 **IMPLEMENTATION OF THE NEW EXECUTIVE ORDER**

16 “[T]he entry into the United States of foreign nationals who may commit, aid, or support
17 acts of terrorism remains a matter of grave concern.” *Id.* § 1(i). To help address this concern,
18 the President replaced Executive Order No. 13,769 with the New Executive Order “[i]n light of
19 the Ninth Circuit’s observation that the political branches are better suited to determine the
20 appropriate scope of any suspensions than are the courts, and in order to avoid spending
21 additional time pursuing litigation[.]” *Id.* To achieve the objective of reducing the risk of
22 terrorism posed by foreign nationals entering the United States, the Government intends to begin
23 enforcing the New Executive Order on its effective date of March 16, 2017. *See* New Executive
24 Order § 14.
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1 This Court's injunctive order does not limit the Government's ability to immediately
2 begin enforcing the New Executive Order. In entering the injunctive order, this Court noted that
3 the "narrow question" before it concerned "certain actions taken by the Executive in the context
4 of this specific lawsuit," stating that "[t]he work of the court is not to create policy or judge the
5 wisdom of any particular policy." Injunctive Order at 6, 7 (ECF No. 52). Accordingly, the
6 Court's injunctive order, by its terms, applied only to specific sections of Executive Order No.
7 13,769. *See id.* at 2 (describing Executive Order of January 27, 2017); *id.* at 5-6 (enjoining
8 specific sections of Executive Order No. 13,769). Those sections have been substantially
9 changed or removed altogether.
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11 The New Executive Order likewise complies with the Ninth Circuit's decision reviewing
12 this Court's entry of temporary injunctive relief. The Ninth Circuit invited the Executive Branch
13 to promulgate a new order to address the concerns highlighted by the courts because the "political
14 branches are far better equipped to make appropriate distinctions." *Washington*, 847 F.3d
15 at 1167. The Executive Branch has now revoked Executive Order No. 13,769 and promulgated
16 a new and substantially different policy that addresses those concerns and falls outside of the
17 scope of this Court's injunction. *See Fusari v. Steinberg*, 419 U.S. 379, 387-90 (1975);
18 *Diffenderfer v. Central Baptist Church of Miami, Inc.*, 404 U.S. 412, 414-415 (1972) (per
19 curiam). To the extent plaintiffs wish to challenge the New Executive Order, the Government is
20 prepared to confer regarding an appropriate schedule for amendment of the complaint and/or any
21 other appropriate proceedings.
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24 Finally, the New Executive Order does not present a need for emergency litigation.
25 Indeed, the concerns relied upon by the States in bringing this action are no longer at issue. The
26 New Executive Order does not apply to legal permanent residents or to holders of valid visas (for
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1 example, professors or students at State universities) whether in the United States or abroad. Nor
2 does the New Executive Order authorize the revocation of visas issued before its effective date.
3 *See* New Executive Order § 12(c). As a result, no one who has been approved for travel into the
4 United States will be denied entry by the New Executive Order.
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6 Rather, the Order applies only to those who are overseas and without a visa. That
7 grouping presents the highest concern with respect to the adequacy of visa screening procedures,
8 circumstances for which the courts afford “considerable deference to the President’s policy
9 determinations.” *Washington*, 847 F.3d at 1164. Nor is there any immediate harm presented to
10 that grouping. They do not have visas and do not have an entitlement to one. Indeed, even if
11 there were some legal right, there is no imminent harm from a temporary suspension where visa
12 applicants normally must wait a period of months or longer to apply and/or be issued a visa or
13 travel document if found eligible. *See* Declaration of Emily Chiang ¶ 13 (ECF No. 8) (“The
14 process of getting a visa for her mother who lives in Iran was long and arduous. It took six
15 months to get an appointment with the embassy. Her appointment was in August and she finally
16 received her visa in early January.”). The New Executive Order, moreover, provides robust
17 waiver authority under which such individuals may seek relief if they wish to travel to the United
18 States during the suspension period.
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21 In sum, there is no basis for emergency relief. Any relief sought by the States should be
22 assessed in a traditional manner, allowing this Court a more complete opportunity to assess the
23 provisions of the New Executive Order, should the States assert a challenge to them.
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1 DATED: March 6, 2017

Respectfully submitted,

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5 Director, Federal Programs Branch

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CERTIFICATE OF SERVICE

I hereby certify that on March 6, 2017, I electronically filed the foregoing Notice of Filing of Executive Order using the Court’s CM/ECF system, causing a notice of filing to be served upon all counsel of record.

Dated: March 6, 2017

/s/ Michelle R. Bennett
MICHELLE R. BENNETT

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THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

March 6, 2017

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

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

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

(i) Among other actions, Executive Order 13769 suspended for 90 days the entry of certain aliens from seven countries: Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen. These are countries that had already been identified as presenting heightened

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

(ii) In ordering the temporary suspension of entry described in subsection (b)(i) of this section, I exercised my authority under Article II of the Constitution and under section 212(f) of the INA, which provides in relevant part: "Whenever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate." 8 U.S.C. 1182(f). Under these authorities, I determined that, for a brief period of 90 days, while existing screening and vetting procedures were under review, the entry into

the United States of certain aliens from the seven identified countries -- each afflicted by terrorism in a manner that compromised the ability of the United States to rely on normal decision-making procedures about travel to the United States -- would be detrimental to the interests of the United States. Nonetheless, I permitted the Secretary of State and the Secretary of Homeland Security to grant case-by-case waivers when they determined that it was in the national interest to do so.

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

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

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

equipped to make appropriate distinctions" about who should be covered by a suspension of entry or of refugee admissions.

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

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

(i) Iran. Iran has been designated as a state sponsor of terrorism since 1984 and continues to support various terrorist groups, including Hizballah, Hamas, and terrorist groups in Iraq. Iran has also been linked to support for al-Qa'ida and has permitted al-Qa'ida to transport funds and fighters through Iran to Syria and South Asia. Iran does not cooperate with the United States in counterterrorism efforts.

(ii) Libya. Libya is an active combat zone, with hostilities between the internationally recognized government and its rivals. In many parts of the country, security and law enforcement functions are provided by armed militias rather than state institutions. Violent extremist groups, including the Islamic State of Iraq and Syria (ISIS), have

exploited these conditions to expand their presence in the country. The Libyan government provides some cooperation with the United States' counterterrorism efforts, but it is unable to secure thousands of miles of its land and maritime borders, enabling the illicit flow of weapons, migrants, and foreign terrorist fighters. The United States Embassy in Libya suspended its operations in 2014.

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

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

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

cooperate with the United States' counterterrorism efforts.

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

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

(g) Iraq presents a special case. Portions of Iraq remain active combat zones. Since 2014, ISIS has had dominant influence over significant territory in northern and central Iraq. Although that influence has been significantly reduced due to the efforts and sacrifices of the Iraqi government and armed forces, working along with a United States-led coalition, the ongoing conflict has impacted the Iraqi government's capacity to secure its borders and to identify fraudulent travel documents. Nevertheless, the close cooperative relationship between the United States and the democratically elected Iraqi government, the strong United States diplomatic presence in Iraq, the significant presence of United States forces in Iraq, and Iraq's commitment to combat ISIS justify different treatment for Iraq. In particular, those Iraqi government forces that have fought to regain more than half of the territory previously

dominated by ISIS have shown steadfast determination and earned enduring respect as they battle an armed group that is the common enemy of Iraq and the United States. In addition, since Executive Order 13769 was issued, the Iraqi government has expressly undertaken steps to enhance travel documentation, information sharing, and the return of Iraqi nationals subject to final orders of removal. Decisions about issuance of visas or granting admission to Iraqi nationals should be subjected to additional scrutiny to determine if applicants have connections with ISIS or other terrorist organizations, or otherwise pose a risk to either national security or public safety.

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

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

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

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

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

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

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

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

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

Sec. 3. Scope and Implementation of Suspension.

(a) Scope. Subject to the exceptions set forth in subsection (b) of this section and any waiver under subsection (c) of this section, the suspension of entry pursuant

to section 2 of this order shall apply only to foreign nationals of the designated countries who:

(i) are outside the United States on the effective date of this order;

(ii) did not have a valid visa at 5:00 p.m., eastern standard time on January 27, 2017; and

(iii) do not have a valid visa on the effective date of this order.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

otherwise threaten the national security or public safety of the United States.

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

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

Sec. 6. Realignment of the U.S. Refugee Admissions Program for Fiscal Year 2017. (a) The Secretary of State shall suspend travel of refugees into the United States under the USRAP, and the Secretary of Homeland Security shall suspend decisions on applications for refugee status, for 120 days after the effective date of this order, subject to waivers pursuant to subsection (c) of this section. During the 120-day period, the Secretary of State, in conjunction with the Secretary of Homeland Security and in consultation with the Director of

National Intelligence, shall review the USRAP application and adjudication processes to determine what additional procedures should be used to ensure that individuals seeking admission as refugees do not pose a threat to the security and welfare of the United States, and shall implement such additional procedures. The suspension described in this subsection shall not apply to refugee applicants who, before the effective date of this order, have been formally scheduled for transit by the Department of State. The Secretary of State shall resume travel of refugees into the United States under the USRAP 120 days after the effective date of this order, and the Secretary of Homeland Security shall resume making decisions on applications for refugee status only for stateless persons and nationals of countries for which the Secretary of State, the Secretary of Homeland Security, and the Director of National Intelligence have jointly determined that the additional procedures implemented pursuant to this subsection are adequate to ensure the security and welfare of the United States.

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

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

(d) It is the policy of the executive branch that, to the extent permitted by law and as practicable, State and local jurisdictions be granted a role in the process of determining the placement or settlement in their jurisdictions of aliens eligible to be admitted to the United States as refugees. To that end, the Secretary of State shall examine existing law to

determine the extent to which, consistent with applicable law, State and local jurisdictions may have greater involvement in the process of determining the placement or resettlement of refugees in their jurisdictions, and shall devise a proposal to lawfully promote such involvement.

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

Sec. 8. Expedited Completion of the Biometric Entry-Exit Tracking System. (a) The Secretary of Homeland Security shall expedite the completion and implementation of a biometric entry-exit tracking system for in-scope travelers to the United States, as recommended by the National Commission on Terrorist Attacks Upon the United States.

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

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

conducting meetings or business with the United States Government.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19

(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

THE WHITE HOUSE,
March 6, 2017.

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