**From:** Eugene Kiely <eugene.kiely@factcheck.org>
**Sent:** Tuesday, March 07, 2017 9:52 AM
**To:** 'Raimondi, Marc (OPA)'; 'Navas, Nicole (OPA)'
**Subject:** RE: State of Washington, et al v. Donald J. Trump, et al

Marc –

Are you going to answer any questions at all on the refugees who are under investigation?

If so, I would like to know:

- The executive order (and AG Jeff Sessions in his remarks) said that "more than 300 persons who entered the United States as refugees are currently the subjects of [FBI] counterterrorism investigations." **How many total counterterrorism investigations are there?**
- The EO uses the term "counterterrorism investigations." Can you please define that? CRS did a report in 2013 on FBI terrorism investigations that said "between March 2009 and March 2011, the Bureau opened 82,325 assessments" of groups or individuals who were being investigated for possible terrorism ties, and those assessments produced just under 2,000 full or preliminary investigations**. Are the 300 refugees under full or preliminary investigation, or are they at the assessment level?**

Thanks,

Eugene Kiely
Director, FactCheck.org
202 South 36th Street
Philadelphia, PA 19104
215-898-2372
@ekiely



---

**From:** Eugene Kiely [mailto:eugene.kiely@factcheck.org]
**Sent:** Monday, March 06, 2017 4:48 PM
**To:** 'Raimondi, Marc (OPA)' <Marc.Raimondi@usdoj.gov>; 'Navas, Nicole (OPA)' <Nicole.Navas@usdoj.gov>
**Subject:** RE: State of Washington, et al v. Donald J. Trump, et al

Hi Marc. Let me ask one more question, because the President is the one who made this claim without providing any context for it. The "more than 300" figure is meaningless without context. How many people – including refugees – in total are currently the subjects of counterterrorism investigations by the Federal Bureau of Investigation? That seems like a pretty simply question and one that you should have an answer for.

Eugene Kiely
Director, FactCheck.org
202 South 36th Street
Philadelphia, PA 19104
215-898-2372
@ekiely

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---

**From:** Raimondi, Marc (OPA) [mailto:Marc.Raimondi@usdoj.gov]
**Sent:** Monday, March 06, 2017 4:42 PM
**To:** Navas, Nicole (OPA) <Nicole.Navas@usdoj.gov>; Eugene Kiely <eugene.kiely@factcheck.org>
**Subject:** RE: State of Washington, et al v. Donald J. Trump, et al

Thanks Nicole.

Eugene, I have no additional information to share than what was released earlier today.

Thank you,
Marc

---

**From:** Navas, Nicole (OPA)
**Sent:** Monday, March 06, 2017 4:41 PM
**To:** Eugene Kiely <eugene.kiely@factcheck.org>
**Cc:** Raimondi, Marc (OPA) <mraimondi@jmd.usdoj.gov>
**Subject:** RE: State of Washington, et al v. Donald J. Trump, et al

Hi Eugene,
I am connecting you to my colleague Marc Raimondi, the Department s National Security Division spokesman.
Thanks

Nicole A. Navas
Spokesperson/Public Affairs Specialist
U.S. Department of Justice (DOJ)

---

**From:** Eugene Kiely [mailto:eugene.kiely@factcheck.org]
**Sent:** Monday, March 06, 2017 4:07 PM
**To:** 'Navas, Nicole (OPA)' <Nicole.Navas@usdoj.gov>
**Subject:** RE: State of Washington, et al v. Donald J. Trump, et al

Hi Nicole. The president's EO says, "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." Can you provide some information about the 300 or so people? Is there a list that is available?

Thanks,

Eugene Kiely
Director, FactCheck.org
202 South 36th Street
Philadelphia, PA 19104
215-898-2372
@ekiely

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Document ID: 0.7.12046.62905

From: Navas, Nicole (OPA) <nnavas@jmd.usdoj.gov>
To: Eugene Kiely <eugene.kiely@factcheck.org>
Cc: Hornbuckle, Wyn (OPA) <wyn.hornbuckle@usdoj.gov>
Bcc:
Subject: RE: Q from Friday on # of visa revocations revealed in EDVA case
Date: Mon Feb 06 2017 13:43:31 EST
Attachments:

The State Dept. would be in a better position to discuss the breakdown of visa revocations and stats on refugees. They can be reached at: CAPRESSREQUESTS@state.gov. Thank you

Nicole A. Navas
Spokesperson/Public Affairs Specialist
U.S. Department of Justice (DOJ)

From: Eugene Kiely [mailto:eugene.kiely@factcheck.org]
Sent: Monday, February 06, 2017 1:33 PM
To: 'Navas, Nicole (OPA)' <Nicole.Navas@usdoj.gov>
Cc: 'Hornbuckle, Wyn (OPA)' <Wyn.Hornbuckle@usdoj.gov>
Subject: RE: Q from Friday on # of visa revocations revealed in EDVA case

Thanks for passing this alone. One question: Des the 60,000 figure for visas affected by the executive order include refugees? The UN has said<http://www.unhcr.org/en-us/news/press/2017/1/588f78ee4/unhcr-alarmed-impact-refugee-program-suspension.html> that as many as 20,000 refugees might have been settled during the 120 days covered by the suspension.

Eugene Kiely
Director, FactCheck.org
202 South 36th Street
Philadelphia, PA 19104
215-898-2372
@ekiely

Donate to FactCheck.org. Help us hold politicians accountable.<https://giving.apps.upenn.edu/giving/jsp/fast.do?fastStart=simpleForm&program=ANS&fund=602014&bhcp=1>

From: Navas, Nicole (OPA) [mailto:Nicole.Navas@usdoj.gov]
Sent: Monday, February 06, 2017 1:12 PM
To: eugene.kiely@factcheck.org<mailto:eugene.kiely@factcheck.org>
Cc: Hornbuckle, Wyn (OPA) <Wyn.Hornbuckle@usdoj.gov<mailto:Wyn.Hornbuckle@usdoj.gov>>
Subject: Q from Friday on # of visa revocations revealed in EDVA case

Hi Eugene,
I hope you had a good weekend. Please see attached filing notifying the court with update on visa revocations. Thank you

Nicole A. Navas
Spokesperson/Public Affairs Specialist

U.S. Department of Justice (DOJ)

**From:** Navas, Nicole (OPA)
**Sent:** Monday, February 06, 2017 1:12 PM
**To:** eugene.kiely@factcheck.org
**Cc:** Hornbuckle, Wyn (OPA)
**Subject:** Q from Friday on # of visa revocations revealed in EDVA case
**Attachments:** not020517.arg.fld.pdf

Hi Eugene,
I hope you had a good weekend. Please see attached filing notifying the court with update on visa revocations.
Thank you

Nicole A. Navas
Spokesperson/Public Affairs Specialist
U.S. Department of Justice (DOJ)

**UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF VIRGINIA**
**Alexandria Division**

| | | |
|---|---|---|
| TAREQ AQEL MOHAMMED AZIZ, *et al.*, | ) | |
| Petitioners, | ) | |
| vs. | ) | Civil Action No. 1:17cv116 |
| DONALD TRUMP, President of the United States, *et al.*, | ) | |
| Respondents. | ) | |

**NOTICE TO THE COURT**

Undersigned counsel write to update this Court of three developments since oral argument on Friday, February 3, 2017 that bear on this litigation.

First, undersigned counsel respectfully notify the Court and the parties that it wishes to correct a statement made by government counsel at oral argument. In response to a question from this Court as to how many individuals have been affected by the Executive Order, government counsel presenting oral argument, based on information he had received, stated that 100,000 visas had been provisionally revoked as a result of the Executive Order (Dkt. No. 43, at 24-25). The Department of State has since provided undersigned counsel with a revised number, which is roughly 60,000 visas.

Second, undersigned counsel notify the Court and the parties that on the evening of February 3, 2017, based upon the entry of a temporary restraining order by the United States District Court for the Western District of Washington that prohibited administration of the Executive Order nationwide, *see Washington v. Trump*, No. C17-0141, 2017 WL 462040 (W.D. Wash. Feb. 3, 2017), the United States Department of State issued a directive that reversed the

previous provisional visa revocation referenced in government counsel's earlier statement to this Court.

Third, counsel note that the United States Government has appealed the Washington decision on an emergency basis, *see Washington v. Trump*, No. 17-35105 (9th Cir. 2017), seeking a stay of the district court's order pending appeal. Per the Ninth Circuit's scheduling order, the State of Washington filed a brief in opposition on February 5, 2017, and the Government's reply brief in support is due no later than 6:00 PM EST, February 6, 2017.

///

///

Respectfully submitted,

DANA J. BOENTE
United States Attorney

CHAD A. READLER
Acting Assistant Attorney General
Civil Division

WILLIAM PEACHEY
Director
Civil Division, Office of Immigration Litigation

By: /s/

DENNIS C. BARGHAAN, JR.
Assistant U.S. Attorney
2100 Jamieson Avenue
Alexandria, Virginia 22314
Telephone: (703) 299-3891
Fax: (703) 299-3983
Email: dennis.barghaan@usdoj.gov

EREZ R. REUVENI
Senior Litigation Counsel
Civil Division, Office of Immigration Litigation
P.O. Box 868
Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 307-4293
Fax: (202) 616-8962
Email: erez.r.reuvani@usdoj.gov

DATE: February 6, 2017

ATTORNEYS FOR RESPONDENTS

**CERTIFICATE OF SERVICE**

I hereby certify that on this date, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will transmit a true and correct copy of the same to the following:

Simon Sandoval Moshenburg
Legal Aid Justice Center
6066 Leesburg Pike, Suite 520
Falls Church, Virginia 22041
Email: Simon@justice4all.org

Stuart Alan Raphael
Office of the Attorney General (Richmond)
202 North 9th Street
Richmond, VA 23219
804-786-7240
Fax: 804-371-0200
Email: sraphael@oag.state.va.us

Timothy J. Heaphy
Hunton & Williams LLP
2200 Pennsylvania Ave NW
Washington, DC 20037
202-955-1500
Fax: 202-778-2201
Email: theaphy@hunton.com

Date: February 6, 2017

/s/
DENNIS C. BARGHAAN, JR.
Assistant U.S. Attorney
2100 Jamieson Avenue
Alexandria, Virginia 22314
Telephone: (703) 299-3891
Fax: (703) 299-3983
Email: dennis.barghaan@usdoj.gov

ATTORNEYS FOR RESPONDENTS

**From:** Eugene Kiely <eugene.kiely@factcheck.org>
**Sent:** Friday, February 03, 2017 6:09 PM
**To:** 'Hornbuckle, Wyn (OPA)'
**Subject:** RE: Visas

Anything yet?

Eugene Kiely
Director, FactCheck.org
202 South 36th Street
Philadelphia, PA 19104
215-898-2372
@ekiely



---

**From:** Hornbuckle, Wyn (OPA) [mailto:Wyn.Hornbuckle@usdoj.gov]
**Sent:** Friday, February 03, 2017 3:35 PM
**To:** Eugene Kiely <eugene.kiely@factcheck.org>
**Subject:** RE: Visas

Hi Eugene,
We're looking into it now. We'll be back in touch on this this afternoon.

---

**From:** Eugene Kiely [mailto:eugene.kiely@factcheck.org]
**Sent:** Friday, February 03, 2017 2:32 PM
**To:** wyn.hornbuckle@usdoj.gov
**Subject:** Visas

Wyn –

I have a question about the 100,000 figure provided by DOJ in court today in Virginia. There seems to be a disagreement between DOJ and State, which says it is "fewer than 60,000." Can you clear it up? Which figure did DOJ provide to the court and what does it represent and how does that figure square with the State Department figure?

The Times says:

> A lawyer for the United States government said in federal court in Virginia on Friday that more than 100,000 visas had been revoked as part of President Trump's policy halting travelers from seven predominantly Muslim countries, a move a judge said was causing "chaos," a lawyer for the plaintiff said.
>
> While protesters have focused on the executive order stopping foreigners from entering the country, a State Department memorandum that was not initially released publicly went much further, canceling at least temporarily almost all visas from the seven countries. The New York Times reported Thursday that tens of thousands of these visas, for foreigners inside and outside the United States, had been revoked without any notice to the visa holders. Had any of them left the United States, they would have most likely lost the ability to return.

> The 100,000 figure cited in court on Friday represented the first time the government had quantified the number of revoked visas. After the hearing, however, a State Department official provided a lower number, saying it was "fewer than 60,000."
>
> "To put that number in context, we issued over 11 million immigrant and nonimmigrant visas in fiscal year 2015," said the official, William Cocks, a spokesman for the State Department's Bureau of Consular Affairs. "As always, national security is our top priority when issuing visas."

Also, the Times says "revoked," but just to be clear we are talking about the 90-day period – not indefinitely, correct?

Thanks,

Eugene Kiely
Director, FactCheck.org
202 South 36th Street
Philadelphia, PA 19104
215-898-2372
@ekiely

**From:** Carr, Peter (OPA)
**Sent:** Sunday, January 29, 2017 4:17 PM
**To:** Andrea Noble
**Subject:** Re: Executive orders

No, I don't have any additional information.

On Jan 29, 2017, at 4:15 PM, Andrea Noble <anoble@washingtontimes.com> wrote:

> Thanks Peter.
> Can you at all address specifics on when EOs were reviewed, or whether OLC made any recommendations or suggestions to change any of the EOs before they were signed?
>
> On Sun, Jan 29, 2017 at 4:01 PM, Carr, Peter (OPA) <Peter.Carr@usdoj.gov> wrote:
> > Hi Andrea,
> >
> > Marc asked me to get back to you on OLC's role regarding the executive orders signed to date in the new administration. Below is some information provided on background, which can be attributed to a senior Justice Department official if needed.
> >
> > Best,
> > Peter Carr
> >
> > Through administrations of both parties, the Office of Legal Counsel (OLC) has consistently been asked by the White House to review Executive Orders for form and legality before they are issued.
> >
> > That review is limited to the narrow question of whether, in OLC's view, a proposed Executive Order is on its face lawful and properly drafted.
> >
> > OLC has continued to serve this traditional role in the present administration.
> >
> > OLC's legal review is generally conducted without the involvement of Department of Justice leadership, and OLC's legal review does not address the broader policy issues inherent in any executive order.
>
> --
> Andrea Noble
> The Washington Times
> Phone (b) (6)
> Twitter: anobleDC

**From:** Carr, Peter (OPA) <pcarr@jmd.usdoj.gov>
**Sent:** Monday, January 30, 2017 6:41 PM
**To:** Andrea Noble
**Subject:** AG message
**Attachments:** Message from the Acting Attorney General.pdf; ATT00001.txt

On January 27, 2017, the President signed an Executive Order regarding immigrants and refugees from certain Muslim-majority countries. The order has now been challenged in a number of jurisdictions. As the Acting Attorney General, it is my ultimate responsibility to determine the position of the Department of Justice in these actions.

My role is different from that of the Office of Legal Counsel (OLC), which, through administrations of both parties, has reviewed Executive Orders for form and legality before they are issued. OLC's review is limited to the narrow question of whether, in OLC's view, a proposed Executive Order is lawful on its face and properly drafted. Its review does not take account of statements made by an administration or it surrogates close in time to the issuance of an Executive Order that may bear on the order's purpose. And importantly, it does not address whether any policy choice embodied in an Executive Order is wise or just.

Similarly, in litigation, DOJ Civil Division lawyers are charged with advancing reasonable legal arguments that can be made supporting an Executive Order. But my role as leader of this institution is different and broader. My responsibility is to ensure that the position of the Department of Justice is not only legally defensible, but is informed by our best view of what the law is after consideration of all the facts. In addition, I am responsible for ensuring that the positions we take in court remain consistent with this institution's solemn obligation to always seek justice and stand for what is right. At present, I am not convinced that the defense of the Executive Order is consistent with these responsibilities nor am I convinced that the Executive Order is lawful.

Consequently, for as long as I am the Acting Attorney General, the Department of Justice will not present arguments in defense of the Executive Order, unless and until I become convinced that it is appropriate to do so.

**From:** Carr, Peter (OPA) <pcarr@jmd.usdoj.gov>
**Sent:** Monday, January 30, 2017 7:04 PM
**To:** Matthew Dean
**Subject:** AG message
**Attachments:** Message from the Acting Attorney General.pdf; ATT00001.txt

Matt,

Attached is a message the acting AG provided this afternoon to those handling the EO cases.

Thx,
Peter

On January 27, 2017, the President signed an Executive Order regarding immigrants and refugees from certain Muslim-majority countries. The order has now been challenged in a number of jurisdictions. As the Acting Attorney General, it is my ultimate responsibility to determine the position of the Department of Justice in these actions.

My role is different from that of the Office of Legal Counsel (OLC), which, through administrations of both parties, has reviewed Executive Orders for form and legality before they are issued. OLC's review is limited to the narrow question of whether, in OLC's view, a proposed Executive Order is lawful on its face and properly drafted. Its review does not take account of statements made by an administration or it surrogates close in time to the issuance of an Executive Order that may bear on the order's purpose. And importantly, it does not address whether any policy choice embodied in an Executive Order is wise or just.

Similarly, in litigation, DOJ Civil Division lawyers are charged with advancing reasonable legal arguments that can be made supporting an Executive Order. But my role as leader of this institution is different and broader. My responsibility is to ensure that the position of the Department of Justice is not only legally defensible, but is informed by our best view of what the law is after consideration of all the facts. In addition, I am responsible for ensuring that the positions we take in court remain consistent with this institution's solemn obligation to always seek justice and stand for what is right. At present, I am not convinced that the defense of the Executive Order is consistent with these responsibilities nor am I convinced that the Executive Order is lawful.

Consequently, for as long as I am the Acting Attorney General, the Department of Justice will not present arguments in defense of the Executive Order, unless and until I become convinced that it is appropriate to do so.

**From:** Carr, Peter (OPA)
**Sent:** Monday, January 30, 2017 7:07 PM
**To:** Andrea Noble
**Subject:** Re: AG message

To those handling the executive order cases.

On Jan 30, 2017, at 7:00 PM, Andrea Noble <anoble@washingtontimes.com> wrote:

> Thanks.
> To be able to characterize this, was this sent to a particular department or across the DOJ?
>
> On Mon, Jan 30, 2017 at 6:40 PM, Carr, Peter (OPA) <Peter.Carr@usdoj.gov> wrote:

--
Andrea Noble
The Washington Times
Phone (b) (6)
Twitter: anobleDC

**From:** Navas, Nicole (OPA)
**Sent:** Friday, February 03, 2017 8:10 PM
**To:** Andrea Noble
**Cc:** Carr, Peter (OPA)
**Subject:** RE: TRO on executive order?

Hi Andrea,
Please use the following statement: "The Department looks forward to reviewing the court's written order and will determine next steps." Thank you

Nicole A. Navas
Spokesperson/Public Affairs Specialist
U.S. Department of Justice (DOJ)

**From:** Andrea Noble [mailto:anoble@washingtontimes.com]
**Sent:** Friday, February 03, 2017 7:17 PM
**To:** Nicole Navas <nicole.navas@usdoj.gov>; Carr, Peter (OPA) <Peter.Carr@usdoj.gov>
**Subject:** TRO on executive order?

Is DOJ able to comment on the temporary restraining order out of Washington on Donald Trump's executive order on immigration?

--
Andrea Noble
The Washington Times
Phone (b) (6)
Twitter: anobleDC

**From:** Carr, Peter (OPA)
**Sent:** Sunday, February 05, 2017 11:21 AM
**To:** Andrea Noble
**Subject:** Re: Executive order

With the fast briefing schedule the appeals court laid out, we do not plan to ask the Supreme Court for an immediate stay but instead let the appeals process play out.

On Feb 5, 2017, at 11:14 AM, Andrea Noble <anoble@washingtontimes.com> wrote:

> Since the 9th Circuit left the TRO in place, what is DOJs plan? Will it appeal to the Supreme Court on this matter?
> Will there be a hearing Monday, or is that just when briefs are due in this latest round?
> Thanks.

**From:** Carr, Peter (OPA)
**Sent:** Wednesday, February 08, 2017 11:35 AM
**To:** rpollockdc@gmail.com
**Subject:** Message from acting AG Yates
**Attachments:** Message from the Acting Attorney General.pdf; ACTING ATTORNEY GENERAL BOENTE ISSUES GUIDANCE TO DEPARTMENT ON EXECUTIVE ORDER

Attached is the message that was sent on Jan. 30 close to 6pm. Later that evening, the new acting AG issued the attached statement rescinding her guidance.

Best,
Peter

**From:** USDOJ-Office of Public Affairs (SMO)
**Sent:** Monday, January 30, 2017 11:42 PM
**To:** USDOJ-Office of Public Affairs (SMO)
**Subject:** ACTING ATTORNEY GENERAL BOENTE ISSUES GUIDANCE TO DEPARTMENT ON EXECUTIVE ORDER

# Department of Justice

FOR IMMEDIATE RELEASE
MONDAY, JANUARY 30, 2017
WWW.JUSTICE.GOV

AG
(202) 514-2007
TTY (866) 544-5309

## ACTING ATTORNEY GENERAL BOENTE ISSUES GUIDANCE TO DEPARTMENT ON EXECUTIVE ORDER

WASHINGTON Dana J. Boente, who was appointed this evening to serve as acting Attorney General, tonight issued the following guidance to the men and women of the department:

> *On January 30, 2017, Acting Attorney General Sally Q. Yates issued a memorandum barring Department of Justice Attorney's from presenting arguments in defense of the President's January 27, 2017, Executive Order entitled "Protecting the Nation from Foreign Terrorist Entry Into the United States." At approximately 9:00 p.m., I was asked by the President to serve in the capacity of Acting Attorney General. After having dedicated the last thirty-three years of my life to this Department, I am humbled and incredibly honored to serve as Acting Attorney General. Based upon the Office of Legal Counsel's analysis, which found the Executive Order both lawful on its face and properly drafted, I hereby rescind former Acting Attorney General Sally Q. Yates January 30, 2017, guidance and direct the men and women of the Department of Justice to do our sworn duty and to defend the lawful orders of our President.*

Prior to this appointment, Boente had been serving as the U.S. Attorney for the Eastern District of Virginia since his confirmation by the U.S. Senate on Dec. 15, 2015. Boente was appointed by the Attorney General in December 2012 to serve as the U.S. Attorney for the Eastern District of Louisiana, a position he held until September 2013. Boente began his career with the Justice Department in 1984 with the Tax Division, and in January 2001 he became an Assistant U.S. Attorney in the Fraud Unit of the Eastern District of Virginia.

From 2005 to 2007, Boente served as the Principal Deputy Assistant Attorney General of the Tax Division. Following his service with the Tax Division, he returned to the Eastern District of Virginia when he was selected as the First Assistant U.S. Attorney. He served as acting U.S. Attorney for that office from October 2008 through September 2009 and from Sept. 23, 2013 until his Senate confirmation.

# # #

17-131

On January 27, 2017, the President signed an Executive Order regarding immigrants and refugees from certain Muslim-majority countries. The order has now been challenged in a number of jurisdictions. As the Acting Attorney General, it is my ultimate responsibility to determine the position of the Department of Justice in these actions.

My role is different from that of the Office of Legal Counsel (OLC), which, through administrations of both parties, has reviewed Executive Orders for form and legality before they are issued. OLC's review is limited to the narrow question of whether, in OLC's view, a proposed Executive Order is lawful on its face and properly drafted. Its review does not take account of statements made by an administration or it surrogates close in time to the issuance of an Executive Order that may bear on the order's purpose. And importantly, it does not address whether any policy choice embodied in an Executive Order is wise or just.

Similarly, in litigation, DOJ Civil Division lawyers are charged with advancing reasonable legal arguments that can be made supporting an Executive Order. But my role as leader of this institution is different and broader. My responsibility is to ensure that the position of the Department of Justice is not only legally defensible, but is informed by our best view of what the law is after consideration of all the facts. In addition, I am responsible for ensuring that the positions we take in court remain consistent with this institution's solemn obligation to always seek justice and stand for what is right. At present, I am not convinced that the defense of the Executive Order is consistent with these responsibilities nor am I convinced that the Executive Order is lawful.

Consequently, for as long as I am the Acting Attorney General, the Department of Justice will not present arguments in defense of the Executive Order, unless and until I become convinced that it is appropriate to do so.

**From:** Carr, Peter (OPA)
**Sent:** Thursday, February 09, 2017 6:31 PM
**To:** Matthew.Dean@FOXNEWS.COM
**Subject:** FW: STATEMENT BY THE JUSTICE DEPARTMENT ON NINTH CIRCUIT RULING IN STATE OF WASHINGTON; STATE OF MINNESOTA V DONALD J TRUMP
**Attachments:** Court of appeal order on stay motion.pdf

**Importance:** High

Making sure you got this.

---

**From:** Navas, Nicole (OPA)
**Sent:** Thursday, February 09, 2017 6:28 PM
**To:** Navas, Nicole (OPA) (JMD) <Nicole.Navas@usdoj.gov>
**Subject:** STATEMENT BY THE JUSTICE DEPARTMENT ON NINTH CIRCUIT RULING IN STATE OF WASHINGTON; STATE OF MINNESOTA V DONALD J TRUMP
**Importance:** High

Good evening,
"The Justice Department is reviewing the decision and considering its options." We have no further comment.

Thank you,

Nicole A. Navas
Spokesperson/Public Affairs Specialist
U.S. Department of Justice (DOJ)

**From:** Carr, Peter (OPA)
**Sent:** Thursday, February 09, 2017 6:51 PM
**To:** anoble@washingtontimes.com
**Subject:** FW: STATEMENT BY THE JUSTICE DEPARTMENT ON NINTH CIRCUIT RULING IN STATE OF WASHINGTON; STATE OF MINNESOTA V DONALD J TRUMP
**Attachments:** Court of appeal order on stay motion.pdf

**Importance:** High

---

**From:** Navas, Nicole (OPA)
**Sent:** Thursday, February 09, 2017 6:28 PM
**To:** Navas, Nicole (OPA) (JMD) <Nicole.Navas@usdoj.gov>
**Subject:** STATEMENT BY THE JUSTICE DEPARTMENT ON NINTH CIRCUIT RULING IN STATE OF WASHINGTON; STATE OF MINNESOTA V DONALD J TRUMP
**Importance:** High

Good evening,
"The Justice Department is reviewing the decision and considering its options." We have no further comment.

Thank you,

Nicole A. Navas
Spokesperson/Public Affairs Specialist
U.S. Department of Justice (DOJ)

**FOR PUBLICATION**

# UNITED STATES COURT OF APPEALS
# FOR THE NINTH CIRCUIT

| | |
|---|---|
| STATE OF WASHINGTON; STATE OF MINNESOTA,<br>*Plaintiffs-Appellees,*<br><br>v.<br><br>DONALD J. TRUMP, President of the United States; U.S. DEPARTMENT OF HOMELAND SECURITY; REX W. TILLERSON, Secretary of State; JOHN F. KELLY, Secretary of the Department of Homeland Security; UNITED STATES OF AMERICA,<br>*Defendants-Appellants.* | No. 17-35105<br><br>D.C. No. 2:17-cv-00141<br><br>ORDER |

Motion for Stay of an Order of the
United States District Court for the
Western District of Washington
James L. Robart, District Judge, Presiding

Argued and Submitted February 7, 2017

Filed February 9, 2017

Before: William C. Canby, Richard R. Clifton, and Michelle T. Friedland, Circuit Judges

Per Curiam Order

## COUNSEL

August E. Flentje (argued), Special Counsel to the Assistant Attorney General; Douglas N. Letter, Sharon Swingle, H. Thomas Byron, Lowell V. Sturgill Jr., and Catherine Dorsey, Attorneys, Appellate Staff; Chad A. Readler, Acting Assistant Attorney General; Noel J. Francisco, Acting Solicitor General; Civil Division, United States Department of Justice, Washington, D.C., for Defendants-Appellants.

Noah G. Purcell (argued), Solicitor General; Marsha Chien and Patricio A. Marquez, Assistant Attorneys General; Colleen M. Melody, Civil Rights Unit Chief; Anne E. Egeler, Deputy Solicitor General; Robert W. Ferguson, Attorney General; Attorney General's Office, Seattle, Washington; for Plaintiff-Appellee State of Washington.

Jacob Campion, Assistant Attorney General; Alan I. Gilbert, Solicitor General; Lori Swanson, Attorney General; Office of the Attorney General, St. Paul, Minnesota; for Plaintiff-Appellee State of Minnesota.

---

## ORDER

PER CURIAM:

At issue in this emergency proceeding is Executive Order 13769, "Protecting the Nation From Foreign Terrorist Entry Into the United States," which, among other changes to immigration policies and procedures, bans for 90 days the entry into the United States of individuals from seven countries. Two States challenged the Executive Order as unconstitutional and violative of federal law, and a federal district court preliminarily ruled in their favor and

temporarily enjoined enforcement of the Executive Order. The Government now moves for an emergency stay of the district court's temporary restraining order while its appeal of that order proceeds.

To rule on the Government's motion, we must consider several factors, including whether the Government has shown that it is likely to succeed on the merits of its appeal, the degree of hardship caused by a stay or its denial, and the public interest in granting or denying a stay. We assess those factors in light of the limited evidence put forward by both parties at this very preliminary stage and are mindful that our analysis of the hardships and public interest in this case involves particularly sensitive and weighty concerns on both sides. Nevertheless, we hold that the Government has not shown a likelihood of success on the merits of its appeal, nor has it shown that failure to enter a stay would cause irreparable injury, and we therefore deny its emergency motion for a stay.

## I. Background

On January 27, 2017, the President issued Executive Order 13769, "Protecting the Nation From Foreign Terrorist Entry Into the United States" (the "Executive Order"). 82 Fed. Reg. 8,977. Citing the terrorist attacks of September 11, 2001, and stating that "numerous foreign-born individuals have been convicted or implicated in terrorism-related crimes" since then, the Executive Order declares that "the United States must ensure that those admitted to this country do not bear hostile attitudes toward it and its founding principles." *Id.* 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 makes several changes to the policies and procedures by which non-citizens may enter the United States. Three are at issue here. First, section 3(c) of the Executive Order suspends for 90 days the entry of aliens from seven countries: Iraq, Iran, Libya, Somalia, Sudan, Syria, and Yemen. 82 Fed. Reg. 8,977-78 (citing the Immigration and Nationality Act (INA) § 217(a)(12), codified at 8 U.S.C. § 1187(a)(12)). Second, section 5(a) of the Executive Order suspends for 120 days the United States Refugee Admissions Program. 82 Fed. Reg. 8,979. Upon resumption of the refugee program, section 5(b) of the Executive Order directs the Secretary of State to prioritize refugee claims based on religious persecution where a refugee's religion is the minority religion in the country of his or her nationality. *Id.* Third, section 5(c) of the Executive Order suspends indefinitely the entry of all Syrian refugees. *Id.* 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.

The impact of the Executive Order was immediate and widespread. It was reported that thousands of visas were

immediately canceled, hundreds of travelers with such visas were prevented from boarding airplanes bound for the United States or denied entry on arrival, and some travelers were detained. Three days later, on January 30, 2017, the State of Washington filed suit in the United States District Court for the Western District of Washington, challenging sections 3(c), 5(a)-(c), and 5(e) of the Executive Order, naming as defendants the President, the Secretary of the Department of Homeland Security, the Secretary of State, and the United States (collectively, "the Government"). Washington alleged that the Executive Order unconstitutionally and illegally stranded its residents abroad, split their families, restricted their travel, and damaged the State's economy and public universities in violation of the First and Fifth Amendments, the INA, the Foreign Affairs Reform and Restructuring Act, the Religious Freedom Restoration Act, and the Administrative Procedure Act. Washington also alleged that the Executive Order was not truly meant to protect against terror attacks by foreign nationals but rather was intended to enact a "Muslim ban" as the President had stated during his presidential campaign that he would do.

Washington asked the district court to declare that the challenged sections of the Executive Order are illegal and unconstitutional and to enjoin their enforcement nationwide. On the same day, Washington filed an emergency motion for a temporary restraining order (TRO) seeking to enjoin the enforcement of sections 3(c), 5(a)-(c), and 5(e) of the Executive Order. Two days later, Washington's Complaint was amended to add the State of Minnesota as a plaintiff and to add a claim under the Tenth Amendment. Washington and Minnesota (collectively, "the States") jointly filed an amended motion for a TRO. The Government opposed the

motion the next day, and the district court held a hearing the day after that.

That evening, the court entered a written order granting the TRO. *Washington v. Trump*, No. C17-0141-JLR, 2017 WL 462040 (W.D. Wash. Feb. 3, 2017). The district court preliminarily concluded that significant and ongoing harm was being inflicted on substantial numbers of people, to the detriment of the States, by means of an Executive Order that the States were likely to be able to prove was unlawful. *Id.* at *2. The district court enjoined and restrained the nationwide enforcement of sections 3(c) and 5(a)-(c) in their entirety. *Id.* It enjoined section 5(e) to the extent that section "purports to prioritize refugee claims of certain religious minorities," and prohibited the government from "proceeding with any action that prioritizes the refugee claims of certain religious minorities." The court also directed the parties to propose a briefing schedule for the States' request for a preliminary injunction and denied the Government's motion to stay the TRO pending an emergency appeal. *Id.* at *3.

The Government filed a notice of appeal the next day and sought an emergency stay in this court, including an immediate stay while its emergency stay motion was under consideration. We denied the request for an immediate stay and set deadlines for the filing of responsive and reply briefs on the emergency stay motion over the next two days.[1] *Washington v. Trump*, No. 17-35105, 2017 WL 469608 (9th Cir. Feb. 4, 2017). The motion was submitted after oral argument was conducted by telephone.

[1] We have also received many amicus curiae briefs in support of both the Government and the States.

## II. Appellate Jurisdiction

The States argue that we lack jurisdiction over the Government's stay motion because the Government's appeal is premature. A TRO is not ordinarily appealable. *See Bennett v. Medtronic, Inc.*, 285 F.3d 801, 804 (9th Cir. 2002). We may nonetheless review an order styled as a TRO if it "possesses the qualities of a preliminary injunction." *Serv. Emps. Int'l Union v. Nat'l Union of Healthcare Workers*, 598 F.3d 1061, 1067 (9th Cir. 2010). This rule has ordinarily required the would-be appellant to show that the TRO was strongly challenged in adversarial proceedings before the district court and that it has or will remain in force for longer than the fourteen-day period identified in Federal Rule of Civil Procedure 65(b). *See, e.g.*, *id.*

We are satisfied that in the extraordinary circumstances of this case, the district court's order possesses the qualities of an appealable preliminary injunction. The parties vigorously contested the legal basis for the TRO in written briefs and oral arguments before the district court. The district court's order has no expiration date, and no hearing has been scheduled. Although the district court has recently scheduled briefing on the States' motion for a preliminary injunction, it is apparent from the district court's scheduling order that the TRO will remain in effect for longer than fourteen days. In light of the unusual circumstances of this case, in which the Government has argued that emergency relief is necessary to support its efforts to prevent terrorism, we believe that this period is long enough that the TRO

should be considered to have the qualities of a reviewable preliminary injunction.[2]

## III. Standing

The Government argues that the district court lacked subject matter jurisdiction because the States have no standing to sue. 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.

Article III, section 2 of the Constitution allows federal courts to consider only "Cases" and "Controversies." *Massachusetts v. EPA*, 549 U.S. 497, 516 (2007). "Those two words confine 'the business of federal courts to questions presented in an adversary context and in a form historically viewed as capable of resolution through the judicial process.'" *Id.* (quoting *Flast v. Cohen*, 392 U.S. 83, 95 (1968)). "Standing is an essential and unchanging part of the case-or-controversy requirement" and is therefore a prerequisite to our jurisdiction. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). The "gist of the question of standing" is whether the plaintiff has a sufficiently "personal stake in the outcome of the controversy" to ensure that the parties will be truly adverse and their legal

[2] Our conclusion here does not preclude consideration of appellate jurisdiction at the merits stage of this appeal. *See Nat'l Indus., Inc. v. Republic Nat'l Life Ins. Co.*, 677 F.2d 1258, 1262 (9th Cir. 1982).

presentations sharpened. *Massachusetts*, 549 U.S. at 517 (quoting *Baker v. Carr*, 369 U.S. 186, 204 (1962)).

To establish Article III standing, a plaintiff must demonstrate "that it has suffered a concrete and particularized injury that is either actual or imminent, that the injury is fairly traceable to the defendant, and that it is likely that a favorable decision will redress that injury." *Id.* (citing *Lujan*, 504 U.S. at 560-61).

Because standing is "an indispensable part of the plaintiff's case," it "must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, *i.e.*, with the manner and degree of evidence required at the successive stages of the litigation." *Lujan*, 504 U.S. at 561. At this very preliminary stage of the litigation, the States may rely on the allegations in their Complaint and whatever other evidence they submitted in support of their TRO motion to meet their burden. *See id.* With these allegations and evidence, the States must make a "clear showing of each element of standing." *Townley v. Miller*, 722 F.3d 1128, 1133 (9th Cir. 2013).[3]

The States argue that the Executive Order causes a concrete and particularized injury to their public universities, which the parties do not dispute are branches of the States under state law. *See, e.g.*, *Hontz v. State*, 714 P.2d 1176, 1180 (Wash. 1986) (en banc); *Univ. of Minn. v. Raygor*, 620 N.W.2d 680, 683 (Minn. 2001).

[3] Our decision in *Townley* concerned a motion for a preliminary injunction, but the legal standards applicable to TROs and preliminary injunctions are "substantially identical." *Stuhlbarg Int'l Sales Co., Inc. v. John D. Brush & Co., Inc.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001).

Specifically, the States allege that the teaching and research missions of their universities are harmed by the Executive Order's effect on their faculty and students who are nationals of the seven affected countries. These students and faculty cannot travel for research, academic collaboration, or for personal reasons, and their families abroad cannot visit. Some have been stranded outside the country, unable to return to the universities at all. The schools cannot consider attractive student candidates and cannot hire faculty from the seven affected countries, which they have done in the past.

According to declarations filed by the States, for example, two visiting scholars who had planned to spend time at Washington State University were not permitted to enter the United States; one was informed he would be unable to obtain a visa. Similarly, the University of Washington was in the process of sponsoring three prospective employees from countries covered by the Executive Order for visas; it had made plans for their arrival beginning in February 2017, but they have been unable to enter the United States. The University of Washington also sponsored two medicine and science interns who have been prevented by the Executive Order from coming to the University of Washington. 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. Both schools have a mission of "global engagement" and rely on such visiting students, scholars, and faculty to advance their educational goals. Students and faculty at Minnesota's public universities were similarly restricted from traveling for academic and personal reasons.

Under the "third party standing" doctrine, these injuries to the state universities give the States standing to assert the

rights of the students, scholars, and faculty affected by the Executive Order. *See Singleton v. Wulff*, 428 U.S. 106, 114-16 (1976) (explaining that third-party standing is allowed when the third party's interests are "inextricably bound up with the activity the litigant wishes to pursue"; when the litigant is "fully, or very nearly, as effective a proponent of the right" as the third party; or when the third party is less able to assert her own rights). Vendors, for example, "have been uniformly permitted to resist efforts at restricting their operations by acting as advocates of the rights of third parties who seek access to their market or function." *Craig v. Boren*, 429 U.S. 190, 195 (1976). Likewise, doctors have been permitted to assert the rights of their patients. *See, e.g.*, *Griswold v. Connecticut*, 381 U.S. 479 (1965). And advocacy organizations such as the NAACP have been permitted to assert the constitutional rights of their members. *See, e.g.*, *NAACP v. Alabama*, 357 U.S. 449 (1958).

Most relevant for our purposes, schools have been permitted to assert the rights of their students. *See, e.g.*, *Runyon v. McCrary*, 427 U.S. 160, 175 & n.13 (1976) ("It is clear that the schools have standing to assert these arguments [asserting free-association rights, privacy rights, and 'a parent's right to direct the education of his children'] on behalf of their patrons."); *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 536 (1925) (allowing a school to assert the "right of parents to choose schools where their children will receive appropriate mental and religious training [and] the right of the child to influence the parents' choice of a school"); *Parks Sch. of Bus., Inc. v. Symington*, 51 F.3d 1480, 1487-88 (9th Cir. 1995) (citing *Pierce* and rejecting the argument that the plaintiff school had no standing to assert claims of discrimination against its minority students); *see also Ohio Ass'n of Indep. Sch. v. Goff*, 92 F.3d 419, 422 (6th Cir. 1996) (citing similar authorities). As in those cases, the interests

of the States' universities here are aligned with their students. The students' educational success is "inextricably bound up" in the universities' capacity to teach them. *Singleton*, 428 U.S. at 115. And the universities' reputations depend on the success of their professors' research. Thus, as the operators of state universities, the States may assert not only their own rights to the extent affected by the Executive Order but may also assert the rights of their students and faculty members.[4]

We therefore conclude that the States have alleged harms to their proprietary interests traceable to the Executive Order. The necessary connection can be drawn in at most two logical steps: (1) the Executive Order prevents nationals of seven countries from entering Washington and Minnesota; (2) as a result, some of these people will not enter state universities, some will not join those universities as faculty, some will be prevented from performing research, and some will not be permitted to return if they leave. And we have no difficulty concluding that the States' injuries would be redressed if they could obtain the relief they ask for: a declaration that the Executive Order violates the Constitution and an injunction barring its enforcement. The Government does not argue otherwise.

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[4] The Government argues that the States may not bring Establishment Clause claims because they lack Establishment Clause rights. Even if we assume that States lack such rights, an issue we need not decide, that is irrelevant in this case because the States are asserting the rights of their students and professors. Male doctors do not have personal rights in abortion and yet any physician may assert those rights on behalf of his female patients. *See Singleton*, 428 U.S. at 118.

We therefore hold that the States have standing.[5]

## IV. Reviewability of the Executive Order

The Government contends that the district court lacked authority to enjoin enforcement of the Executive Order because the President has "unreviewable authority to suspend the admission of any class of aliens." The Government does not merely argue that courts owe substantial deference to the immigration and national security policy determinations of the political branches an uncontroversial principle that is well-grounded in our jurisprudence. *See, e.g.*, *Cardenas v. United States*, 826 F.3d 1164, 1169 (9th Cir. 2016) (recognizing that "the power to expel or exclude aliens [is] a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control" (quoting *Fiallo v. Bell*, 430 U.S. 787, 792 (1977))); *see also Holder v. Humanitarian Law Project*, 561 U.S. 1, 33-34 (2010) (explaining that courts should defer to the political branches with respect to national security and foreign relations). Instead, the Government has taken the position that the President's decisions about immigration policy, particularly when motivated by national security concerns, are *unreviewable*, even if those actions potentially contravene constitutional rights and protections. The Government indeed asserts that it violates separation of powers for the

[5] The States have asserted other proprietary interests and also presented an alternative standing theory based on their ability to advance the interests of their citizens as *parens patriae*. Because we conclude that the States' proprietary interests as operators of their public universities are sufficient to support standing, we need not reach those arguments.

judiciary to entertain a constitutional challenge to executive actions such as this one.

There is no precedent to support this claimed unreviewability, which runs contrary to the fundamental structure of our constitutional democracy. *See Boumediene v. Bush*, 553 U.S. 723, 765 (2008) (rejecting the idea that, even by congressional statute, Congress and the Executive could eliminate federal court habeas jurisdiction over enemy combatants, because the "political branches" lack "the power to switch the Constitution on or off at will"). Within our system, it is the role of the judiciary to interpret the law, a duty that will sometimes require the "[r]esolution of litigation challenging the constitutional authority of one of the three branches." *Zivotofsky* ex rel. *Zivotofsky v. Clinton*, 566 U.S. 189, 196 (2012) (quoting *INS v. Chadha*, 462 U.S. 919, 943 (1983)). We are called upon to perform that duty in this case.

Although our jurisprudence has long counseled deference to the political branches on matters of immigration and national security, neither the Supreme Court nor our court has ever held that courts lack the authority to review executive action in those arenas for compliance with the Constitution. To the contrary, the Supreme Court has repeatedly and explicitly rejected the notion that the political branches have unreviewable authority over immigration or are not subject to the Constitution when policymaking in that context. *See Zadvydas v. Davis*, 533 U.S. 678, 695 (2001) (emphasizing that the power of the political branches over immigration "is subject to important constitutional limitations"); *Chadha*, 462 U.S. at 940-41 (rejecting the argument that Congress has "unreviewable authority over the regulation of aliens," and affirming that courts can review "whether Congress has chosen a constitutionally

permissible means of implementing that power").[6] Our court has likewise made clear that "[a]lthough alienage classifications are closely connected to matters of foreign policy and national security," courts "can and do review foreign policy arguments that are offered to justify legislative or executive action when constitutional rights are at stake." *American-Arab Anti-Discrimination Comm. v. Reno*, 70 F.3d 1045, 1056 (9th Cir. 1995).

*Kleindienst v. Mandel*, 408 U.S. 753 (1972), does not compel a different conclusion. The Government cites *Mandel* for the proposition that "'when the Executive exercises' immigration authority 'on the basis of a facially legitimate and bona fide reason, the courts will [not] look behind the exercise of that discretion.'" The Government omits portions of the quoted language to imply that this standard governs judicial review of *all* executive exercises of immigration authority. In fact, the *Mandel* standard applies to lawsuits challenging an executive branch official's decision to issue or deny an individual visa based on the

[6] *See also, e.g.*, *Galvan v. Press*, 347 U.S. 522, 530 (1954) (reaffirming the broad power of Congress over immigration, but observing that "[i]n the enforcement of these policies, the Executive Branch of the Government must respect the procedural safeguards of due process"); *Yamataya v. Fisher*, 189 U.S. 86, 100-01 (1903) (reaffirming, in the context of adjudicating a constitutional challenge to an immigration policy, that "this court has never held, nor must we now be understood as holding, that administrative officers, when executing the provisions of a statute involving the liberty of persons, may disregard the fundamental principles that inhere in 'due process of law' as understood at the time of the adoption of the Constitution"); *Chae Chan Ping v. United States*, 130 U.S. 581, 604 (1889) ("The powers to declare war, make treaties . . . and admit subjects of other nations to citizenship, are all sovereign powers, restricted in their exercise only by the constitution itself and considerations of public policy and justice which control, more or less, the conduct of all civilized nations.").

application of a congressionally enumerated standard to the particular facts presented by that visa application. The present case, by contrast, is not about the application of a specifically enumerated congressional policy to the particular facts presented in an individual visa application. Rather, the States are challenging the President's *promulgation* of sweeping immigration policy. Such exercises of policymaking authority at the highest levels of the political branches are plainly not subject to the *Mandel* standard; as cases like *Zadvydas* and *Chadha* make clear, courts can and do review constitutional challenges to the substance and implementation of immigration policy. *See Zadvydas*, 533 U.S. at 695; *Chadha*, 462 U.S. at 940-41.

This is no less true when the challenged immigration action implicates national security concerns. *See Ex parte Quirin*, 317 U.S. 1, 19 (1942) (stating that courts have a duty, "in time of war as well as in time of peace, to preserve unimpaired the constitutional safeguards of civil liberty"); *Ex parte Milligan*, 71 U.S. 2, 120-21 (1866) ("The Constitution of the United States is a law for rulers and people, equally in war and in peace . . . under all circumstances."). We are mindful that deference to the political branches is particularly appropriate with respect to national security and foreign affairs, given the relative institutional capacity, informational access, and expertise of the courts. *See Humanitarian Law Project*, 561 U.S. at 33-34.

Nonetheless, "courts are not powerless to review the political branches' actions" with respect to matters of national security. *Alperin v. Vatican Bank*, 410 F.3d 532, 559 n.17 (9th Cir. 2005). To the contrary, while counseling deference to the national security determinations of the political branches, the Supreme Court has made clear that

the Government's "authority and expertise in [such] matters do not automatically trump the Court's own obligation to secure the protection that the Constitution grants to individuals," even in times of war. *Humanitarian Law Project*, 561 U.S. at 34 (quoting *id.* at 61 (Breyer, J., dissenting)); *see also United States v. Robel*, 389 U.S. 258, 264 (1967) ("'[N]ational defense' cannot be deemed an end in itself, justifying any exercise of legislative power designed to promote such a goal. . . . It would indeed be ironic if, in the name of national defense, we would sanction the subversion of one of those liberties . . . which makes the defense of the Nation worthwhile."); *Zemel v. Rusk*, 381 U.S. 1, 17 (1965) ("[S]imply because a statute deals with foreign relations [does not mean that] it can grant the Executive totally unrestricted freedom of choice.").

Indeed, federal courts routinely review the constitutionality of and even invalidate actions taken by the executive to promote national security, and have done so even in times of conflict. *See, e.g.*, *Boumediene*, 553 U.S. 723 (striking down a federal statute purporting to deprive federal courts of jurisdiction over habeas petitions filed by non-citizens being held as "enemy combatants" after being captured in Afghanistan or elsewhere and accused of authorizing, planning, committing, or aiding the terrorist attacks perpetrated on September 11, 2001); *Aptheker v. Sec'y of State*, 378 U.S. 500 (1964) (holding unconstitutional a statute denying passports to American members of the Communist Party despite national security concerns); *Ex parte Endo*, 323 U.S. 283 (1944) (holding unconstitutional the detention of a law-abiding and loyal American of Japanese ancestry during World War II and affirming federal court jurisdiction over habeas petitions by such individuals). As a plurality of the Supreme Court cautioned in *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004), "Whatever power the United

States Constitution envisions for the Executive in its exchanges with other nations or with enemy organizations in times of conflict, it most assuredly envisions a role for all three branches when individual liberties are at stake." *Id.* at 536 (plurality opinion).

In short, although courts owe considerable deference to the President's policy determinations with respect to immigration and national security, it is beyond question that the federal judiciary retains the authority to adjudicate constitutional challenges to executive action.

## V. Legal Standard

The Government moves to stay the district court's order pending this appeal. "A stay is not a matter of right, even if irreparable injury might otherwise result." *Nken v. Holder*, 556 U.S. 418, 433 (2009) (quoting *Virginian Ry. Co. v. United States*, 272 U.S. 658, 672 (1926)). "It is instead 'an exercise of judicial discretion,' and 'the propriety of its issue is dependent upon the circumstances of the particular case.'" *Id.* (quoting *Virginian*, 272 U.S. at 672-73) (alterations omitted). "The party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion." *Id*. at 433-34.

Our decision is guided by four questions: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Lair v. Bullock*, 697 F.3d 1200, 1203 (9th Cir. 2012) (quoting *Nken*, 556 U.S. at 434). "The first two factors . . . are the most critical," *Nken*, 556 U.S. at 434, and the last two steps are reached "[o]nce an applicant satisfies the first two

factors," *id.* at 435. We conclude that the Government has failed to clear each of the first two critical steps. We also conclude that the final two factors do not militate in favor of a stay. We emphasize, however, that our analysis is a preliminary one. We are tasked here with deciding only whether the Government has made a strong showing of its likely success in this appeal and whether the district court's TRO should be stayed in light of the relative hardships and the public interest.

The Government has not shown that it is likely to succeed on appeal on its arguments about, at least, the States' Due Process Clause claim, and we also note the serious nature of the allegations the States have raised with respect to their religious discrimination claims. We express no view as to any of the States' other claims.

## VI. Likelihood of Success—Due Process

The Fifth Amendment of the Constitution prohibits the Government from depriving individuals of their "life, liberty, or property, without due process of law." U.S. Const. amend. V. The Government may not deprive a person of one of these protected interests without providing "notice and an opportunity to respond," or, in other words, the opportunity to present reasons not to proceed with the deprivation and have them considered. *United States v. Raya-Vaca*, 771 F.3d 1195, 1204 (9th Cir. 2014); *accord Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985); *ASSE Int'l, Inc. v. Kerry*, 803 F.3d 1059, 1073 (9th Cir. 2015).

The Government has not shown that the Executive Order provides what due process requires, such as notice and a hearing prior to restricting an individual's ability to travel. Indeed, the Government does not contend that the Executive

Order provides for such process. Rather, in addition to the arguments addressed in other parts of this opinion, the Government argues that most or all of the individuals affected by the Executive Order have no rights under the Due Process Clause.

In the district court, the States argued that the Executive Order violates the procedural due process rights of various aliens in at least three independent ways. First, section 3(c) denies re-entry to certain lawful permanent residents and non-immigrant visaholders without constitutionally sufficient notice and an opportunity to respond. Second, section 3(c) prohibits certain lawful permanent residents and non-immigrant visaholders from exercising their separate and independent constitutionally protected liberty interests in travelling abroad and thereafter re-entering the United States. Third, section 5 contravenes the procedures provided by federal statute for refugees seeking asylum and related relief in the United States. The district court held generally in the TRO that the States were likely to prevail on the merits of their due process claims, without discussing or offering analysis as to any specific alleged violation.

At this stage of the proceedings, it is the Government's burden to make "a strong showing that [it] is likely to" prevail against the States' procedural due process claims. *Lair v. Bullock*, 697 F.3d 1200, 1203 (9th Cir. 2012) (quoting *Nken v. Holder*, 556 U.S. 418, 426 (2009)). We are not persuaded that the Government has carried its burden for a stay pending appeal.

The procedural protections provided by the Fifth Amendment's Due Process Clause are not limited to citizens. Rather, they "appl[y] to all 'persons' within the United States, including aliens," regardless of "whether their

presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). These rights also apply to certain aliens attempting to reenter the United States after travelling abroad. *Landon v. Plasencia*, 459 U.S. 21, 33-34 (1982). The Government has provided no affirmative argument showing that the States' procedural due process claims fail as to these categories of aliens. For example, the Government has failed to establish that lawful permanent residents have no due process rights when seeking to re-enter the United States. *See id.* ("[T]he returning resident alien is entitled as a matter of due process to a hearing on the charges underlying any attempt to exclude him." (quoting *Rosenberg v. Fleuti*, 374 U.S. 449, 460 (1963))). Nor has the Government established that the Executive Order provides lawful permanent residents with constitutionally sufficient process to challenge their denial of re-entry. *See id.* at 35 ("[T]he courts must evaluate the particular circumstances and determine what procedures would satisfy the minimum requirements of due process on the re-entry of a permanent resident alien.").

The Government has argued that, even if lawful permanent residents have due process rights, the States' challenge to section 3(c) based on its application to lawful permanent residents is moot because several days after the Executive Order was issued, White House counsel Donald F. McGahn II issued "[a]uthoritative [g]uidance" stating that sections 3(c) and 3(e) of the Executive Order do not apply to lawful permanent residents. At this point, however, we cannot rely upon the Government's contention that the Executive Order no longer applies to lawful permanent residents. The Government has offered no authority establishing that the White House counsel is empowered to issue an amended order superseding the Executive Order

signed by the President and now challenged by the States, and that proposition seems unlikely.

Nor has the Government established that the White House counsel's interpretation of the Executive Order is binding on all executive branch officials responsible for enforcing the Executive Order. The White House counsel is not the President, and he is not known to be in the chain of command for any of the Executive Departments. Moreover, in light of the Government's shifting interpretations of the Executive Order, we cannot say that the current interpretation by White House counsel, even if authoritative and binding, will persist past the immediate stage of these proceedings. On this record, therefore, we cannot conclude that the Government has shown that it is "*absolutely clear* that the allegedly wrongful behavior could not reasonably be expected to recur." *Friends of the Earth, Inc., v. Laidlaw Envtl. Servs., Inc.*, 528 U.S. 167, 189 (2000) (emphasis added).

Even if the claims based on the due process rights of lawful permanent residents were no longer part of this case, the States would continue to have potential claims regarding possible due process rights of other persons who are in the United States, even if unlawfully, *see Zadvydas*, 533 U.S. 693; non-immigrant visaholders who have been in the United States but temporarily departed or wish to temporarily depart, *see Landon*, 459 U.S. 33-34; refugees, *see* 8 U.S.C. § 1231 note 8; and applicants who have a relationship with a U.S. resident or an institution that might have rights of its own to assert, *see Kerry v. Din*, 135 S. Ct. 2128, 2139 (2015) (Kennedy, J., concurring in judgment); *id.* at 2142 (Breyer, J., dissenting); *Kleindienst v. Mandel*, 408 U.S. 753, 762-65 (1972). Accordingly, the Government has not demonstrated that the States lack viable claims based

on the due process rights of persons who will suffer injuries to protected interests due to the Executive Order. Indeed, the existence of such persons is obvious.

The Government argues that, even if the States have shown that they will likely succeed on some of their procedural due process claims, the district court nevertheless erred by issuing an "overbroad" TRO. Specifically, the Government argues that the TRO is overbroad in two independent respects: (1) the TRO extends beyond lawful permanent residents, and covers aliens who cannot assert cognizable liberty interests in connection with travelling into and out of the United States, and (2) the TRO applies nationwide, and enjoins application of the Executive Order outside Washington and Minnesota. We decline to modify the scope of the TRO in either respect.

First, we decline to limit the scope of the TRO to lawful permanent residents and the additional category more recently suggested by the Government, in its reply memorandum, "previously admitted aliens who are temporarily abroad now or who wish to travel and return to the United States in the future." That limitation on its face omits aliens who are in the United States unlawfully, and those individuals have due process rights as well. *Zadvydas*, 533 U.S. at 693. That would also omit claims by citizens who have an interest in specific non-citizens' ability to travel to the United States. *See Din*, 135 S. Ct. at 2139 (Kennedy, J., concurring in judgment); *id.* at 2142 (Breyer, J., dissenting) (six Justices declining to adopt a rule that would categorically bar U.S. citizens from asserting cognizable liberty interests in the receipt of visas by alien spouses). There might be persons covered by the TRO who do not have viable due process claims, but the Government's proposed revision leaves out at least some who do.

Second, we decline to limit the geographic scope of the TRO. The Fifth Circuit has held that such a fragmented immigration policy would run afoul of the constitutional and statutory requirement for uniform immigration law and policy. *Texas v. United States*, 809 F.3d 134, 187-88 (5th Cir. 2015), *aff'd by an equally divided Court*, 136 S. Ct. 2271 (2016). At this stage of the litigation, we do not need to and do not reach such a legal conclusion for ourselves, but we cannot say that the Government has established that a contrary view is likely to prevail. Moreover, even if limiting the geographic scope of the injunction would be desirable, the Government has not proposed a workable alternative form of the TRO that accounts for the nation's multiple ports of entry and interconnected transit system and that would protect the proprietary interests of the States at issue here while nevertheless applying only within the States' borders.

More generally, even if the TRO might be overbroad in some respects, it is not our role to try, in effect, to rewrite the Executive Order. *See United States v. Nat'l Treasury Emps. Union*, 513 U.S. 454, 479 (1995) (declining to rewrite a statute to eliminate constitutional defects); *cf. Aptheker v. Sec'y of State*, 378 U.S. 500, 516 (1964) (invalidating a restriction on freedom of travel despite the existence of constitutional applications). The political branches are far better equipped to make appropriate distinctions. For now, it is enough for us to conclude that the Government has failed to establish that it will likely succeed on its due process argument in this appeal.

## VII. Likelihood of Success—Religious Discrimination

The First Amendment prohibits any "law respecting an establishment of religion." U.S. Const. amend. I. A law that has a religious, not secular, purpose violates that clause,

*Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971), as does one that "officially prefer[s] [one religious denomination] over another," *Larson v. Valente*, 456 U.S. 228, 244 (1982). The Supreme Court has explained that this is because endorsement of a religion "sends the ancillary message to . . . nonadherents 'that they are outsiders, not full members of the political community.'" *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 310 (2000) (quoting *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984) (O'Connor, J., concurring)). The Equal Protection Clause likewise prohibits the Government from impermissibly discriminating among persons based on religion. *De La Cruz v. Tormey*, 582 F.2d 45, 50 (9th Cir. 1978).

The States argue that the Executive Order violates the Establishment and Equal Protection Clauses because it was intended to disfavor Muslims. In support of this argument, the States have offered evidence of numerous statements by the President about his intent to implement a "Muslim ban" as well as evidence they claim suggests that the Executive Order was intended to be that ban, including sections 5(b) and 5(e) of the Order. It is well established that evidence of purpose beyond the face of the challenged law may be considered in evaluating Establishment and Equal Protection Clause claims. *See, e.g.*, *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 534 (1993) ("The Free Exercise Clause, like the Establishment Clause, extends beyond facial discrimination. . . . Official action that targets religious conduct for distinctive treatment cannot be shielded by mere compliance with the requirement of facial neutrality."); *Larson*, 456 U.S. at 254-55 (holding that a facially neutral statute violated the Establishment Clause in light of legislative history demonstrating an intent to apply regulations only to minority religions); *Village of Arlington Heights v. Metro. Housing Dev. Corp.*, 429 U.S. 252, 266-

68 (1977) (explaining that circumstantial evidence of intent, including the historical background of the decision and statements by decisionmakers, may be considered in evaluating whether a governmental action was motivated by a discriminatory purpose).

The States' claims raise serious allegations and present significant constitutional questions. In light of the sensitive interests involved, the pace of the current emergency proceedings, and our conclusion that the Government has not met its burden of showing likelihood of success on appeal on its arguments with respect to the due process claim, we reserve consideration of these claims until the merits of this appeal have been fully briefed.

## VIII. The Balance of Hardships and the Public Interest

The Government has not shown that a stay is necessary to avoid irreparable injury. *Nken*, 556 U.S. at 434. Although we agree that "the Government's interest in combating terrorism is an urgent objective of the highest order," *Holder v. Humanitarian Law Project*, 561 U.S. 1, 28 (2010), the Government has done little more than reiterate that fact. Despite the district court's and our own repeated invitations to explain the urgent need for the Executive Order to be placed immediately into effect, the Government submitted no evidence to rebut the States' argument that the district court's order merely returned the nation temporarily to the position it has occupied for many previous years.

The Government has pointed to no evidence that any alien from any of the countries named in the Order has

perpetrated a terrorist attack in the United States.[7] Rather than present evidence to explain the need for the Executive Order, the Government has taken the position that we must not review its decision at all.[8] We disagree, as explained above.

To the extent that the Government claims that it has suffered an institutional injury by erosion of the separation of powers, that injury is not "irreparable." It may yet pursue and vindicate its interests in the full course of this litigation. *See, e.g.*, *Texas v. United States*, 787 F.3d 733, 767-68 (5th Cir. 2015) ("[I]t is the resolution of the case on the merits, not whether the injunction is stayed pending appeal, that will affect those principles.").

---

[7] Although the Government points to the fact that Congress and the Executive identified the seven countries named in the Executive Order as countries of concern in 2015 and 2016, the Government has not offered any evidence or even an explanation of how the national security concerns that justified those designations, which triggered visa requirements, can be extrapolated to justify an urgent need for the Executive Order to be immediately reinstated.

[8] In addition, the Government asserts that, "[u]nlike the President, courts do not have access to classified information about the threat posed by terrorist organizations operating in particular nations, the efforts of those organizations to infiltrate the United States, or gaps in the vetting process." But the Government may provide a court with classified information. Courts regularly receive classified information under seal and maintain its confidentiality. Regulations and rules have long been in place for that. 28 C.F.R. § 17.17(c) (describing Department of Justice procedures to protect classified materials in civil cases); 28 C.F.R. § 17.46(c) ("Members of Congress, Justices of the United States Supreme Court, and Judges of the United States Courts of Appeal and District Courts do not require a determination of their eligibility for access to classified information . . . ."); W.D. Wash. Civ. L.R. 5(g) (providing procedures governing filings under seal).

By contrast, the States have offered ample evidence that if the Executive Order were reinstated even temporarily, it would substantially injure the States and multiple "other parties interested in the proceeding." *Nken*, 556 U.S. at 434 (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)). When the Executive Order was in effect, the States contend that the travel prohibitions harmed the States' university employees and students, separated families, and stranded the States' residents abroad. These are substantial injuries and even irreparable harms. *See Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) ("It is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976))).

The Government suggests that the Executive Order's discretionary waiver provisions are a sufficient safety valve for those who would suffer unnecessarily, but it has offered no explanation for how these provisions would function in practice: how would the "national interest" be determined, who would make that determination, and when? Moreover, as we have explained above, the Government has not otherwise explained how the Executive Order could realistically be administered only in parts such that the injuries listed above would be avoided.

Finally, in evaluating the need for a stay, we must consider the public interest generally. *See Nken*, 556 U.S. at 434. Aspects of the public interest favor both sides, as evidenced by the massive attention this case has garnered at even the most preliminary stages. On the one hand, the public has a powerful interest in national security and in the ability of an elected president to enact policies. And on the other, the public also has an interest in free flow of travel, in avoiding separation of families, and in freedom from

discrimination. We need not characterize the public interest more definitely than this; when considered alongside the hardships discussed above, these competing public interests do not justify a stay.

## IX. Conclusion

For the foregoing reasons, the emergency motion for a stay pending appeal is **DENIED.**

**From:** Carr, Peter (OPA)
**Sent:** Thursday, February 09, 2017 7:04 PM
**To:** John.Roberts@foxnews.com
**Subject:** FW: STATEMENT BY THE JUSTICE DEPARTMENT ON NINTH CIRCUIT RULING IN STATE OF WASHINGTON; STATE OF MINNESOTA V DONALD J TRUMP
**Attachments:** Court of appeal order on stay motion.pdf

**Importance:** High

Hi John,

I was asked to make sure you got this statement.

Best,
Peter

---

**From:** Navas, Nicole (OPA)
**Sent:** Thursday, February 09, 2017 6:28 PM
**To:** Navas, Nicole (OPA) (JMD) <Nicole.Navas@usdoj.gov>
**Subject:** STATEMENT BY THE JUSTICE DEPARTMENT ON NINTH CIRCUIT RULING IN STATE OF WASHINGTON; STATE OF MINNESOTA V DONALD J TRUMP
**Importance:** High

Good evening,
"The Justice Department is reviewing the decision and considering its options." We have no further comment.

Thank you,

Nicole A. Navas
Spokesperson/Public Affairs Specialist
U.S. Department of Justice (DOJ)

**FOR PUBLICATION**

# UNITED STATES COURT OF APPEALS
# FOR THE NINTH CIRCUIT

| | |
|---|---|
| STATE OF WASHINGTON; STATE OF MINNESOTA,<br>*Plaintiffs-Appellees,*<br><br>v.<br><br>DONALD J. TRUMP, President of the United States; U.S. DEPARTMENT OF HOMELAND SECURITY; REX W. TILLERSON, Secretary of State; JOHN F. KELLY, Secretary of the Department of Homeland Security; UNITED STATES OF AMERICA,<br>*Defendants-Appellants.* | No. 17-35105<br><br>D.C. No. 2:17-cv-00141<br><br>ORDER |

Motion for Stay of an Order of the
United States District Court for the
Western District of Washington
James L. Robart, District Judge, Presiding

Argued and Submitted February 7, 2017

Filed February 9, 2017

Before: William C. Canby, Richard R. Clifton, and Michelle T. Friedland, Circuit Judges

Per Curiam Order

**From:** Flores, Sarah Isgur (OPA)
**Sent:** Wednesday, March 15, 2017 9:35 PM
**Subject:** Statement on federal district court ruling in Hawaii

The Department of Justice strongly disagrees with the federal district court's ruling, which is flawed both in reasoning and in scope. The President's Executive Order falls squarely within his lawful authority in seeking to protect our Nation's security, and the Department will continue to defend this Executive Order in the courts.

***

Sarah Isgur Flores
Director of Public Affairs
(b) (6)

**From:** Dean, Matthew <Matthew.Dean@FOXNEWS.COM>
**Sent:** Monday, January 30, 2017 6:50 PM
**To:** Wyn Hornbuckle (OPA)
**Subject:** Fwd: First on CNN: Justice Department will not defend executive order on travel restrictions - CNNPolitics.com

Hi Wyn -

Could you confirm this. I am seeing the DAG put out a memo on this.

Thanks,

Matt

Matt Dean
Department of Justice & Federal Law Enforcement Producer
Fox News Channel
(b) (6) (Mobile)
202.789.0261 (DOJ)
matthew.dean@foxnews.com
@MattFirewall

Begin forwarded message:

> **From:** "Becker, Bruce" <bruce.becker@foxbusiness.com>
> **Date:** January 30, 2017 at 5:42:08 PM CST
> **To:** "Dean, Matthew" <Matthew.Dean@FOXNEWS.COM>
> **Subject: First on CNN: Justice Department will not defend executive order on travel restrictions - CNNPolitics.com**
>
> Anything on this?
>
> http://www.cnn.com/2017/01/30/politics/donald-trump-immigration-order-department-of-justice/

**From:** Dean, Matthew <Matthew.Dean@FOXNEWS.COM>
**Sent:** Friday, February 03, 2017 2:16 PM
**To:** Navas, Nicole (OPA)
**Subject:** State on the 60K figure

So you have it in case you don't already...

Thanks much,

Matt

Will Cocks, Spokesperson for Bureau of Consular Affairs, Department of State:

"Fewer than 60,000 individuals' visas were provisionally revoked to comply with the Executive Order. We recognize that those individuals are temporarily inconvenienced while we conduct our review under the Executive Order. To put that number in context, we issued over 11 million immigrant and non immigrant visas in fiscal year 2015. As always, national security is our top priority when issuing visas."

Matt Dean
Department of Justice & Federal Law Enforcement Producer
Fox News Channel
(b) (6) (Mobile)
202.789.0261 (DOJ)
matthew.dean@foxnews.com
@MattFirewall

**From:** Navas, Nicole (OPA)
**Sent:** Monday, February 06, 2017 1:07 PM
**To:** Andrea Noble
**Subject:** Q from Friday on # of visa revocations revealed in EDVA case
**Attachments:** not020517.arg.fld.pdf

Hi Andrea,
I hope you had a good weekend. Please see attached filing notifying the court with update on visa revocations.
Thank you

Nicole A. Navas
Spokesperson/Public Affairs Specialist
U.S. Department of Justice (DOJ)

**UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF VIRGINIA**
**Alexandria Division**

| | | |
|---|---|---|
| TAREQ AQEL MOHAMMED AZIZ, *et al.*, | ) | |
| Petitioners, | ) | |
| vs. | ) | Civil Action No. 1:17cv116 |
| DONALD TRUMP, President of the United States, *et al.*, | ) | |
| Respondents. | ) | |

**NOTICE TO THE COURT**

Undersigned counsel write to update this Court of three developments since oral argument on Friday, February 3, 2017 that bear on this litigation.

First, undersigned counsel respectfully notify the Court and the parties that it wishes to correct a statement made by government counsel at oral argument. In response to a question from this Court as to how many individuals have been affected by the Executive Order, government counsel presenting oral argument, based on information he had received, stated that 100,000 visas had been provisionally revoked as a result of the Executive Order (Dkt. No. 43, at 24-25). The Department of State has since provided undersigned counsel with a revised number, which is roughly 60,000 visas.

Second, undersigned counsel notify the Court and the parties that on the evening of February 3, 2017, based upon the entry of a temporary restraining order by the United States District Court for the Western District of Washington that prohibited administration of the Executive Order nationwide, *see Washington v. Trump*, No. C17-0141, 2017 WL 462040 (W.D. Wash. Feb. 3, 2017), the United States Department of State issued a directive that reversed the

previous provisional visa revocation referenced in government counsel's earlier statement to this Court.

Third, counsel note that the United States Government has appealed the Washington decision on an emergency basis, *see Washington v. Trump*, No. 17-35105 (9th Cir. 2017), seeking a stay of the district court's order pending appeal. Per the Ninth Circuit's scheduling order, the State of Washington filed a brief in opposition on February 5, 2017, and the Government's reply brief in support is due no later than 6:00 PM EST, February 6, 2017.

///

///

Respectfully submitted,

DANA J. BOENTE
United States Attorney

CHAD A. READLER
Acting Assistant Attorney General
Civil Division

WILLIAM PEACHEY
Director
Civil Division, Office of Immigration Litigation

By: /s/
DENNIS C. BARGHAAN, JR.
Assistant U.S. Attorney
2100 Jamieson Avenue
Alexandria, Virginia 22314
Telephone: (703) 299-3891
Fax: (703) 299-3983
Email: dennis.barghaan@usdoj.gov

EREZ R. REUVENI
Senior Litigation Counsel
Civil Division, Office of Immigration Litigation
P.O. Box 868
Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 307-4293
Fax: (202) 616-8962
Email: erez.r.reuvani@usdoj.gov

DATE: February 6, 2017

ATTORNEYS FOR RESPONDENTS

**CERTIFICATE OF SERVICE**

I hereby certify that on this date, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will transmit a true and correct copy of the same to the following:

Simon Sandoval Moshenburg
Legal Aid Justice Center
6066 Leesburg Pike, Suite 520
Falls Church, Virginia 22041
Email: Simon@justice4all.org

Stuart Alan Raphael
Office of the Attorney General (Richmond)
202 North 9th Street
Richmond, VA 23219
804-786-7240
Fax: 804-371-0200
Email: sraphael@oag.state.va.us

Timothy J. Heaphy
Hunton & Williams LLP
2200 Pennsylvania Ave NW
Washington, DC 20037
202-955-1500
Fax: 202-778-2201
Email: theaphy@hunton.com

Date: February 6, 2017

/s/
DENNIS C. BARGHAAN, JR.
Assistant U.S. Attorney
2100 Jamieson Avenue
Alexandria, Virginia 22314
Telephone: (703) 299-3891
Fax: (703) 299-3983
Email: dennis.barghaan@usdoj.gov

ATTORNEYS FOR RESPONDENTS

**From:** Hall, Sylvia <Sylvia.Hall@foxbusiness.com>
**Sent:** Monday, February 06, 2017 2:14 PM
**To:** Navas, Nicole (OPA)
**Subject:** RE: Media question- Fox Business Network

Thanks so much, Nicole.

---

**From:** Navas, Nicole (OPA) [mailto:Nicole.Navas@usdoj.gov]
**Sent:** Monday, February 06, 2017 2:13 PM
**To:** Hall, Sylvia <Sylvia.Hall@foxbusiness.com>
**Subject:** RE: Media question- Fox Business Network

Hi Sylvia,
I am the spokesperson of the Justice Department's Civil Division, who is litigating this case. For planning purposes only, the government's appellate brief will be filed with the Ninth Circuit close to the deadline at 6:00 pm EST. I will send you a copy when filed. Thank you

Nicole A. Navas
Spokesperson/Public Affairs Specialist
U.S. Department of Justice (DOJ)

---

**From:** Hall, Sylvia [mailto:Sylvia.Hall@foxbusiness.com]
**Sent:** Monday, February 06, 2017 12:13 PM
**To:** Press@usdoj.gov
**Subject:** Media question- Fox Business Network

Hello,

I'm a producer at Fox Business Network with a quick question. We understand the Justice Department has until 6pm ET to file briefs in the lawsuits filed against President Trump's executive order instituting travel restrictions. Do you know yet when you'll be filing today?

Thank you very much.

Best,
Sylvia Hall

Sylvia Hall
Fox Business Network
Washington, DC
(b) (6)
(b) (6)
Sylvia.Hall@foxbusiness.com

reply e-mail. Any content of this message and its attachments that does not relate to the official business of Fox News or Fox Business must not be taken to have been sent or endorsed by either of them. No representation is made that this email or its attachments are without defect.

**From:** Navas, Nicole (OPA)
**Sent:** Monday, February 06, 2017 6:23 PM
**To:** Hall, Sylvia
**Subject:** RE: Media question- Fox Business Network
**Attachments:** Reply in support of stay motion FINAL --as filed.pdf

Please see attached government's reply in support of the emergency motion for stay pending appeal filed with the U.S. Court of Appeals for the Ninth Circuit in the State of Washington; State of Minnesota vs. Donald Trump D.C. No. 2:17-cv-00141. The court of appeals has asked for oral argument tomorrow on the federal government's motion for a stay pending appeal. The argument is scheduled for tomorrow at 3:00 pm PST.
Docket Text:
Filed order (WILLIAM C. CANBY, RICHARD R. CLIFTON and MICHELLE T. FRIEDLAND) The State of Hawaii's emergency motion to intervene (Docket Entry No. [21]) is denied for the purposes of this appeal only. The State of Hawaii's motion for leave to file an amicus curiae brief (Docket Entry No. [21]) is granted. The State of Hawaii's amicus brief has been filed. Appellants and appellees shall appear by telephone for oral argument on Tuesday, February 7, 2017 at 3:00 p.m. PST. Each side will be permitted 30 minutes of argument time. Call-in instructions will be provided to the appearing parties. A recording of the oral argument will be made available to the public promptly following the conclusion of oral argument. All other pending motions will be addressed by separate order. [10304200] (ME)

Nicole A. Navas
Spokesperson/Public Affairs Specialist
U.S. Department of Justice (DOJ)

---

**From:** Hall, Sylvia [mailto:Sylvia.Hall@foxbusiness.com]
**Sent:** Monday, February 06, 2017 6:07 PM
**To:** Navas, Nicole (OPA) <Nicole.Navas@usdoj.gov>
**Subject:** Re: Media question- Fox Business Network

Hello Nicole,
Just checking to see if you have sent around the brief yet.
Thanks!

Sylvia Hall
Producer
Fox Business Network
(b) (6)

Sent from my iPhone

On Feb 6, 2017, at 14:13, "Navas, Nicole (OPA)" <Nicole.Navas@usdoj.gov> wrote:

> Hi Sylvia,
> I am the spokesperson of the Justice Department's Civil Division, who is litigating this case. For planning purposes only, the government's appellate brief will be filed with the Ninth Circuit close to the deadline at 6:00 pm EST. I will send you a copy when filed. Thank you
>
> Nicole A. Navas

Spokesperson/Public Affairs Specialist
U.S. Department of Justice (DOJ)

---

**From:** Hall, Sylvia [mailto:Sylvia.Hall@foxbusiness.com]
**Sent:** Monday, February 06, 2017 12:13 PM
**To:** Press@usdoj.gov
**Subject:** Media question- Fox Business Network

Hello,

I'm a producer at Fox Business Network with a quick question. We understand the Justice Department has until 6pm ET to file briefs in the lawsuits filed against President Trump's executive order instituting travel restrictions. Do you know yet when you'll be filing today?

Thank you very much.

Best,
Sylvia Hall

Sylvia Hall
Fox Business Network
Washington, DC
(b) (6)
(b) (6)
Sylvia.Hall@foxbusiness.com

No. 17-35105

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

STATE OF WASHINGTON, et al.,
Plaintiffs-Appellees,
v.

DONALD TRUMP, President of the United States, et al.
Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

# REPLY IN SUPPORT OF EMERGENCY MOTION FOR STAY PENDING APPEAL

EDWIN S. KNEEDLER*
*Deputy Solicitor General*

AUGUST E. FLENTJE
*Special Counsel to the Assistant Attorney General*
DOUGLAS N. LETTER
SHARON SWINGLE
H. THOMAS BYRON III
LOWELL V. STURGILL JR.
CATHERINE DORSEY
*Attorneys, Appellate Staff*
*Civil Division, Room 7241*
*U.S. Department of Justice*
*950 Pennsylvania Ave., NW*
*Washington, DC 20530*

* The Acting Solicitor General and Acting Assistant Attorney General have refrained from signing this brief, out of an abundance of caution, in light of a last-minute filing of an amicus brief by their former law firm.

The Executive Order is a lawful exercise of the President's authority over the entry of aliens into the United States and the admission of refugees. Relying on his express statutory authority to suspend entry of any class of aliens to protect the national interest, the President has directed a temporary suspension of entries through the refugee program and from countries that have a previously identified link to an increased risk of terrorist activity, *see* 8 U.S.C. § 1187(a)(12). The purpose of that temporary suspension is to permit an orderly review and revision of screening procedures to ensure that adequate standards are in place to protect against terrorist attacks. As a different district court recently concluded, that objective provides a "facially legitimate and bona fide" justification that satisfies any constitutional scrutiny that applies. *Louhghalam v. Trump*, Civ. Action No. 17-10154-NMG, Order 18-19 (D. Mass. Feb. 3, 2017); *see id.* at 10-11, 15-16.

The district court therefore erred in entering an injunction barring enforcement of the order. But even if some relief were appropriate, the court's sweeping nationwide injunction is vastly overbroad, extending far beyond the State's legal claims to encompass numerous applications of the Order that the State does not even attempt to argue are unlawful.

1. As an initial matter, the State cannot challenge the denial of entry or visas to third-party aliens. It is well-settled that a State lacks authority to sue "as the representative of its citizens" to protect them from the operation of federal law.

*Massachusetts v. Mellon*, 262 U.S. 447, 485-86 (1923); *South Carolina v. Katzenbach*, 383 U.S. 301, 324 (1966). The State invokes the "special solicitude" for States referred to in *Massachusetts v. EPA*, but there, Massachusetts sought to enforce a congressionally created "procedural right" to protect a loss of "sovereign territory." 549 U.S. 497, 519-20, 522-23 (2007). Here, by contrast, the State's interest in protecting its own territory is not at issue. Instead, the Constitution vests the federal government with exclusive power over immigration for the Nation as a whole, and Congress did not create any "procedural right" for States to sue the federal government to challenge its decisions to deny the entry of (or revoke visas held by) third-party aliens.

To the contrary, an alien outside the United States has no substantive right or basis for judicial review in the denial of a visa at all. *See Brownell v. Tom We Shung*, 352 U.S. 180, 184 n.3, 185 n.6 (1956). Moreover, Congress has been clear that the issuance of a visa to an alien does not confer upon that alien any right of admission into the United States, 8 U.S.C. § 1201(h), and that the Secretary of State "may, at any time, in his discretion, revoke such visa or other documentation." *Id.* § 1201(i). If a visa is revoked, even the alien himself has no right of judicial review "except in the context of a removal proceeding," and only if the visa revocation "provides the sole ground for removal." *Id.* And even an alien who has been admitted to and developed significant ties with this country, who has as a result come within the

protection of the Fifth Amendment's Due Process Clause, has no protected property or liberty interest in the retention of his visa. *Knoetze v. U.S. Dep't of State*, 634 F.2d 207, 212 (5th Cir. 1981). A fortiori, the State cannot challenge the revocation of third-party aliens' visas here. The State likewise cannot challenge the Executive's decision not to admit a refugee.

The Supreme Court's decisions in *Kerry v. Din*, 135 S. Ct. 2128 (2015), and *Kleindienst v. Mandel*, 408 U.S. 753 (1972), also do not support even limited judicial review of the State's claims here. In those cases, U.S. citizens sought review of the denial of a third-party visa on the ground that the citizens had an independent constitutionally-protected interest in the third-party's admission to the country—either a marital relationship or a First Amendment interest. The State, in contrast, has no independent constitutional rights to invoke with respect to the denial of admission of aliens affected by the Order.

2. Even if it could establish standing and a right of judicial review, the State would be unlikely to succeed on the merits of its claims.

a. Congress has granted the President broad discretion under 8 U.S.C. § 1182(f) to suspend the entry of "any class of aliens" into the United States, and independently broad discretion over the refugee program under 8 U.S.C. § 1157. The exclusion of aliens is also "a fundamental act of sovereignty * * * inherent in the executive power to control the foreign affairs of the nation." *United States ex*

*rel. Knauff v. Shaughnessy*, 338 U.S. 537, 542 (1950). The State does not address the text of § 1182(f), or the extensive caselaw relating to the exclusion of aliens from the United States. And although the State suggests (Response 23) that it is somehow impermissible for the President to rely on § 1182(f) "to impose a *categorical* ban on admission," the statute's broad grant of authority to suspend the entry "of any class of aliens," "for such period as [the President] shall deem necessary," whenever the President finds that it would be "detrimental to the interests of the United States," clearly authorizes the categorical, temporary suspension the President has adopted here.

b. The State continues to argue that Section 3(c)'s temporary suspension of the entry of aliens from seven countries contravenes the restriction on nationality-based distinctions in 8 U.S.C. § 1152(a)(1)(A). But that restriction applies only to "the issuance of an immigrant visa," *Id.*, not to the President's restrictions on the right of entry. It also has no application at all to aliens who hold or seek *non immigrant* visas, such as student visas or work visas. And § 1152(a)(1)(B) permits, as here, a temporary suspension of entry pending completion of a review and revision of procedures for processing visa applications.

Furthermore, even if it applied, § 1152(a)(1)(A) would not restrict § 1182(f)'s broad grant of discretionary authority. A court should, whenever possible, "interpret two seemingly inconsistent statutes to avoid a potential conflict," *California ex rel.*

*Sacramento Metro. Air Quality Mgmt. Dist. v. United States*, 215 F.3d 1005, 1012 (9th Cir. 2000), and should interpret "the specific [to] govern[] the general." *RadLAX Gateway Hotel v. Amalgamated Bank*, 132 S. Ct. 2065, 2070-71 (2012). Here, § 1152(a)(1)(A) establishes a general rule governing the issuance of immigrant visas, whereas § 1182(f) governs the specific instance in which the President determines that entry of a "class of aliens" would be "detrimental to the interests of the United States." The State's assertion that § 1152(a)(1)(A) limits that authority would mean that the President would be statutorily disabled from barring the entry of nationals of a country with which the United States was at war—a result that would raise serious constitutional questions, which is itself a sufficient reason to reject the State's reading. *See Edward J. DeBartolo Corp. v. Florida Gulf Coast Building & Constr. Trades Council*, 485 U.S. 568, 575 (1988).

c. The State asserts that the Order violates the constitutional rights of lawful permanent residents (LPRs). Response at 10, 15 & n.3, 16. But the Order does not apply to LPRs. Exhibit D. It applies only to aliens who lack LPR status. And most of those aliens are outside the United States and have never been admitted to this country. The Supreme Court "has long held that an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application." *Landon v. Plasencia*, 459 U.S. 21, 32 (1982).

The State argues (Response 9) that "courts routinely review executive decisions with far greater security implications than this Order." In those cases, however, the courts were reviewing government actions taken against individuals who had rights under the U.S. Constitution or federal statutes with respect to the adverse actions they faced. *See, e.g., Hamdi v. Rumsfeld*, 542 U.S. 507, 535 (2004) (plurality op.) (reviewing indefinite detention of U.S. citizen); *Boumediene v. Bush*, 553 U.S. 723 (2008) (reviewing detention of aliens held to have constitutionally protected interest in habeas corpus review). Those cases do not override the longstanding rule that aliens outside the United States have no right or interest in their admission to the United States protected by the Due Process Clause, *Knauff*, 338 U.S. at 543, or the rule that non-immigrants do not have a liberty or property interest in the retention of a visa.

d. The State's constitutional challenges lack merit.

i. The State first asserts that the Order violates the Establishment Clause and equal protection principles because it was assertedly based on animus against Muslims. That is incorrect. There are two separate aspects of the Order challenged here, and both are neutral with respect to religion.

First, Section 3(c) temporarily suspends entry of aliens from seven countries previously identified under 8 U.S.C. § 1187(a)(12). Those countries were identified by Congress and the Executive Branch as being associated with a heightened risk of

terrorism. Congress itself identified Iraq and Syria, where "the Islamic State of Iraq and the Levant (ISIL) * * * maintain[s] a formidable force." U.S. Department of State, *Country Reports on Terrorism 2015* 6 (June 2016). *See* 8 U.S.C. § 1187(a)(12)(A)(i)(I), (ii)(I). Congress also incorporated countries designated as state sponsors of terrorism: Iran, Sudan, and Syria. *Id.* § 1187(a)(12)(A)(i)(II) and (ii)(II). And in 2016, the Executive Branch added Libya, Somalia, and Yemen after a review that considered "whether the country or area is a safe haven for terrorists" and "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." 8 U.S.C. § 1187(a)(12)(D)(iii); https://www.dhs.gov/news/20016/02/18/dhs-announces-further-travel-restrictions-visa-waiver-program.

Second, Section 5(a) temporarily suspends the refugee program as to refugees from *all* countries, not just the seven countries identified in Section 3(c). Section 5(b) further provides that, when the refugee program resumes, the Secretary of State shall "make changes, to the extent permitted by law, to prioritize refugee claims" by members of persecuted minority religions. Laws that "give relief to a religious minority" "are in tune with the Bill of Rights," *Kong v. Scully*, 341 F.3d 1132, 1141 (9th Cir. 2003), and Section 5(b) of the Order applies equally to *all* religious minorities seeking refugee status "on the basis of religious-based persecution." As the district court recognized in *Louhghalam*, Section 5(b) "could be invoked to give

preferred refugee status to a Muslim individual in a country that is predominantly Christian." Order 13.[2]

Accordingly, as the district court held in *Louhghalam*, Order 13, the Executive Order is "neutral with respect to religion." And under *Mandel*, the Order's national-security basis for the temporary suspension amply establishes its constitutionality. *See also Louhghalam*, Order 18-19. The State asserts (Response 10) that the Court should "look behind" the stated basis for the Order to probe its subjective motivations because the State claims to have made "an affirmative showing of bad faith." *Din*, 135 S. Ct. at 2141 (Kennedy, J., concurring). But the State's allegations of bad faith are not meaningfully different from the allegations deemed insufficient in *Mandel*, where the plaintiff asserted that the visa was denied because of the alien's advocacy of revolutionary Marxism and world communism, rather than his failure to comply with the terms of prior visas. 408 U.S. at 756; *see Din*, 135 S. Ct. at 2141-2142 (Kennedy, J., concurring) (endorsing *Mandel*). And here, the State asks the courts to take the extraordinary step of second-guessing a formal national-security judgment made by the President himself pursuant to broad grants of statutory authority.

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[2] Washington relies on *Larson v. Valente*, 456 U.S. 228 (1982), but that holding is limited to cases where a government statute or practice "explicitly discriminates against a certain religious group." *Sep. of Church & State Comm. v. City of Eugene*, 93 F.3d 617, 623 (9th Cir. 1996) (O'Scannlain, J., concurring).

ii. The State also argues (Response 14-18) that the order violates aliens' procedural due process rights. But as explained above, aliens outside the United States have no due process rights with respect to their attempt to gain entry into this country. And regardless, "notice and an opportunity to respond" is not required where, as here, the challenged rule reflects a categorical judgment. *Cf. Bi Metallic Inv. Co. v. State Bd. Of Equalization*, 239 U.S. 441, 445 (1915) ("[w]here a rule of conduct applies to more than a few people," individuals affected do not "have a constitutional right to be heard before a matter can be decided"); *see also Din*, 135 S. Ct. at 2144 (Breyer, J., dissenting) (citing *Bi Metallic*).

3. The State argues (Response 7-8) that the injunction does not impose any irreparable harm. But the injunction reinstates procedures that the President determined should be temporarily suspended in the interest of national security. Order § 1; *see also id.* § 2. The Order temporarily suspends entry of aliens from seven countries previously identified by Congress and the Executive Branch as raising heightened terrorism-related concerns. The suspension terminates in 90 days, once concerns relating to screening practices can be addressed, as necessary "to prevent infiltration [into this Nation] by foreign terrorists or criminals," Order § 3(c). Similarly, the temporary suspension of the U.S. refugee program will be lifted after 120 days, once the Secretaries of State and Homeland Security, in consultation with the Director of National Intelligence, 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." Order § 5(a). The potential national-security risks and harms resulting from the compelled application of procedures that the President has determined must be reexamined, for the purpose of ensuring an adequate measure of protection for the Nation, cannot be undone. Nor can the effect on our constitutional separation of powers.

4. Regardless of the plaintiff's likelihood of success, the injunction court is, at a minimum, vastly overbroad. The State has made clear that it is seeking to protect LPRs and other nationals from the seven identified countries who were previously admitted to the United States and are either temporarily abroad or are here now and wish to travel outside this country—*not* aliens who are attempting to enter the country for the first time. *See* Response 11-12, 15-16; Transcript 7-8, 15-16. That makes sense because the latter class of aliens have no constitutional rights with respect to entry into the country—a point the State largely conceded below. *See* Transcript 7, 15. The injunction, however, bars *all* applications of Section 3(c)—even as to aliens who have never previously visited this country, and have not yet begun the process of obtaining a visa. It also bars all applications of Section 5, even though there is no indication that any of the aliens affected by the temporary

suspension of the refugee program have been previously admitted to this country.[3] That is plainly impermissible. At most, the injunction should be limited to the class of individuals on whom the State's claims rest—previously admitted aliens who are temporarily abroad now or who wish to travel and return to the United States in the future.

[3] Indeed, the district court even enjoined a provision that will not go into effect for 120 days, a provision as to which even plaintiffs conceded that their challenge is not ripe for review. Transcript 15 (Section 5(b) claim "does not necessarily require immediate injunction").

## CONCLUSION

For the foregoing reasons, defendants respectfully request a stay pending appeal of the district court's February 3, 2017 injunctive order.

Respectfully submitted,

/s/ Edwin S. Kneedler
EDWIN S. KNEEDLER*
*Deputy Solicitor General*

AUGUST E. FLENTJE
*Special Counsel to the Assistant Attorney General*
DOUGLAS N. LETTER
SHARON SWINGLE
H. THOMAS BYRON III
LOWELL V. STURGILL JR.
CATHERINE DORSEY
*Attorneys, Appellate Staff*
*Civil Division, Room 7241*
*U.S. Department of Justice*
*950 Pennsylvania Ave., NW*
*Washington, DC 20530*



* The Acting Solicitor General and Acting Assistant Attorney General have refrained from signing this brief, out of an abundance of caution, in light of a last-minute filing of an amicus brief by their former law firm.

**CERTIFICATE OF SERVICE**

I hereby certify that on February 6, 2017, I filed the foregoing motion with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. All participants in the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

s/ Lowell V. Sturgill Jr.
Lowell V. Sturgill Jr.

## CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Reply in Support of Emergency Motion for Stay Pending Appeal complies with the type-volume limitation of Fed. R. App. P. 27 because it contains 2,599 words. This Motion complies with the typeface and the type style requirements of Fed. R. App. P. 27 because this brief has been prepared in a proportionally spaced typeface using Word 14-point Times New Roman typeface.

s/ Lowell V. Sturgill Jr.
Lowell V. Sturgill Jr.

**From:** Navas, Nicole (OPA)
**Sent:** Wednesday, February 08, 2017 6:45 PM
**To:** Andrea Noble
**Subject:** RE: Darweesh v. Trump case and names of those detained?

Hi Andrea,
The Justice Department declines to comment on this motion filed yesterday in this pending litigation. (The government's response is due February 21)

Thank you,

Nicole A. Navas
Spokesperson/Public Affairs Specialist
U.S. Department of Justice (DOJ)

**From:** Andrea Noble [mailto:anoble@washingtontimes.com]
**Sent:** Wednesday, February 08, 2017 3:51 PM
**To:** Carr, Peter (OPA) <Peter.Carr@usdoj.gov>; Nicole Navas <nicole.navas@usdoj.gov>
**Subject:** Darweesh v. Trump case and names of those detained?

Hello,
I'm following up on the ACLU's motion in the Darweesh case in NY seeking to force the Trump admin to turn over names of affected individuals who were detained or deported after the extreme vetting executive order took effect.
Has the admin. been able to identify those affected, does it intend to turn over names of people identified?

--
Andrea Noble
The Washington Times
Phone (b) (6)
Twitter: anobleDC

**From:** Navas, Nicole (OPA)
**Sent:** Friday, February 10, 2017 11:42 AM
**To:** pfeiffer@dailycaller.com
**Subject:** RE: Press inquiry

Hi Alex,
We decline to comment beyond the government's public filings and arguments in court in these pending litigations. Thank you

Nicole A. Navas
Spokesperson/Public Affairs Specialist
U.S. Department of Justice (DOJ)

**From:** Alex Pfeiffer [mailto:pfeiffer@dailycaller.com]
**Sent:** Thursday, February 9, 2017 6:15 PM
**To:** Press@usdoj.gov
**Subject:** Press inquiry

Hi - Hans Bader, a Washington-area attorney, emailed DOJ assistant director Sharon Swingle on Monday about the mistake by Judge James Robart that no terrorists have come from the seven countries affected by Trump's executive order. During the hearing Tuesday, Judge William Canby repeated this falsehood to DOJ attorney August Flentje. Who said, "These proceedings have been moving quite fast and we're doing the best we can."

Why wasn't Flentje prepared to answer this?

Thanks,
Alex Pfeiffer
Reporter
The Daily Caller

**From:** Navas, Nicole (OPA)
**Sent:** Monday, February 13, 2017 3:06 PM
**To:** Nicole.Navas@usdoj.gov
**Subject:** State of Washington; State of Minnesota vs. Donald Trump
**Attachments:** (76) Defs.' Feb. 13 Memorandum.pdf

Good afternoon,
Attached is the government's filed memorandum in the Western District of Washington addressing the Court's question about whether the Ninth Circuit construed the district court's order as a TRO or PI. The Justice Department declines to comment beyond the government's filing in this pending litigation.

Thank you,

Nicole A. Navas
Spokesperson/Public Affairs Specialist
U.S. Department of Justice (DOJ)

The Honorable James L. Robart

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

| | |
|---|---|
| STATE OF WASHINGTON and STATE OF MINNESOTA,<br><br>Plaintiffs,<br><br>v.<br><br>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,<br><br>Defendants. | No. 2:17-cv-00141 (JLR)<br><br>**DEFENDANTS' MEMORANDUM IN RESPONSE TO FEBRUARY 10, 2017 MINUTE ORDER** |

In a February 10, 2017 Minute Order (ECF No. 74), the Court instructed the parties to file a memorandum discussing "whether the Ninth Circuit has construed the court's temporary restraining order ("TRO") (TRO (Dkt. # 52)) as a preliminary injunction, such that additional briefing and possible evidence on a motion for preliminary injunction is no longer required in the district court . . . or whether the parties should submit additional briefing and evidence in the district court concerning the issue of a preliminary injunction." Defendants' position is set forth below.



**U.S. DEPARTMENT OF JUSTICE**
**Civil Division, Federal Programs Branch**
**20 Massachusetts Ave., NW**
**Washington, DC 20530**
**Tel: (202) 305-8902**

On February 3, 2017, this Court entered a nationwide injunction barring enforcement of sections 3(c), 5(a)-(c), and 5(e) of the Executive Order: Protecting the Nation from Foreign Terrorist Entry into the United States. The injunctive order contained no explicit expiration date. The Court's order directed the parties to jointly propose a briefing schedule for plaintiffs' motion for preliminary injunction, and after the parties submitted a joint status report, the Court directed that plaintiffs' forthcoming motion for preliminary injunction be filed no later than February 9, 2017.

The day after this Court entered its injunctive order, defendants noticed their appeal of the order and also moved the Ninth Circuit to stay the injunctive order pending resolution of the appeal. A panel of the Ninth Circuit denied defendants' motion for a stay pending appeal on February 9, 2017. In doing so, the court determined that it had appellate jurisdiction over the stay motion because "the district court's order possesses the qualities of an appealable preliminary injunction." *Washington v. Trump*, No. 17-35105, slip op. at 7, Dkt. No. 134 (9th Cir. 2017); *see id.* at 7-8 ("[W]e believe . . . that the TRO should be considered to have the qualities of a reviewable preliminary injunction."). The court noted, however, that this "conclusion . . . does not preclude consideration of appellate jurisdiction at the merits stage of this appeal." *Id.* at 8 n.2. The court set a briefing schedule for the merits stage of the appeal, which concludes on March 29, 2017. *See Washington*, No. 17-35105, Order at 2, Dkt. No. 135 (9th Cir. 2017). Later on February 9, plaintiffs declined to file their motion for preliminary injunction.

On February 10, 2017, the parties were notified that a Ninth Circuit judge had *sua sponte* requested a vote on whether to reconsider *en banc* the panel's order denying defendants' motion for a stay pending appeal. *See Washington*, No. 17-35105, Order, Dkt. No. 139 (9th Cir. 2017).



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**Civil Division, Federal Programs Branch**
**20 Massachusetts Ave., NW**
**Washington, DC 20530**
**Tel: (202) 305-8902**

The parties have been directed to file briefs on whether reconsideration *en banc* is appropriate by February 16, 2017.

Further proceedings in the Ninth Circuit will likely inform what additional proceedings on a preliminary injunction motion are necessary in district court. Accordingly, at this time, defendants believe the appropriate course is to postpone any further proceedings in the district court. Defendants respectfully request that they be permitted to file a status report with the Court no later than two business days after the Ninth Circuit decides whether to hear defendants' stay motion *en banc*. The status report will update the Court on the Ninth Circuit's proceedings and advise the Court of any update on defendants' position regarding preliminary injunction proceedings in light of the Ninth Circuit's actions.

DATED: February 13, 2017

Respectfully submitted,

CHAD A. READLER
Acting Assistant Attorney General

JENNIFER RICKETTS
Director, Federal Programs Branch

JOHN R. TYLER
Assistant Director, Federal Programs Branch

*/s/ Michelle R. Bennett*
MICHELLE R. BENNETT
DANIEL SCHWEI
ARJUN GARG
Trial Attorneys
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Avenue, NW
Washington, DC 20530
Tel: (202) 305-8902
Fax: (202) 616-8470
Email: michelle.bennett@usdoj.gov
arjun.garg@usdoj.gov
*Attorneys for Defendants*

**CERTIFICATE OF SERVICE**

I hereby certify that on February 13, 2017, I electronically filed the foregoing Memorandum in Response to February 10, 2017 Minute Order using the Court's CM/ECF system, causing a notice of filing to be served upon all counsel of record.

Dated: February 13, 2017 */s/ Michelle R. Bennett*



**U.S. DEPARTMENT OF JUSTICE**
**Civil Division, Federal Programs Branch**
**20 Massachusetts Ave., NW**
**Washington, DC 20530**
**Tel: (202) 305-8902**

**From:** Navas, Nicole (OPA)
**Sent:** Friday, February 24, 2017 12:56 PM
**To:** Navas, Nicole (OPA)
**Subject:** State of Washington; State of Minnesota vs. Donald Trump
**Attachments:** Document (78).pdf; Document (79).pdf

Hi,
Please see attached government's just filed motion to hold proceedings in the 9th Circuit in abeyance. The Department declines to comment beyond the filing in this pending litigation. For guidance in your reporting: the Chief Judge has stayed en banc proceedings, but the court (as per the attached scheduling order) did not stay the briefing schedule entered by the panel, and the government's opening brief on appeal is currently due on Friday, March. 3. Thank you

Nicole A. Navas
Spokesperson/Public Affairs Specialist
U.S. Department of Justice (DOJ)

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

STATE OF WASHINGTON and STATE OF MINNESOTA,
Plaintiffs-Appellees,

ALI PLAINTIFFS; JAMES J. O'HAGAN,
Intervenors-Pending,

v.

DONALD J. TRUMP, President of the United States; U.S. DEPARTMENT OF HOMELAND SECURITY; REX W. TILLERSON, Secretary of State; JOHN F. KELLY, Secretary of the Department of Homeland Security; UNITED STATES OF AMERICA,
Defendants-Appellants.

No. 17-35105

**DEFENDANTS-APPELLANTS' MOTION TO HOLD PROCEEDINGS IN ABEYANCE**

Defendants-appellants Donald J. Trump *et al.* respectfully move this Court to hold proceedings in abeyance pending further order of the Court. Counsel for plaintiffs-appellees oppose this motion. In support of this motion, counsel states as follows:

1. This appeal is from an injunction entered by the U.S. District Court for the Western District of Washington, barring defendants-appellants from enforcing Sections 3(c) and 5(a), (b), and (c) of Executive Order No. 13,769, and from

enforcing Section 5(e) of the Executive Order "to the extent [it] purports to prioritize refugee claims of certain religious minorities."

2. On February 9, 2017, a panel of this Court denied defendants-appellants' motion for an emergency stay of the injunction pending appeal. The panel also issued an order that, *inter alia*, set a briefing schedule for appeal, pursuant to which the opening brief is due March 3, 2017. A judge of the Court subsequently called *sua sponte* for a vote as to whether the order denying a stay should be reconsidered by the en banc Court, and the Court ordered the parties to file briefs setting forth their respective positions on whether this matter should be reconsidered en banc.

3. Defendants-appellants filed a supplemental brief on en banc consideration on February 16, 2017. The supplemental brief explained that "the United States does not seek en banc review of the merits of the panel's ruling. Rather than continuing this litigation, the President intends in the near future to rescind the Order and replace it with a new, substantially revised Executive Order * * *." Defendants-appellants asked the Court to "hold its consideration of the case until the President issues the new Order and then vacate the panel's preliminary decision."

4. On February 16, 2017, the Court issued an order staying en banc proceedings before the Court pending further order of the Court. The Court's order referenced the United States' "representat[ion] to the Court that the President intends

to issue a new Executive Order" and its request that the Court "hold its consideration of the case until the President issues the new Order."

5. There is no need at this time for immediate briefing of the appeal as contemplated by the February 9 order. Although the Court's February 16 order did not specifically address the earlier order setting a briefing schedule, the stay of en banc proceedings reflects the appropriateness of awaiting further developments before committing further resources of the parties or the Court to appellate litigation. Defendants-appellants respectfully request that the Court hold all proceedings on appeal in abeyance pending further order of the Court.

6. Counsel for the plaintiffs-appellees, Ann Egeler, has indicated that the plaintiffs-appellees oppose this motion.

## CONCLUSION

Defendants-appellants respectfully request that the Court hold proceedings in this appeal in abeyance pending further order of the Court.

Respectfully submitted,

/s/ Sharon Swingle
SHARON SWINGLE
(202) 353-2689
Attorney, Appellate Staff
Civil Division, Room 7250
Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530-0001

FEBRUARY 2017

**CERTIFICATE OF SERVICE**

I hereby certify that on February 24, 2017, I filed the foregoing Defendants-Appellants' Motion to Hold Proceedings in Abeyance and served opposing counsel through the CM/ECF system.

/s/ Sharon Swingle
SHARON SWINGLE
Counsel for Defendants-Appellants

## CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing motion complies with the type-volume limitations of Fed. R. App. P. 27(d)(2) because it contains 471 words, excluding the portions of the motion identified in Fed. R. App. P. 32(f).

/s/ Sharon Swingle
SHARON SWINGLE
Counsel for Defendants-Appellants

FILED

FEB 09 2017

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

| | |
|---|---|
| STATE OF WASHINGTON and STATE OF MINNESOTA,<br><br>Plaintiffs-Appellees,<br><br>v.<br><br>DONALD J. TRUMP, President of the United States; et al.,<br><br>Defendants-Appellants. | No. 17-35105<br><br>D.C. No. 2:17-cv-00141<br>Western District of Washington, Seattle<br><br>ORDER |

Before: CANBY, CLIFTON, and FRIEDLAND, Circuit Judges.

The motions for leave to file amicus curiae briefs, to file a substitute or amended amicus curiae brief, and for an extension of time to file an amicus curiae brief, are granted (Docket Entry Nos. 19, 20, 22, 24, 26, 43, 49, 53, 55, 58, 62, 65, 66, 68, 69, 76, 79, 82, 87, 90, 91, 103, 113, 132). In light of the filing of a corrected amicus brief, the motions at Docket Entry Nos. 23 and 25 are denied as moot.

David Golden's motion to intervene is denied (Docket Entry No. 112).

Any motion for reconsideration or reconsideration en banc of the court's February 9, 2017 order denying the motion for stay is due within 14 days. *See* 9th

Cir. R. 27-10(a)(2). If a motion for reconsideration or reconsideration en banc is filed, a response to the motion shall be filed within 7 days after service of the motion. *See* 9th Cir. R. 27-10(b).

The following briefing schedule shall govern this appeal: the opening brief is due March 3, 2017; the answering brief is due March 24, 2017; and the optional reply brief is due March 29, 2017.

**From:** Navas, Nicole (OPA)
**Sent:** Tuesday, March 14, 2017 7:44 PM
**To:** Navas, Nicole (OPA)
**Subject:** State of Washington; State of Minnesota vs. Donald Trump
**Attachments:** (146) Opp'n to Mot. to Enforce PI.PDF

Good evening,
Please see attached the government's opposition to plaintiffs' emergency motion to enforce preliminary injunction. The Department declines to comment beyond the filing. Thank you

Nicole A. Navas
Spokesperson/Public Affairs Specialist
U.S. Department of Justice (DOJ)

The Honorable James L. Robart

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

STATE OF WASHINGTON and STATE OF MINNESOTA,

Plaintiffs,

v.

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.

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

**DEFENDANTS' OPPOSITION TO PLAINTIFFS' EMERGENCY MOTION TO ENFORCE PRELIMINARY INJUNCTION**

Noted For Consideration:
March 14, 2017



**U.S. DEPARTMENT OF JUSTICE**
**Civil Division, Federal Programs Branch**
**20 Massachusetts Ave., NW**
**Washington, DC 20530**
**Tel: (202) 305-8902**

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**U.S. DEPARTMENT OF JUSTICE**
**Civil Division, Federal Programs Branch**
**20 Massachusetts Ave., NW**
**Washington, DC 20530**
**Tel: (202) 305-8902**

## INTRODUCTION

Plaintiffs, the States of Washington and Minnesota, assert that this Court's existing preliminary injunction prohibiting the enforcement of five particular sections of Executive Order No. 13,769 should be read as extending to the Government's new Executive Order, which was developed and promulgated following the Ninth Circuit's invitation for the Executive Branch to revise the prior Executive Order. *See Washington v. Trump*, 847 F.3d 1151, 1167 (9th Cir. 2017). Plaintiffs are wrong: this Court's order, by its plain terms, does not apply to the New Executive Order. And courts routinely hold that relief granted as to prior policies does not extend to new policies that are substantially different.

Here, the New Executive Order is undoubtedly substantially different, because it addresses *all* of the claims Plaintiffs raised in support of their motion for a temporary restraining order, as well as the concerns expressed by the Ninth Circuit. Thus, the Court's injunctive order does not, and should not, apply to the New Executive Order. Finally, to the extent there is even any doubt, the Court's prior order should not be construed as enjoining the New Executive Order given that the New Executive Order is a lawful exercise of the President's congressionally delegated authority.

## I. THE COURT'S PRIOR ORDER, BY ITS OWN TERMS, DOES NOT APPLY TO THE NEW EXECUTIVE ORDER.

Plaintiffs accuse the Government of seeking to evade this Court's injunction by issuing the New Executive Order. *See* Emergency Mot. to Enforce Prelim. Inj. ("Pls.' Mot."), at 1, ECF No. 119. Remarkably, however, Plaintiffs nowhere acknowledge the actual *text* of the Court's prior order, which is of course the starting point for determining its scope. *Cf. Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 150 51 (2009) ("[A] court should enforce a court order, a public



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**Civil Division, Federal Programs Branch**
**20 Massachusetts Ave., NW**
**Washington, DC 20530**
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governmental act, according to its unambiguous terms."); Fed. R. Civ. P. 65(d)(1) ("Every order granting an injunction and every restraining order must . . . state its terms specifically[.]").

The Court's injunctive order expressly applied only to Executive Order No. 13,769. The order defined the phrase "Executive Order" as referring to "the Executive Order of January 27, 2017, entitled 'Protecting the Nation from Foreign Terrorist Entry into the United States[.]'" ECF No. 52, at 2. The prohibitions on the Government's conduct were then expressly framed with reference to that particular Executive Order. *See id.* at 5 ("Federal Defendants . . . are hereby ENJOINED and RESTRAINED from . . . [e]nforcing Section 3(c) of *the Executive Order*[.]" (emphasis added)). The plain terms of the injunction thus prohibited only actions taken pursuant to that particular Executive Order, and the Government has complied fully with that prohibition. But the Court's injunction did not prohibit actions taken pursuant to other sources of authority, including any revised or replacement Executive Orders.

Notably, the Court's injunction did not purport to restrain any underlying activities or conduct. For example, the order did not state that the Government must continue processing refugee admissions, or that the Government cannot impose any type of temporary suspension on the entry of foreign nationals. Rather, the Court only enjoined those actions insofar as they were taken pursuant to particular sections of Executive Order No. 13,769. That stands in contrast to other injunctive orders entered by courts, which did purport to regulate the Government's primary conduct. *See, e.g.*, Decision & Order at 2, *Darweesh v. Trump*, No. 17-cv-480 (AMD) (E.D.N.Y. Jan. 28, 2017), ECF No. 8 (enjoining Government officials "from, in any manner or by any means, removing individuals with refugee applications approved . . . as part of the U.S. Refugee Admissions Program, holders of valid immigrant and non-immigrant visas, and other individuals



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from Iraq, Syria, Iran, Sudan, Libya, Somalia, and Yemen legally authorized to enter the United States").

Plaintiffs are wrong, therefore, to frame the issue as "[w]hen a court orders a defendant to stop certain conduct, the defendant cannot proceed by stopping only some of the enjoined conduct." Pls.' Mot. at 6. Defendants do not dispute that a partial violation of an injunction is still a violation. But Plaintiffs' framing simply begs the question by assuming that the New Executive Order's provisions do, in fact, qualify as "enjoined conduct" under the terms of this Court's injunction. The scope of that injunction is the very issue that Plaintiffs ask this Court to decide. And based on its plain terms, that injunction prohibits only enforcement of certain sections of a particular Executive Order. The injunction does not prohibit any underlying conduct, nor does it prevent the Government from developing and enforcing a substantially different Executive Order. *Cf. Pratt v. Rowland*, 917 F.2d 566 (9th Cir. 1990) (table) (holding that an injunction requiring state to transfer inmate out of a prison did not restrict the state's ability to transfer the inmate to that prison again in the future).

Plaintiffs' motion argues that the scope of the Court's order must be interpreted not only by its "strict letter," but also according to "the spirit of the injunction[.]" Pls.' Mot. at 6 (quoting *Inst. of Cetacean Research v. Sea Shepherd Conservation Soc'y*, 774 F.3d 935, 949 (9th Cir. 2014)). As an initial matter, that gets the law exactly backwards when it comes to interpreting injunctions affecting Government policies. *See Clark v. Coye*, 60 F.3d 600, 604 (9th Cir. 1995) (holding that the district court abused its discretion in concluding that its prior injunction applied to a new state program, because "[w]hen the Department is expected to conform its behavior to the injunction . . . , that injunction must be clear enough on its face to give the Department notice that the behavior is forbidden").



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In any event, the "spirit" of the injunction here only confirms that this Court's injunction does not extend to the subsequently issued New Executive Order. The Ninth Circuit expressly invited the "political branches . . . to make appropriate distinctions" and revise the scope of the Executive Order. *Washington*, 847 F.3d at 1167. That invitation is wholly inconsistent with Plaintiffs' argument that, even after the Executive Branch substantially revised the Executive Order, the Government nonetheless remains enjoined from enforcing the New Executive Order. Moreover, this Court likewise made clear that its injunction was addressing only a "narrow question" about "whether it is appropriate to enter a TRO against *certain actions* taken by the Executive *in the context of this specific lawsuit*." ECF No. 52, at 7 (emphases added). Plainly the Court's injunction does not extend to the future Executive Order, which did not yet exist, much less was it part of "this specific lawsuit" at that time. *Id.*

Finally, the injunction's narrow scope is further confirmed by Plaintiffs' own actions and this Court's Order of March 10, 2017. *See* ECF No. 117. After reviewing Defendants' Notice of Filing of Executive Order (ECF No. 108) and Plaintiffs' Responses to that Notice (ECF Nos. 113, 114), the Court issued an order "declin[ing] to resolve the apparent dispute between the parties concerning the applicability of the court's injunctive order to the New Executive Order until such time as an amended complaint that addresses the New Executive Order is properly before the court." ECF No. 117, at 3. Plaintiffs thereafter sought leave to file a Second Amended Complaint challenging the New Executive Order. *See* ECF No. 118.

These events wholly undermine Plaintiffs' theory that the Court's injunction applies to the New Executive Order. As this Court already noted, up until yesterday Plaintiffs had not even filed a Complaint challenging the New Executive Order. *See* ECF No. 117, at 3. *A fortiori*, then, the Court's prior injunction cannot apply to the New Executive Order that did not yet exist and



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was not yet being challenged in "this specific lawsuit." ECF No. 52, at 7; *see also John B. Hull, Inc. v. Waterbury Petrol. Prods., Inc.*, 588 F.2d 24, 30 (2d Cir. 1978) ("A decree cannot enjoin conduct about which there has been no complaint[.]" (modifications omitted) (quoting *United States v. Spectro Foods Corp.*, 544 F.2d 1175, 1180 (3d Cir. 1976))); *PBM Prods., LLC v. Mead Johnson & Co.*, 639 F.3d 111, 128 (4th Cir. 2011) (an injunction may "address only the circumstances of the case")). By its plain terms, therefore, this Court's prior injunction does not and cannot extend to the New Executive Order.

## II. JUDICIAL RELIEF ENTERED AS TO AN OLD POLICY DOES NOT EXTEND TO A NEW POLICY.

The limited scope of this Court's injunction is consistent with well-established case law holding that judicial relief entered as to an old government policy does not carry over to a new, substantially revised version of that policy. *See, e.g.*, *Fusari v. Steinberg*, 419 U.S. 379 (1975); *Diffenderfer v. Cent. Baptist Church of Miami, Fla., Inc.*, 404 U.S. 412 (1972).

Plaintiffs seek to discount these cases through strained interpretations of them. With respect to *Fusari*, Plaintiffs assert that "[t]he case is an example of appellate restraint" in which the Supreme Court "declined to rule in the first instance" on a recently revised statutory scheme. Pls.' Mot. at 11. But the Supreme Court did not simply remand the case to the district court for additional proceedings regarding the new scheme; it also *vacated* the district court's judgment as to the old scheme. *See Fusari*, 419 U.S. at 390. Thus, the case squarely holds that when a new policy is enacted, judicial relief as to the old policy is no longer effective.

Similarly, the Court in *Diffenderfer* held that a judgment entered as to an old policy must be vacated once the policy challenged in the complaint has been replaced. *See* 404 U.S. at 414-15 ("The only relief sought in the complaint was a declaratory judgment that the now repealed [statute] is unconstitutional as applied to a church parking lot . . . and an injunction against its



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application to said lot. This relief is, of course, inappropriate now that the statute has been repealed."). The Court vacated the judgment as to the old policy, notwithstanding the plaintiffs' potential desire to challenge the new policy through an amended complaint. *See id.* at 415. Again, that holding is directly applicable here. At the time this Court issued its injunction, Plaintiffs' operative complaint challenged only Executive Order No. 13,769. But that Executive Order is being revoked and replaced as of 12:01 a.m., eastern daylight time on March 16, 2017. Although Plaintiffs here seek to challenge the New Executive Order through their Second Amended Complaint, the Court's prior relief as to the Old Executive Order does not apply to the New Executive Order. *See id.* ("[W]e vacate the judgment of the District Court and remand the case to the District Court with leave to the appellants to amend their pleadings.").

In short, Plaintiffs' attempts to undermine these two cases are unpersuasive. These cases (and others) make clear that judicial relief entered against a prior policy does not apply to a new, substantially revised policy. *See also, e.g.*, *Chem. Producers & Distributors Ass'n v. Helliker*, 463 F.3d 871, 875 (9th Cir. 2006) ("Where the law has been 'sufficiently altered so as to present a substantially different controversy from the one the District Court originally decided,' there is 'no basis for concluding that the challenged conduct is being repeated.'" (modifications omitted) (quoting *Ne. Fla. Chapter of Associated Gen. Contractors of Am. v. City of Jacksonville*, 508 U.S. 656, 662 n.3 (1993))). Here, as discussed below, the New Executive Order undoubtedly raises a distinct set of issues from the claims Plaintiffs sought to bring against the Old Executive Order.

## III. THE POLICIES IN THE NEW EXECUTIVE ORDER ARE SUBSTANTIALLY DIFFERENT THAN THOSE IN THE OLD EXECUTIVE ORDER.

Far from merely "renumbering the polic[ies] enjoined" in the Old Executive Order, Pls.' Mot. at 8, the New Executive Order explicitly revokes the Old Executive Order and replaces it



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with substantially revised policies. The changes made in the New Executive Order address *all* of the specific claims raised by Plaintiffs in their earlier effort to enjoin the Old Executive Order, as well as the concerns expressed by the Ninth Circuit in declining to stay this Court's injunction. Because the New Executive Order is substantially different than the Old Executive Order, the Court's injunction does not extend to the New Executive Order and Defendants should not be prohibited from enforcing it on its effective date as planned.

In seeking a temporary restraining order against enforcement of the Old Executive Order, Plaintiffs challenged four discrete aspects of that Executive Order. *See* ECF No. 19-1. With respect to the 90-day suspension of entry for foreign nationals of the seven designated countries, Plaintiffs claimed, first, that the provision unlawfully discriminated against "green-card holders currently residing in the United States on the basis of national origin," *id.* at 6, and, second, that the provision violated the due process rights of "legal permanent residents," "visaholders," and individuals seeking asylum, *id.* at 14-18. With respect to the Old Executive Order's refugee provisions, Plaintiffs claimed, first, that the Old Executive Order impermissibly "single[d] out refugees from Syria for differential treatment," *id.* at 7, and, second, that it discriminated based on religion by prioritizing religious-persecution claims where "the religion of the individual is a minority religion in the individual's country of nationality," *id.* at 7; *see id.* 12-13.

Plaintiffs reiterated the scope of these same claims in the Ninth Circuit. *See* States' Resp. to Emergency Mot. Under Circuit Rule 27-3 for Admin. Stay & Mot. for Stay Pending Appeal ("Pls.' Appellate Br."), *Washington v. Trump*, No. 17-35105, ECF No. 28-1 (9th Cir. Feb. 6, 2017). Plaintiffs invoked the due process rights of "lawful permanent residents" and "visaholders" in challenging the 90-day suspension of entry. *Id.* at 14-16; *id.* at 10 ("This case . . . involves longtime residents who are here and have constitutional rights."); *see also*



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*Washington*, 847 F.3d at 1165 (summarizing plaintiffs' due process arguments as relating solely to "lawful permanent residents," "non-immigrant visaholders," and "refugees seeking asylum"). And, in challenging the Old Executive Order's refugee provisions, Plaintiffs attacked the instruction to prioritize religious-persecution claims of refugees that practice minority religions. Pls.' Appellate Br. at 20; *see id.* at 18 ("The Order's refugee provisions explicitly distinguish between members of religious faiths," "favor[ing] Christian refugees at the expense of Muslims."); *see also Washington*, 847 F.3d at 1167-68 (noting that Plaintiffs' challenge to "sections 5(b) and 5(e) of the [Old Executive] Order," which related to prioritizing religious-persecution claims of refugees that practice minority religions, "present[ed] significant constitutional questions").

Responding to the Ninth Circuit's invitation to "rewrite the Executive Order" to "make appropriate distinctions," *id.* at 1167 and at the joint urging of the Attorney General and Secretary of Homeland Security[1] the President issued the New Executive Order. The New Executive Order contains substantially revised policies that address all of the claims Plaintiffs raised in support of their motion for a temporary restraining order, as well as the concerns expressed by the Ninth Circuit. The New Executive Order's 90-day suspension of entry does not apply to individuals whose alleged due process rights Plaintiffs previously asserted: lawful permanent residents, visaholders, and foreign nationals who are in the United States on the effective date of the New Executive Order. Order § 3(a)-(b). And the New Executive Order makes clear that it does not "limit the ability of an individual to seek asylum." *Id.* § 12(e). The New Executive Order also omits the refugee-related provisions of the Old Executive Order that

[1] Joint Ltr. to President (Mar. 6, 2017), https://www.dhs.gov/sites/default/files/publications/17_0306_S1_DHS-DOJ-POTUS-letter_0.pdf.



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Plaintiffs claimed were problematic. The New Executive Order does not contain a Syria-specific refugee provision, and it no longer instructs agencies to prioritize the religious-persecution claims of refugees practicing minority religions.[2]

Plaintiffs attempt to make much of the Ninth Circuit's statement that Plaintiffs "have *potential* claims regarding *possible* due process rights of . . . [visa] applicants who have a relationship with a U.S. resident or an institution that might have rights of its own to assert." Pls.' Mot. at 8-9 (emphasis added). Even assuming United States residents or institutions had due process rights in another's visa application, *but see Kerry v. Din*, 135 S. Ct. 2128, 2131 (2015) (plurality opinion) ("There is no such constitutional right."); *Santos v. Lynch,* 2016 WL 3549366, at *3-4 (E.D. Cal. June 29, 2016) (refusing to extend *Din* to relationship between parent and adult child); *L.H. v. Kerry,* No. 14-06212, slip op. at 3-4 (C.D. Cal. Jan. 26, 2017) (same for daughter, son-in-law, and grandson), the New Executive Order addresses this concern by providing a waiver process that is more robust and specific than that provided in the Old Executive Order, that is integrated into the visa application process, and that provides whatever process is due, *see* Order § 3(c).

The New Executive Order specifies that consular officers (and the U.S. Customs and Border Protection Commissioner) may grant case-by-case waivers where denying entry "would cause undue hardship" and "entry would not pose a threat to national security and would be in the national interest." *Id.* To guide consular officers' exercise of discretion, the New Executive Order provides a nonexhaustive list of circumstances where a waiver could be considered. *Id.*

[2] The New Executive Order contains additional substantive changes as well. Among other things, it removes Iraq from the list of countries whose nationals are covered by the 90-day suspension on entry, and it provides a detailed explanation of the risks it seeks to address. *See generally* Defs.' Notice of Filing of Executive Order, ECF No. 108.



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This list expands significantly on the Old Executive Order's waiver provisions. Finally, the New Executive Order makes clear that requests for waivers will be processed "as part of the visa issuance process," *id.*, such that "[a]n individual who wishes to apply for a waiver should apply for a visa and disclose during the visa interview any information that might qualify the individual for a waiver," U.S. Dep't of State, Executive Order on Visas (Mar. 6, 2017), https://travel.state.gov/content/travel/en/news/important-announcement.html.

Thus, contrary to Plaintiffs' assertion, the waiver provisions in the New Order are not "materially identical" to those in the Old Executive Order. Pls.' Mot. at 10. Indeed, the changes made in the New Executive Order eliminate the only potential shortcomings the Ninth Circuit identified in the Old Executive Order's waiver provisions. *See Washington*, 847 F.3d at 1169 (stating that the government had not explained how those provisions "would function in practice," including "who would make th[e] determination, and when"). And the new waiver provisions provide more than ample process for the "*potential* claims regarding *possible* due process rights of . . . [visa] applicants" about whom Plaintiffs have expressed concern *i.e.*, those with a "relationship with a U.S. resident or an institution." *Washington*, 847 F.3d at 1166 (emphasis added); *see also* Pls. Mot. at 7.

In short, the policy changes in the New Executive Order are far from "minor." Pls.' Mot. at 8. They instead reflect substantial modifications that address *all* of the particular challenges Plaintiffs brought when seeking expedited relief against the Old Executive Order. *Cf. White v. Lee*, 227 F.3d 1214, 1243 (9th Cir. 2000) (holding that prior claim for injunctive relief was moot once defendant agency issued a new policy that "addresses all of the objectionable measures that [government] officials took against the plaintiffs in this case"). At the very least, the New Executive Order's revisions reflect that "the law has been 'sufficiently altered so as to present a



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substantially different controversy from the one the District Court originally decided[.]'" *Helliker*, 463 F.3d at 875. This Court's injunction, therefore, does not prevent Defendants from enforcing the New Executive Order beginning on its effective date.

## IV. THE NEW EXECUTIVE ORDER IS LAWFUL.

In any event, the Court's injunction should not be extended to the New Executive Order because the New Executive Order is entirely lawful.

First, the New Executive Order does not violate the Due Process Clause. The only persons subject to the New Executive Order are foreign nationals outside the United States with no visa or other authorization to enter this country. Order § 3(a)-(b). The Supreme Court "has long held that an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application." *Landon*, 459 U.S. at 32; *see Mandel*, 408 U.S. at 762. Such aliens thus have no due-process rights regarding their potential entry. *Angov v. Lynch*, 788 F.3d 893, 898 (9th Cir. 2015) (as amended).

As explained above, the Ninth Circuit noted that U.S. citizens who have an interest in the ability of aliens about to enter the United States have "*potential* claims regarding *possible* due process rights." *Washington*, 847 F.3d at 1166 (emphasis added). Even if the Due Process Clause applied to such persons, however, their claims would fail. Due process does not require notice or individualized hearings where, as here, the government acts through categorical judgments rather than individual adjudications. *See Bi Metallic Inv. Co. v. State Bd. of Equalization*, 239 U.S. 441, 446 (1915); *Yassini v. Crosland*, 618 F.2d 1356, 1363 (9th Cir. 1980). Furthermore, even if some individualized process were required, the New Executive Order's substantially revised waiver provisions provide more process than the Constitution may require and is similar to the process provided in *Kleindienst v. Mandel*, 408 U.S. 753, 769-70 (1972).



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Second, the New Executive Order does not discriminate on the basis of religion. As noted above, the only provision of the Old Executive Order that Plaintiffs challenged on religious discrimination grounds (*i.e.*, the instruction to prioritize religious-persecution claims of refugees that practice minority religions) has been removed. And, even if Plaintiffs raise a different or broader challenge to the New Executive Order, *see* ECF No. 118, it would fail. The New Executive Order does not convey any religious message; indeed, it does not reference religion at all. The New Executive Order's 120-day suspension of certain aspects of the Refugee Program applies to all refugees, and its 90-day suspension of entry applies to six countries that Congress and the prior Administration determined posed special risks to the United States. *See* Order §§ 2, 3, 6. Importantly, the provisions apply to all refugees and nationals of the relevant countries, regardless of their religion. *See id.*

Although the populations of the six countries to which the suspension of entry applies are majority Muslim, that fact does not establish that the suspension's object is to single out Islam. The six countries covered were previously selected by Congress and the Executive through a process that Plaintiffs have never contended was religiously motivated. In addition, those countries represent only a small fraction of the world's 50 Muslim-majority nations, and are home to less than 9% of the global Muslim population.[3] Even as to these individuals, the suspension has numerous exceptions and is subject to a comprehensive waiver provision. Finally, the suspension covers every national of those countries, including millions of non-Muslim individuals in those countries, if they meet the New Executive Order's criteria.

[3] *See* Pew-Templeton Global Religious Futures Project, Muslim Population by Country (2010), http://www.globalreligiousfutures.org/religions/muslims.



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Plaintiffs try to impugn the New Executive Order using campaign statements. *See* ECF No. 118-1, ¶¶ 141-153. But the Supreme Court has made clear that official action like that challenged here must be adjudged by its "'text, legislative history, and implementation of the statute or comparable official act[ion],'" not through "judicial psychoanalysis of a drafter's heart of hearts." *McCreary Cty. v. ACLU of Ky.*, 545 U.S. 844, 862 (2005) (quoting *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 308 (2000)). Political candidates are not government actors, and statements of what they might attempt to achieve if elected, which are often simplified and imprecise, are not "official act[s]." *Id.*

In any event, even if such extrinsic evidence could be considered, none of it demonstrates that *this* New Executive Order adopted after the President took office, and specifically addressing the concerns of the Ninth Circuit was driven by religious animus. The New Executive Order responds to concerns about the Old Executive Order's aims by removing the provisions that purportedly drew religious distinctions erasing any doubt that national security, not religion, is the focus. The New Executive Order also reflects the considered views of the Secretary of State, the Secretary of Homeland Security, and the Attorney General, who announced the New Executive Order and whose motives have not been impugned. Finally, it responds to the concerns expressed by the Judicial Branch in the Ninth Circuit ruling. In short, the President's efforts to accommodate courts' concerns while simultaneously fulfilling his constitutional duty to protect the Nation only confirms that the New Executive Order's intention most emphatically is not to discriminate along religious lines.

## CONCLUSION

For these reasons, the Court should deny Plaintiffs' emergency motion to enforce the preliminary injunction.



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**20 Massachusetts Ave., NW**
**Washington, DC 20530**
**Tel: (202) 305-8902**

DATED: March 14, 2017

Respectfully submitted,

CHAD A. READLER
Acting Assistant Attorney General

JENNIFER D. RICKETTS
Director, Federal Programs Branch

JOHN R. TYLER
Assistant Director, Federal Programs Branch

*/s/ Michelle R. Bennett*
MICHELLE R. BENNETT
DANIEL SCHWEI
ARJUN GARG
BRAD P. ROSENBERG
Trial Attorneys
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Avenue, NW
Washington, DC 20530
Tel: (202) 305-8902
Fax: (202) 616-8470
Email: michelle.bennett@usdoj.gov
arjun.garg@usdoj.gov

*Attorneys for Defendants*

**CERTIFICATE OF SERVICE**

I hereby certify that on March 14, 2017, I electronically filed the foregoing Opposition to Plaintiffs' Emergency Motion to Enforce Preliminary Injunction using the Court's CM/ECF system, causing a notice of filing to be served upon all counsel of record.

Dated: March 14, 2017

*/s/ Michelle R. Bennett*
MICHELLE R. BENNETT



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**Washington, DC 20530**
**Tel: (202) 305-8902**

**From:** Navas, Nicole (OPA)
**Sent:** Wednesday, March 22, 2017 3:03 PM
**To:** Navas, Nicole (OPA)
**Subject:** Fourth Circuit filing in International Refugee Assistance Project (IRAP), et al v. Donald J. Trump, et al
**Attachments:** expedited briefing motion corrected as filed.pdf

Hi,
Please see attached corrected motion to expedite appeal and set briefing deadlines in *International Refugee Assistance Project v. Trump*. Thank you

Nicole A. Navas
Spokesperson/Public Affairs Specialist
U.S. Department of Justice (DOJ)

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

| | |
|---|---|
| INTERNATIONAL REFUGEE ASSISTANCE PROJECT, *et al.*,<br>Plaintiffs-Appellees,<br><br>v.<br><br>DONALD J. TRUMP, *et al.*,<br>Defendants-Appellants. | No. 17-1351 |

**CORRECTED MOTION TO EXPEDITE APPEAL AND SET BRIEFING DEADLINES**

Pursuant to 28 U.S.C. § 1657(a), FRAP 27 and 31(a)(2), and this Court's Local Rule 12(c), defendants-appellants (the "government") respectfully move for expedited hearing of this appeal from the district court's preliminary injunction. The order on appeal enjoins enforcement of a key provision of an Executive Order, which presents an issue of national significance; courts addressing both this and an earlier Executive Order have expedited their consideration of cases such as this. The government respectfully asks this Court to enter a schedule to allow prompt, coordinated consideration of both (1) the government's appeal from the preliminary

injunction entered by the district court on March 16, 2017, and (2) the government's forthcoming motion for a stay of that injunction pending appeal.

The reasons supporting expedition are set forth below, along with a proposed schedule for briefing. For the same reasons, oral argument on the appeal is appropriate, and the government is prepared to present argument following expedited briefing. A transcript of the district court hearing has been prepared, and the government believes that the parties can present briefing of this appeal on the existing record. Pursuant to this Court's Rule 27(a), counsel for plaintiffs-appellees have been notified of the government's intent to file this motion, and have informed us that they oppose this motion.

**1.** This case concerns plaintiffs' challenge to Executive Order No. 13,780, issued by the President on March 6, 2017, titled "Protecting the Nation from Foreign Terrorist Entry Into the United States." See 82 Fed. Reg. 13209 (Mar. 9, 2017) ("Order"). Following highly expedited briefing and a hearing, the district court entered a preliminary injunction on March 16, 2017, and denied a stay of its injunction pending appeal. The district court's

preliminary injunction, which operates nationwide, prohibits the government from enforcing § 2(c) of the Order, which suspends for 90 days the entry into the United States of certain foreign nationals from six countries.

**2.** The government filed a notice of appeal from the district court's injunction on March 17, 2017. The Court docketed the appeal and issued a standard briefing schedule. Under that schedule, the government's opening brief is due April 26, 2017, and briefing would be completed by June 9, 2017.

**3.** This appeal from a preliminary injunction should be expedited to permit this Court's full review as soon as possible, with the benefit of full briefing by the parties. "[U]nder 28 U.S.C. § 1657(a) the granting or denying of a preliminary injunction is the basis for an expedited appeal." *American Bioscience, Inc. v. Thompson*, 269 F.3d 1077, 1084 n.8 (D.C. Cir. 2001). Moreover, this case presents constitutional and statutory issues of nationwide significance. The district court here enjoined the President and government agencies from enforcing a key provision of the Order, which is designed to protect national security, an interest that this Court has

recognized as paramount. See, *e.g.*, *United States v. Abu Ali*, 528 F.3d 210, 240 (4th Cir. 2008) ("no governmental interest is more compelling than the security of the Nation") (quoting *Haig v. Agee*, 453 U.S. 280, 307 (1981)).

Recognizing the need for prompt consideration of the issues presented, courts adjudicating challenges to the Order, and to an earlier Executive Order, No. 13,769 (the "Revoked Order"), have expedited their review of those cases. For example, the district court in this case considered the parties' briefs and argument addressing the motion for injunctive relief over the course of five days (including a weekend). See *Int'l Refugee Assistance Project, Inc. v. Trump*, D. Md. No. 8:17-cv-00361-TDC, DE# 86. And a district court in Hawaii granted plaintiffs' motion for a temporary restraining order of two sections of the Order following briefing and a hearing conducted in seven days; that court is now considering plaintiffs' motion to convert that order to a preliminary injunction, and has entered a briefing and hearing schedule that will be completed over 9 days. *Hawaii v. Trump*, 2017 WL 1011673 (Mar. 15, 2017); see D. Haw. Civ. No. 17-00050 DKW-KSC (Orders Mar. 8 & Mar. 20, 2017). Similarly, a district court in

Washington entered a nationwide injunction concerning the Revoked Order after briefing and hearing conducted over four days. See *Washington v. Trump*, 2017 WL 462040 (W.D. Wash. Feb. 3, 2017). And the Ninth Circuit considered a stay pending appeal in that case after ordering briefing and argument conducted over three days. *Washington v. Trump*, 847 F.3d 1151 (9th Cir. 2017); reh'g en banc denied, 2017 WL 992527 (Mar. 15, 2017).

Courts of appeals considering similar cases involving constitutional and national security questions of this significance have similarly ordered expedited briefing and argument. For example, the D.C. Circuit ordered expedited briefing of the merits, completed in 18 days after the court's order, in *Kiyemba v. Obama*, 555 F.3d 1022 (2009), vacated, 130 S. Ct. 1235 (2010). See D.C. Cir. No. 08-5424 (Order Oct. 20, 2008). Similarly, that court ordered merits briefing over a 36-day period in *Munaf v. Geren*, 482 F.3d 582 (D.C. Cir. 2007, vacated 553 U.S. 674 (2008). See D.C. Cir. No. 06-5324 (Order Dec. 1, 2006). And the Sixth Circuit ordered expedited briefing to be completed within 27 days in *Detroit Free Press v. Ashcroft*, 303 F.3d 681 (6th Cir. 2002). See 6th Cir. No. 02-1437 (Order April 10, 2002). The Supreme Court has

likewise expedited briefing in such cases. See, *e.g.*, *Dames & Moore v. Regan*, 453 U.S. 654, 660 (1981) (noting expedited briefing and argument schedule).

**4.** The government also intends to seek a stay of the district court's injunction pending appeal, and the government believes that the Court would be best served by having full briefing on the merits of the underlying appeal before ruling on that motion. The parties presented full briefs and argument to the district court in this case on an even more expedited schedule, as explained above, at the urging of plaintiffs. See *Int'l Refugee Assistance Project, Inc. v. Trump*, D. Md. No. 8:17-cv-00361-TDC, DE# 86 (order); see also DE# 83 (plaintiffs' pre-motion letter proposing schedule). The district court authorized the parties to file overlength briefs, so that it would have the benefit of full briefing before adjudicating the plaintiffs' motion for a preliminary injunction or temporary restraining order. *Id.* DE# 87 (order authorizing briefs up to 40 pages in 12-point font). Similarly, the government believes that this Court would benefit from receiving briefing on both the government's motion for a stay pending appeal and the merits. Because the government is prepared to file its appellate brief on a highly

expedited basis, it is not necessary to consider the two matters separately. We urge this Court to enter a schedule that would allow full briefing of the issues on an appropriately expedited schedule.

**5.** The government proposes the following schedule:

- Friday, March 24, 2017: the government files its opening merits brief and its motion for stay pending appeal;
- Friday, March 31, 2017: Plaintiffs-Appellees file their response merits brief and their response to the government's stay motion;
- Wednesday, April 5, 2017: the government files its reply merits brief and its reply in support of its stay motion;
- At the earliest possible opportunity after briefing is complete, the Court should schedule oral argument.

**6.** Government counsel proposed this schedule to plaintiffs' counsel on Tuesday, March 21, 2017, and plaintiffs did not agree. Instead, plaintiffs proposed a significantly more extended schedule for the appellate merits briefs. Under that schedule, plaintiffs' response merits brief would not be due until May 10, 2017, and briefing would not be completed until

May 17, 2017. In the government's view, that would not permit the prompt, expedited review by this Court that is appropriate in light of the preliminary injunction prohibiting enforcement of a key provision of the Order, as well as the nationwide significance of the underlying legal questions. Plaintiffs also proposed to separate briefing on the merits of the appeal from briefing of the stay motion. As explained above, we believe there is no basis for such disjunctive filings or serial consideration of the issues. Instead, we urge the Court to consider the stay motion and the merits of the government's appeal together.

## CONCLUSION

For the foregoing reasons, this Court should issue an expedited schedule for briefs and the government's motion for stay pending appeal.

Respectfully submitted,

SHARON SWINGLE
(202) 353-2689

**/s/ H. Thomas Byron III**
H. THOMAS BYRON III
(202) 616-5367
Attorneys, Appellate Staff
Civil Division
U.S. Department of Justice
950 Pennsylvania Ave., N.W.
Room 7529
Washington, D.C. 20530

MARCH 2017

## CERTIFICATE OF SERVICE

I hereby certify that on March 22, 2017, I electronically filed the foregoing corrected motion for expedited briefing schedule by using the appellate CM/ECF system.

I certify that the participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

**/s/ H. Thomas Byron III**
H. THOMAS BYRON III

## CERTIFICATE OF COMPLIANCE

Pursuant to FRAP 32(g)(1), I hereby certify that the foregoing corrected motion complies with the type-volume limitation in FRAP 27(d)(2)(A). According to Microsoft Word, the motion contains 1,404 words and has been prepared in a proportionally spaced typeface using Palatino Linotype in 14 point size.

**/s/ H. Thomas Byron III**
H. THOMAS BYRON III

**From:** Raimondi, Marc (OPA)
**Sent:** Thursday, February 09, 2017 6:30 PM
**To:** Adam Housley (adam.housley@foxnews.com)
**Subject:** STATEMENT BY THE JUSTICE DEPARTMENT ON NINTH CIRCUIT RULING IN STATE OF WASHINGTON; STATE OF MINNESOTA V DONALD J TRUMP
**Attachments:** Court of appeal order on stay motion.pdf

**Importance:** High

As promissed

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**From:** Navas, Nicole (OPA)
**Sent:** Thursday, February 09, 2017 6:28 PM
**To:** Navas, Nicole (OPA) (JMD) <Nicole.Navas@usdoj.gov>
**Subject:** STATEMENT BY THE JUSTICE DEPARTMENT ON NINTH CIRCUIT RULING IN STATE OF WASHINGTON; STATE OF MINNESOTA V DONALD J TRUMP
**Importance:** High

Good evening,
"The Justice Department is reviewing the decision and considering its options." We have no further comment.

Thank you,

Nicole A. Navas
Spokesperson/Public Affairs Specialist
U.S. Department of Justice (DOJ)

**FOR PUBLICATION**

# UNITED STATES COURT OF APPEALS
# FOR THE NINTH CIRCUIT

| | |
|---|---|
| STATE OF WASHINGTON; STATE OF MINNESOTA,<br>*Plaintiffs-Appellees,*<br><br>v.<br><br>DONALD J. TRUMP, President of the United States; U.S. DEPARTMENT OF HOMELAND SECURITY; REX W. TILLERSON, Secretary of State; JOHN F. KELLY, Secretary of the Department of Homeland Security; UNITED STATES OF AMERICA,<br>*Defendants-Appellants.* | No. 17-35105<br><br>D.C. No. 2:17-cv-00141<br><br>ORDER |

Motion for Stay of an Order of the
United States District Court for the
Western District of Washington
James L. Robart, District Judge, Presiding

Argued and Submitted February 7, 2017

Filed February 9, 2017

Before: William C. Canby, Richard R. Clifton, and Michelle T. Friedland, Circuit Judges

Per Curiam Order

**From:** Raimondi, Marc (OPA)
**Sent:** Thursday, March 16, 2017 11:35 AM
**To:** Jason.Kopp@FOXNEWS.COM
**Subject:** DOJ response

Jason, last night, the Department of Justice released the following statement attributable to Sarah Isgur-Flores, the Department's Director of Public Affairs and chief spokesperson.

"The Department of Justice strongly disagrees with the federal district court's ruling, which is flawed both in reasoning and in scope. The President's Executive Order falls squarely within his lawful authority in seeking to protect our Nation's security, and the Department will continue to defend this Executive Order in the courts."

Please let me know if you have any additional questions.

Thank you,

**Marc Raimondi**
National Security Spokesman
U.S. Department of Justice
Marc.raimondi@usdoj.gov
O: 202-514-1153
C (b) (6)

**From:** USDOJ-Office of Public Affairs (SMO)
**Sent:** Monday, March 06, 2017 9:16 AM
**To:** USDOJ-Office of Public Affairs (SMO)
**Subject:** FOR PLANNING PURPOSES ONLY: DHS TO HOST INTERAGENCY PRESS CALL
**Attachments:** Q&A - Protecting The Nation From Foreign Terrorist Entry To The United S....pdf; Fact Sheet Protecting The Nation From Foreign Terrorist Entry To The Uni....pdf

Our apologies for the delay but we were just provided this advisory and wanted to make sure you had received it.

Please also see the attached PDFs provided **under embargo for 11:30am EST.**

*Press Office*
**U.S. Department of Homeland Security**

# Media Advisory

March 6, 2016
Contact: DHS Press Office, (202) 282-8010

*** FOR PLANNING PURPOSES ONLY – NOT FOR REPORTING ***

## DHS TO HOST INTERAGENCY PRESS CALL

WASHINGTON Senior Department of Homeland Security (DHS) officials will join officials from the Departments of State and Justice to participate in an interagency press call on Monday, March 6 at 9:30 AM EST. The call will be held ON BACKGROUND and EMBARGOED to discuss issues related to visas and travel.

Reporters who RSVP will receive an email with dialing instructions and additional information for this media-only briefing. Only one line will be allotted per outlet.

**Monday, March 6**

9:30 AM EST Senior officials from the Departments of Homeland Security, State, and Justice will host and participate in an interagency press call to discuss issues related to visas and travel OPEN PRESS*

**Credentialed media planning to call in must RSVP to mediainquiry@dhs.gov for conference call-in number and additional information no later than 9:15 AM.*

# # #

# Fact Sheet: Protecting The Nation From Foreign Terrorist Entry To The United States

March 5, 2017

The Executive Order signed on March 6, 2017, allows for the proper review and establishment of standards to prevent terrorist or criminal infiltration by foreign nationals. The United States has the world's most generous immigration system, yet it has been repeatedly exploited by terrorists and other malicious actors who seek to do us harm. In order to ensure that the U.S. Government can conduct a thorough and comprehensive analysis of the national security risks posed from our immigration system, the Executive Order imposes a 90-day suspension of entry to the United States of nationals of certain designated countries  countries that were designated by Congress and the Obama Administration as posing national security risks with respect to visa-free travel to the United States under the Visa Waiver Program.

The U.S. Government must ensure that those entering this country will not harm the American people after entering, and that they do not bear malicious intent toward the United States and its people. The Executive Order, together with the Presidential Memorandum, protects the United States from countries compromised by terrorism and ensures a more rigorous vetting process. This Executive Order ensures that we have a functional immigration system that safeguards our national security.

This Executive Order, as well as EO 13767 and EO 13768, provide the Department of Homeland Security (DHS) with additional resources, tools, and personnel to carry out the critical work of securing our borders, enforcing the immigration laws of our Nation, and ensuring that individuals from certain designated countries who pose a threat to national security or public safety cannot enter or remain in our country.  Protecting the American people is the highest priority of our government and this Department.

DHS will faithfully execute the immigration laws and the President's Executive Orders, and will treat everyone we encounter humanely and with professionalism.

## Authorities

The Congress provided the President of the United States, in section 212(f) of the Immigration and Nationality Act (INA), with the authority to suspend the entry of any class of aliens the President deems detrimental to the national interest.  This authority has been exercised repeatedly for decades, and has been a component of immigration law since the enactment of the original INA in 1952.

## Actions

For the next 90 days, foreign nationals from Sudan, Syria, Iran, Libya, Somalia, and Yemen who are outside the United States on the effective date of the order, do not currently have a valid visa on the effective date of this order, and did not have a valid visa at 5:00 eastern standard time on January 27, 2017, are not eligible to travel to the United States. The 90-day period will allow for proper review and establishment of standards to prevent terrorist or criminal infiltration by foreign nationals.

On the basis of negotiations that have taken place between the Government of Iraq and the U.S. Department of State in the last month, Iraq will increase cooperation with the U.S. Government on the vetting of its citizens applying for a visa to travel to the United States. As a result of this increased information sharing, Iraqi citizens are not affected by the Executive Order. Of course, all normal immigration processing requirements continue to apply, including the grounds of inadmissibility that may be applicable.

In the first 20 days, DHS will perform a global, country-by-country review of the identity and security information that each country provides to the U.S. Government to support U.S. visa and other immigration benefit determinations. Countries will then have 50 days to comply with requests from the U.S. Government to update or improve the quality of the information they provide.

The Executive Order does not apply to certain individuals, such as lawful permanent residents of the United States; foreign nationals admitted to the United States after the effective date of the order; individuals with a document that is valid on the effective date of the order or any date thereafter which permits travel to the United States; dual nationals when travelling on a passport issued by a non-designated country; foreign nationals traveling on diplomatic, NATO, C-2 for travel to the United Nations, G-1, G-2, G-3, or G-4 visas; and individuals already granted asylum or refugee status in the United States before the effective date of the order.

DHS and the Department of State have the discretionary authority, on a case-by-case basis, to issue visas or allow the entry of nationals of these six countries into the United States when a national from one of the countries demonstrates that the denial of entry would cause undue hardship, that his or her entry would not pose a threat to national security, and that his or her entry would be in the national interest.

Similarly, the Refugee Admissions Program will be temporarily suspended for the next 120 days while DHS and interagency partners review screening procedures to ensure refugees admitted in the future do not pose a security risk to the United States. Upon resumption of the Refugee Admissions Program, refugee admissions to the United States will not exceed 50,000 for fiscal year 2017. The Executive Order does not apply to those refugees who have already been formally scheduled for transit by the State Department. During this 120-day period, similar to the waiver authority for visas, the Secretary of State and 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 would not pose a threat to the security or welfare of the United States.

The Department of Homeland Security, in conjunction with the Department of State, the Office of the Director of National Intelligence, and the Department of Justice, will develop uniform screening standards for all immigration programs government-wide as appropriate and in the national interest.

The Secretary of Homeland Security will expedite the completion and implementation of a biometric entry-exit system for all in-scope travelers entering and departing the United States.

As part of a broader set of government actions, the Secretary of State will review all nonimmigrant visa reciprocity agreements to ensure that they are, with respect to each visa classification, truly reciprocal.

The Department of State will restrict the Visa Interview Waiver Program and require additional nonimmigrant visa applicants to undergo an in-person interview.

# Transparency

In order to be more transparent with the American people and to more effectively implement policies and practices that serve the national interest, DHS will make information available to the public every 180 days. Specifically, in coordination with the Department of Justice, DHS will make available to the public information regarding the number of foreign nationals who have been charged with terrorism-related offenses while in the United States; convicted of terrorism-related offenses while in the United States; 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; and 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.

## Q&A: Protecting The Nation From Foreign Terrorist Entry To The United States

1. **Who is subject to the suspension of entry under the Executive Order?**

   Per the Executive Order, foreign nationals from Sudan, Syria, Iran, Libya, Somalia, and Yemen, who are outside the United States and who did not have a valid visa at 5 p.m. Eastern Standard Time on January 27, 2017, and do not have a valid visa on the effective date of this order are not eligible to enter the United States while the temporary suspension remains in effect. Thus any individual who had a valid visa either on January 27, 2017 (prior to 5:00 PM) or holds a valid visa on the effective date of the Executive Order is not barred from seeking entry.

2. **Will "in-transit" travelers within the scope of the Executive Order be denied entry into the United States and returned to their country of origin?**

   Those individuals who are traveling on valid visas and arrive at a U.S. port of entry will still be permitted to seek entry into the United States. All foreign nationals traveling with a visa must continue to satisfy all requirements for entry, including demonstrating that they are admissible. Additional information on applying for admission to the United States is available on CBP.gov.

3. **I am a national from one of the six affected countries currently overseas and in possession of a valid visa, but I have no prior travel to the United States. Can I travel to the United States?**

   Per the Executive Order, foreign nationals from Sudan, Syria, Iran, Libya, Somalia, and Yemen who have valid visas will not be affected by this Executive Order. No visas will be revoked solely based on this Executive Order.

4. **I am presently in the United States in possession of a valid single entry visa but I am a national of one of the six impacted countries. Can I travel abroad and return to the United States?**

   Regardless of the Executive Order, your visa is not valid for multiple entries into the Unites States. While the Executive Order does not apply to those within the United States and your travel abroad is not limited, a valid visa or other document permitting you to travel to and seek admission to the United States is still required for any subsequent entry to the United States.

5. **I am presently in the United States in possession of a valid multiple entry visa but am a national of one of the six affected countries, can I travel abroad and return to the United States?**

   Yes. Individuals within the United States with valid multiple entry visas on the effective date of the order are eligible for travel to and from the United States, provided the visa remains valid and the traveler is otherwise admissible. All foreign nationals traveling with a visa must satisfy all admissibility requirements for entry. Additional information on applying for admission to the United States is available on CBP.gov.

6. **I am from one of the six countries, currently in the United States in possession of a valid visa and have planned overseas travel. My visa will expire while I am overseas, can I return to the United States?**

   Travelers must have a valid visa to travel to the United States, regardless of the Executive Order. Travelers who do not have a valid visa due to its expiration while abroad must obtain a new valid visa prior to returning to the United States.

**7. Will the Department of Homeland Security (DHS) and the Department of State (DOS) be revoking the visas of persons ineligible to travel under the revised Executive Order?**

Visas will not be revoked solely as a result of the Executive Order. The Department of State has broad authority under Section 221(i) of the Immigration and Nationality Act to revoke visas.

**8. What is the process for overseas travelers affected by the Executive Order to request a waiver?**

Waivers for overseas travelers without a valid U.S. visa will be adjudicated by the Department of State in conjunction with a visa application.

**9. How are returning refugees and asylees affected by the Executive Order?**

Returning refugees and asylees, i.e., individuals who have already been granted asylum or refugee status in the United States, are explicitly excepted from this Executive Order. As such, they may continue to travel consistent with existing requirements.

**10. Are first-time arrival refugees with valid /travel documents allowed to travel to the United States?**

Yes, but only refugees, regardless of nationality, whose travel was already formally scheduled by the Department of State, are permitted to travel to the United States and seek admission. The Department of State will have additional information.

**11. Will unaccompanied minors within the scope of the Executive Order be denied boarding and or denied entry into the United States?**

The Executive Order applies to those who do not have valid visas. Any individuals, including children, who seek entry to the United States must have a valid visa (or other approved travel document) before travel to the United States. The Secretary of State may issue a waiver on a case-by-case basis when in the national interest of the United States. With such a waiver, a visa may be issued.

**12. Is DHS complying with all court orders?**

DHS is complying, and will continue to comply, with all court orders in effect.

**13. When will the Executive Order be implemented?**

The Executive Order is effective at 12:01 A.M., Eastern Standard Time, on March 16, 2017.

**14. Will the Executive Order impact Trusted Traveler Program membership?**

No. Currently, CBP does not have reciprocal agreements for a Trusted Traveler Program with any of the countries designated in the Executive Order.

**15. When will CBP issue guidance to both the field and airlines regarding the Executive Order?**

CBP will issue guidance and contact stakeholders to ensure timely implementation consistent with the terms of the Executive Order.

**16. Will first-time arrivals with valid immigrant visas be allowed to travel to the U.S.?**

Yes. Individuals holding valid visas on the effective date of the Executive Order or on January 27, 2017 prior to 5:00 PM do not fall within the scope of the Order.

**17. Does this affect travelers at all ports of entry?**

Yes, this Executive Order applies to travelers who are applying for entry into the United States at any port of entry air, land, or sea and includes preclearance locations.

**18. What does granting a waiver to the Executive Order mean? How are waivers applied to individual cases?**

Per the Executive Order, the Departments of Homeland Security and State can review individual cases and grant waivers on a case-by-case basis if a foreign national demonstrates that his or her entry into the United States is in the national interest, will not pose a threat to national security, and that denying entry during the suspension period will cause undue hardship.

**19. Does "from one of the six countries" mean citizen, national, or born in?**

The Executive Order applies to both nationals and citizens of the six countries.

**20. How does the lawsuit/stay affect DHS operations in implementing this Executive Order?**

Questions regarding the application of specific federal court orders should be directed to the Department of Justice.

**21. Will nationals of the six countries with valid green cards (lawful permanent residents of the United States) be allowed to return to the United States?**

Per the Executive Order, the suspension of entry does not apply to lawful permanent residents of the United States.

**22. Can a dual national who holds nationality with one of the six designated countries traveling with a passport from an unrestricted country travel to the United States?**

The Executive Order exempts from its scope any dual national of one of the six countries when the individual is traveling on a passport issued by a different non-designated country.

**23. Can a dual national who holds nationality with one of the six designated countries and is currently overseas, apply for an immigrant or nonimmigrant visa to the United States?**

Please contact the Department of State for information about how the Executive Order applies to visa applicants.

**24. Are international students, exchange visitors, and their dependents from the six countries (such as F, M, or J visa holders) included in the Executive Order? What kind of guidance is being given to foreign students from these countries legally in the United States?**

The Executive Order does not apply to individuals who are within the United States on the effective date of the Order or to those individuals who hold a valid visa. Visas which were provisionally revoked solely as a result of the enforcement of Executive Order 13769 are valid for purposes of administering this Executive Order. Individuals holding valid F, M, or J visas may continue to travel to the United States on those visas if they are otherwise valid.

Please contact the State Department for information about how the Executive Order applies to visa applicants.

**25. What happens to international students, exchange visitors or their dependents from the six countries, such as F, M or J visa holders if their visa expires while the Executive Order is in place and they have to depart the country?**

The Executive Order does not affect F, M, or J visa holders if they currently have a valid visa on the effective date or held a valid visa on January 27, 2017 prior to the issuance of the Executive Order. With that said, travelers must have a valid visa to travel to the United States, regardless of the Executive Order. Travelers whose visa expires after the effective date of the Executive Order must obtain a new, valid visa to return to the United States.

**26. Can U.S. Citizenship and Immigration Services (USCIS) continue refugee interviews?**

The Departments of Homeland Security and State will conduct interviews as appropriate and consistent with the Executive Order. However, the Executive Order suspends decisions on applications for refugee status, unless the Secretary of Homeland Security and the Secretary of State jointly determine, on a case-by-case basis, that the entry of an individual as a refugee is in the national interest and would not pose a threat to the security or welfare of the United States.

**27. Can the exception for refugee admission be used for Refugee/Asylee Relative Petitions (Form I-730) cases where a family member is requesting a beneficiary follow to join?**

No. Individuals who already have valid visas or travel documents that permit them to travel to the United States are exempt from the Executive Order. To the extent that an individual does not yet have such documents, please contact the Department of State.

**28. Does the Executive Order apply to those currently being adjudicated for naturalization or adjustment of status?**

USCIS will continue to adjudicate Applications for Naturalization (Form N-400) and Applications to Register Permanent Residence or Adjust Status (Form I-485) and grant citizenship consistent with existing practices.

**29. Will landed immigrants of Canada affected by the Executive Order be eligible for entry to the United States?**

Landed immigrants of Canada who hold passports from one of the six countries are eligible to apply for a visa, and coordinate a waiver, at a location within Canada.

**30. Has CBP issued clear guidance to CBP officers at ports of entry regarding the Executive Order?**

CBP has and will continue to issue any needed guidance to the field with respect to this Executive Order.

**31. What coordination is being done between CBP and the carriers?**

CBP has been and will remain in continuous communication with the airlines through CBP regional carrier liaisons. In addition, CBP will hold executive level calls with airlines in order to provide guidance, answer questions, and address concerns.

**32. What additional screening will nationals of restricted countries (as well as any visa applications) undergo as a result of the Executive Order?**

In making admission and visa eligibility determinations, DHS and DOS will continue to apply all appropriate security vetting procedures.

**33. Why is a temporary suspension warranted?**

The Executive Order signed on March 6, 2017, allows for the proper review and establishment of standards to prevent terrorist or criminal infiltration by foreign nationals. The Executive Order protects the United States from countries compromised by terrorism and ensures a more rigorous vetting process. Protecting the American people is the highest priority of our Government and this Department.

Congress and the Obama Administration designated these six countries as countries of concern due to the national security risks associated with their instability and the prevalence of terrorist fighters in their territories. The conditions in the six designated countries present a recognized threat, warranting additional scrutiny of their nationals seeking to travel to and enter the United States. In order to ensure that the U.S. Government can conduct a thorough and comprehensive analysis of the national security risks, the Executive Order imposes a 90-day suspension on entry to the United States of nationals of those countries.

Based on commitments from the Government of Iraq, the suspension of entry in this Executive Order will not apply to nationals of Iraq. Iraq has taken steps to increase their cooperation with the United States in the vetting of Iraqi nationals and as such it was determined that a temporary suspension is not warranted.

DHS will faithfully execute the immigration laws and the President's Executive Order, and will treat all of those we encounter humanely and with professionalism.

**34. Why is a suspension of the refugee program warranted?**

Some of those who have entered the United States as refugees have also proved to be threats to our national security. For example, in October 2014, an individual admitted to the United States as a refugee from Somalia, and who later became a naturalized U.S. citizen was sentenced to 30 years in prison for attempting to use a weapon of mass destruction in connection with a plot to set off a bomb at a Christmas tree-lighting ceremony in Portland, Oregon. The Federal Bureau of Investigation has reported that approximately 300 persons who entered the United States as refugees are currently the subjects of counterterrorism investigations.

**35. How were the six countries designated in the Executive Order selected?**

The six countries, Iran, Libya, Somalia, Sudan, Syria, and Yemen, had already been identified as presenting concerns about terrorism and travel to the United States. Specifically, the suspension applies to countries referred to in, or designated under except Iraq section 217(a)(12) of the INA, 8 U.S.C. § 1187(a)(12). In that provision Congress restricted use of the Visa Waiver Program by dual nationals of, and aliens recently present in, (A) Syria and Iraq, (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 former Secretary of Homeland Security

designated Libya, Somalia, and Yemen as additional countries of concern regarding aliens recently present in those countries.

For the purposes of this Executive Order, although Iraq has been previously identified, based on commitments from the Government of Iraq, the suspension of entry in this Executive Order will not apply to nationals of Iraq. However, those who are dual nationals of Iraq and aliens recently present in Iraq continue to have restricted use of the Visa Waiver Program.

On the basis of negotiations that have taken place between the Government of Iraq and the U.S. Department of State in the last month, Iraq will increase cooperation with the U.S. Government on the vetting of its citizens applying for a visa to travel to the United States. As such it was determined that a temporary suspension with respect to nationals of Iraq is not warranted at this time.

**36. Why was Iraq treated differently in this Executive Order?**

The close cooperative relationship between the United States and the democratically-elected Iraqi government, the strong U.S. diplomatic presence in Iraq, the significant presence of U.S. forces in Iraq, and Iraq's commitment to combat ISIS justify different treatment. In particular, those Iraqi government forces that have fought to regain more than half of the territory previously dominated by ISIS have earned special status. In addition, since Executive Order 13769 was issued, the Iraqi government has expressly undertaken steps to provide additional information about its citizens for purposes of our immigration decisions. Accordingly, it is no longer necessary to include Iraq in the temporary suspension applicable to the other six countries, but visa applications and applications for admission to the United States by Iraqi nationals will be subjected to additional scrutiny to determine if they have connections with ISIS or other terrorist organizations.

**37. Are Iraqi nationals subject to the Executive Order? Will they require a waiver to travel to the United States?**

This Executive Order does not presently suspend the entry of nationals of Iraq. However, all travelers must have a valid travel document in order to travel to the United States. Admissibility will be determined by a CBP officer upon arrival at a Port of Entry. Please contact the Department of State for information related to visa eligibility and application.

**From:** USDOJ-Office of Public Affairs (SMO)
**Sent:** Monday, March 06, 2017 11:47 AM
**To:** USDOJ-Office of Public Affairs (SMO)
**Subject:** ATTORNEY GENERAL JEFF SESSIONS DELIVERS REMARKS ON REVISED EXECUTIVE ORDER PROTECTING THE NATION FROM FOREIGN TERRORIST ENTRY

Department of Justice

FOR IMMEDIATE RELEASE
MONDAY, MARCH 6, 2017
WWW.JUSTICE.GOV

AG
(202) 514-2007
TTY (866) 544-5309

# ATTORNEY GENERAL JEFF SESSIONS DELIVERS REMARKS ON REVISED EXECUTIVE ORDER PROTECTING THE NATION FROM FOREIGN TERRORIST ENTRY

*Remarks as prepared for delivery*

WASHINGTON, D.C.

Good morning. One of the Justice Department's top priorities is to protect the United States from threats to our national security. Therefore, I want to discuss two points: first, the national security basis for this order, and second, our department's role in defending the lawful orders of the President.

First: As the President noted in his address to Congress, the majority of people convicted in our courts for terrorism-related offenses since 9/11 came here from abroad. We also know that people seeking to support or commit terrorist attacks here will try to enter through our refugee program. In fact, today more than 300 people who came here as refugees are under FBI investigation for potential terrorism-related activities.

Like every nation, the United States has the right to control who enters our country, and to keep out those who would do we harm. This executive order protects the American people as well as lawful permanent residents by putting in place an enhanced screening and vetting process for visitors from six nations.

Three of these nations are state sponsors of terrorism. The other three have served as safe havens for terrorists countries where the government has lost control of territory to terrorist groups like ISIL or Al Qaeda and its affiliates. This increases the risk that people admitted here from these countries may belong to terrorist groups, or may have been radicalized by them.

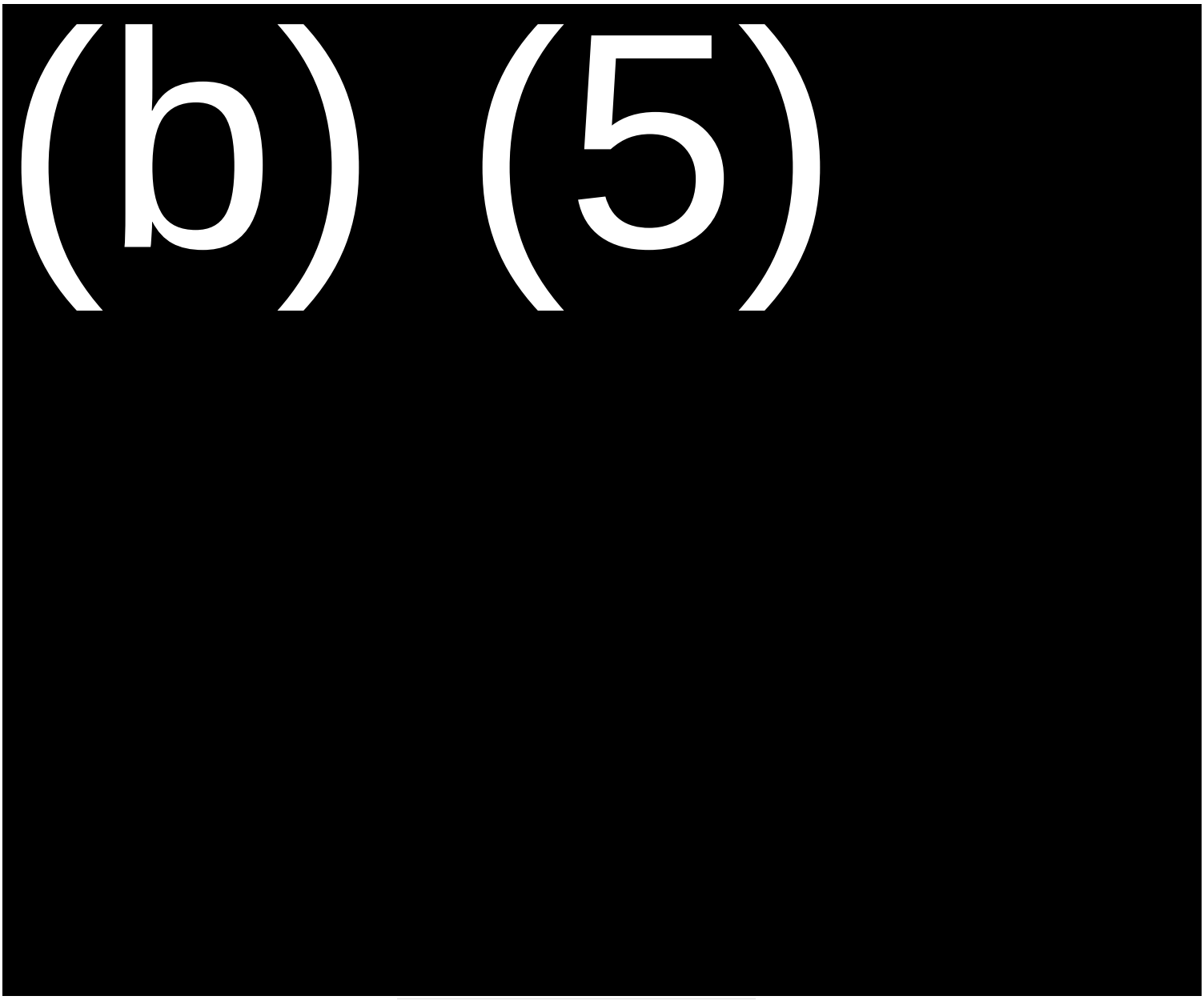
We cannot compromise our nation's security by allowing visitors entry when their own governments are unable or unwilling to provide the information we need to vet them responsibly or when those governments actively support terrorism. This executive order provides a needed pause, so we can carefully review how we scrutinize people coming here from these countries of concern.

Second: The Department of Justice believes that this executive order, just as the first, is a lawful and proper exercise of presidential authority. This Department of Justice will defend and enforce lawful orders of the President consistent with core principles of our Constitution. The executive is empowered under the Constitution and by Congress to make national security judgments and to enforce our immigration policies in order to safeguard the American public.

Terrorism is clearly a danger for America and our people. The President gets briefings on these dangers and emerging threats on a regular basis. The federal investigative agencies, the intelligence community, the Department of State, the Department of Homeland Security, and the U.S. military report to the President. Knowing the President would possess such extensive information, our founders wisely gave the executive branch the authority and duty to protect the nation. This executive order is a proper exercise of that power.

Now I will turn things over to Secretary [John] Kelly [of the Department of Homeland Security].

# # #




**From:** Muneer Ahmad [mailto:muneer.ahmad@ylsclinics.org]
**Sent:** Saturday, January 28, 2017 5:12 PM
**To:** Evans, Sarah (USANYE) <SEvans@usa.doj.gov>; Sasso, Jennifer (USANYE) <JSasso@usa.doj.gov>; Riley, Susan (USANYE) <SRiley@usa.doj.gov>
**Cc:** Mike Wishnie <michael.wishnie@yale.edu>; Elora Mukherjee <elora.mukherjee@YLSClinics.org>; Omar Jadwat <OJadwat@aclu.org>; David Hausman <dhausman@aclu.org>; jkornfeld@refugeerights.org; Lee Gelernt <LGELERNT@aclu.org>
**Subject:** EMERGENCY Motion in Darweesh et al. v. Trump et al., No. 1:17-cv-480 (EDNY)

Dear Susan, Sarah and Jennifer,

Please find attached an emergency motion and memorandum of law in support thereof in the above-referenced case. We are asking the Court to consider the motion as soon as possible.

Sincerely,
Muneer Ahmad

Muneer I. Ahmad
Clinical Professor of Law

Yale Law School
P.O. Box 209090
New Haven, CT 06520-9090
tel. (203) 432-4716
fax (203) 432-1426
email: muneer.ahmad@yale.edu


---

**From:** Lee Gelernt
**Date:** Saturday, January 28, 2017 at 9:02 AM
**To:** "sevans@usa.doj.gov"
**Cc:** "jennifer.sasso@usdoj.gov", Muneer Ahmad, Mike Wishnie, Elora Mukherjee, Omar Jadwat, David Hausman, "jkornfeld@refugeerights.org"
**Subject:** Fwd: Darweesh et al. v. Trump et al., No. 1:17-cv-480 (EDNY)

Papers

Begin forwarded message:

> **From:** "Wishnie, Michael" <michael.wishnie@yale edu>
> **To:** "Scott eeDunn@usdoj gov" <Scott.Dunn@usdoj.gov>
> **Cc:** "Lee Gelernt" <LGELERNT@aclu org>, "Karen Tumlin" <tumlin@nilc.org>, "Justin Cox" <cox@nilc.org>, "Omar Jadwat" <OJadwat@aclu.org>, "Cecillia Wang" <Cwang@aclu.org>, "Muneer Ahmad" <muneer.ahmad@ylsclinics.org>, "Elora Mukherjee" <elora.mukherjee@YLSClinics.org>, "Becca Heller" <bheller@refugeerights.org>, "spoellot@refugeerights.org" <spoellot@refugeerights.org>
> **Subject: Darweesh et al. v. Trump et al., No. 1:17-cv-480 (EDNY)**
>
> Dear Scott,
>
> Attached are courtesy copies of the habeas petition and motion for class certification in the above-captioned case, which we filed this morning. The named petitioners are Iraqi nationals who arrived at JFK Airport yesterday evening and were detained there overnight by CBP, solely pursuant to an executive order issued hours earlier. As of the time of filing, the petitioners were still at JFK in the custody of respondents. I have copied co-counsel on this message. Please contact us as soon as possible, as petitioners may have no choice but to seek judicial intervention over the weekend.
>
> Best,

Mike

Michael J. Wishnie
William O. Douglas Clinical Professor of Law and
Deputy Dean for Experiential Education
Yale Law School
(203) 436-4780
michael.wishnie@ylsclinics.org



<6-1 Memorandum in Support of Motion to Stay[1].pdf>
<6 Motion to Stay Removal.pdf>

**Axelrod, Matthew (ODAG)**

| | |
|---|---|
| **From:** | Axelrod, Matthew (ODAG) |
| **Sent:** | Monday, January 30, 2017 8:41 AM |
| **To:** | Yates, Sally (ODAG) |
| **Attachments:** | draft.docx |

Matthew S. Axelrod
Office of the Deputy Attorney General
U.S. Department of Justice
Desk: (202) 514-2105
Cell: (b) (6)

**Axelrod, Matthew (ODAG)**

---

**From:** Axelrod, Matthew (ODAG)
**Sent:** Monday, January 30, 2017 1:44 PM
**To:** Yates, Sally (ODAG)
**Attachments:** Draft2.docx

(b) (5)

-----Original Message-----
From: Klingler, McLaurine E. EOP/WHO [mailto:(b) (6): White House email address
Sent: Saturday, January 28, 2017 6:07 PM
To: mary.blanche.hankey@usdoj.gov
Subject: Immigration Executive Order Implementation Meeting with Stephen Miller

Hey Mary Blanche,

(b) (6) saw that you were one of the people to reach out to about this.(b) (6)
(b) (6)

(b) (5)
(b) (5) Do you have any time restrictions on Monday (1/30)? Let me know when you can!

Thanks,
McLaurine

| | |
|---|---|
| From: | Axelrod, Matthew (ODAG)</o=exchangelabs/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=e1130fa440d54fd8808c355f05a26567-axelrod, ma> |
| Date: | Mon Jan 30 2017 17:53:04 EST |
| To: | Yates, Sally (ODAG) </o=exchangelabs/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=da584794ddec48d7ac9321a1f04665e5-yates, sall> |
| Cc: | Blank |
| Bcc: | Blank |
| Subject: | FW: Message from the Acting Attorney General |
| Attachments: | Message from the Acting Attorney General.pdf |

From: Axelrod, Matthew (ODAG)
Sent: Monday, January 30, 2017 5:53 PM
To: Gannon, Curtis E. (OLC) <cegannon@jmd.usdoj.gov>; Parker, Rachel (ASG) <racparker@jmd.usdoj.gov>; Whitaker, Henry (ASG) <hwhitaker@jmd.usdoj.gov>; Schools, Scott (ODAG) <sschools@jmd.usdoj.gov>; Aminfar, Amin (ODAG) <amaminfar@jmd.usdoj.gov>; Swartz, Bruce (b) (6), (b) (7)(C)@CRM.USDOJ.GOV>; Branda, Joyce (CIV) <JBranda@CIV.USDOJ.GOV>; Flentje, August (CIV) <AFlentje@CIV.USDOJ.GOV>; Readler, Chad A. (CIV) <creadler@CIV.USDOJ.GOV>; Terwilliger, Zachary (ODAG) <zterwilliger@jmd.usdoj.gov>; Crowell, James (ODAG) <jcrowell@jmd.usdoj.gov>; Murray, Michael (ODAG) <mmurray@jmd.usdoj.gov>
Subject: Message from the Acting Attorney General

All,

Thanks so much for meeting with the Acting Attorney General earlier today. Attached, please find a message from her. Please make sure that others who are working on these matters are made aware of her direction as well.

Thanks,

Matt

Matthew S. Axelrod

Office of the Deputy Attorney General

U.S. Department of Justice

Desk: (202) 514-2105

Cell (b) (6)

On January 27, 2017, the President signed an Executive Order regarding immigrants and refugees from certain Muslim-majority countries. The order has now been challenged in a number of jurisdictions. As the Acting Attorney General, it is my ultimate responsibility to determine the position of the Department of Justice in these actions.

My role is different from that of the Office of Legal Counsel (OLC), which, through administrations of both parties, has reviewed Executive Orders for form and legality before they are issued. OLC's review is limited to the narrow question of whether, in OLC's view, a proposed Executive Order is lawful on its face and properly drafted. Its review does not take account of statements made by an administration or it surrogates close in time to the issuance of an Executive Order that may bear on the order's purpose. And importantly, it does not address whether any policy choice embodied in an Executive Order is wise or just.

Similarly, in litigation, DOJ Civil Division lawyers are charged with advancing reasonable legal arguments that can be made supporting an Executive Order. But my role as leader of this institution is different and broader. My responsibility is to ensure that the position of the Department of Justice is not only legally defensible, but is informed by our best view of what the law is after consideration of all the facts. In addition, I am responsible for ensuring that the positions we take in court remain consistent with this institution's solemn obligation to always seek justice and stand for what is right. At present, I am not convinced that the defense of the Executive Order is consistent with these responsibilities nor am I convinced that the Executive Order is lawful.

Consequently, for as long as I am the Acting Attorney General, the Department of Justice will not present arguments in defense of the Executive Order, unless and until I become convinced that it is appropriate to do so.

**Axelrod, Matthew (ODAG)**

| | |
|---|---|
| **From:** | Axelrod, Matthew (ODAG) |
| **Sent:** | Monday, January 30, 2017 6:44 PM |
| **To:** | Raimondi, Marc (OPA); Carr, Peter (OPA); Hornbuckle, Wyn (OPA); Gauhar, Tashina (ODAG) |
| **Subject:** | RE: Confirming reports on Yates and immigration ban |
| **Attachments:** | Message from the Acting Attorney General.pdf |

It's true. Attached.

---

**From:** Raimondi, Marc (OPA)
**Sent:** Monday, January 30, 2017 6:42 PM
**To:** Carr, Peter (OPA) <pcarr@jmd.usdoj.gov>; Hornbuckle, Wyn (OPA) <whornbuckle@jmd.usdoj.gov>; Gauhar, Tashina (ODAG) <tagauhar@jmd.usdoj.gov>; Axelrod, Matthew (ODAG) <maaxelrod@jmd.usdoj.gov>
**Subject:** Fwd: Confirming reports on Yates and immigration ban

Team, Peter may be on a bus so making sure you see this.

Sent from my iPhone

Begin forwarded message:

> **From:** <julia.edwards@thomsonreuters.com>
> **Date:** January 30, 2017 at 6:39:49 PM EST
> **To:** <Peter.Carr@usdoj.gov>, <Wyn.Hornbuckle@usdoj.gov>, <Marc.Raimondi@usdoj.gov>
> **Subject: Confirming reports on Yates and immigration ban**
>
> Hi all,
> Can you please confirm that Sally Yates has ordered has ordered the Justice Dept not to enforce Trump's immigration ban?
> Thank you,
> Julia
>
> Julia Edwards Ainsley
> Reuters News
> Thomson Reuters
>
> Mobile (b) (6)
>
> julia.edwards@thomsonreuters.com
> Reuters.com

On January 27, 2017, the President signed an Executive Order regarding immigrants and refugees from certain Muslim-majority countries. The order has now been challenged in a number of jurisdictions. As the Acting Attorney General, it is my ultimate responsibility to determine the position of the Department of Justice in these actions.

My role is different from that of the Office of Legal Counsel (OLC), which, through administrations of both parties, has reviewed Executive Orders for form and legality before they are issued. OLC's review is limited to the narrow question of whether, in OLC's view, a proposed Executive Order is lawful on its face and properly drafted. Its review does not take account of statements made by an administration or it surrogates close in time to the issuance of an Executive Order that may bear on the order's purpose. And importantly, it does not address whether any policy choice embodied in an Executive Order is wise or just.

Similarly, in litigation, DOJ Civil Division lawyers are charged with advancing reasonable legal arguments that can be made supporting an Executive Order. But my role as leader of this institution is different and broader. My responsibility is to ensure that the position of the Department of Justice is not only legally defensible, but is informed by our best view of what the law is after consideration of all the facts. In addition, I am responsible for ensuring that the positions we take in court remain consistent with this institution's solemn obligation to always seek justice and stand for what is right. At present, I am not convinced that the defense of the Executive Order is consistent with these responsibilities nor am I convinced that the Executive Order is lawful.

Consequently, for as long as I am the Acting Attorney General, the Department of Justice will not present arguments in defense of the Executive Order, unless and until I become convinced that it is appropriate to do so.

**Terwilliger, Zachary (ODAG)**

**From:** Terwilliger, Zachary (ODAG)
**Sent:** Monday, January 30, 2017 9:12 PM
**To:** Gannon, Curtis E. (OLC)
**Subject:** (b) (5)

Curtis,
(b) (5)

Zachary Terwilliger
Associate Deputy Attorney General
Office of the Deputy Attorney General
Zachary.Terwilliger2@usdoj.gov
(202) 307-1045 (Desk)
(b) (6) (Mobile)

**Terwilliger, Zachary (ODAG)**

| | |
|---|---|
| **From:** | Terwilliger, Zachary (ODAG) |
| **Sent:** | Monday, January 30, 2017 10:03 PM |
| **To:** | Carr, Peter (OPA) |
| **Subject:** | Peter can you review this for typos etc |

(b) (5)

Dana J. Boente
Acting Attorney General

_____

Zachary Terwilliger
Associate Deputy Attorney General
Office of the Deputy Attorney General
Zachary.Terwilliger2@usdoj.gov
(202) 307-1045 (Desk)
(b) (6) (Mobile)

**Terwilliger, Zachary (ODAG)**

| | |
|---|---|
| **From:** | Terwilliger, Zachary (ODAG) |
| **Sent:** | Monday, January 30, 2017 10:16 PM |
| **To:** | Crowell, James (ODAG) |
| **Subject:** | memo from Acting Attorney General Boente |
| **Attachments:** | Memo from Acting Attorney General Boente.docx |


Zachary Terwilliger
Associate Deputy Attorney General
Office of the Deputy Attorney General
Zachary.Terwilliger2@usdoj.gov
(202) 307-1045 (Desk)
(b) (6) (Mobile)

**Carr, Peter (OPA)**

| | |
|---|---|
| **From:** | Carr, Peter (OPA) |
| **Sent:** | Tuesday, January 31, 2017 12:56 PM |
| **To:** | Hornbuckle, Wyn (OPA) |
| **Subject:** | FW: Flagging for the group: DHS press conference with Secretary Kelly on executive orders |
| **Attachments:** | 2017 01 31 DHS EO Press Conference Notes.docx |

FYI, in case there is something here that would be worth sharing with the PIOs handling the EO cases.

**From:** Keshwani, Sonya (OPA)
**Sent:** Tuesday, January 31, 2017 12:45 PM
**To:** Navas, Nicole (OPA) <nnavas@jmd.usdoj.gov>; Carr, Peter (OPA) <pcarr@jmd.usdoj.gov>; Raimondi, Marc (OPA) <mraimondi@jmd.usdoj.gov>
**Subject:** RE: Flagging for the group: DHS press conference with Secretary Kelly on executive orders

**DHS Press Conference on Executive Order**
**January 31, 2017**

(b) (5)

(b) (5)

Thanks,
Sonya

**Sonya Keshwani**
National Security Press Assistant | U.S. Department of Justice
D: 202-514-2016 | C: (b) (6) | Sonya.Keshwani@usdoj.gov

---

**From:** Navas, Nicole (OPA)
**Sent:** Tuesday, January 31, 2017 12:23 PM
**To:** Keshwani, Sonya (OPA) <skeshwani@jmd.usdoj.gov>; Carr, Peter (OPA) <pcarr@jmd.usdoj.gov>; Raimondi, Marc (OPA) <mraimondi@jmd.usdoj.gov>
**Subject:** RE: Flagging for the group: DHS press conference with Secretary Kelly on executive orders

I'm watching it live on CNN. thanks

Nicole A. Navas
Spokesperson/Public Affairs Specialist
U.S. Department of Justice (DOJ)
202-514-1155 (office)
(b) (6) (cell)
Nicole.Navas@usdoj.gov

---

**From:** Keshwani, Sonya (OPA)
**Sent:** Tuesday, January 31, 2017 12:02 PM
**To:** Navas, Nicole (OPA) <nnavas@jmd.usdoj.gov>; Carr, Peter (OPA) <pcarr@jmd.usdoj.gov>; Raimondi, Marc (OPA) <mraimondi@jmd.usdoj.gov>
**Subject:** RE: Flagging for the group: DHS press conference with Secretary Kelly on executive orders

I'm checking the DHS & CBP website and twitter for a live feed link but it looks like the press conference hasn't started yet. Just mentioned on CNN that they will go live at the conference too, fyi.

Sonya

**Sonya Keshwani**
National Security Press Assistant | U.S. Department of Justice
D: 202-514-2016 | C: (b) (6) | Sonya.Keshwani@usdoj.gov

---

**From:** Navas, Nicole (OPA)
**Sent:** Tuesday, January 31, 2017 11:56 AM
**To:** Carr, Peter (OPA) <pcarr@jmd.usdoj.gov>; Raimondi, Marc (OPA) <mraimondi@jmd.usdoj.gov>; Keshwani, Sonya (OPA) <skeshwani@jmd.usdoj.gov>

Keshwani, Sonya (OPA) <skeshwani@jmd.usdoj.gov>
**Subject:** RE: Flagging for the group: DHS press conference with Secretary Kelly on executive orders

Thanks, Marc. Can you send us the live stream link that DHS sends you?

Nicole A. Navas
Spokesperson/Public Affairs Specialist
U.S. Department of Justice (DOJ)
202-514-1155 (office)
(b) (6) (cell)
Nicole.Navas@usdoj.gov

---

**From:** Carr, Peter (OPA)
**Sent:** Tuesday, January 31, 2017 11:50 AM
**To:** Raimondi, Marc (OPA) <mraimondi@jmd.usdoj.gov>; Keshwani, Sonya (OPA) <skeshwani@jmd.usdoj.gov>; Navas, Nicole (OPA) <nnavas@jmd.usdoj.gov>
**Subject:** RE: Flagging for the group: DHS press conference with Secretary Kelly on executive orders

Thanks. Sonya – could you try to catch the livestream and take some notes?

---

**From:** Raimondi, Marc (OPA)
**Sent:** Tuesday, January 31, 2017 11:48 AM
**To:** Keshwani, Sonya (OPA) <skeshwani@jmd.usdoj.gov>; Christensen, Gillian (b) (6) per DHS
**Subject:** FW: Flagging for the group: DHS press conference with Secretary Kelly on executive orders

Team, please see note from DHS regarding what they have going on today. Please go direct with Gillian with any questions.

---

**From:** Christensen, Gillian [mailto:(b) (6) per DHS
**Sent:** Tuesday, January 31, 2017 11:12 AM
**To:** Trudeau, Elizabeth K <trudeauek@state.gov>; Toner, Mark C <tonermc@state.gov>; Raimondi, Marc (OPA) <Marc.Raimondi@usdoj.gov>; (b) (6)
(b) (6) (b) (6)
**Subject:** Flagging for the group: DHS press conference with Secretary Kelly on executive orders

Hey Folks –

Apologies I didn't make the call this a.m. We got tasked to arrange a press conference today at noon at CBP HQ with the Secretary and heads of CBP, ICE and our Intel department. (b) (5)
(b) (5) It will be streamed live. State – it may be helpful for you guys to tune it

Let me know if you have any questions!

Cheers,
Gillian

Gillian M. Christensen
Press Secretary (Acting)
Department of Homeland Security
(b) (6) per DHS

(b) (6) per DHS

(b) (6) per DHS

(b) (6) per DHS

**Administrator@osac.gov**

**From:** Administrator@osac.gov
**Sent:** Friday, February 03, 2017 12:04 PM
**To:** marc.raimondi@usdoj.gov
**Subject:** OSAC Report: Immigration Executive Order Impacts & Benchmarking

# Immigration Executive Order Impacts & Benchmarking

On January 27, U.S. President Donald Trump signed an Executive Order (EO) titled "Protecting the Nation From Foreign Terrorists Entry Into the United States." The EO imposes a 90-day suspension on entry to the U.S. of nationals of seven designated countries: Iraq, Iran, Libya, Somalia, Sudan, Syria, and Yemen, except for U.S. Legal Permanent Residents, Visa Waiver Program dual nationals of these countries, and Special Immigrant Visa-holders - Iraq. In addition, the U.S. Refugee Admissions Program was also suspended for 120 days. The application of the EO has raised concerns from many OSAC constituents about the implications for their operations, prompted protests in some cities, and triggered questions about possible reprisals from some of the impacted countries.

The complete report can be viewed at https://www.osac.gov/Pages/ContentReportDetails.aspx?cid=21191

**Andrea Noble**

---

**From:** Andrea Noble
**Sent:** Friday, February 03, 2017 2:21 PM
**To:** Nicole Navas
**Subject:** visas revoked under executive order - number?

Hey Nicole,
Following up on the discrepancy between the 100,000 visa number provided by a DOJ attorney in court in Virginia today and the State Department's 60,000 number.
Is DOJ able to comment on what is behind the difference in the number of revoked visas that are being cited by both agencies?

--
Andrea Noble
The Washington Times
Phone: 202-636-3160
Twitter: anobleDC

**Navas, Nicole (OPA)**

| | |
|---|---|
| **From:** | Navas, Nicole (OPA) |
| **Sent:** | Friday, February 03, 2017 8:10 PM |
| **To:** | Andrea Noble |
| **Cc:** | Carr, Peter (OPA) |
| **Subject:** | RE: TRO on executive order? |

Hi Andrea,
Please use the following statement: "The Department looks forward to reviewing the court's written order and will determine next steps." Thank you

Nicole A. Navas
Spokesperson/Public Affairs Specialist
U.S. Department of Justice (DOJ)

**From:** Andrea Noble [mailto:anoble@washingtontimes.com]
**Sent:** Friday, February 03, 2017 7:17 PM
**To:** Nicole Navas <nicole.navas@usdoj.gov>; Carr, Peter (OPA) <Peter.Carr@usdoj.gov>
**Subject:** TRO on executive order?

Is DOJ able to comment on the temporary restraining order out of Washington on Donald Trump's executive order on immigration?

--
Andrea Noble
The Washington Times
Phone: 202-636-3160
Twitter: anobleDC

(b) (5)

-------- Original message --------
From: Andrea Noble <anoble@washingtontimes.com>
Date: 02/03/2017 4:34 PM (GMT-08:00)
To: "Bennett, Michelle (CIV)" <(b) (6) per CIV
Subject: TRO on immigration?

Hi Ms. Bennett,
Is the DOJ able to comment on the TRO out of Seattle on the immigration executive order? Will you be appealing to the 9th Circuit?

--
Andrea Noble
The Washington Times
Phone: 202-636-3160
Cell: (b) (6)
Twitter: anobleDC

**Andrea Noble**

---

**From:** Andrea Noble
**Sent:** Sunday, February 05, 2017 11:14 AM
**To:** Carr, Peter (OPA)
**Subject:** Executive order

Since the 9th Circuit left the TRO in place, what is DOJs plan? Will it appeal to the Supreme Court on this matter?
Will there be a hearing Monday, or is that just when briefs are due in this latest round?
Thanks.

**Carr, Peter (OPA)**

**From:** Carr, Peter (OPA)
**Sent:** Wednesday, February 08, 2017 11:24 AM
**To:** Love, Kelly A. EOP/WHO
**Subject:** RE: Administration Appeals of judicial motions on refugee EO

Sure, thanks Kelly.

---

**From:** Love, Kelly A. EOP/WHO [mailto:(b) (6): White House email address
**Sent:** Wednesday, February 08, 2017 11:09 AM
**To:** Carr, Peter (OPA) <Peter.Carr@usdoj.gov>
**Subject:** FW: Administration Appeals of judicial motions on refugee EO

Hi Peter,
Could you speak to Richard about his inquiry below (b) (5) ?
Best,
Kelly

---

**From:** Richard Pollock [mailto:(b) (6)
**Sent:** Wednesday, February 8, 2017 10:58 AM
**To:** Bryan Lanza <(b) (6)
**Cc:** Love, Kelly A. EOP/WHO <(b) (6): White House email address>
**Subject:** Re: Administration Appeals of judicial motions on refugee EO

Hi Kelly,

Can we talk off-the-record about Yates and if she actually obstructed DOJ on the immigration EO?

All the best,

Richard

Richard Pollock
(b) (6)

On Feb 2, 2017, at 12:04 PM, Bryan Lanza <(b) (6) wrote:

> Looping in Kelly Love at the White House for the assist.
>
> Best, Bryan Lanza
>
> Get Outlook for iOS
>
> ---
>
> **From:** Richard Pollock <(b) (6)
> **Sent:** Thursday, February 2, 2017 10:17:42 AM
> **To:** Bryan Lanza
> **Subject:** Administration Appeals of judicial motions on refugee EO

**Subject:** Administration Appeals of Judicial Motions on refugee EO

Hi Bryan,

A number of reporters openly wondered on Sunday night why the administration did not file appeals for the refugee executive order.

In light of what we now know of Sally Yates, is it possible that she actually blocked or delayed any of DOJ appeals?

If so, I think this is a big story and prepared to write about it.

Please let me know if this is the case and if so, could you connect me to AG Sessions press person who can provide me with details?

Thanks!

Richard

--
Richard Pollock
Senior Investigative Reporter
The Daily Caller News Foundation
Mobile: (b) (6)
Direct Dial: 202-463-5056
@rpollockDC

**Burton, Faith (OLA)**

| | |
|---|---|
| **From:** | Burton, Faith (OLA) |
| **Sent:** | Wednesday, February 15, 2017 11:34 AM |
| **To:** | Colborn, Paul P (OLC) |
| **Subject:** | Incoming letter (and briefing request) from Sen. McCaskill (re: Executive Order/travel) |
| **Attachments:** | 2017-02-14 Letter to AG Sessions re travel ban.pdf |

Heads up – (b) (5) [redacted] let's discuss when you have a minute. FB

---

**From:** Johnson, Joanne E. (OLA)
**Sent:** Wednesday, February 15, 2017 11:27 AM
**To:** Ramer, Sam (OLA) <sramer@jmd.usdoj.gov>; Burton, Faith (OLA) <fburton@jmd.usdoj.gov>
**Subject:** Incoming letter (and briefing request) from Sen. McCaskill (re: Executive Order/travel)

Sam/Faith: FYI: Attached please find a letter that we just received from Senator McCaskill concerning the recent Executive Order (re: travel from the 7 countries). Sen. McCaskill asks several questions and also seeks a briefing from the Department before March 1.

Faith: I sent the letter to Shirley for log-in. (b) (5) [redacted]
(b) (5) I also would like to confer with you re: (b) (5) [redacted]

Thank you,

Joanne Johnson
Attorney-Advisor
OLA/DOJ
202-305-8313

United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510–6250

February 14, 2017

The Honorable Jeff B. Sessions
Attorney General
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, D.C. 20530

Dear Mr. Sessions:

On January 27, President Trump issued an Executive Order banning travel from seven Muslim-majority countries for 90 days, blocking the entry of all refugees to the United States for 120 days, and indefinitely suspending the Syrian refugee program.[1] That day, the Department of Justice's (DOJ) Office of Legal Counsel (OLC) issued a memorandum approving the proposed Executive Order for form and legality. The memorandum did not include any of the legal analysis that led to this approval.[2] Even though OLC approved the Executive Order, on January 30 then-acting Attorney General Sally Yates stated that she did not believe the Executive Order was lawful and ordered DOJ attorneys not to defend the Executive Order.[3]

There has been considerable confusion at airports across the country and embassies around the world regarding the implementation of the Executive Order.[4] The elements of the executive order that require a determination of a refugee's religion, and those that subject legal permanent residents of the United States to delayed or denied entry to the U.S have been

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[1] Exec. Order 13769, 82 Fed. Reg. 8977 (Jan. 27, 2017) (https://www.gpo.gov/fdsys/pkg/FR-2017-02-01/pdf/2017-02281.pdf).

[2] Memorandum from Curtis E. Gannon, Acting Assistant Attorney General, Department of Justice, Re: Proposed Executive Order Entitled, "Protecting the Nation from Foreign Terrorist Entry into the United States" (Jan. 27, 2017) (https://www.buzzfeed.com/zoetillman/heres-the-justice-department-memo-on-trumps-refugee-and-trav?utm_term=.jtwzkN6w2#.cbq5dBo96).

[3] Letter from Acting Attorney General Sally Yates, Department of Justice, to Unidentified Justice Department Officials (Jan. 30, 2017) (https://assets.documentcloud.org/documents/3438879/Letter-From-Sally-Yates.pdf).

[4] *Judge Blocks Trump Order on Refugees Amid Chaos and Outcry Worldwide,* New York Times (Jan. 28, 2017) (https://www.nytimes.com/2017/01/28/us/refugees-detained-at-us-airports-prompting-legal-challenges-to-trumps-immigration-order.html).

particularly troubling.[5] On February 1, White House Counsel Don McGahn issued highly unusual "authoritative guidance" that key parts of the Executive Order would no longer apply to legal permanent residents, effectively redrafting the Executive Order.[6] As of the date of this letter, there are at least eight major lawsuits challenging the Executive Order.[7] On February 3, U.S. District Judge James Robart ordered a nation-wide temporary restraining order halting the implementation of the Executive Order.[8]

In order to better understand the analysis of the Executive Order by the Department, I request the following information:

1) The names, titles and qualifications of any Justice Department officials who were involved in the drafting and/or review of the Executive Order prior to its issuance, including any political appointees, members of the "beachhead team", special advisors and consultants;

2) All legal analysis related to the Executive Order, including any analysis done by OLC that concluded the Executive Order was legal; and

3) All legal analysis related to whether the U.S. government may request information regarding an individual's religion prior to receiving a visa, admission or favorable immigration or refugee status; and

4) Any analysis on the history, authority and effect of White House Counsel "guidance" on executive orders, and a description of any similar role in interpreting executive orders that OLC previously played.

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[5] *Judge Blocks Trump Order on Refugees Amid Chaos and Outcry Worldwide,* New York Times (Jan. 28, 2017) (https://www.nytimes.com/2017/01/28/us/refugees-detained-at-us-airports-prompting-legal-challenges-to-trumps-immigration-order.html).

[6] Memorandum from Donald F. McGahn, Counsel to the President, to the Acting Secretary of State, the Acting Attorney General and the Secretary of Homeland Security, Authoritative Guidance on Executive Order Entitled "Protecting the Nation from Foreign Terrorist Entry into the United States", (February 1, 2017) (http://www.politico.com/f/?id=00000159-fb28-da98-a77d-fb7dba170001).

[7] *Is Trump's Travel Order Legal? How Challengers Are Opposing It,* NBC News, (Feb. 5, 2017) (http://www.nbcnews.com/news/us-news/trumps-travel-order-legal-how-challengers-are-opposing-it-n716921).

[8] *Judge in Seattle Halts Trump's Immigration Order Nationwide; White House Vows to Fight,* The Seattle Times, (Feb. 4, 2017) (http://www.seattletimes.com/seattle-news/politics/federal-judge-in-seattle-halts-trumps-immigration-order/).

I also request that you provide a briefing to my staff on the implementation of this order on or before March 1, 2017. I also request a thorough, written response as soon as practicable, and in no case later than March 1, 2017.

Please contact Jackson Eaton with the Committee staff at (b) (6) with any questions. Please send any official correspondence relating to this request to (b) (6)

Sincerely,

Claire McCaskill
Ranking Member

cc: Ron Johnson
Chairman

**Kellner, Kenneth E. (OLA)**

| | |
|---|---|
| **From:** | Kellner, Kenneth E. (OLA) |
| **Sent:** | Wednesday, February 15, 2017 3:36 PM |
| **To:** | Colborn, Paul P (OLC) |
| **Cc:** | Burton, Faith (OLA); Johnson, Joanne E. (OLA) |
| **Subject:** | FW: Letter from Sen. McCaskill re Executive Order |
| **Attachments:** | 2017-02-14 Letter to AG Sessions re travel ban.pdf |

Hi Paul:

Here is a new incoming from HSGAC Ranking Member McCaskill concerning Executive Order 13769. (b) (5)
(b) (5)

Thanks,

Ken

**Carr, Peter (OPA)**

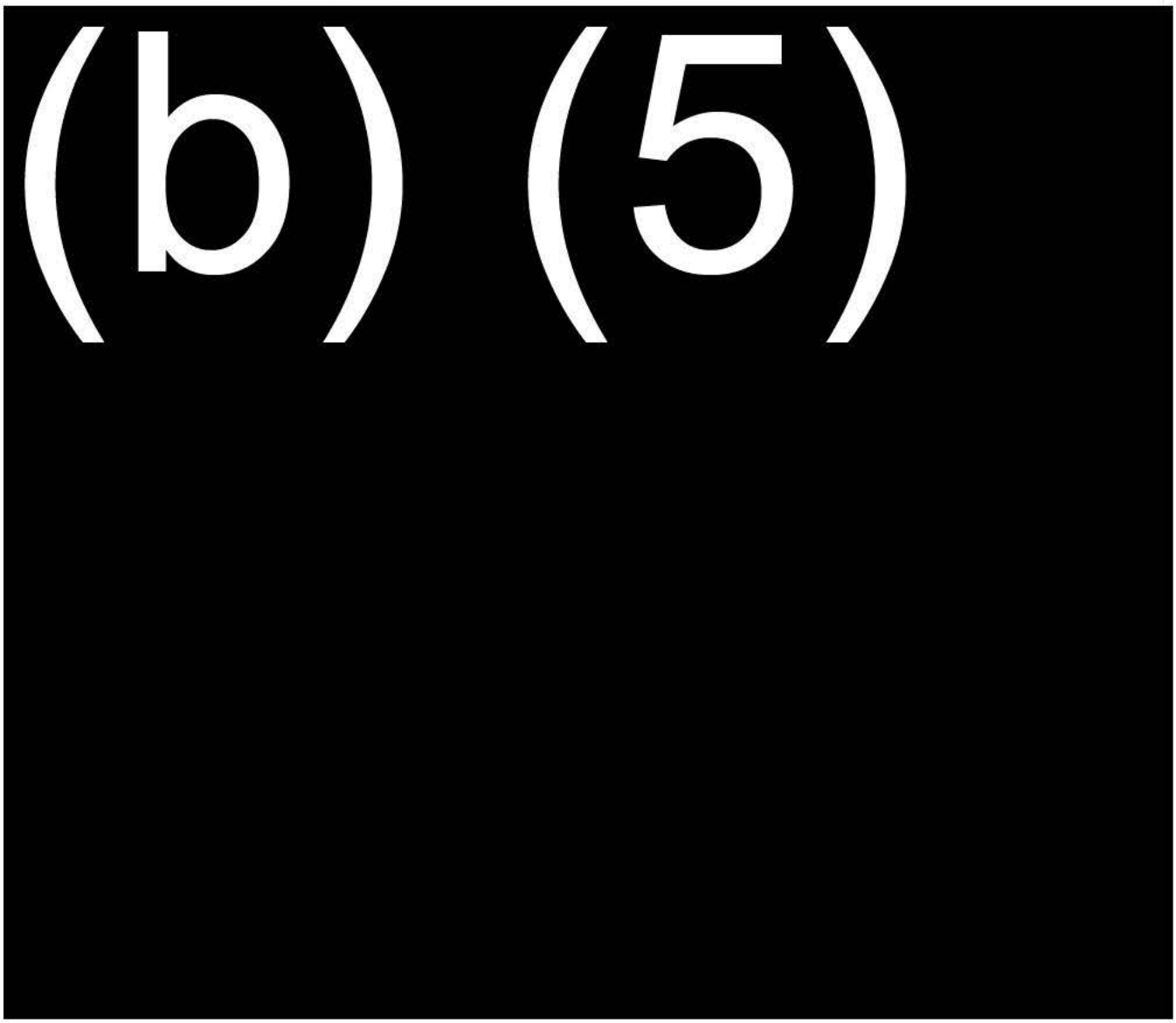
**From:** Carr, Peter (OPA)
**Sent:** Thursday, February 16, 2017 2:11 PM
**To:** Bockhorn, Lee F. (OPA)
**Subject:** RE: Hot Topics 2.16.17

Thanks, Lee.

**From:** Bockhorn, Lee F. (OPA)
**Sent:** Thursday, February 16, 2017 2:10 PM
**To:** Carr, Peter (OPA) <pcarr@jmd.usdoj.gov>
**Subject:** RE: Hot Topics 2.16.17

Thanks for sending this, Peter. (b) (5)

(b) (5)



[redacted]

That's all I can think of at the moment. Hope at least some of this is helpful.

--Lee

p.s. – Do you know if anyone will be recording/transcribing this meet-and-greet tomorrow?

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**From:** Carr, Peter (OPA)
**Sent:** Thursday, February 16, 2017 1:01 PM
**To:** Bockhorn, Lee F. (OPA) <lfbockhorn@jmd.usdoj.gov>
**Subject:** Hot Topics 2.16.17

Lee,

The AG is doing an off-the-record meet and greet tomorrow with reporters. [redacted]

Thx,
Peter

[redacted]

**From:** Tucker, Eric [mailto:etucker@ap.org]
**Sent:** Thursday, February 23, 2017 5:22 PM
**To:** Peter.Carr@usdoj.gov
**Subject:** Draft EO -- we're trying to confirm that this is final version. Thanks!

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Immigration and National 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 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 aid, support, or commit acts of terrorism and in preventing

crucial role in detecting foreign nationals who may aid, support, or commit acts of terrorism and in preventing those individuals from entering the United States. In recent years, many foreign nationals have been convicted of or implicated in terrorism-related crimes in the United States, including foreign nationals who entered the United States through visas or as refugees. It is therefore the policy of the United States to improve the 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. I selected those countries because each of them had already been determined to raise heightened concerns about terrorism and entry into the United States. Specifically, the suspension applied to countries referred to in section 217(a)(12) of the Immigration and Nationality Act (INA), 8 U.S.C. 1187(a)(12), in which Congress had denied certain immigration benefits to nationals of, and aliens present in, (A) Iraq or Syria, (B) any country designated 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, based on his 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). I was particularly concerned about gaps in visa screening processes that could be exacerbated by further deterioration of conditions in these countries.

(ii) In ordering the temporary suspension of entry, I exercised my authority under Article II of the Constitution and under section 212(f) of the INA, which provides: "Whenever the President finds that the entry of any aliens or 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 appropriate. 8 U.S.C. 1182(f). Under these authorities, I determined that for a brief period of 90 days, while existing vetting procedures were under review, the entry into the United States of certain aliens from these seven, terrorist-compromised countries 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. It is widely known that terrorist groups are seeking to infiltrate the United States and other Western nations through refugee programs. Accordingly, I temporarily suspended the USRAP pending a review of our procedures for 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 neither provided a basis for discriminating for or against members of any particular religion, nor did it have the effect of favoring one religion over another. While the 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. The order was therefore 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 exceptional challenges and circumstances.

(v) The White House Counsel's guidance of February 1, 2017, clarified that the Executive Order did not apply to lawful permanent residents.

(c) Although Executive Order 13769 was a lawful, necessary, and appropriate exercise of my powers under Article II of the Constitution and the INA, the courts have delayed its implementation. Most significantly, enforcement of critical provisions of the Order has been barred 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 that injunction pending the outcome of further judicial proceedings, stating that the "political branches are far better equipped to make appropriate distinctions."

(d) The entry into the United States of foreign nationals who may support, aid, or commit acts of terrorism remains a matter of grave concern. In particular, the United States cannot wait for the pending litigation to run its course before implementing the temporary suspensions discussed above to the fullest extent consistent with the reasoning of existing court rulings. For that reason, and in light of the Ninth Circuit's observation that the political branches are better suited to determining the appropriate scope of any suspensions than are the courts, 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 certain other aspects of the earlier order.

**Sec. 2.** Temporary Suspension of Entry for Nationals of Countries of Particular Concern During Visa Review. (a) The Secretary of Homeland Security, in consultation with the Secretary of State and the Director of National Intelligence, shall conduct a review to identify the information needed from each 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 who the individual claims to be and 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 such information 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 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 30 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 of foreign nationals, and to ensure that adequate standards are established to prevent infiltration by foreign terrorists or criminals, pursuant to sections 212(f) and 215(a)(1) of the INA, 8 U.S.C. 1182(f) and 1185(a)(1), I hereby proclaim that the unrestricted entry into the United States of aliens from countries referred to in, or designated under, section 217(a)(12) of the INA, 8 U.S.C. 1187(a)(12) ("section 217(a)(12) countries"), would be detrimental to the interests of the United States. I therefore direct that the entry into the United States of nationals of the section 217(a)(12) countries be suspended for 90 days from the effective date of this order, subject to the limitations, waivers, and exceptions set forth in section 3 of this order.

(d) Immediately upon receipt 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 begin 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 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 foreign nationals, within the categories described in section 3 of this order, of countries that do not provide the information requested pursuant to subsection (d) of this section until compliance occurs.

(f) At any point after the submission of the list described in subsection (e) of this section, the Secretary of State, the Attorney General, or the Secretary of Homeland Security may submit to the President the names of any additional countries recommended for similar treatment. The Secretary of State or the Secretary of Homeland Security may also take appropriate action, as permitted by law, to heighten scrutiny and vetting procedures to ensure the immigration system protect national security and the national interest.

(g) 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 effective date of this order, a second report within 60 days of the effective date of this order, a third report within 90 days of the effective date of this order, and a fourth report within 120 days of the effective date of this order.

**Sec. 3.** Scope and Implementation of Suspension. (a) Subject to the exceptions and waivers in subsections (b) through (f) of this section, the suspension of entry pursuant to subsection (c) or (e) of section 2 of this order is limited to the following categories of aliens:

(i) foreign nationals of the applicable countries who have never been in the United States and are not in transit to the United States on the effective date of this order;

(ii) foreign nationals of the applicable countries who have previously been in the United States but are outside the United States on the effective date of this order and did not have a current visa on either January 27, 2017, or on the effective date of this order.

(b) The suspension of entry pursuant to section 2 of this order shall not apply to a dual national of a section 217(a)(12) country or other country designated under subsection (e) of section 2 when the individual is traveling on a passport issued by a different country.

(c) The suspension of entry pursuant to subsection (c) or (e) of section 2 of this order shall not apply to any lawful permanent resident of the United States.

(d) The suspension of entry pursuant to subsection (c) or (e) of section 2 of this order shall not apply to any alien who is in the United on the effective date of this order, unless the alien is later removed from the United States and then seeks reentry.

(e) The suspension of entry pursuant to subsection (c) or (e) of section 2 shall not apply to foreign nationals traveling on diplomatic visas, North Atlantic Treaty Organization visas, C-2 visas for travel to the United Nations, or G-1, G-2, G-3, or G-4 visas.

(f) Notwithstanding a suspension of entry pursuant to subsection (c) of section 2 or pursuant to a Presidential proclamation described in subsection (e) of section 2, the Secretary of State or the Secretary of Homeland Security may, in their unreviewable discretion, decide on a case-by-case basis that it is in the national interest to issue a visa to, or permit the entry of, a foreign national for whom entry is otherwise suspended, including in circumstances such as the following:

(i) the alien 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, and later seeks to reenter the United States to resume that activity;

(ii) the alien has previously resided lawfully in the United States but is outside the United States on the effective date of this order for work, study, or other lawful activity; or

(iii) the alien lacks significant prior contacts with the United States, but special circumstances exist such that entry into the United States would not be contrary to the national interest. Such aliens may include individuals with business or professional obligations in the United States, individuals seeking to live with a spouse who is a U.S. citizen or lawful permanent resident, parents joining minor children, minor children joining parents, infants, adoptees, and individuals needing special medical care.

**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 who seek to enter the United States on a fraudulent basis, who support terrorism, violent extremism, or acts of oppression toward any group or class of people within the United States, or who are at risk of causing harm subsequent to their admission. This program shall include the development of uniform screening 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 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 may aid, commit, or support any kind of violent, 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 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. 5.** Realignment of the U.S. Refugee Admissions Program for Fiscal Year 2017. (a) The Secretary of State shall suspend approvals of refugee status under the USRAP 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 process to determine what additional procedures should be taken to ensure that individuals approved for 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 in this subsection shall not apply to refugee applicants whose eligibility has been approved and who have been provided refugee travel documents before the effective date of this order. Upon the date that is 120 days after the effective date of this order, the Secretary of State shall resume USRAP adjudications and provision of travel documents 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) 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 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

(c) Notwithstanding the temporary suspension imposed pursuant to subsection (a) of this section, the Secretaries of State and Homeland Security may determine to admit individuals to the United States as refugees on a case-by-case basis, in their unreviewable discretion, but only so long as they determine that the admission of such individuals as refugees is in the national interest and would not pose a risk to the security or welfare of the United States, including in circumstances such as the following: admission of the individual would enable the United States to conform its conduct to a preexisting international agreement, or the individual is in final preparation for transit on the effective date of this order and denying admission 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 and the Office of Refugee Resettlement 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 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 contained in subsection (a) of this section. The initial report shall be submitted within 100 days of the date of this order, a second report shall be submitted within 200 days of the date of this order, and a third report shall be submitted within 365 days of the date of this order. Further, the Secretary shall submit a report every 180 days thereafter until the system is fully deployed and operational.

**Sec. 8.** Visa Interview Security. (a) The Secretary of State shall immediately suspend the Visa Interview Waiver Program and ensure compliance with section 222 of the INA, 8 U.S.C. 1202, which requires that all individuals seeking a nonimmigrant visa undergo an in-person interview, subject to specific statutory exceptions.

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

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

**Sec. 10.** Transparency and Data Collection. (a) To be more transparent with the American people, and to more effectively implement policies and practices that serve the national interest, the Secretary of

Homeland Security, in consultation with the Attorney General, shall, consistent with applicable law and national security, collect and make publicly available 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, or material support to a terrorism-related organization, or any other national-security reasons;

(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;

(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; 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 initial report under subsection (a) of this section shall be released 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. 11.** 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) 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 a 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) This order shall not apply to an individual who has been determined to be an asylee or to an alien granted withholding of removal or protection under the Convention Against Torture. Nothing in this order shall be construed to limit the ability of an alien to seek asylum, withholding of removal, or protection under the Convention Against Torture.

**Sec. 12.** Revocation. Executive Order 13769 of January 27, 2017, is hereby revoked.

**Sec. 13.** Effective Date. This order is effective at 12:01 am, Eastern Time, on February XX, 2017.

**Sec. 14.** 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. 15.** 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.

(b) (5)

-----Original Message-----
From: America Hernandez [mailto:America_Hernandez@dailyjournal.com]
Sent: Friday, February 24, 2017 1:11 PM
To: Navas, Nicole (OPA) <nnavas@jmd.usdoj.gov>
Cc: Go, Samuel (CIV) <(b) (6) per CIV>
Subject: RE: Daily Journal article on Mohammed et al v USA et al

Ms. Navas,

Thank you for the response.

I do however, have some follow up questions as I was present for the first two portions of the hearing, at which both the parties and the judge DID address another issue: that of whether additional plaintiffs had been properly added to the suit already.

I was also present when Judge Otero verbally and on the record extended the TRO for seven days, and ordered the parties to return with a briefing schedule, after which he cleared the courtroom and called the next case, which he said was a sealed matter.

It appears that after having made this order on the record and moved on to the next case, anticipating a briefing schedule would be submitted by the parties, that the court resumed the hearing, and then proceeded to dissolve the TRO.

My question is, why did the parties return to the courtroom after the judge moved on to another case- was it the parties' decision, or were they summoned back in by the judge? What was the stated reason for needing to continue argument? What was then discussed at this resumed hearing, and what did the government attorney argue that ultimately persuaded the judge to reverse himself?

The final written order appears to say two things:
1. That the issue of the 3-year-old toddler whom the government claims was denied a visa for insufficient documentation, and whom plaintiffs claim had a final interview cancelled but not rescheduled, allegedly in violation of the TRO, had been resolved in such a way that an order was

unnecessary. Did the parties come to a resolution regarding how this last named plaintiff who did not have a valid visa would be dealt with? What is that agreement or what was the judge's determination? 2. That some 500 additional named plaintiffs won't be added to the case, or that the issue of whether they are properly added was not addressed by the court. Was there a determination at the hearing as to the admissibility of additional plaitniffS, or was there an argument date set for that issue, and if so, what is that date?

Lastly, there is mention in the order of "two recesses" being taken, but it does not mention any in camera discussions the judge may have had with one or both sides. Did the government have any communication with the judge in chambers during those recesses? Was opposing counsel (plaintiff's counsel) present at that time? What aspect of the case was discussed? Did it take place before or after the judge ruled to dissolve the TRO?

My very best,

America Hernandez
Reporter, California Federal Courts
Los Angeles Daily Journal
Office: 213.229.5331
Cell: (b) (6)
america_hernandez@dailyjournal.com

-----Original Message-----
From: Navas, Nicole (OPA) [mailto:Nicole.Navas@usdoj.gov]
Sent: Thursday, February 23, 2017 2:11 PM
To: America Hernandez <America_Hernandez@dailyjournal.com>
Subject: RE: Daily Journal article on Mohammed et al v USA et al

Hi America,
Sorry for delayed reply. The TRO expired on Feb. 21 (this was the TRO's expiration date, and it was not extended). Attached is the order. For guidance in your reporting: Agreement to a briefing schedule was unnecessary because the judge let the TRO expire. No other issues were addressed at the hearing. We anticipate filing a response to the First Amended Complaint and a Response to the Motion for Class Certification.

Thank you,

Nicole A. Navas
Spokesperson/Public Affairs Specialist
U.S. Department of Justice (DOJ)

-----Original Message-----
From: America Hernandez [mailto:America_Hernandez@dailyjournal.com]
Sent: Thursday, February 23, 2017 12:36 PM
To: Navas, Nicole (OPA) <Nicole.Navas@usdoj.gov>
Cc: Go, Samuel (CIV) <(b) (6) per CIV
Subject: RE: Daily Journal article on Mohammed et al v USA et al

Ms. Navas,

Good morning. I would like to inquire as to whether the plaintiffs' temporary restraining order against the executive immigration order was extended for 7 days to Feb. 28, or whether it was dissolved, and whether Judge Otero stated any reason on the record for the change?

Additionally:
- Why were the parties unable to agree to a briefing schedule for the new hearing arguing for or against a preliminary injunction?
- Did the judge address any other issue at this week's hearing, regarding whether the additional plaintiffs would be allowed to be included in the first amended complaint?
- What are the next steps in this litigation, procedurally?

My very best,

America Hernandez
Reporter, California Federal Courts
Los Angeles Daily Journal
Office: 213.229.5331
Cell: (b) (6)
america_hernandez@dailyjournal.com

-----Original Message-----
From: Go, Samuel (CIV) [mailto (b) (6) per CIV
Sent: Thursday, February 23, 2017 5:23 AM
To: America Hernandez <America_Hernandez@dailyjournal.com>
Cc: Navas, Nicole (OPA) <Nicole.Navas@usdoj.gov>
Subject: RE: Daily Journal article on Mohammed et al v USA et al

Dear America,

Please communicate with Nicole Navas, who is cc'd here.

Sent from my Verizon Wireless 4G LTE smartphone

-------- Original message --------
From: America Hernandez <America_Hernandez@dailyjournal.com>
Date: 02/22/2017 2:34 PM (GMT-05:00)
To: "Go, Samuel (CIV)" (b) (6) per CIV
Subject: Daily Journal article on Mohammed et al v USA et al

Mr. Go,

Good morning, this is America Hernandez, the reporter from the Daily Journal legal newspaper who attended the Mohammed hearing before Judge Otero yesterday.

I heard from a colleague that after most of the reporters left, Otero did not extend the TRO as he previously said he would, but let it lapse after the attorneys could not agree on a briefing schedule.

Would you be willing to speak with me via phone so that I can understand what happened? It looks like the article I wrote based on the information Otero initially gave is now outdated.

My very best,

America Hernandez
Reporter, California Federal Courts
Los Angeles Daily Journal
Office: 213.229.5331
Cell: (b) (6)
america_hernandez@dailyjournal.com



US judge indicates his ruling on Trump executive order would be narrow By America Hernandez LOS ANGELES - A federal judge on Tuesday requested additional briefing on whether to issue a preliminary injunction preventing President Donald Trump's immigration executive order from taking effect, and issued a seven-day extension on the current emergency injunction, over the government's objection.

U.S. District Judge S. James Otero further opined that the order currently in place, penned by Central District colleague Andrew Birotte, was overbroad, and that any future injunction issued by Otero would likely apply only to visa holders from Yemen, where all the named plaintiffs in the proposed class action are from.

Otero agreed to hear argument on the preliminary injunction Feb. 28, on both parties' belief that the presence of U.S. citizen plaintiffs creates a different standing issue from the temporary restraining order issued by U.S. District Judge James L. Robart in Seattle brought by the state of Washington and upheld by the 9th U.S. Circuit Court of Appeals. State of Washington, et al. v. Trump et al, CV 17-141 (W.D. Wash., filed Jan. 30).

The decision to hit pause on the proceedings arose as counsel for the government and the plaintiffs sparred in open court over whether the lawsuit was moot, given settlement discussions that have allowed all but one named plaintiff to enter the United States since the case was filed Jan. 31. Mohammed et al., v. USA et al., CV 17-786 (C.D. Cal., filed Jan. 31, 2017).

"27 out of the 28 original plaintiffs have all been admitted to the U.S.," said Samuel P. Go, senior litigation counsel of the Office of Immigration Litigation District Court section.

The lone plaintiff still in Yemen is the 3-year-old son of another named plaintiff, the U.S.-based plaintiff alleges. The government contends that the toddler was properly denied a visa for insufficient documentation, an argument which appeared to flummox Otero given that both parents were allowed into the country.

"He was not denied, his case status reflects that he is ready for an interview to be scheduled," objected plaintiffs' counsel Julie A. Goldberg, of Goldberg & Associates in New York and Los Angeles. "He had an interview date which was canceled after the executive order was signed, and the fact that the embassy has not yet rescheduled him for an interview is a violation of the 9th Circuit order and of the temporary restraining order we have in this court." Goldberg also informed the court that she had filed a first amended complaint just before the 2 p.m. hearing began, which listed a total of 564 plaintiffs, all of whom claim to be either U.S. citizens or Yemeni relatives of U.S. citizens who said they had completed the required application and vetting process and had been granted visas at the time the executive order was issued, according to the complaint.

Goldberg also filed a motion for class certification on Tuesday, which Otero said he had not yet reviewed

reviewed.

The judge questioned whether those new plaintiffs could be properly considered, given that Goldberg had first filed a supplemental briefing tacking on 230 additional plaintiffs on Feb. 2, then filed a first amended complaint Feb. 21 purporting to add even more.

"This is a highly technical question, but it's a very important one," Otero said, explaining that if under court rules the Feb. 2 supplemental briefing counted as the first amended complaint, then Goldberg would have had to seek court permission to file the latest version with 564 plaintiffs.

Counsel for the government also objected to the motion for class certification on the grounds that proper notice was not given.

"Your honor, the reason why the initial TRO is so broad and has the language referring to 'every other person' is because we told Judge Birotte that this was going to be a class action, that we were on the ground in Africa and there was a race against the clock, and that's why in our initial complaint we also referred to all other similarly situated individuals," Goldberg told the court.

Government counsel disagreed.

"There are no Does 1-100 listed in the case caption, and beyond the general collective action allegations in the complaint we had no notice in compliance with the Local Rules, and there's nothing here given all the filings indicating that the one remaining named plaintiff is suffering irreparable harm" warranting a preliminary injunction, Goldberg said.

In addition to invalidating the executive order, the proposed class action before Otero seeks damages stemming from the costs U.S. citizen petitioners are paying to support their Yemeni relatives abroad in the wake of the 90-day travel freeze.

The U.S. embassy in Yemen closed in February 2015 due to terrorist activities and civil unrest, according to a U.S. travel warning issued at the time urging Americans to leave that country.

Americans seeking visas for Yemeni relatives have routed their petitions through the embassy in the Republic of Djibouti, a small country on the Horn of Africa reached by traveling southwest across the Mandeb Strait, which connects the Red Sea and the Arabian Sea.

"A trip ... means a great risk of bodily injury or death at sea. Each seat costs anywhere from $500 to $1,000," while "the average cost per family to live in Djibouti is $5,000 to $8,000 USD per month ... [because] Djibouti is heavily reliant on the import of basic necessities including food, water, toiletries, and shelter," according to a Feb. 2 declaration by Goldberg attached to the motion for preliminary injunction.

america_hernandez@dailyjournal.com<mailto:america_hernandez@dailyjournal.com>

**Burton, Faith (OLA)**

---

**From:** Burton, Faith (OLA)
**Sent:** Friday, February 24, 2017 4:43 PM
**To:** Kellner, Kenneth E. (OLA)
**Subject:** RE: DAG nominee prep
**Attachments:** Immig EO Talking Points mfb.docx

(b) (5) Pls upload if that's OK. Thank.s

---

**From:** Kellner, Kenneth E. (OLA)
**Sent:** Friday, February 24, 2017 4:22 PM
**To:** Burton, Faith (OLA) <fburton@jmd.usdoj.gov>
**Subject:** FW: DAG nominee prep

(b) (5)

**Kellner, Kenneth E. (OLA)**

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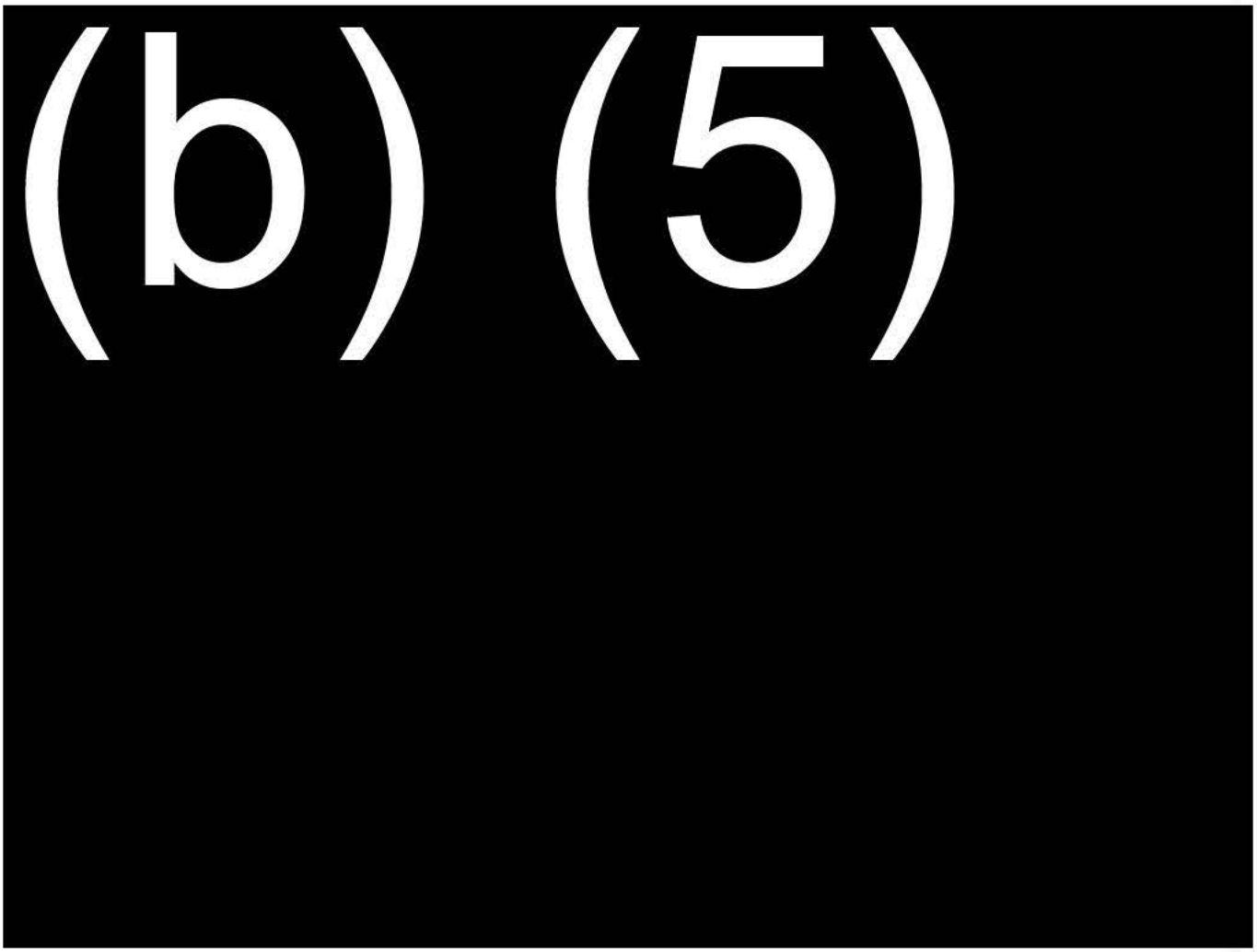
**From:** Kellner, Kenneth E. (OLA)
**Sent:** Monday, February 27, 2017 1:24 PM
**To:** Burton, Faith (OLA)
**Subject:** (b) (5)
**Attachments:** Immig EO Talking Points.docx

**Flores, Sarah Isgur (OPA)**

**From:** Flores, Sarah Isgur (OPA)
**Sent:** Saturday, March 04, 2017 12:06 PM
**To:** (b) (6): White House email address
**Subject:** Approved DOJ talking points



**Burton, Faith (OLA)**

| | |
|---|---|
| **From:** | Burton, Faith (OLA) |
| **Sent:** | Monday, March 06, 2017 2:29 PM |
| **To:** | Kellner, Kenneth E. (OLA) |
| **Subject:** | RE: HSGAC Information Request |

(b) (5)
(b) (5) Thanks. FB

**From:** Kellner, Kenneth E. (OLA)
**Sent:** Monday, March 06, 2017 2:23 PM
**To:** Burton, Faith (OLA) <fburton@jmd.usdoj.gov>
**Subject:** FW: HSGAC Information Request

Sen. McCaskill's office is calling about the response to this letter. (b) (5) (b) (5)
(b) (5)

**From:** Walsh, Joel (HSGAC) [mailto:(b) (6)
**Sent:** Monday, March 06, 2017 1:58 PM
**To:** 'kenneth.e.kellner@usdoj.gov' <kenneth.e.kellner@usdoj.gov>
**Cc:** Eaton, Jackson (HSGAC) (b) (6) ; Joanne Johnson (Joanne.e.johnson@usdoj.gov) <Joanne.e.johnson@usdoj.gov>
**Subject:** RE: HSGAC Information Request

Mr. Kellner:

Thanks for taking my call.

As I mentioned, I'm following up to see when we can expect a response to Senator McCaskill's Feb. 14 letter to DOJ (attached).

The Senator asked for a copy of any and all DOJ legal analysis related to Executive Order 13769 in addition to a staff briefing on implementation of the EO. This is an especially timely request given the issuance of today's revised Executive Order.

Please let me know at your earliest convenience when we can expect a written response from DOJ in addition to a briefing on the issue. As you'll note in the attached letter, my boss initially requested a response by March 1 (last Wednesday).

Thanks for your assistance.

Joel Walsh
(b) (6)

**From:** Walsh, Joel (HSGAC)
**Sent:** Wednesday, March 01, 2017 1:57 PM
**To:** Joanne Johnson (Joanne.e.johnson@usdoj.gov)
**Cc:** Eaton, Jackson (HSGAC)
**Subject:** HSGAC Information Request

**Subject:** HSGAC Information Request

Good afternoon Ms. Johnson.

I'm following up on this Feb. 14 letter from Senator McCaskill to Attorney General Sessions requesting information related to President Trump's Jan. 27 Executive Order (letter attached).

When can we expect a written response to the Senator's letter, along with the production of all requested materials, and when will DOJ provide HSGAC staff with a briefing on this matter as requested?

Thanks for your assistance.

--

**Joel Walsh**
Investigator
Senate Homeland Security and Governmental Affairs Committee
Ranking Member Claire McCaskill
(b) (6)

**Burton, Faith (OLA)**

| | |
|---|---|
| **From:** | Burton, Faith (OLA) |
| **Sent:** | Monday, March 06, 2017 3:50 PM |
| **To:** | Colborn, Paul P (OLC) |
| **Cc:** | Kellner, Kenneth E. (OLA) |
| **Subject:** | Status of DOJ response to McCaskill incoming re immigration order - |
| **Attachments:** | 3786050.McCaskill.incom.pdf; McCaskill immigration order response 21717.docx |

(b) (5) [redacted] Thanks FB

**Ditto, Jessica E. EOP/WHO**

| | |
|---|---|
| **From:** | Ditto, Jessica E. EOP/WHO |
| **Sent:** | Monday, March 06, 2017 8:34 PM |
| **To:** | Shah, Raj S. EOP/WHO; Sims, Clifton D. EOP/WHO; Strom, Natalie M. EOP/WHO; Hoffman, Jonathan; Epshteyn, Boris EOP/WHO; Hurley, Carolina L. EOP/WHO; Dubke, Michael D. EOP/WHO; Dorr, Kaelan K. EOP/WHO; Rateike, Bradley A. EOP/WHO; Staff Secretary; Katsas, Gregory G. EOP/WHO; Bash, John F. EOP/WHO; Short, Michael C. EOP/WHO; Hemming, Andrew J. EOP/WHO; Kennedy, Adam R. EOP/WHO; Sarah.Isgur.Flores@usdoj.gov; Lapan, David; 'hammondrc@state.gov'; Hazelton, Jennifer L; Gabriel, Robert EOP/WHO; Anton, Michael N. EOP/WHO; Sanders, Sarah H. EOP/WHO; Walters, Lindsay E. EOP/WHO; Grisham, Stephanie A. EOP/WHO; Spicer, Sean M. EOP/WHO; Magyarits, Caroline S. EOP/WHO; Henning, Alexa A. EOP/WHO |
| **Subject:** | Travel EO - Final Docs |
| **Attachments:** | Fact Sheet Protecting The Nation From Foreign Terrorist Entry To The Uni....pdf; Q&A - Protecting The Nation From Foreign Terrorist Entry To The United S....pdf; (b) (5) ; (b) (5) (b) (5) ;(b) (5) (b) (5) (b) (5) ;(b) (5) |

Everyone -

Thank you for your coordination today (b) (5) (b) (5) I also, wanted to put in one email the final materials – attached and below. Let me know how we can further assist with the outreach on this important action. Thanks, Jessica

EO: https://www.whitehouse.gov/the-press-office/2017/03/06/executive-order-protecting-nation-foreign-terrorist-entry-united-states
Memo: https://www.whitehouse.gov/the-press-office/2017/03/06/memorandum-secretary-state-attorney-general-secretary-homeland-security

DHS: https://www.dhs.gov/news/2017/03/06/statement-secretary-homeland-security-john-kelly-presidents-executive-order-signed
DHS Q/A: https://www.dhs.gov/news/2017/03/06/qa-protecting-nation-foreign-terrorist-entry-united-states
DHS Fact Sheet: https://www.dhs.gov/news/2017/03/06/fact-sheet-protecting-nation-foreign-terrorist-entry-united-states

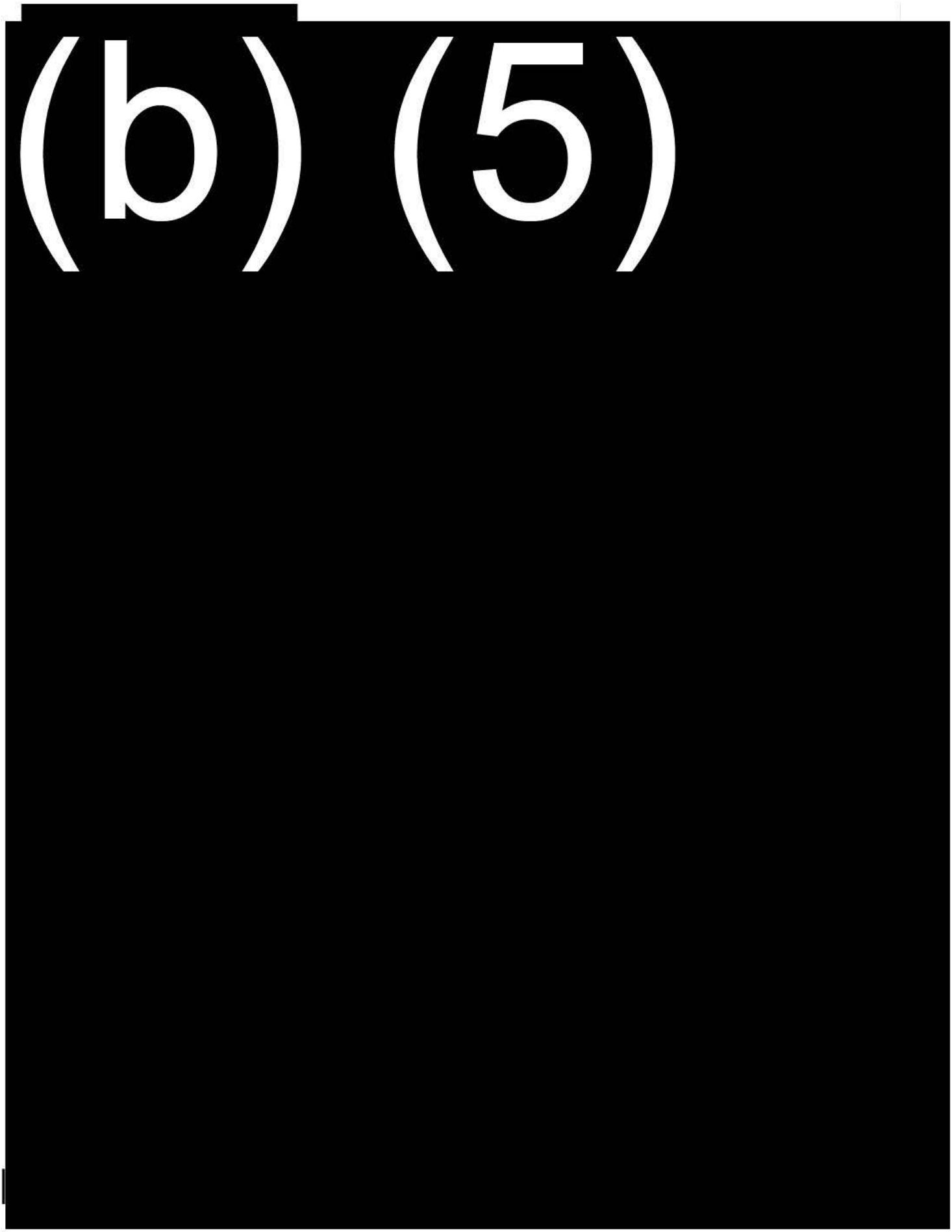
State: https://www.state.gov/secretary/remarks/2017/03/268230.htm

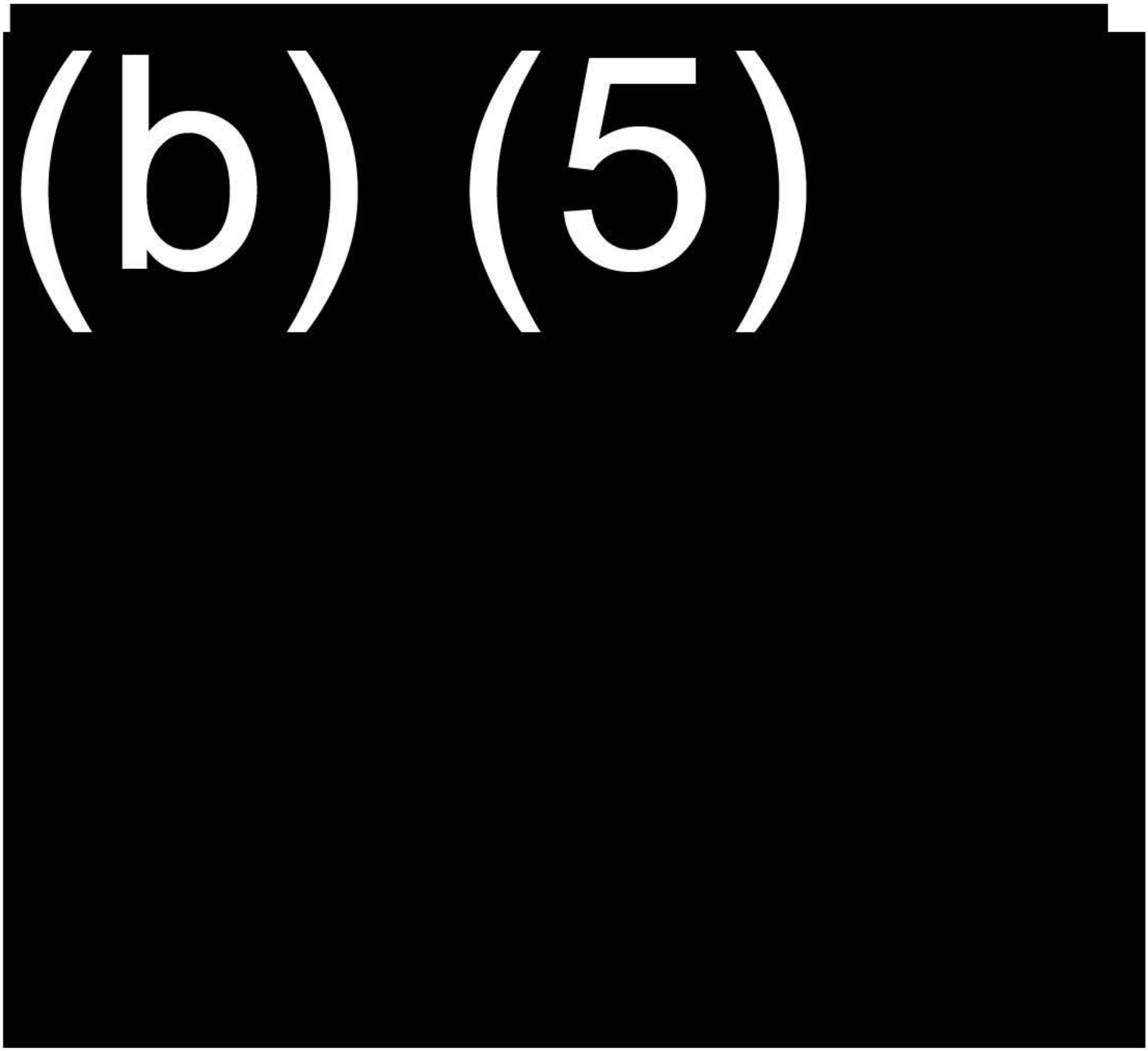
DOJ: https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-revised-executive-order-protecting-nation

WH Talking Points:

**Executive Order Protecting the Nation from Foreign Terrorist Entry into the United States**

(b) (5)


(b) (5)


(b) (5)

# Fact Sheet: Protecting The Nation From Foreign Terrorist Entry To The United States

March 5, 2017

The Executive Order signed on March 6, 2017, allows for the proper review and establishment of standards to prevent terrorist or criminal infiltration by foreign nationals. The United States has the world's most generous immigration system, yet it has been repeatedly exploited by terrorists and other malicious actors who seek to do us harm. In order to ensure that the U.S. Government can conduct a thorough and comprehensive analysis of the national security risks posed from our immigration system, the Executive Order imposes a 90-day suspension of entry to the United States of nationals of certain designated countries  countries that were designated by Congress and the Obama Administration as posing national security risks with respect to visa-free travel to the United States under the Visa Waiver Program.

The U.S. Government must ensure that those entering this country will not harm the American people after entering, and that they do not bear malicious intent toward the United States and its people. The Executive Order, together with the Presidential Memorandum, protects the United States from countries compromised by terrorism and ensures a more rigorous vetting process. This Executive Order ensures that we have a functional immigration system that safeguards our national security.

This Executive Order, as well as EO 13767 and EO 13768, provide the Department of Homeland Security (DHS) with additional resources, tools, and personnel to carry out the critical work of securing our borders, enforcing the immigration laws of our Nation, and ensuring that individuals from certain designated countries who pose a threat to national security or public safety cannot enter or remain in our country.  Protecting the American people is the highest priority of our government and this Department.

DHS will faithfully execute the immigration laws and the President's Executive Orders, and will treat everyone we encounter humanely and with professionalism.

## Authorities

The Congress provided the President of the United States, in section 212(f) of the Immigration and Nationality Act (INA), with the authority to suspend the entry of any class of aliens the President deems detrimental to the national interest.  This authority has been exercised repeatedly for decades, and has been a component of immigration law since the enactment of the original INA in 1952.

## Actions

For the next 90 days, foreign nationals from Sudan, Syria, Iran, Libya, Somalia, and Yemen who are outside the United States on the effective date of the order, do not currently have a valid visa on the effective date of this order, and did not have a valid visa at 5:00 eastern standard time on January 27, 2017, are not eligible to travel to the United States. The 90-day period will allow for proper review and establishment of standards to prevent terrorist or criminal infiltration by foreign nationals.

On the basis of negotiations that have taken place between the Government of Iraq and the U.S. Department of State in the last month, Iraq will increase cooperation with the U.S. Government on the vetting of its citizens applying for a visa to travel to the United States. As a result of this increased information sharing, Iraqi citizens are not affected by the Executive Order. Of course, all normal immigration processing requirements continue to apply, including the grounds of inadmissibility that may be applicable.

In the first 20 days, DHS will perform a global, country-by-country review of the identity and security information that each country provides to the U.S. Government to support U.S. visa and other immigration benefit determinations. Countries will then have 50 days to comply with requests from the U.S. Government to update or improve the quality of the information they provide.

The Executive Order does not apply to certain individuals, such as lawful permanent residents of the United States; foreign nationals admitted to the United States after the effective date of the order; individuals with a document that is valid on the effective date of the order or any date thereafter which permits travel to the United States; dual nationals when travelling on a passport issued by a non-designated country; foreign nationals traveling on diplomatic, NATO, C-2 for travel to the United Nations, G-1, G-2, G-3, or G-4 visas; and individuals already granted asylum or refugee status in the United States before the effective date of the order.

DHS and the Department of State have the discretionary authority, on a case-by-case basis, to issue visas or allow the entry of nationals of these six countries into the United States when a national from one of the countries demonstrates that the denial of entry would cause undue hardship, that his or her entry would not pose a threat to national security, and that his or her entry would be in the national interest.

Similarly, the Refugee Admissions Program will be temporarily suspended for the next 120 days while DHS and interagency partners review screening procedures to ensure refugees admitted in the future do not pose a security risk to the United States. Upon resumption of the Refugee Admissions Program, refugee admissions to the United States will not exceed 50,000 for fiscal year 2017. The Executive Order does not apply to those refugees who have already been formally scheduled for transit by the State Department. During this 120-day period, similar to the waiver authority for visas, the Secretary of State and 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 would not pose a threat to the security or welfare of the United States.

The Department of Homeland Security, in conjunction with the Department of State, the Office of the Director of National Intelligence, and the Department of Justice, will develop uniform screening standards for all immigration programs government-wide as appropriate and in the national interest.

The Secretary of Homeland Security will expedite the completion and implementation of a biometric entry-exit system for all in-scope travelers entering and departing the United States.

As part of a broader set of government actions, the Secretary of State will review all nonimmigrant visa reciprocity agreements to ensure that they are, with respect to each visa classification, truly reciprocal.

The Department of State will restrict the Visa Interview Waiver Program and require additional nonimmigrant visa applicants to undergo an in-person interview.

## Transparency

In order to be more transparent with the American people and to more effectively implement policies and practices that serve the national interest, DHS will make information available to the public every 180 days. Specifically, in coordination with the Department of Justice, DHS will make available to the public information regarding the number of foreign nationals who have been charged with terrorism-related offenses while in the United States; convicted of terrorism-related offenses while in the United States; 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; and 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.

## Q&A: Protecting The Nation From Foreign Terrorist Entry To The United States

1. **Who is subject to the suspension of entry under the Executive Order?**

   Per the Executive Order, foreign nationals from Sudan, Syria, Iran, Libya, Somalia, and Yemen, who are outside the United States and who did not have a valid visa at 5 p.m. Eastern Standard Time on January 27, 2017, and do not have a valid visa on the effective date of this order are not eligible to enter the United States while the temporary suspension remains in effect. Thus any individual who had a valid visa either on January 27, 2017 (prior to 5:00 PM) or holds a valid visa on the effective date of the Executive Order is not barred from seeking entry.

2. **Will "in-transit" travelers within the scope of the Executive Order be denied entry into the United States and returned to their country of origin?**

   Those individuals who are traveling on valid visas and arrive at a U.S. port of entry will still be permitted to seek entry into the United States. All foreign nationals traveling with a visa must continue to satisfy all requirements for entry, including demonstrating that they are admissible. Additional information on applying for admission to the United States is available on CBP.gov.

3. **I am a national from one of the six affected countries currently overseas and in possession of a valid visa, but I have no prior travel to the United States. Can I travel to the United States?**

   Per the Executive Order, foreign nationals from Sudan, Syria, Iran, Libya, Somalia, and Yemen who have valid visas will not be affected by this Executive Order. No visas will be revoked solely based on this Executive Order.

4. **I am presently in the United States in possession of a valid single entry visa but I am a national of one of the six impacted countries. Can I travel abroad and return to the United States?**

   Regardless of the Executive Order, your visa is not valid for multiple entries into the Unites States. While the Executive Order does not apply to those within the United States and your travel abroad is not limited, a valid visa or other document permitting you to travel to and seek admission to the United States is still required for any subsequent entry to the United States.

5. **I am presently in the United States in possession of a valid multiple entry visa but am a national of one of the six affected countries, can I travel abroad and return to the United States?**

   Yes. Individuals within the United States with valid multiple entry visas on the effective date of the order are eligible for travel to and from the United States, provided the visa remains valid and the traveler is otherwise admissible. All foreign nationals traveling with a visa must satisfy all admissibility requirements for entry. Additional information on applying for admission to the United States is available on CBP.gov.

6. **I am from one of the six countries, currently in the United States in possession of a valid visa and have planned overseas travel. My visa will expire while I am overseas, can I return to the United States?**

   Travelers must have a valid visa to travel to the United States, regardless of the Executive Order. Travelers who do not have a valid visa due to its expiration while abroad must obtain a new valid visa prior to returning to the United States.

**7. Will the Department of Homeland Security (DHS) and the Department of State (DOS) be revoking the visas of persons ineligible to travel under the revised Executive Order?**

Visas will not be revoked solely as a result of the Executive Order. The Department of State has broad authority under Section 221(i) of the Immigration and Nationality Act to revoke visas.

**8. What is the process for overseas travelers affected by the Executive Order to request a waiver?**

Waivers for overseas travelers without a valid U.S. visa will be adjudicated by the Department of State in conjunction with a visa application.

**9. How are returning refugees and asylees affected by the Executive Order?**

Returning refugees and asylees, i.e., individuals who have already been granted asylum or refugee status in the United States, are explicitly excepted from this Executive Order. As such, they may continue to travel consistent with existing requirements.

**10. Are first-time arrival refugees with valid /travel documents allowed to travel to the United States?**

Yes, but only refugees, regardless of nationality, whose travel was already formally scheduled by the Department of State, are permitted to travel to the United States and seek admission. The Department of State will have additional information.

**11. Will unaccompanied minors within the scope of the Executive Order be denied boarding and or denied entry into the United States?**

The Executive Order applies to those who do not have valid visas. Any individuals, including children, who seek entry to the United States must have a valid visa (or other approved travel document) before travel to the United States. The Secretary of State may issue a waiver on a case-by-case basis when in the national interest of the United States. With such a waiver, a visa may be issued.

**12. Is DHS complying with all court orders?**

DHS is complying, and will continue to comply, with all court orders in effect.

**13. When will the Executive Order be implemented?**

The Executive Order is effective at 12:01 A.M., Eastern Standard Time, on March 16, 2017.

**14. Will the Executive Order impact Trusted Traveler Program membership?**

No. Currently, CBP does not have reciprocal agreements for a Trusted Traveler Program with any of the countries designated in the Executive Order.

**15. When will CBP issue guidance to both the field and airlines regarding the Executive Order?**

CBP will issue guidance and contact stakeholders to ensure timely implementation consistent with the terms of the Executive Order.

**16. Will first-time arrivals with valid immigrant visas be allowed to travel to the U.S.?**

Yes. Individuals holding valid visas on the effective date of the Executive Order or on January 27, 2017 prior to 5:00 PM do not fall within the scope of the Order.

**17. Does this affect travelers at all ports of entry?**

Yes, this Executive Order applies to travelers who are applying for entry into the United States at any port of entry air, land, or sea and includes preclearance locations.

**18. What does granting a waiver to the Executive Order mean? How are waivers applied to individual cases?**

Per the Executive Order, the Departments of Homeland Security and State can review individual cases and grant waivers on a case-by-case basis if a foreign national demonstrates that his or her entry into the United States is in the national interest, will not pose a threat to national security, and that denying entry during the suspension period will cause undue hardship.

**19. Does "from one of the six countries" mean citizen, national, or born in?**

The Executive Order applies to both nationals and citizens of the six countries.

**20. How does the lawsuit/stay affect DHS operations in implementing this Executive Order?**

Questions regarding the application of specific federal court orders should be directed to the Department of Justice.

**21. Will nationals of the six countries with valid green cards (lawful permanent residents of the United States) be allowed to return to the United States?**

Per the Executive Order, the suspension of entry does not apply to lawful permanent residents of the United States.

**22. Can a dual national who holds nationality with one of the six designated countries traveling with a passport from an unrestricted country travel to the United States?**

The Executive Order exempts from its scope any dual national of one of the six countries when the individual is traveling on a passport issued by a different non-designated country.

**23. Can a dual national who holds nationality with one of the six designated countries and is currently overseas, apply for an immigrant or nonimmigrant visa to the United States?**

Please contact the Department of State for information about how the Executive Order applies to visa applicants.

**24. Are international students, exchange visitors, and their dependents from the six countries (such as F, M, or J visa holders) included in the Executive Order? What kind of guidance is being given to foreign students from these countries legally in the United States?**

The Executive Order does not apply to individuals who are within the United States on the effective date of the Order or to those individuals who hold a valid visa. Visas which were provisionally revoked solely as a result of the enforcement of Executive Order 13769 are valid for purposes of administering this Executive Order. Individuals holding valid F, M, or J visas may continue to travel to the United States on those visas if they are otherwise valid.

Please contact the State Department for information about how the Executive Order applies to visa applicants.

**25. What happens to international students, exchange visitors or their dependents from the six countries, such as F, M or J visa holders if their visa expires while the Executive Order is in place and they have to depart the country?**

The Executive Order does not affect F, M, or J visa holders if they currently have a valid visa on the effective date or held a valid visa on January 27, 2017 prior to the issuance of the Executive Order. With that said, travelers must have a valid visa to travel to the United States, regardless of the Executive Order. Travelers whose visa expires after the effective date of the Executive Order must obtain a new, valid visa to return to the United States.

**26. Can U.S. Citizenship and Immigration Services (USCIS) continue refugee interviews?**

The Departments of Homeland Security and State will conduct interviews as appropriate and consistent with the Executive Order. However, the Executive Order suspends decisions on applications for refugee status, unless the Secretary of Homeland Security and the Secretary of State jointly determine, on a case-by-case basis, that the entry of an individual as a refugee is in the national interest and would not pose a threat to the security or welfare of the United States.

**27. Can the exception for refugee admission be used for Refugee/Asylee Relative Petitions (Form I-730) cases where a family member is requesting a beneficiary follow to join?**

No. Individuals who already have valid visas or travel documents that permit them to travel to the United States are exempt from the Executive Order. To the extent that an individual does not yet have such documents, please contact the Department of State.

**28. Does the Executive Order apply to those currently being adjudicated for naturalization or adjustment of status?**

USCIS will continue to adjudicate Applications for Naturalization (Form N-400) and Applications to Register Permanent Residence or Adjust Status (Form I-485) and grant citizenship consistent with existing practices.

**29. Will landed immigrants of Canada affected by the Executive Order be eligible for entry to the United States?**

Landed immigrants of Canada who hold passports from one of the six countries are eligible to apply for a visa, and coordinate a waiver, at a location within Canada.

**30. Has CBP issued clear guidance to CBP officers at ports of entry regarding the Executive Order?**

CBP has and will continue to issue any needed guidance to the field with respect to this Executive Order.

**31. What coordination is being done between CBP and the carriers?**

CBP has been and will remain in continuous communication with the airlines through CBP regional carrier liaisons. In addition, CBP will hold executive level calls with airlines in order to provide guidance, answer questions, and address concerns.

**32. What additional screening will nationals of restricted countries (as well as any visa applications) undergo as a result of the Executive Order?**

In making admission and visa eligibility determinations, DHS and DOS will continue to apply all appropriate security vetting procedures.

**33. Why is a temporary suspension warranted?**

The Executive Order signed on March 6, 2017, allows for the proper review and establishment of standards to prevent terrorist or criminal infiltration by foreign nationals. The Executive Order protects the United States from countries compromised by terrorism and ensures a more rigorous vetting process. Protecting the American people is the highest priority of our Government and this Department.

Congress and the Obama Administration designated these six countries as countries of concern due to the national security risks associated with their instability and the prevalence of terrorist fighters in their territories. The conditions in the six designated countries present a recognized threat, warranting additional scrutiny of their nationals seeking to travel to and enter the United States. In order to ensure that the U.S. Government can conduct a thorough and comprehensive analysis of the national security risks, the Executive Order imposes a 90-day suspension on entry to the United States of nationals of those countries.

Based on commitments from the Government of Iraq, the suspension of entry in this Executive Order will not apply to nationals of Iraq. Iraq has taken steps to increase their cooperation with the United States in the vetting of Iraqi nationals and as such it was determined that a temporary suspension is not warranted.

DHS will faithfully execute the immigration laws and the President's Executive Order, and will treat all of those we encounter humanely and with professionalism.

**34. Why is a suspension of the refugee program warranted?**

Some of those who have entered the United States as refugees have also proved to be threats to our national security. For example, in October 2014, an individual admitted to the United States as a refugee from Somalia, and who later became a naturalized U.S. citizen was sentenced to 30 years in prison for attempting to use a weapon of mass destruction in connection with a plot to set off a bomb at a Christmas tree-lighting ceremony in Portland, Oregon. The Federal Bureau of Investigation has reported that approximately 300 persons who entered the United States as refugees are currently the subjects of counterterrorism investigations.

**35. How were the six countries designated in the Executive Order selected?**

The six countries, Iran, Libya, Somalia, Sudan, Syria, and Yemen, had already been identified as presenting concerns about terrorism and travel to the United States. Specifically, the suspension applies to countries referred to in, or designated under except Iraq section 217(a)(12) of the INA, 8 U.S.C. § 1187(a)(12). In that provision Congress restricted use of the Visa Waiver Program by dual nationals of, and aliens recently present in, (A) Syria and Iraq, (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 former Secretary of Homeland Security

designated Libya, Somalia, and Yemen as additional countries of concern regarding aliens recently present in those countries.

For the purposes of this Executive Order, although Iraq has been previously identified, based on commitments from the Government of Iraq, the suspension of entry in this Executive Order will not apply to nationals of Iraq. However, those who are dual nationals of Iraq and aliens recently present in Iraq continue to have restricted use of the Visa Waiver Program.

On the basis of negotiations that have taken place between the Government of Iraq and the U.S. Department of State in the last month, Iraq will increase cooperation with the U.S. Government on the vetting of its citizens applying for a visa to travel to the United States. As such it was determined that a temporary suspension with respect to nationals of Iraq is not warranted at this time.

**36. Why was Iraq treated differently in this Executive Order?**

The close cooperative relationship between the United States and the democratically-elected Iraqi government, the strong U.S. diplomatic presence in Iraq, the significant presence of U.S. forces in Iraq, and Iraq's commitment to combat ISIS justify different treatment. In particular, those Iraqi government forces that have fought to regain more than half of the territory previously dominated by ISIS have earned special status. In addition, since Executive Order 13769 was issued, the Iraqi government has expressly undertaken steps to provide additional information about its citizens for purposes of our immigration decisions. Accordingly, it is no longer necessary to include Iraq in the temporary suspension applicable to the other six countries, but visa applications and applications for admission to the United States by Iraqi nationals will be subjected to additional scrutiny to determine if they have connections with ISIS or other terrorist organizations.

**37. Are Iraqi nationals subject to the Executive Order? Will they require a waiver to travel to the United States?**

This Executive Order does not presently suspend the entry of nationals of Iraq. However, all travelers must have a valid travel document in order to travel to the United States. Admissibility will be determined by a CBP officer upon arrival at a Port of Entry. Please contact the Department of State for information related to visa eligibility and application.

**Bryant, Errical (OAG)**

---

**From:** Bryant, Errical (OAG)
**Sent:** Friday, March 10, 2017 8:03 AM
**To:** Ramer, Sam (OLA)
**Subject:** RE: Meeting Request - Representative Dana Rohrabacher

Thanks Sam,
(b) (5) Thanks

---

**From:** Ramer, Sam (OLA)
**Sent:** Friday, March 10, 2017 7:41 AM
**To:** Bryant, Errical (OAG) <ebryant@jmd.usdoj.gov>
**Subject:** Re: Meeting Request - Representative Dana Rohrabacher

Apologies for not getting back to you yesterday- it was quite busy. (b) (5)
(b) (5) Please feel free to call me at (b) (6) if you want to discuss further.

Samuel R. Ramer
Acting Assistant Attorney General
Office of Legislative Affairs
Department of Justice

On Mar 10, 2017, at 7:07 AM, Bryant, Errical (OAG) <ebryant@jmd.usdoj.gov> wrote:

> Good morning Sam,
>
> I just wanted to circle back. (b) (5) Thanks
>
> ---
>
> **From:** Tucker, Rachael (OAG)
> **Sent:** Wednesday, March 8, 2017 9:07 AM
> **To:** Bryant, Errical (OAG) <ebryant@jmd.usdoj.gov>
> **Cc:** Hunt, Jody (OAG) <Jody.Hunt@usdoj.gov>; Ramer, Sam (OLA) <sramer@jmd.usdoj.gov>
> **Subject:** Re: Meeting Request - Representative Dana Rohrabacher
>
> CC'ing Sam Ramer
>
> On Mar 8, 2017, at 8:18 AM, Bryant, Errical (OAG) <ebryant@jmd.usdoj.gov> wrote:
>
> (b) (5)
>
> ---
>
> **From:** Eisenberger, Andrew [mailto (b) (6)
> **Sent:** Tuesday, March 7, 2017 3:30 PM
> **To:** 'AG.schedule84@usdoj.gov' <AG.schedule84@usdoj.gov>
> **Cc:** Ahn, Justin <(b) (6)
> **Subject:** Meeting Request - Representative Dana Rohrabacher

Good afternoon,

Congressman Dana Rohrabacher wishes to connect with Attorney General Sessions at his earliest convenience, preferably in the next couple of days. He said he can come to DOJ for an in-person meeting, or, if preferred, a ten minute phone call will suffice.

The topic of the discussion will be the revised travel ban executive order and immigration policy generally. I've copied Congressman Rohrabacher's scheduler on this email to facilitate a time that works best.

Thank you,

Andrew Eisenberger
Legislative Correspondent/Staff Assistant
Rep. Dana Rohrabacher | CA-48
P: (b) (6)

**Hunt, Jody (OAG)**

**From:** Hunt, Jody (OAG)
**Sent:** Tuesday, March 14, 2017 7:26 PM
**To:** Bryant, Errical (OAG)
**Subject:** RE: Meeting Request - Representative Dana Rohrabacher

(b) (5)

**From:** Bryant, Errical (OAG) [mailto:ebryant@jmd.usdoj.gov]
**Sent:** Tuesday, March 14, 2017 4:04 PM
**To:** Hunt, Jody (OAG) <Jody.Hunt@usdoj.gov>
**Subject:** FW: Meeting Request - Representative Dana Rohrabacher

(b) (5)

**From:** Cutrona, Danielle (OAG)
**Sent:** Tuesday, March 14, 2017 3:54 PM
**To:** Bryant, Errical (OAG) <ebryant@jmd.usdoj.gov>; Ramer, Sam (OLA) <sramer@jmd.usdoj.gov>; danielle cutrona (danielle.cutrona@usdoj.gov) <danielle.cutrona@usdoj.gov>
**Subject:** RE: Meeting Request - Representative Dana Rohrabacher

(b) (5)

**Terwilliger, Zachary (ODAG)**

| | |
|---|---|
| **From:** | Terwilliger, Zachary (ODAG) |
| **Sent:** | Monday, January 30, 2017 9:50 PM |
| **To:** | Burnham, James M. EOP/WHO |
| **Subject:** | Statement |

James,
(b) (5)

Here is the proposed statement that we would send out to all department employees as well as the press: (b) (5)

(b) (5)

Dana J. Boente
Acting Attorney General

**Crowell, James (ODAG)**

| | |
|---|---|
| **From:** | Crowell, James (ODAG) |
| **Sent:** | Monday, January 30, 2017 10:16 PM |
| **To:** | Terwilliger, Zachary (ODAG) |
| **Cc:** | Carr, Peter (OPA); Peter Carr |
| **Subject:** | RE: press release drafts |

(b) (5)

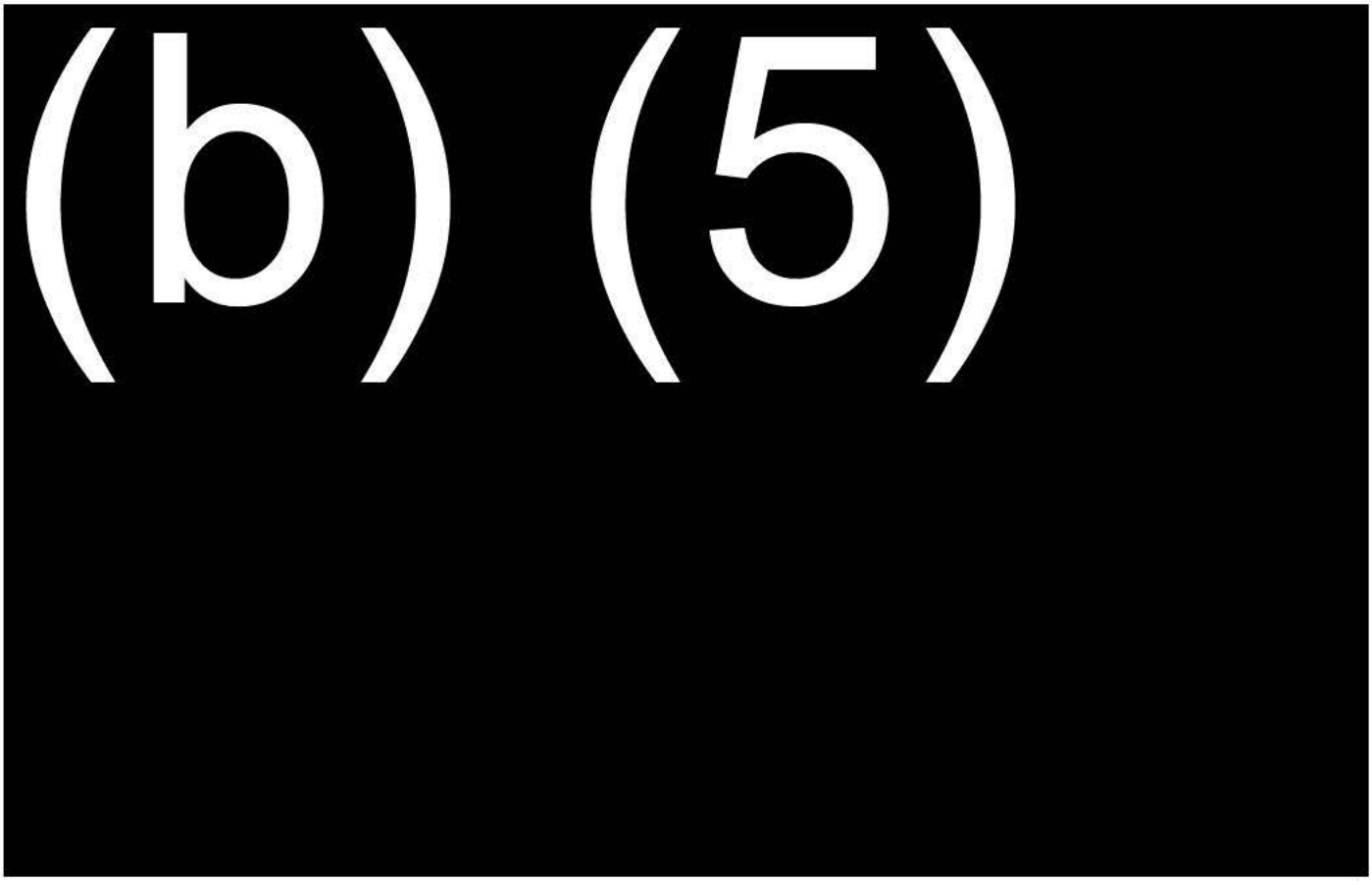
**From:** Terwilliger, Zachary (ODAG)
**Sent:** Monday, January 30, 2017 10:15 PM
**To:** Crowell, James (ODAG) <jcrowell@jmd.usdoj.gov>
**Cc:** Carr, Peter (OPA) <pcarr@jmd.usdoj.gov>; Peter Carr <(b) (6)
**Subject:** press release drafts

Peter-(b) (7)(E), (b) (7)(F) he will be sworn in tonight. I will be in car, so Jim is your POC for this.

Thanks,
Zach

Peter, here is a revision (b) (5)
(b) (5)

(b) (5)




Zachary Terwilliger
Associate Deputy Attorney General
Office of the Deputy Attorney General
Zachary.Terwilliger2@usdoj.gov
(202) 307-1045 (Desk)
(b) (6) (Mobile)

**Peter Carr**

**From:** Peter Carr
**Sent:** Monday, January 30, 2017 10:18 PM
**To:** Terwilliger, Zachary (ODAG); Wyn Hornbuckle; James.Crowell@usdoj.gov
**Subject:** Re: Draft release

Just got Zach's email, so copying Jim.

On Jan 30, 2017, at 10:16 PM, Peter Carr <(b) (6) wrote:

THE WHITE HOUSE
Office of the Press Secretary

FOR IMMEDIATE RELEASE
January 30, 2017

**Statement on the Appointment of Dana Boente as Acting Attorney General**

The acting Attorney General, Sally Yates, has betrayed the Department of Justice by refusing to enforce a legal order designed to protect the citizens of the United States. This order was approved as to form and legality by the Department of Justice Office of Legal Counsel.

Ms. Yates is an Obama Administration appointee who is weak on borders and very weak on illegal immigration.

It is time to get serious about protecting our country. Calling for tougher vetting for individuals travelling from seven dangerous places is not extreme. It is reasonable and necessary to protect our country.

Tonight, President Trump relieved Ms. Yates of her duties and subsequently named Dana Boente, U.S. Attorney for the Eastern District of Virginia, to serve as Acting Attorney General until Senator Jeff Sessions is finally confirmed by the Senate, where he is being wrongly held up by Democrat senators for strictly political reasons.

"I am honored to serve President Trump in this role until Senator Sessions is confirmed. I will defend and enforce the laws of our country to ensure that our people and our nation are protected," said Dana Boente, Acting Attorney General.

###

<Screen Shot 2017-01-30 at 10.03.48 PM.png>

Thanks, Zach. Adding Wyn, since he has access to our DOJ email address and will be issuing the release.(b) (5)

(b) (5)

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(b) (5)

###

DUPLICATE

THE WHITE HOUSE
Office of the Press Secretary

FOR IMMEDIATE RELEASE
January 30, 2017

**Statement on the Appointment of Dana Boente as Acting Attorney General**

The acting Attorney General, Sally Yates, has betrayed the Department of Justice by refusing to enforce a legal order designed to protect the citizens of the United States. This order was approved as to form and legality by the Department of Justice Office of Legal Counsel.

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"I am honored to serve President Trump in this role until Senator Sessions is confirmed. I will defend and enforce the laws of our country to ensure that our people and our nation are protected." said Dana Boente, Acting Attorney General.

###

**Hornbuckle, Wyn (OPA)**

**From:** Hornbuckle, Wyn (OPA)
**Sent:** Monday, January 30, 2017 10:35 PM
**To:** Peter Carr; Terwilliger, Zachary (ODAG); Wyn Hornbuckle
**Subject:** RE: Draft release

(b) (5)

**Terwilliger, Zachary (ODAG)**

**From:** Terwilliger, Zachary (ODAG)
**Sent:** Monday, January 30, 2017 11:47 PM
**To:** Peter Carr; Carr, Peter (OPA)
**Subject:** RE: Draft release

Peter,
We need the scanned doc, can you send asap?

**Carr, Peter (OPA)**

---

| | |
|---|---|
| **From:** | Carr, Peter (OPA) |
| **Sent:** | Friday, February 10, 2017 6:10 PM |
| **To:** | Simotes, Jenna A. (OPA); Sarah Isgur Flores |
| **Subject:** | AG Sessions Second Day_readout - DRAFT |
| **Attachments:** | AG Sessions Second Day_readout.docx |

Jenna, thank you for helping to get this out. Here is the current draft. Waiting for final clearance and any additional edits from Sarah, who is copied.

When you issue this, can you include Sarah in the bcc?

Thx,
Peter

**Carr, Peter (OPA)**

**From:** Carr, Peter (OPA)
**Sent:** Friday, February 10, 2017 6:47 PM
**To:** Sarah Isgur Flores
**Subject:** RE: Draft readout

Thx, we'll get it out.

**From:** Sarah Isgur Flores [mailto:(b) (6)
**Sent:** Friday, February 10, 2017 6:30 PM
**To:** Carr, Peter (OPA) <peter.carr@usdoj.gov>
**Subject:** Re: Draft readout

Great!

On Fri, Feb 10, 2017 at 6:01 PM -0500, "Carr, Peter (OPA)" <Peter.Carr@usdoj.gov> wrote:

Got it, thanks. Here's a revision. (b) (5)
(b) (5)

(b) (5)

**From:** Sarah Isgur Flores [mailto:(b) (6)
**Sent:** Friday, February 10, 2017 5:35 PM
**To:** Carr, Peter (OPA) <peter.carr@usdoj.gov>
**Subject:** Re: Draft readout

(b) (5)

From: Carr, Peter (OPA) <peter.carr@usdoj.gov>

Sent: Friday, February 10, 2017 5:12 PM
Subject: Draft readout
To: (b) (6)

Here is a draft. (b) (5)
(b) (5)

--

(b) (5)

**Burton, Faith (OLA)**

| | |
|---|---|
| **From:** | Burton, Faith (OLA) |
| **Sent:** | Thursday, February 16, 2017 6:21 PM |
| **To:** | Colborn, Paul P (OLC) |
| **Subject:** | RE: McCaskill letter |
| **Attachments:** | 2017-02-14 Letter to AG Sessions re travel ban.pdf; McCaskill immigration order response 21617.docx |

(b) (5)

**From:** Colborn, Paul P (OLC)
**Sent:** Thursday, February 16, 2017 5:51 PM
**To:** Burton, Faith (OLA) <fburton@jmd.usdoj.gov>
**Subject:** McCaskill letter

(b) (5)

**Colborn, Paul P (OLC)**

| | |
|---|---|
| **From:** | Colborn, Paul P (OLC) |
| **Sent:** | Friday, February 17, 2017 3:20 PM |
| **To:** | Burton, Faith (OLA) |
| **Subject:** | RE: McCaskill letter |
| **Attachments:** | McCaskill immigration order response 21717.docx |

Faith, (b) (5)
(b) (5)

**From:** Burton, Faith (OLA)
**Sent:** Friday, February 17, 2017 12:19 PM
**To:** Colborn, Paul P (OLC) <pcolborn@jmd.usdoj.gov>
**Subject:** RE: McCaskill letter

(b) (5)
Thanks. FB

**From:** Colborn, Paul P (OLC)
**Sent:** Friday, February 17, 2017 10:41 AM
**To:** Burton, Faith (OLA) <fburton@jmd.usdoj.gov>
**Subject:** RE: McCaskill letter

Thanks. (b) (5)
(b) (5)

**Johnson, Joanne E. (OLA)**

| | |
|---|---|
| **From:** | Johnson, Joanne E. (OLA) |
| **Sent:** | Friday, February 24, 2017 8:28 PM |
| **To:** | Burton, Faith (OLA) |
| **Cc:** | Kellner, Kenneth E. (OLA) |
| **Subject:** | For Review: Executive Order on Travel Restrictions |
| **Attachments:** | Immigration - Travel Executive Order.jej.2-24-17.docx |

**Flores, Sarah Isgur. (OPA)**

| | |
|---|---|
| **From:** | Flores, Sarah Isgur. (OPA) |
| **Sent:** | Wednesday, March 01, 2017 2:36 PM |
| **To:** | Hunt, Jody (OAG) |
| **Subject:** | FW: Draft talking points and brief remarks on new executive order |
| **Attachments:** | 20170301 talking points for AG Sessions on new executive order.docx; 20170301 Remarks for Attorney General Sessions on Second Executive Order.docx |

Here's where the EO draft comments for the AG currently stand

---

**From:** Bockhorn, Lee F. (OPA)
**Sent:** Tuesday, February 28, 2017 6:46 PM
**To:** Flores, Sarah Isgur. (OPA) <siflores@jmd.usdoj.gov>; Carr, Peter (OPA) <pcarr@jmd.usdoj.gov>
**Cc:** Sarah Isgur Flores (b) (6)
**Subject:** Draft talking points and brief remarks on new executive order

Sarah and Peter,

Attached are:

1) Draft talking points on the revised executive order and the various issues surrounding it
2) Brief remarks ((b) (5) (b) (5) b) (5)
(b) (5) (b) (5)
(b) (5)
(b) (5)
(b) (5) (b) (5)
(b) (5)

Heading home now, but let me know if you have any questions and we can revisit in the morning.

--Lee

**Bockhorn, Lee F. (OPA)**

| | |
|---|---|
| **From:** | Bockhorn, Lee F. (OPA) |
| **Sent:** | Friday, March 03, 2017 4:31 PM |
| **To:** | Flores, Sarah Isgur (OPA); Carr, Peter (OPA); Navas, Nicole (OPA) |
| **Subject:** | Updated draft of AG's remarks on revised executive order |
| **Attachments:** | 20170306 Remarks for Attorney General Sessions on Revised Executive Order.docx |

All,

(b) (5)
(b) (5) b) (5)
(b) (5)
(b) (5)

Thanks,
Lee

Lee Bockhorn
Office of Public Affairs
U.S. Department of Justice
202-307-0572 (direct)
(b) (6) (cell)
Lee.F.Bockhorn@usdoj.gov

**Bockhorn, Lee F. (OPA)**

---

**From:** Bockhorn, Lee F. (OPA)
**Sent:** Friday, March 03, 2017 6:09 PM
**To:** Flores, Sarah Isgur (OPA); Carr, Peter (OPA)
**Subject:** RE: Updated draft of AG's remarks on revised executive order

Sarah and Peter –

I'm gonna head out, but please feel free to email if you need me to do anything else on this over the weekend.

--Lee

**Hunt, Jody (OAG)**

---

| | |
|---|---|
| **From:** | Hunt, Jody (OAG) |
| **Sent:** | Sunday, March 05, 2017 11:33 AM |
| **To:** | (b) (6): AG personal email address |
| **Subject:** | Fwd: Updated draft of AG's remarks on revised executive order |
| **Attachments:** | 20170306 Remarks for Attorney General Sessions on Revised Executive Order.docx; ATT00001.htm |

For some reason it appears that the attachment did not go through on my last message. Here it is.

**Hunt, Jody (OAG)**

**From:** Hunt, Jody (OAG)
**Sent:** Sunday, March 05, 2017 12:32 PM
**To:** Flores, Sarah Isgur (OPA)
**Subject:** RE: Updated draft of AG's remarks on revised executive order

Thanks. I sent it to him. (b) (5)

(b) (5)

**From:** Flores, Sarah Isgur (OPA)
**Sent:** Sunday, March 5, 2017 11:43 AM
**To:** Hunt, Jody (OAG) <johunt@jmd.usdoj.gov>
**Subject:** Re: Updated draft of AG's remarks on revised executive order

Just want to make sure you saw this. If he'll be in the office this afternoon, I can also come by with a copy. (b) (5)
(b) (5)
(b) (5) b) (5)
(b) (5)

On Mar 4, 2017, at 5:16 PM, Flores, Sarah Isgur (OPA) <siflores@jmd.usdoj.gov> wrote:

I assume you are with him tonight? (b) (5)
(b) (5)

Perhaps for the flight back tomorrow you can have him look at these?

Begin forwarded message:

**From:** "Bockhorn, Lee F. (OPA)" <lfbockhorn@jmd.usdoj.gov>
**Date:** March 3, 2017 at 4:30:36 PM EST
**To:** "Flores, Sarah Isgur (OPA)" <siflores@jmd.usdoj.gov>, "Carr, Peter (OPA)" <pcarr@jmd.usdoj.gov>, "Navas, Nicole (OPA)" <nnavas@jmd.usdoj.gov>
**Subject: Updated draft of AG's remarks on revised executive order**

All,

(b) (5)
(b) (5) b) (5)
(b) (5)
(b) (5)

Thanks

Thanks,
Lee

Lee Bockhorn
Office of Public Affairs
U.S. Department of Justice
202-307-0572 (direct)
(b) (6) (cell)
Lee.F.Bockhorn@usdoj.gov

<20170306 Remarks for Attorney General Sessions on Revised Executive Order.docx>

**Hunt, Jody (OAG)**

**From:** Hunt, Jody (OAG)
**Sent:** Sunday, March 05, 2017 12:51 PM
**To:** (b) (6): AG's official DOJ email address
**Subject:** DRAFT
**Attachments:** 20170306 Remarks for Attorney General Sessions on Revised Executive Orde....docx

(b) (5) for the current DRAFT of the attached remarks (same DRAFT as I forwarded earlier).

(b) (5)

(b) (5)

(b) (5)

**Carr, Peter (OPA)**

---

**From:** Carr, Peter (OPA)
**Sent:** Monday, March 06, 2017 8:17 AM
**To:** Navas, Nicole (OPA)
**Cc:** Flores, Sarah Isgur (OPA)
**Subject:** Roll out plan
**Attachments:** (b) (5) ATT00001.txt

Nicole,

Below is the latest draft of the timeline for today. Sarah is our SME and may have additional information.

Thx,
Peter

**Simotes, Jenna A. (OPA)**

| | |
|---|---|
| **From:** | Simotes, Jenna A. (OPA) |
| **Sent:** | Monday, March 06, 2017 9:56 AM |
| **To:** | Carr, Peter (OPA) |
| **Cc:** | McGowan, Ashley L. (OPA) |
| **Subject:** | FW: AG's prepared remarks for revised EO |
| **Attachments:** | 20170306 Remarks for Attorney General Sessions on Revised Executive Order (2).docx |

Hi Peter – checking in: am I sending out the AG's remarks this a.m.?
If so, I'll get them formatted and flipped back right away.

Thanks!

---

**From:** McGowan, Ashley L. (OPA)
**Sent:** Monday, March 06, 2017 9:53 AM
**To:** Simotes, Jenna A. (OPA) <jasimotes@jmd.usdoj.gov>
**Subject:** FW: AG's prepared remarks for revised EO

---

**From:** Bockhorn, Lee F. (OPA)
**Sent:** Monday, March 06, 2017 9:50 AM
**To:** McGowan, Ashley L. (OPA) <almcgowan@jmd.usdoj.gov>
**Subject:** AG's prepared remarks for revised EO

Ashley,

Prepared text is attached – please forward to whomever else needs it in order to push it out today. (b) (5) (b) (5)

Also, I'm not sure what Justice.gov/AP style is for "executive order" or "executive branch" – I have lowercased both throughout.

Thanks!
Lee

Lee Bockhorn
Office of Public Affairs
U.S. Department of Justice
202-307-0572 (direct)
(b) (6) (cell)
Lee.F.Bockhorn@usdoj.gov

**Remarks prepared for Attorney General Jeff Sessions**
**Signing of President's Revised Executive Order on Protecting the Nation from Foreign Terrorist Entry**
**Ronald Reagan Building – Washington, D.C.**
**March 6, 2017**

Good morning. One of the Justice Department's top priorities is to protect the United States from threats to our national security. Therefore, I want to discuss two points: first, the national security basis for this order, and second, our Department's role in defending the lawful orders of the President.

First: As the President noted in his address to Congress, the majority of people convicted in our courts for terrorism-related offenses since 9/11 came here from abroad. We also know that people seeking to support or commit terrorist attacks here will try to enter through our refugee program. In fact, today more than 300 people who came here as refugees are under FBI investigation for potential terrorism-related activities.

Like every nation, the United States has the right to control who enters our country, and to keep out those who would do we harm. This executive order protects the American people as well as lawful permanent residents by putting in place an enhanced screening and vetting process for visitors from six nations.

Three of these nations are state sponsors of terrorism. The other three have served as safe havens for terrorists countries where the government has lost control of territory to terrorist groups like ISIL or Al Qaeda and its affiliates. This increases the risk that people admitted here from these countries may belong to terrorist groups, or may have been radicalized by them.

We cannot compromise our nation's security by allowing visitors entry when their own governments are unable or unwilling to provide the information we need to vet them responsibly or when those governments actively support terrorism. This executive order provides a needed pause, so we can carefully review how we scrutinize people coming here from these countries of concern.

Second: The Department of Justice believes that this executive order, just as the first, is a lawful and proper exercise of presidential authority. This Department of Justice will defend and enforce lawful orders of the President consistent with core principles of our Constitution. The executive is empowered under the Constitution and by Congress to

make national security judgments and to enforce our immigration policies in order to safeguard the American public.

Terrorism is clearly a danger for America and our people. The President gets briefings on these dangers and emerging threats on a regular basis. The federal investigative agencies, the intelligence community, the Department of State, the Department of Homeland Security, and the U.S. military report to the President. Knowing the President would possess such extensive information, our founders wisely gave the executive branch the authority and duty to protect the nation. This executive order is a proper exercise of that power.

Now I will turn things over to Secretary Kelly.

# # #

**Burton, Faith (OLA)**

| | |
|---|---|
| **From:** | Burton, Faith (OLA) |
| **Sent:** | Wednesday, March 08, 2017 4:49 PM |
| **To:** | Ramer, Sam (OLA) |
| **Subject:** | Draft response to McCaskill re Immigration order |
| **Attachments:** | 3786050.McCaskill.incom.pdf; McCaskill immigration order response 21717.docx |

Per our conversation, here's the pending draft response. Thanks. FB

**Burton, Faith (OLA)**

| | |
|---|---|
| **From:** | Burton, Faith (OLA) |
| **Sent:** | Friday, March 10, 2017 10:11 AM |
| **To:** | Colborn, Paul P (OLC) |
| **Subject:** | Draft response to CEG re Acting AG's docs |
| **Attachments:** | DOJ to CEG Yates order 31017.docx |

Paul, (b) (5)
(b) (5)

(b) (5)
(b) (5) Thanks. FB