Table of Contents

1. Speaker Biographies (view in document)

2. CLE Materials


Part B: Executive Order 13780 (March 6, 2017)

Part C: Whitford, Emma. JFK Lawyers: We Now Have A ‘Replicable’ System To Keep Fighting Trump. (February 2017)

Part D: Verel, Patrick. Although She Beat the Travel Ban, Iranian Law Alumna Faces New Challenge. (January 2018)

Part E: Complaint for Declaratory and Injunctive Relief. Case 8:17-cv-00361. (February 2017)

Part F: The Hill Staff. Transcript of President Donald Trump’s Speech to the Major Cities Chiefs Police Association. (February 2017).

**Speaker Biographies**

**Mariko Hirose**

Mariko Hirose is the Litigation Director at IRAP. She has previous experience litigating civil rights cases at the New York Civil Liberties Union, American Civil Liberties Union, and Outten & Golden LLP. She has taught at the New York University School of Law and at the Fordham University School of Law. Mariko is a graduate of Yale University and Stanford Law School. After law school, she served as a law clerk to the Honorable Stephen Reinhardt of the Ninth Circuit Court of Appeals.

**Farimah Kashkooli**

Farimah Kashkooli received her LLM from Fordham Law School in 2017. She is originally from Iran, where she has been a human rights activist and has worked to protect the rights of refugees. Because the travel ban prevented her family in Iran from joining her in the United States to help care for her daughter Alma, Farimah had to leave the country. She is joining us today from Georgia.

**Camille Mackler**

Camille J. Mackler is the Director of Immigration Legal Policy at the NYIC. In that role, she works on crafting NYIC policy priorities relating to access to justice and right to counsel for New York's immigrant communities. Prior to joining the NYIC, Camille was in private practice representing detained and non-detained immigrants facing deportation, in asylum proceedings, or in family-based petitions. She currently serves as the Chair of the Protecting Immigrant New Yorkers Task Force, the Chair of the New York State Bar Association’s Committee on Immigration Representation, and sits on the American Immigration Lawyers Association committees on Consumer Protection and Unauthorized Practice of Law (national) and Media and Advocacy (New York Chapter).

**Lia Minkoff**

Lia Minkoff is a public interest lawyer and activist. She is a Senior Staff Attorney with LegalHealth, a medical-legal partnership, which is a division of the New York Legal Assistance Group also known as NYLAG. She runs legal clinics in hospitals in Queens and Manhattan where she addresses the non-medical needs of low-income, infirm, disenfranchised minority and immigrant New Yorkers by providing general civil legal services. Ms. Minkoff helped to form and run NYLAG's Post-Election Working Group that acts as a rapid-response to policies and legislation that affect NYLAG’s clients and practice. She was also part of the army of lawyers who went to JFK in January 2017 to break Muslim Ban. She is on the board of the New York chapter of the American Constitution Society and a graduate of Boston University and Cardozo Law.
Executive Order 13769 of January 27, 2017

Protecting the Nation From Foreign Terrorist Entry Into the United States

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Immigration and Nationality Act (INA), 8 U.S.C. 1101 et seq., and section 301 of title 3, United States Code, and to protect the American people from terrorist attacks by foreign nationals admitted to the United States, it is hereby ordered as follows:

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

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

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

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

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

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

(c) To temporarily reduce investigative burdens on relevant agencies during the review period described in subsection (a) of this section, to ensure the proper review and maximum utilization of available resources for the screening of foreign nationals, and to ensure that adequate standards are established to prevent infiltration by foreign terrorists or criminals, pursuant to section 212(f) of the INA, 8 U.S.C. 1182(f), I hereby proclaim that the immigrant and nonimmigrant entry into the United States of aliens from countries referred to in section 217(a)(12) of the INA, 8 U.S.C. 1187(a)(12), would be detrimental to the interests of the United States, and I hereby suspend entry into the United States, as immigrants and nonimmigrants, of such persons for 90 days from the date of this order (excluding those foreign nationals traveling on diplomatic visas, North Atlantic Treaty Organization visas, C–2 visas for travel to the United Nations, and G–1, G–2, G–3, and G–4 visas).

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

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

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

(g) Notwithstanding a suspension pursuant to subsection (c) of this section or pursuant to a Presidential proclamation described in subsection (e) of this section, the Secretaries of State and Homeland Security may, on a case-by-case basis, and when in the national interest, issue visas or other immigration benefits to nationals of countries for which visas and benefits are otherwise blocked.

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

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

(b) The Secretary of Homeland Security, in conjunction with the Secretary of State, the Director of National Intelligence, and the Director of the Federal Bureau of Investigation, shall submit to the President an initial report on the progress of this directive within 60 days of the date of this order, a second report within 100 days of the date of this order, and a third report within 200 days of the date of this order.

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

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

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

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

(e) Notwithstanding the temporary suspension imposed pursuant to subsection (a) of this section, the Secretaries of State and Homeland Security may jointly determine to admit individuals to the United States as refugees on a case-by-case basis, in their discretion, but only so long as they determine that the admission of such individuals as refugees is in the national interest—including when the person is a religious minority in his country of nationality facing religious persecution, when admitting the person would enable the United States to conform its conduct to a preexisting international agreement, or when the person is already in transit and denying admission would cause undue hardship—and it would not pose a risk to the security or welfare of the United States.
(f) The Secretary of State shall submit to the President an initial report on the progress of the directive in subsection (b) of this section regarding prioritization of claims made by individuals on the basis of religious-based persecution within 100 days of the date of this order and shall submit a second report within 200 days of the date of this order.

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

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

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

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

Sec. 8. Visa Interview Security. (a) The Secretary of State shall immediately suspend the Visa Interview Waiver Program and ensure compliance with section 222 of the INA, 8 U.S.C. 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 within 180 days, and every 180 days thereafter:
(i) information regarding the number of foreign nationals in the United States who have been charged with terrorism-related offenses while in the United States; convicted of terrorism-related offenses while in the United States; or removed from the United States based on terrorism-related activity, affiliation, or material support to a terrorism-related organization, or any other national security reasons since the date of this order or the last reporting period, whichever is later;

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

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

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

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

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

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

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

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.
(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,

Protecting the Nation From Foreign Terrorist Entry Into the United States

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

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

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

(i) Among other actions, Executive Order 13769 suspended for 90 days the entry of certain aliens from seven countries: Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen. These are countries that had already been identified as presenting heightened concerns about terrorism and travel to the United States. Specifically, the suspension applied to countries referred to in, or designated under, section 217(a)(12) of the INA, 8 U.S.C. 1187(a)(12), in which Congress restricted use of the Visa Waiver Program for nationals of, and aliens recently present in, (A) Iraq or Syria, (B) any country designated by the Secretary of State as a state sponsor of terrorism (currently Iran, Syria, and Sudan), and (C) any other country designated as a country of concern by the Secretary of Homeland Security, in consultation with the Secretary of State and the Director of National Intelligence. In 2016, the Secretary of Homeland Security designated Libya, Somalia, and Yemen as additional countries of concern for travel purposes, based on consideration of three statutory factors related to terrorism and national security: “(I) whether the presence of an alien in the country or area increases the likelihood that the alien is a credible threat to the national security of the United States; (II) whether a foreign terrorist organization has a significant presence in the country or area; and (III) whether the country or area is a safe haven for terrorists.” 8 U.S.C. 1187(a)(12)(D)(ii). Additionally, Members of Congress have expressed concerns about screening and vetting procedures following recent terrorist attacks in this country and in Europe.

(ii) In ordering the temporary suspension of entry described in subsection (b)(i) of this section, I exercised my authority under Article II of the Constitution and under section 212(f) of the INA, which provides in relevant part: “Whenever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate.”
8 U.S.C. 1182(f). Under these authorities, I determined that, for a brief period of 90 days, while existing screening and vetting procedures were under review, the entry into the United States of certain aliens from the seven identified countries—each afflicted by terrorism in a manner that compromised the ability of the United States to rely on normal decision-making procedures about travel to the United States—would be detrimental to the interests of the United States. Nonetheless, I permitted the Secretary of State and the Secretary of Homeland Security to grant case-by-case waivers when they determined that it was in the national interest to do so.

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

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

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

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

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

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

(ii) Libya. Libya is an active combat zone, with hostilities between the internationally recognized government and its rivals. In many parts of the country, security and law enforcement functions are provided by armed militias rather than state institutions. Violent extremist groups, including the Islamic State of Iraq and Syria (ISIS), have exploited these conditions to expand their presence in the country. The Libyan government provides some cooperation with the United States’ counterterrorism efforts, but it is unable to secure thousands of miles of its land and maritime borders, enabling the illicit flow of weapons, migrants, and foreign terrorist fighters. The United States Embassy in Libya suspended its operations in 2014.

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

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

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

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

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

(g) Iraq presents a special case. Portions of Iraq remain active combat zones. Since 2014, ISIS has had dominant influence over significant territory in northern and central Iraq. Although that influence has been significantly
reduced due to the efforts and sacrifices of the Iraqi government and armed forces, working along with a United States-led coalition, the ongoing conflict has impacted the Iraqi government’s capacity to secure its borders and to identify fraudulent travel documents. Nevertheless, the close cooperative relationship between the United States and the democratically elected Iraqi government, the strong United States diplomatic presence in Iraq, the significant presence of United States forces in Iraq, and Iraq’s commitment to combat ISIS justify different treatment for Iraq. In particular, those Iraqi government forces that have fought to regain more than half of the territory previously dominated by ISIS have shown steadfast determination and earned enduring respect as they battle an armed group that is the common enemy of Iraq and the United States. In addition, since Executive Order 13769 was issued, the Iraqi government has expressly undertaken steps to enhance travel documentation, information sharing, and the return of Iraqi nationals subject to final orders of removal. Decisions about issuance of visas or granting admission to Iraqi nationals should be subjected to additional scrutiny to determine if applicants have connections with ISIS or other terrorist organizations, or otherwise pose a risk to either national security or public safety.

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

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

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

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

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

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

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

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

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

Sec. 3. Scope and Implementation of Suspension.

(a) Scope. Subject to the exceptions set forth in subsection (b) of this section and any waiver under subsection (c) of this section, the suspension of entry pursuant to section 2 of this order shall apply only to foreign nationals of the designated countries who:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 6. Realignment of the U.S. Refugee Admissions Program for Fiscal Year 2017. (a) The Secretary of State shall suspend travel of refugees into the United States under the USRAP, and the Secretary of Homeland Security shall suspend decisions on applications for refugee status, for 120 days after the effective date of this order, subject to waivers pursuant to subsection (c) of this section. During the 120-day period, the Secretary of State, in conjunction with the Secretary of Homeland Security and in consultation with the Director of National Intelligence, shall review the USRAP application and adjudication processes to determine what additional procedures should be used to ensure that individuals seeking admission as refugees do not pose a threat to the security and welfare of the United States, and shall implement such additional procedures. The suspension described in this subsection shall not apply to refugee applicants who, before the effective date of this order, have been formally scheduled for transit by the Department of State. The Secretary of State shall resume travel of refugees into the
United States under the USRAP 120 days after the effective date of this order, and the Secretary of Homeland Security shall resume making decisions on applications for refugee status only for stateless persons and nationals of countries for which the Secretary of State, the Secretary of Homeland Security, and the Director of National Intelligence have jointly determined that the additional procedures implemented pursuant to this subsection are adequate to ensure the security and welfare of the United States.

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

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

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

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

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

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

Sec. 9. Visa Interview Security. (a) The Secretary of State shall immediately suspend the Visa Interview Waiver Program and ensure compliance with section 222 of the INA, 8 U.S.C. 1202, which requires that all individuals seeking a nonimmigrant visa undergo an in-person interview, subject to specific statutory exceptions. This suspension shall not apply to any foreign national traveling on a diplomatic or diplomatic-type visa, North Atlantic Treaty Organization visa, C–2 visa for travel to the United Nations, or G–1, G–2, G–3, or G–4 visa; traveling for purposes related to an international organization designated under the IOIA; or traveling for purposes of conducting meetings or business with the United States Government.
(b) To the extent permitted by law and subject to the availability of appropriations, the Secretary of State shall immediately expand the Consular Fellows Program, including by substantially increasing the number of Fellows, lengthening or making permanent the period of service, and making language training at the Foreign Service Institute available to Fellows for assignment to posts outside of their area of core linguistic ability, to ensure that nonimmigrant visa-interview wait times are not unduly affected.

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

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

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

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

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

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

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

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

(b) In implementing this order, the Secretary of State and the Secretary of Homeland Security shall comply with all applicable laws and regulations, including, as appropriate, those providing an opportunity for individuals to claim a fear of persecution or torture, such as the credible fear determination for aliens covered by section 235(b)(1)(A) of the INA, 8 U.S.C. 1225(b)(1)(A).
(c) No immigrant or nonimmigrant visa issued before the effective date of this order shall be revoked pursuant to this order.

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

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

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

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

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

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

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

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

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

(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.

THE WHITE HOUSE,
March 6, 2017.
JFK Lawyers: We Now Have A 'Replicable' System To Keep Fighting Trump

By Emma Whitford, gothamist.com
February 6th, 2017

Around 2:00 p.m. on Sunday, more than a dozen lawyers, translators and other volunteers—tech specialists, a communications team—milled around behind a cubicle partition wall in John F. Kennedy Airport's Terminal 4, packing up what had become, over the last seven days, their central command station.

"Tomorrow I go back to Staten Island," said Daniela Crespo, a Legal Aid staff attorney who represents tenants in that borough. Last week, Crespo took three vacation days to volunteer at JFK as the head of communications. "I've been
spending a lot of hours here and then I have insomnia," she said, smiling tiredly.

Lawyers who had rushed to JFK a week previous, the first morning of President Donald Trump's travel ban, had transitioned from clustering on the terminal floor on their laptops to working out of a makeshift office, complete with multi-language signage and a check-in table. Seating, and the partition wall, were supplied by the terminal (an agreement reached after a temporary lawyer encampment at Terminal 4’s Central Diner started cutting out the restaurant's business). The majority pro-bono group had also adopted a name—NoBanJFK—a Twitter handle, and a 24-hour shift schedule.

According to organizers, the group has assisted over 130 families whose loved ones were held for lengthy questioning as a result of the ban, which bars all refugees for 120 days and travelers from seven predominantly-Muslim countries for 90 days. After a federal judge in Seattle issued a temporary restraining order on Friday blocking the ban—the Justice Department's appeal was rejected on Sunday—travelers from impacted countries have been able to pass through customs without incident.

"We're tracking, but everyone seems to be making it in without a problem," said Camille Mackler, Director of Legal Initiatives at the New York Immigration Coalition.

Now, Mackler added, "We're transitioning to the next phase."

Not to fear, our hotlines will remain active! If you need help contact JFKNeedALawyer@gmail.com or 1-844-3264940 #NoBanJFK
#NoBanNoWall

— NoBanJFK (@nobanjfk)
Moving forward, the round-the-clock NoBanJFK crew, comprised of dozens of people per shift (hundreds, all-told), will shrink to a 24-hour rotation of eight-to-ten lawyers and four translators, stationed in terminal arrival halls to greet international flights. Immigration lawyers working remotely will also continue to monitor the NoBanJFK hotline, which they launched this week to field tips from travelers.

The Seattle judge's ruling is temporary, and while refugee resettlement organizations are now reportedly working on overdrive to take advantage of this window, some travelers impacted by the ban don't have the means to immediately rebook travel to America.

Shavonne, a 35-year-old mother of two, stood under the arrivals board in Terminal 4 on Sunday, scanning for her husband's flight from Cairo. A green card holder, he'd been in Yemen for the past four months visiting relatives, and had been actively searching for a flight home since December. He managed to find a flight to New York last week, first taking a bus to Jordan and then flying from Jordan to Egypt.

"There's a war over there, so it's kind of hard to get flights in and out," Shavonne said (she asked that her last name be withheld to protect her family's privacy). "They can't just go and say, 'I'm going to get a flight today.'"

"If we're getting no calls, we'll just pack it up," Mackler said, of the lawyer skeleton crew. "If we're getting more calls, we'll think about coming back."

Meanwhile, NoBanJFK has created a system this past week the group believes will help them combat President Trump's immigration policies in the weeks and months to come. In addition to the travel ban, Trump has signed executive orders that could empower Immigration and Customs Enforcement to deport a much
wider swath of non-citizens than previous administrations. One recent analysis, from the Los Angeles Times, estimates that as many as 8 million people could be considered a deportation priority under Trump.

Lawyers predict that Trump's ICE may hold up an Obama administration legacy, performing large-scale raids at New York farms, factories and restaurants with large non-citizen workforces.

"We were saying it's going to be replicable, and that's what we meant," Mackler said. "We didn't mean for another airport effort. We meant when they [ICE teams] go to a dairy farm in Upstate New York and we need to all pile out there. Or on Long Island. So, that's what I have in mind."
It was the 72 hours from hell.

On Feb. 6, 2017, Fahimeh (Farimah) Kashkooli, LAW ’17, made her way with a Fordham Law contingent to John F. Kennedy Airport, where her 12-year-old daughter Alma was scheduled to arrive for desperately needed medical treatment.

Alma, who suffers from a rare congenital disorder of glycosylation or CDG, was supposed to undergo surgery on Jan. 23 in Pittsburgh, but her trip was held up, first by bureaucratic delays and then by the executive order signed by President Trump on Feb. 1 barring entry from six predominantly Muslim countries, including Kashkooli’s native Iran. Without the surgery, there was a risk that Alma could go blind.

Fordham Law Dean Matthew Diller, Assistant Dean Tom Schoenherr, and Gordon Caplan, LAW ’91, of Willkie Farr & Gallagher, were able to help Kashkooli secure Alma’s admission into the country, and in March, she underwent medical treatments in New York that stabilized her condition.
Kashkooli currently lives in Manhattan with Alma. Life is less chaotic than it was a year ago, but the experience still brings her to tears. Because Alma's father and nanny were denied visas at the time, and she didn't know whether she'd be able to return to the United States if she flew home to retrieve Alma, she had to rely on Shaimaa Hussein, an associate at Willkie Farr, to fly to Istanbul and escort her on the flight. When Alma's father attempted to hand her off to Hussein, airport authorities balked. Kashkooli, who was on the phone in New York, could only offer encouragement as he tried to get Alma on the plane.

“They found a boy on the airport staff, and they said to him, ‘Take this wheelchair. See the child in that side of the gate? Put the child in, and bring her here. Quickly, because there’s no time. They are just boarding to the plane,”’ she said.

“My husband was in tears. I said ‘Don’t worry, things are going to be okay, I know this attorney, she will manage it.’”

Kashkooli had been bringing Alma to the United States for treatment since she was born. Her diagnosis at the Mayo Clinic was first of its kind for her disorder. Since then, other children with the same disorder have received similar treatments.

Kashkooli enrolled in Fordham Law's LLM program because she wanted to make the most of her time while Alma was here for treatment, she said. When the travel ban went into effect, she was just beginning of her second semester.

Though reticent at first, she reached out to Fordham Law Clinical Professor Chi Adanna Mgbako and Assistant Dean Toni Jaeger-Fine, who connected her to the dean. Hudson Freeze, Ph.D., director of the Human Genetics Program at the Sanford Children's Health Research Center in La Jolla, Calif, vouched for Alma, and New York Senator Kirsten Gillibrand intervened to grant her passage.

“I realized then, ‘I'm in good hands, I can trust these people; they're not going to leave me alone.’ That was the moment I thought, 'I'm a part of the Fordham family,'” Kashkooli said.

Since her arrival, Kashkooli has secured a new medical team for Alma and enrolled her in school. Kashkooli currently interns at the New York City Supreme Court and is searching for a full-time job that will allow her to obtain a green card once her student visa expires on July 2018.

She wants to stay, to get Alma the best treatment and to put the skills she gained from her law classes to use, but it's not clear that they will be granted extensions of their visas. It’s hard not to be bitter about the prospect of
leaving, she said, particularly since she chose to focus on international law and justice, an area of jurisprudence in which the United States has historically been respected.

“When the time comes [that]I have to leave, I will respect the rules, and I will go. I'll try to find another solution for my child—but with tears in my eyes,” she said.

“I don't want to focus on the negative side, though. I got my degree, I got to know all these beautiful people, I got to experience New York City, and Alma's condition improved. We have a long way to go, but I'm just trying to convince myself that good days are on the way.”

Fahimeh (Farimah) Kashkooli waves goodbye as she and Alma leave the airport. Photo by Bruce Gilbert
INTERNATIONAL REFUGEE
ASSISTANCE PROJECT, a project of the
Urban Justice Center, Inc., on behalf of itself
and its clients,
40 Rector St, 9th Fl
New York, NY 10006;

HIAS, Inc., on behalf of itself and its clients,
1300 Spring Street, Suite 500
Silver Spring, MD 20910;

ALLAN HAKKY,
10629 Rivers Bend Lane
Potomac, MD 20854;

SAMANEH TAKALOO,
4701 Willard Avenue, Apt. 821
Chevy Chase, MD 20815;

JOHN DOES # 1-4; and JANE DOE #1,

Plaintiffs,

v.

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

DEPARTMENT OF HOMELAND
SECURITY,
Serve on: John F. Kelly,
Secretary of Homeland Security
Washington, D.C. 20528;

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

OFFICE OF THE DIRECTOR OF
NATIONAL INTELLIGENCE,
Serve on: Michael Dempsey,

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF
Acting Director of National Intelligence
Washington, D.C. 20511;

JOHN F. KELLY
In his official capacity as Secretary of Homeland Security
Washington, D.C. 20528;

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

MICHAEL DEMPSEY,
In his official capacity as Acting Director of National Intelligence
Washington, D.C. 20511

Defendants.
INTRODUCTION

1. On January 27, 2017, the President signed an Executive Order entitled “Protecting the Nation from Terrorist Entry into the United States.” The Order, which Plaintiffs challenge in its entirety, was intended and designed to target and discriminate against Muslims, and it does just that in operation.

2. The President has been very clear about his desire to prevent Muslims from entering the United States. He specifically promised to do so as a candidate. Presented with early objections to that proposal, he asked advisors how he could implement a Muslim ban indirectly, and they helped him craft the Executive Order challenged here. President Trump further admitted on national television that through the Order he intended to favor Christian refugees over Muslim refugees. Rarely in American history has governmental intent to discriminate against a particular faith and its adherents been so plain.

3. The Executive Order violates two of our most cherished constitutional protections: the guarantee that the government will not establish, favor, discriminate against, or condemn any religion, and the guarantee of equal protection of the laws.

4. The United States was born in part of an effort to escape religious persecution, and the Religion Clauses of the First Amendment reflect the harrowing history of our Founders. More than two centuries later, our nation is one of the most religiously diverse in the world and has become a sanctuary for immigrants and visitors of all faiths and no faith, including refugees fleeing persecution in their homelands.

5. The Executive Order flies in the face of our historical commitment to welcoming and protecting people of all faiths, and no faith, and it violates the “clearest command of the Establishment Clause”—“one religious denomination cannot be officially preferred over another.” *Larson v. Valente*, 456 U.S. 228, 244 (1982).
6. The United States was likewise founded on the principle that all people—regardless of their faith or where they are born—are created equal. Like the Religion Clauses, the equal protection guarantee of the Fifth Amendment reflects this country’s rejection of official preferences on the basis of race, color, creed, or national origin. The Executive Order—which was motivated by animus toward Muslims and expressly discriminates on the basis of national origin—runs afoul of this core constitutional value as well.


8. Plaintiffs respectfully request that the Court issue appropriate declaratory relief and preliminarily and permanently enjoin the Executive Order as a whole.

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1343 over Plaintiffs’ claims under the U.S. Constitution and federal statutes. The Court has additional remedial authority under 28 U.S.C. §§ 2201-02.

10. Venue is proper under 28 U.S.C. §1391(e) and Local Rule 501.4.a.ii. Defendants are officers or employees of the United States acting in their official capacities, and agencies of the United States. Plaintiffs HIAS, Allan Hakky, Samaneh Takaloo, and John Doe #1 reside in the Southern Division of this District. No real property is involved in this action.

PARTIES

11. Plaintiff International Refugee Assistance Project (“IRAP”), a project of the Urban Justice Center, Inc., provides and facilitates free legal services for vulnerable populations around
the world, including refugees, who seek to escape persecution and find safety in the United States and other Western countries.

12. Founded in 2008 as a student organization at Yale Law School, IRAP initially served Iraqi refugees who were victims of the Iraq War. In 2010, IRAP became part of the Urban Justice Center and now has offices in New York as well as the Middle East. IRAP has expanded its client base since its inception to assist refugees from Afghanistan, Egypt, Eritrea, Ethiopia, Iran, Jordan, Kuwait, Libya, Pakistan, Palestine, Somalia, Sudan, Syria, Turkey, and Yemen. Through in-house casework, as well as supervision of 1,200 students from 29 law schools in the United States and Canada and pro bono attorneys from over 75 international law firms and multinational corporations, IRAP directly assists thousands of refugees in urgent registration, protection, and resettlement cases every year.

13. IRAP lawyers provide legal assistance to refugees and other immigrants to the United States throughout the resettlement process. IRAP lawyers advise their clients on the resettlement process, write legal briefs and compile physical evidence in advance of clients’ interviews with United States Citizenship and Immigration Services (“USCIS”), prepare them for their oral testimony in their interviews, and then conduct regular follow-up with USCIS until the client is safely resettled.

14. IRAP assists many individuals in the United States who need assistance filing family reunification petitions for family members overseas. IRAP also assists U.S.-based Iraqi and Syrian citizens and lawful permanent residents in filing petitions in order to get their family members overseas into the Direct Access Program of the United States Refugee Admissions Program. Finally, IRAP also assists countless Iraqi and Afghan citizens who have served the United States government to obtain Special Immigrant Visas, with the support of U.S. citizen veterans of Iraq and Afghanistan.
15. Since its inception, IRAP has helped to resettle over 3,200 individuals to 55 countries, with the majority resettled to the United States. It has provided legal assistance to nearly 20,000 more individuals.

16. The overwhelming majority of IRAP’s clients, including clients abroad and those within the United States, identify as Muslim.

17. As set forth in greater detail below, implementation of the Executive Order has caused substantial harm to IRAP and its clients, and will continue to harm them. IRAP asserts claims on behalf of itself and its clients in the United States and abroad. The rights of its clients that IRAP seeks to vindicate here are inextricably bound up with its organizational mission and purpose, and its clients face numerous hurdles to bringing this suit in their own name.

18. Plaintiff HIAS, the world’s oldest refugee resettlement agency, is a faith-based organization that aims to rescue people around the world whose lives are in danger. The organization works toward a world in which refugees find welcome, safety, and freedom. Founded in 1881 to assist Jews fleeing pogroms in Russia and Eastern Europe, HIAS now serves refugees and persecuted people of all faiths and nationalities around the globe. Since HIAS’s founding, the organization has helped more than 4.5 million refugees start new lives.

19. HIAS has offices in twelve countries worldwide, including headquarters in Silver Spring, Maryland, which is its principal place of business, and another domestic office in New York City. HIAS also provides resettlement experts in support of the United Nations High Commissioner for Refugees (UNHCR). Refugee resettlement lies at the heart of HIAS’s work in the United States. It is one of nine non-profit organizations designated by the federal government to undertake this humanitarian work through contracts with the Department of State and the Department of Health and Human Services.

20. In 2016, HIAS provided services to more than 350,000 refugees and asylum seekers globally. HIAS’s client base includes refugees abroad and in the United States who are from


Syria, Iraq, Iran, Sudan, Somalia, Ukraine, Bhutan, the Democratic Republic of Congo, Afghanistan, Eritrea, Tanzania, Ethiopia, Burundi, South Sudan, Uganda, Russia, Belarus, and Burma, among other countries. Many of these clients are Muslim.

21. HIAS provides programs and services to refugees, including employment, psychosocial, and legal services. HIAS has also been approved to refer cases of particularly vulnerable refugees directly for third-country resettlement to the United States and other countries. Around the world, HIAS provides legal services to protect the rights of refugees, and to register, document, and secure the status of refugees.

22. HIAS is also assigned clients via the State Department’s allocation process, which determines which refugee clients will be resettled by HIAS. For clients who have newly arrived in the United States, HIAS either provides direct resettlement services or partners with other organizations across the country to do so. These services include arranging housing and providing essential furnishings, food, clothing, initial cash assistance, initial health screening, cultural and community orientation, and, through case management services, assistance with enrollment in English language classes and employment services, as well as referrals for health and legal services.

23. HIAS, directly and through affiliated agencies, also provides assistance to refugee and asylee clients in the United States who are seeking to gain entry for family members abroad who still face persecution. As set forth in greater detail below, implementation of the Executive Order has caused substantial harm to HIAS and its clients, and will continue to harm them. HIAS asserts claims on behalf of itself and its clients. The rights of its clients that HIAS seeks to vindicate here are inextricably bound up with its organizational mission and purpose, and its clients face numerous hurdles to bringing this suit in their own name.

24. Plaintiff Allan Hakky is a United States citizen of Iraqi Kurdish origin who lives in Potomac, Maryland with his wife, also a U.S. citizen. Mr. Hakky is a Shia Muslim. He has been
in the United States since 1991, when he immigrated from the United Kingdom with his mother and three siblings. He has been a U.S. citizen since 1996.

25. Plaintiff Samaneh Takaloo is a U.S. citizen of Iranian origin who lives in Chevy Chase, Maryland. She is from a Muslim family. Ms. Takaloo came to the United States from Iran in May 2010 on a K-1 fiancée visa and has been a U.S. citizen since June 2015. She works in Washington, D.C. as a sales associate.

26. Plaintiff John Doe #1 is a lawful permanent resident and national of Iran who lives in Montgomery County, Maryland. He is a scientist. He came to the United States in 2014 on an exchange visitor visa. In 2016, he obtained his lawful permanent resident status through the National Interest Waiver program for people with extraordinary abilities. His pioneering scholarly works are recognized as cutting edge in the sciences. Both John Doe #1 and his wife, who is not a party, are non-practicing Muslims.

27. Plaintiff John Doe #2 is a U.S. citizen from Iraq who lives in Baltimore County, Maryland. John Doe #2 came to the United States in 2009, along with his wife and two daughters, as a refugee. All four are now U.S. citizens, as is John Doe #2’s third daughter, who was born in the United States. John Doe #2 is a Shiite Muslim, as is his father, whereas his mother is a Sunni Muslim.

28. Plaintiff John Doe #3 is a lawful permanent resident and national of Iran who lives in Anne Arundel County, Maryland. He came to the United States in 2011 through the Green Card lottery. John Doe #3 worked as a teacher in Iran, and currently works in the engineering field.

29. John Doe #4 and Jane Doe #1, a married couple, are U.S. citizens of Iraqi descent who live in Alabama.¹ John Doe #1 was born in Mosul, Iraq, and immigrated to the United

¹ A motion for leave of the Court for John Does #1-4 and Jane Doe to proceed under pseudonyms is filed contemporaneously herewith.
States at the age of three; he is now a physician. Jane Doe #1 arrived in 2009 as a refugee. Both are Sunni Muslims.

30. As set forth in greater detail below, implementation of the Executive Order has caused and will continue to cause harm to Plaintiffs Allan Hakky, Samaneh Takaloo, John Does #1 through #4, and Jane Doe #1 (collectively, the “Individual Plaintiffs”).

31. Defendant Donald Trump is the President of the United States. He is sued in his official capacity. In that capacity, he issued the Executive Order challenged in this suit.

32. Defendant U.S. Department of Homeland Security (“DHS”) is a cabinet-level department of the United States federal government. Its components include U.S. Citizenship and Immigration Services (“USCIS”), Customs and Border Protection (“CBP”), and Immigration and Customs Enforcement (“ICE”). CBP’s responsibilities include inspecting and admitting immigrants and nonimmigrants arriving with U.S. visas at international points of entry, including airports and land borders. USCIS’s responsibilities include adjudicating requests for immigration benefits for individuals located within the United States. ICE’s responsibilities include enforcing federal immigration law within the interior of the United States. The Executive Order assigns DHS a variety of responsibilities regarding its enforcement.

33. Defendant U.S. Department of State (“DOS”) is a cabinet-level department of the United States federal government. DOS is responsible for the issuance of immigrant and nonimmigrant visas abroad. The Executive Order assigns DOS a variety of responsibilities regarding its enforcement.

34. Defendant Office of the Director of National Intelligence (“ODNI”) is an independent agency of the United States federal government. The ODNI has specific responsibilities and obligations with respect to implementation of the Order.
35. Defendant Rex Tillerson is the Secretary of State and has responsibility for overseeing enforcement and implementation of the Executive Order by all DOS staff. He is sued in his official capacity.

36. Defendant John Kelly is the Secretary of Homeland Security. Secretary Kelly has responsibility for overseeing enforcement and implementation of the Executive Order by all DHS staff. He is sued in his official capacity.

37. Defendant Michael Dempsey is the Acting Director of National Intelligence, and has responsibility for overseeing enforcement and implementation of the Executive Order by all ODNI staff. He is sued in his official capacity.

FACTUAL ALLEGATIONS

President Trump’s Expressed Intent To Target Muslims and To Favor Christians Seeking to Enter the Country

38. President Trump has repeatedly made clear his intent to enact policies that exclude Muslims from entering the United States and favor Christians seeking to enter the United States.

39. On December 7, 2015, then-Presidential candidate Trump issued a statement on his campaign website. Entitled, “DONALD J. TRUMP STATEMENT ON PREVENTING MUSLIM IMMIGRATION,” the statement declared that “Donald J. Trump is calling for a total and complete shutdown of Muslims entering the United States until our country’s representatives can figure out what is going on.”

40. The statement, which remains on President Trump’s campaign website to this day, invokes stereotypes of Muslims, falsely suggesting that all Muslims believe in “murder against non-believers who won’t convert” and “unthinkable acts” against women.

41. Defending his proposed Muslim ban the next day, candidate Trump told Good Morning America, “What I’m doing is I’m calling very simply for a shutdown of Muslims
entering the United States—and here’s a key—until our country’s representatives can figure out what is going on.”

42. When asked the same day on MSNBC how his Muslim ban would be applied by customs officials, candidate Trump said, “That would be probably—they would say, are you Muslim?” A reporter followed up by asking, “And if they said yes, they would not be allowed in the country[?]” Candidate Trump responded, “That’s correct.”

43. Candidate Trump repeatedly reiterated his support for targeting Muslims seeking to enter the United States.

44. On March 9, 2016, candidate Trump stated, “I think Islam hates us. There’s . . . a tremendous hatred there . . . . There’s an unbelievable hatred of us . . . . We can’t allow people coming into this country who have this hatred of the United States . . . and [of] people that are not Muslim . . . .”

45. The next day, during a debate, candidate Trump said he would “stick with exactly” what he had said the night before. When asked if he was referring to all 1.6 billion Muslims worldwide, he explained, “I mean a lot of them.” Candidate Trump stated later in the same debate, “There is tremendous hate. There is tremendous hate. Where large portions of a group of people, Islam, large portions want to use very, very harsh means.”

46. On March 22, 2016, candidate Trump stated that “we’re having problems with the Muslims, and we’re having problems with Muslims coming into the country,” adding, “You need surveillance. You have to deal with the mosques whether we like it or not . . . . These attacks aren’t . . . done by Swedish people. That I can tell you.”

47. The same day, candidate Trump stated on Twitter that a Democratic candidate, Hillary Clinton, wanted to “let the Muslims flow in.”

48. On June 13, 2016, candidate Trump stated, “I called for a ban after San Bernardino and was met with great scorn and anger. But now many . . . are saying that I was right to do so.”
49. In a July 24, 2016 interview on Meet the Press, candidate Trump was asked if a plan similar to the now-enacted Executive Order was a “rollback” from “[t]he Muslim Ban.” Candidate Trump responded: “I don’t think so. I actually don’t think it’s a rollback. In fact, you could say it’s an expansion. I’m looking now at territories.”

50. Candidate Trump continued: “People were so upset when I used the word Muslim. Oh, you can’t use the word Muslim. Remember this. And I’m okay with that, because I’m talking territory instead of Muslim.”

51. That explanation tracks one later provided by Rudolph Giuliani, an advisor to candidate Trump and later an advisor to him as President. After the Executive Order was signed, Mr. Giuliani explained that “when [candidate Trump] first announced it, he said, ‘Muslim ban.’ He called me up. He said, ‘Put a commission together. Show me the right way to do it legally.’” In response to this edict, according to Mr. Giuliani, the commission decided to focus on territories, rather than explicitly naming Muslims as the subjects of the ban.

The Discriminatory Executive Order

52. After conducting a campaign in which a ban on Muslim admissions was a key promise, President Trump took action to carry out that promise by issuing the challenged Executive Order one week after being inaugurated.

53. Contemporaneous statements made by President Trump and his advisors around the signing of the Executive Order confirm President Trump’s intent to discriminate against Muslims. For instance, during the signing ceremony for the order, President Trump made clear that the order was targeted at Muslims, pledging that it would “keep radical Islamic terrorists out of the United States of America.”

54. In an interview with the Christian Broadcasting Network released the same day that he signed the Executive Order, President Trump stated that the Order was designed to give Christians priority when applying for refugee status. “If you were a Muslim you could come in
[to the United States], but if you were a Christian, it was almost impossible,” he said. “[T]hey were chopping off the heads of everybody but more so the Christians. And I thought it was very, very unfair. So we are going to help them.”

55. Consistent with this expressed religious animus towards Muslims and preference for Christians, the Executive Order will clearly disfavor Muslims while giving special treatment to non-Muslims.

56. Section 3, for example, bans any entry for 90 days for individuals from seven countries, all of which are predominantly Muslim: Syria, Sudan, Iraq, Iran, Libya, Somalia, and Yemen.

57. All seven banned countries have overwhelmingly Muslim populations.

58. Moreover, 82% percent of all Muslim refugees who entered the United States in fiscal years 2014 through 2016 hailed from those seven countries.

59. The Executive Order does not single out any countries for disfavored treatment that are not majority-Muslim.

60. Section 5 of the Executive Order prohibits refugee admissions for 120 days, except for Syrian refugees, who are banned indefinitely.

61. The Executive Order discriminates between persons of majority and minority faiths in their country of origin. Section 5(b) requires the government to “prioritize refugee claims made by individuals on the basis of religious-based persecution, provided that the religion of the individual is a minority religion in the individual’s country of nationality” once the 120-day ban on refugee admissions is complete.

62. During those 120 days, moreover, Section 5(e) allows the admission of certain refugees on a discretionary case-by-case basis, “only so long as [the Secretaries of State and Homeland Security] determine that the admission of such individuals as refugees is in the national interest—including when the person is a religious minority in his country of nationality
facing religious persecution.” As the President has conceded, these provisions are intended to allow Christian refugees to enter the United States, even while Muslim refugees from the same countries are prohibited from doing so.

63. There is no basis in the Refugee Act of 1980, as amended—which governs the admission of refugees to the United States and their resettlement herein—to prioritize refugees fleeing persecution on the basis of religion, as opposed to the other congressionally-recognized bases. See 8 U.S.C. § 1101(a)(42) (defining “refugee”).

64. Muslims will be severely disadvantaged under the minority-faith preferences set forth in Sections 5(b) and 5(e). During the past three fiscal years, only 12% of Muslim refugees hailed from a country where Islam is a minority faith. Thus, based on recent data, approximately 88% of Muslim refugees would be ineligible for the minority-faith preference, even if they can assert strong claims of religious persecution.

65. By contrast, during the past three fiscal years more than half (53%) of non-Muslim refugees hail from countries where they are in the minority faith, and would thus be eligible for the minority-faith preference if they are able to assert religious persecution claims.

66. There is no statutory, regulatory, or constitutional basis for favoring refugees from minority faiths over refugees from majority faiths.

67. In operation, the Executive Order not only disfavors Muslims while giving preference to non-Muslims, but also entangles the executive branch in questions of religious doctrine and practice. Under these provisions, the government is required to categorize a religion as “minority” or “majority” in each country.

68. Drawing these lines will necessarily entail inquiry into the religious beliefs, practices, and faith identification of billions of people.
69. The indefinite ban on Syrian refugees also effectuates President Trump’s intent to
limit the entry of Muslims into the United States. In fiscal year 2016, Muslim Syrian refugees
made up 32% of all Muslim refugees who entered the United States.

70. Furthermore, Section 5(g) seeks to expand the limited role State and local
governments have in the refugee resettlement process beyond that envisioned by Congress in
order to authorize and facilitate the stated desire and intent of some states and localities in the
United States to discriminate against lawfully-admitted refugees on the basis of their nationality
and/or religion. See, e.g., Exodus Refugee Immigration, Inc. v. Pence, 838 F.3d 902 (7th Cir.
2016) (affirming preliminary injunction on equal protection grounds of state executive order
issued by then-Governor of Indiana, Mike Pence, that sought to prevent the resettlement in the
State of refugees from Syria).

71. In addition to Sections 3 and 5, other sections of the Executive Order reinforce
stereotypes about Muslims and discriminate against them. Multiple sections, for example,
associate Muslims with violence, bigotry, and hatred, inflicting stigmatic and dignitary harms,
among other types of injury. These include Sections 1 and 2, which portray the ban as protecting
citizens from foreign nationals “who would place violent ideologies over American law” and
“who intend to commit terrorist attacks in the United States”; and Section 10, which requires the
Secretary of Homeland Security to periodically publish information about the number of “foreign
nationals” involved in, among other things, terrorism-related activities, radicalization, and
“gender-based violence against women, including honor killings”—direct echoes of then-
candidate Trump’s broad statements denigrating Islam and Muslims.

72. Further, on information and belief, since the Order was signed, CBP has questioned
foreign nationals entering from certain countries about their religious beliefs to determine
whether or not they are Muslim, and has subjected Muslim travelers from countries other than
the seven designation nations to disproportionate and unwarranted scrutiny and interrogation.
73. There is no sound basis for concluding that Muslims generally, or Muslims from particular countries, are more likely to commit violent acts of terror.

74. A previous program to track certain foreign nationals predominantly from Muslim-majority countries, NSEERS, did not lead to the conviction or even identification of a single terrorist, even though it subjected tens of thousands of people to additional screening and investigation.

75. Many alternatives exist that do not involve targeting individuals based on their faith or using nationality as a proxy for faith, are less restrictive than the Executive Order, and are more closely tailored to legitimate national security concerns.

The Chaotic and Irregular Implementation of the Order

76. The preparation and implementation of the Executive Order were extremely unusual and chaotic. Upon information and belief, the White House bypassed regular channels for input and cooperation with other components of the Executive Branch, including the Secretaries of Homeland Security, Defense, and State. Moreover, upon information and belief CBP was not given clear operational guidance during critical times in the implementation of the Executive Order.

77. The Executive Order was signed without final review or legal analysis from DHS, which—along with the DOS—is principally charged with implementing the Order.

78. Secretary of Homeland Security Kelly was reportedly in the midst of a conference call to discuss the Order when someone on the call learned from watching television that the Order they were discussing had been signed.

79. Similarly, Secretary of Defense Mattis, who had publicly criticized President Trump’s proposal to ban Muslims from the United States, reportedly did not see a final version of the Order until the day it was signed and was not consulted during its preparation.
80. This Order did not arise out of the usual process of consulting with the relevant cabinet-level officials and agencies before issuing an Executive Order. Instead, the Order was primarily drafted by a small team of Presidential aides, overseen by chief White House strategist Stephen K. Bannon.

81. Mr. Bannon has previously made anti-Muslim comments. He criticized former President George W. Bush for referring to Islam as “a religion of peace,” calling President Bush “one of the dumbest presidents in the history of these United States.”

82. Congressional staff who worked on the Executive Order reportedly were required to sign nondisclosure agreements, and not even the members of Congress they served were allowed to know of their work on the Order. On information and belief, this arrangement was also highly unusual.

83. During the days leading up to and following the signing of the Executive Order, its scope and provisions were changed without any rational relationship to the purported reasons for the Order.

84. For example, the night before the Order was signed, the Department of Homeland Security issued guidance interpreting the Order as not applying to lawful permanent residents. Overnight, the White House overruled that guidance, applying the Order to lawful permanent residents subject to a case-by-case exception process, in a decision closely associated with Mr. Bannon.

85. After the detention at airports of many individuals, including lawful permanent residents, led to chaos nationwide, Secretary Kelly issued a statement “deem[ing] the entry of lawful permanent residents to be in the national interest.” Secretary Kelly’s statement was made pursuant to Section 3(g) of the order, which requires such a decision to be made jointly with the Secretary of State and “on a case-by-case basis.”
86. Finally, on February 1, the Counsel to the President purported to interpret the Order as exempting Lawful permanent residents from the ban entirely.

87. Similarly, initial guidance from the Department of State indicated that individuals with dual citizenship, with one country of citizenship subject to the ban, would be banned from entering the United States. Word of a change in that policy spread irregularly, with notice being given to airlines and foreign nations but contradicted in official U.S. government communications.

88. Finally, CBP announced a changed policy, explaining, in response to the question “Does ‘from one of the seven countries’ mean citizen, national or born in?” that “Travelers are being treated according to the travel document they present.” According to this policy, currently in place, the very same individual both is and is not subject to the travel ban depending only on the travel document she presents.

89. The government also reversed itself on its policy toward holders of Special Immigrant Visas from Iraq. Holders of these visas are clearly banned under the terms of the Order, and they were refused entry when it went into effect. However, on February 2, 2017, the government changed course and allowed them to enter the United States despite the Executive Order.

90. Still other aspects of the Executive Order and its implementation demonstrate utter disregard for the individuals affected by it. For example, the Administration knew that the Executive Order would bar the entry of individuals who were literally mid-air when the order was issued. Nonetheless, and absent any exigency that would justify it, the order was signed late on a Friday afternoon. That decision had a number of predictable consequences, including: making it more difficult for the federal employees tasked with enforcing the order to obtain instruction on how to interpret and enforce the order’s sloppily-written provisions; prolonging the detentions at airports of those affected, and leading many to be wrongfully deported; and increasing the difficulty advocates had in accessing their clients and the courts.
91. Even once advocates were able to access the courts and obtain temporary injunctive relief against aspects of the Executive Order, DHS officials frequently refused or otherwise failed to comply with the court orders, undermining bedrock constitutional principles and inflicting further unlawful injury on the affected individuals.

92. Other actions taken by DHS and DOS to enforce the Executive Order exhibit a zealous desire to go beyond even the draconian measures the order actually requires.

93. Notwithstanding that Section 3 of the Executive Order only bars “entry into the United States of aliens from” one of the aforementioned seven Muslim-majority countries, DHS interpreted it to prohibit the granting of any immigration-related benefit to anyone from those countries—including to individuals who are already in the United States. That decision would have wide-ranging consequences, including: delaying naturalization of lawful permanent residents (“LPRs”) from those countries who wish to become U.S. citizens; rendering asylees from those countries unable to be lawfully employed once their Employment Authorization Documents expire; and either expelling or making undocumented any individuals here on nonimmigrant visas (including student, employment, and tourist) that otherwise could have been renewed.

94. DOS, at the request of DHS, issued a letter purporting to provisionally revoke all immigrant and nonimmigrant visas of nationals of the seven designated countries on a categorical basis. The letter is dated January 27, 2017, but only came to light on January 31, 2017, when Department of Justice lawyers filed it in pending litigation. DOS has stated that this action was taken to “implement[]” the Executive Order.

95. On information and belief, DOS has never before revoked a broad swath of valid visas in this manner. Nor, on information and belief, is visa revocation ordinarily undertaken in secret, with no notice to the visa holder and no individualized consideration of whether any particular visa should be revoked.
96. Still further evidence of discriminatory intent and effect is reflected in the statements by President Trump and his Administration seeking to defend and justify the Executive Order after it was issued.

97. President Trump, for example, falsely stated that only 109 people were detained over the weekend following the issuance of the Executive Order, even though he knew or should have known that the number was far higher.

98. Following the issuance on February 3 of a temporary restraining order of various parts of the Executive Order, President Trump personally attacked the Honorable James Robart, who issued the order. President Trump referred to Judge Robart as a “so-called judge,” calling his opinion “outrageous,” “ridiculous,” and “terrible.” President Trump falsely claimed that one consequence of Judge Robart’s order is that now “anyone, even with bad intentions” must be allowed to enter the country, saying that the judge had “open[ed] up our country to potential terrorists” and put it in “such peril.” President Trump advised the public to “blame him and the court system” if “something happens.” Comments like this by a President about a sitting judge are extremely unusual, if not unprecedented, and further underline the extent to which the ordinary norms and processes of government have been cast aside with respect to this Order.

99. These chaotic, irregular, and irrational policies, policy changes, and statements indicate that the purported justifications for the Executive Order are pretextual and that it was at least substantially motivated by an intent to discriminate against Muslims.

The Nationwide Temporary Restraining Order

100. The February 3, 2017, temporary restraining order (“TRO”) issued by Judge Robart currently prohibits the government from enforcing Sections 3(c), 5(a), 5(b), and 5(e) of the Executive Order. The government has appealed to the Ninth Circuit and sought a stay pending
appeal. That stay motion was fully briefed by 3:00 pm Pacific Standard Time on February 6, 2017.

101. In response to the TRO, the government issued assurances that, while the TRO remained in place, entry procedures would revert to those in place before the Order was signed; visas purportedly revoked by the DOS letter would be reinstated; airlines would be informed that they could fly individuals from the banned countries to the United States; and visa processing and interviews overseas would resume.

102. Presumably, should the TRO be dissolved, the government will also unwind all of these changes, and thereby reinstate the Executive Order in its entirety (except as limited by other Executive Branch decisions, like the decision to allow Special Immigrant Visa holders to enter the United States, or by other court orders).

The Grave Harm to Plaintiffs and Their Clients

103. Implementation and enforcement of the Order has already caused Plaintiffs and their clients substantial, concrete, and particularized injury, and will continue to harm Plaintiffs if not permanently enjoined.

104. The Executive Order, which suspends refugee resettlement and intentionally discriminates against Muslim immigrants, frustrates IRAP’s mission and imposes a significant burden on IRAP’s work. As a direct result of the imposition and enforcement of the Executive Order, IRAP and its clients have suffered substantial, concrete injuries.

105. IRAP serves refugees and displaced persons of all faiths, but the vast majority of its client base is Muslim. IRAP counsels persecuted individuals on various legal avenues to safe countries and represents them throughout these processes, with a majority of its clients resettling to the United States.
106. The Order has severely restricted IRAP’s ability to carry out its work and mission. In the ten days immediately following the issuance of the Executive Order, IRAP provided assistance to more than forty individuals from Iraq, Iran, Sudan, Libya, Syria, Somalia, and Yemen who, despite being vetted and given permission to enter the United States, had been prevented by the Order from doing so.

107. Of its 583 open cases, 419 families are from Iraq, Syria, Iran, Sudan, Somalia, Libya, or Yemen or are refugees from other countries and therefore potentially affected by this Order. IRAP has already used a significant portion of its financial resources and time to represent these 419 clients through legal adjudications and to provide counseling through the demanding vetting process. Restricting entry into the United States has rendered that investment of resources and time a waste.

108. Furthermore, the Executive Order will create a significant backlog in the U.S. Refugee Admissions Program, delaying the processing of many of IRAP’s clients’ cases. This delay forces IRAP to exhaust more of its resources, as the average lifespan of a case now grows significantly.

109. The delay also greatly endangers the lives of IRAP’s clients, because the longer it takes for their cases to be decided, the longer they are in life-threatening environments. In addition, some of the IRAP clients abroad have familial ties to IRAP clients already in the United States, and those U.S. clients are suffering harm as a result of the ongoing delay in reunification with their family members, as well as the risk that their family members may suffer persecution or death in the meantime.

110. The Executive Order, moreover, marginalizes IRAP’s Muslim clients and subjects them to suspicion, scrutiny, and social isolation on the basis of religion and national origin, and inflicts stigmatic and dignitary injuries.
111. The Executive Order has furthermore forced IRAP to devote substantial resources to addressing the order’s effects on IRAP’s clients and those similarly situated. Following the signing of the Executive Order on January 27, 2017 at 4:42 P.M. EST, two IRAP clients, Mr. Hameed Khalid Darweesh and Mr. Haider Sameer Abdulkhaleq Alshawi, were detained at John F. Kennedy Airport (“JFK”) despite being the recipients of valid visas. As a result, IRAP attorneys were present at JFK from 2 am to 6:30 pm on January 28, 2017 attempting to secure their lawful release. Furthermore, together with co-counsel, IRAP filed a habeas petition on behalf of those two clients, together with a motion for class certification (Darweesh et al. v. Trump et al., No. 1:17-cv-480 (E.D.N.Y. filed Jan. 28, 2017)). That litigation is ongoing. These actions are not in the scope of normal IRAP legal assistance, as previous IRAP clients were allowed to enter at U.S. Ports of Entry after receiving final approval to travel.

112. The Order has further caused IRAP to divert its resources as IRAP has become the focal point organization for volunteer attorneys all across the country who have gone to airports to attempt to secure the release of individuals detained pursuant to this Order. In addition to being the first organization to put out a call to volunteer attorneys, IRAP created and maintains a unique hotline email address (airport@refugeerights.org) to advise attorneys and affected individuals. Since the creation of this email address on January 28, 2017, IRAP has received and responded to nearly 800 email messages. IRAP has also developed templates and informational materials for attorneys, affected family members in the United States, and individuals overseas who have been denied travel pursuant to the Order.

113. HIAS has likewise been significantly harmed by the Executive Order. HIAS’s refugee resettlement work is grounded in, and an expression of, the organization’s sincere Jewish beliefs. The Torah, Judaism’s central and most holy text, commands followers to welcome, love, and protect the stranger. The Jewish obligation to the stranger is repeated throughout the Torah, more than any other teaching or commandment. HIAS believes that this religious commandment
demands concern for and protection of persecuted people of all faiths. The Torah also teaches that the Jewish people are to welcome, protect, and love the stranger because “we were strangers in the land of Egypt” (Leviticus 19:34). Throughout their history, violence and persecution have made the Jewish people a refugee people. Thus, both history and values lead HIAS to welcome refugees in need of protection. A refusal to aid persecuted people of any one faith, because of stigma attached to that faith, violates HIAS’s deeply held religious convictions.

114. The Executive Order severely impedes HIAS’s religious mission and work by intentionally discriminating against Muslims, prohibiting the entry of all refugees into the United States for 120 days, indefinitely prohibiting Syrian refugees’ entry into the United States, and disfavoring majority-faith refugees generally.

115. Despite having been previously vetted and granted refugee status, HIAS clients from Iraq, Iran, Sudan, Somalia, Ukraine, Bhutan, the Democratic Republic of Congo, Afghanistan, Eritrea, Tanzania, Ethiopia, Uganda, Russia, Belarus, and Burma were prevented from entering the country because of the Executive Order and continue to face significant delays. But for the Temporary Restraining Order, HIAS clients would continue to be barred from entering the country. Before the Executive Order was signed, arrangements had been made for many of these clients to arrive in the United States in January, February, and the coming months.

116. Many of these clients are Muslim and hail from Muslim-majority countries and would thus be precluded from using the preference for refugees of a minority faith, even if they have religious persecution claims. Others are not Muslim but follow faiths that are the majority faiths in their countries of origin and thus would similarly be ineligible for the “minority” faith preference even if they are able to assert religious persecution claims.

117. Some HIAS clients abroad have refugee referral applications pending with the United States, and will suffer significant delay in the adjudication of those applications because of the Executive Order. That delay puts them at risk of the very persecution and abuse that they are
fleeing. Some of these clients are from Syria; therefore, under the Executive Order, adjudication of their refugee applications is suspended indefinitely. Some of these clients are Muslim and hail from Muslim-majority countries. They will be precluded, even once refugee resettlement resumes, from benefiting from the preference for refugees of a minority faith.

118. Some HIAS clients in the United States have relatives abroad who are eligible for resettlement or other immigration applicants. Some HIAS clients abroad have family ties in the United States. Those U.S. clients and family members in the United States are suffering harm as a result of the ongoing delay in reunification with their family members, as well as the risk that their family members may suffer persecution or death in the meantime.

119. HIAS’s Muslim clients in the United States have been marginalized as a result of the anti-Muslim message conveyed by the Executive Order and subjected to baseless suspicion, scrutiny, and social isolation on the basis of religion and national origin.

120. Additionally, as a result of the Executive Order, at least one of HIAS’s Muslim clients in the United States has been detained at an airport for an extended period, handcuffed and separated from his family, and many other clients have otherwise had their travel significantly delayed.

121. Because HIAS is a non-profit resettlement organization that has a cooperative agreement with the federal government on a per-capita basis for each refugee served, and because the Department of State asked HIAS to increase its capacity from the 3,884 refugees resettled in federal fiscal year (“FFY”) 2016 to 4,794 refugees in FFY 2017, HIAS would be denied crucial funding as a result of the Executive Order, which bans all refugees for 120 days, bars all entry for the seven Muslim-majority countries for 90 days, indefinitely bars refugees from Syria, and caps the number of refugees to be admitted in the current fiscal year at 50,000, which is less than half the number the Department of State told the resettlement agencies to collectively plan to resettle.
122. The Executive Order would also result in the waste of HIAS resources. For example, in the past year, HIAS has devoted substantial private resources to developing a program with several congregations in Westchester, New York, to welcome Syrian refugee families. Because of the indefinite ban on Syrian refugees and the unexpected and dramatic lowering of the refugee admissions ceiling, the Executive Order would put those resources to waste. Congregations and family members of HIAS clients have extended resources to prepare for anticipated refugees, by renting apartments and purchasing furnishings. In addition, some refugees who were anticipating resettlement through HIAS left jobs or travelled through other countries and now face precarious situations as a direct result of this Executive Order.

123. In the weeks and months prior to the order, HIAS concluded a formal plan with the Department of State to increase HIAS’s national resettlement capacity by 23.4% from 3,884 refugees in federal fiscal year 2016 to 4,794 refugees in federal fiscal year 2017. This plan caused HIAS to invest substantial resources into expanding existing resettlement sites and opening new refugee resettlement sites in Wisconsin, Delaware, New York, Illinois, and Massachusetts, as approved by the Department of State. These resources will be wasted, at least in part, because of the Executive Order.

124. In addition, HIAS will be forced to divert substantial resources to dealing with the fallout from the Executive Order and its effect on HIAS’s clients, including devoting staff time to working with clients, and their families in the United States, who were denied entry and face precarious situations overseas.

125. Plaintiff Hakky, a U.S. citizen, has suffered and will continue to suffer harm because of the Executive Order. Mr. Hakky has six sisters-in-law, one of whom lives in the United States and is a lawful permanent resident. Another sister-in-law lives in London, United Kingdom. His parents-in-law and four other sisters-in-law are all Iraqi nationals who have valid visitor visas to the United States. One sister-in-law was born in Kuwait and the other three were born in Jordan.
Like their parents, all four are considered to be Iraqi nationals and subject to the executive order travel ban. Mr. Hakky’s parents-in-law and sisters-in-law are all Muslim.

126. Plaintiff Hakky’s parents-in-law and sisters-in-law were coming to the United States to visit Mr. Hakky’s sister-in-law, a lawful permanent resident who gave birth prematurely to a baby in January, 2017. Her parents and sisters planned to visit the United States to provide support and assistance and to meet the baby, who is still in the neonatal intensive care unit. They had planned to travel to the United States in late January but were barred from doing so because of the Executive Order.

127. Plaintiffs Jane Doe and John Doe #4, U.S. citizens, have suffered and will continue to suffer harm because of the Executive Order. Jane Doe is pregnant, and she is scheduled for a Caesarean section in mid-February, 2017. She filed a family-based visa petition for her two parents, who live in Baghdad, in 2016. That visa petition was approved, and her parents were issued visas, which are facially valid until May 2017.

128. Jane Doe’s mother, who is a Shiite Muslim, and her father, who is a Sunni Muslim, plan to travel to the United States before the date of the Caesarean section and will be unable to do so under the terms of the executive order. If the executive order banning entry from Iraq is in effect, Jane Doe’s parents will not be able to travel to the United States to be present for the birth of their grandchild.

129. Plaintiff Takaloo, a U.S. citizen, has suffered and will continue to suffer harm because of the Executive Order. Ms. Takaloo’s parents are Muslim and live in Iran. They received temporary family-based visas, permitting them to become lawful permanent residents upon arrival in the United States. These visas expire on April 13, 2017.

130. Ms. Tukaloo and her parents have expended substantial amounts of money in obtaining visas for her parents, including fees payable to the U.S. government, costs of travel
outside of Iran for a visa interview because there is no U.S. embassy in Iran, and required medical examinations.

131. Ms. Takaloo’s parents bought plane tickets on Qatar Airlines to travel to the United States on March 7, 2017. On January 27, 2017, Ms. Takaloo’s parents learned through news reports that under President Trump’s executive order, Iranian nationals would no longer be permitted to travel to the United States.

132. Plaintiff John Doe #1, a lawful permanent resident, has suffered and will continue to suffer harm because of the Executive Order. In August 2016, while John Doe #1’s application to become a lawful permanent resident was pending, he married an Iranian national who lives in Iran. She applied for a visa as John Doe #1’s dependent and her application was approved on November 3, 2016. As of January 9, 2017 John Doe #1 and his wife had submitted all of the requisite documentation and paid immigrant visa processing fees, and were waiting for notification that an interview was scheduled. At the time the Executive Order went into effect, John Doe #1 expected his wife’s interview to be scheduled within no more than six weeks based on information published by the National Visa Center. Under the Executive Order, John Doe #1’s wife will not be interviewed or granted a visa.

133. The executive order’s travel ban on Iranian nationals has created significant fear, anxiety and insecurity for John Doe #1 and his wife regarding their future. After her mother’s unexpected death in 2013, John Doe #1’s wife has been alone in Tehran. The Executive Order’s ban forces John Doe to choose between his career and being together with his wife, who remains in Tehran.

134. Plaintiff John Doe #2, a U.S. citizen, has suffered and will continue to suffer harm because of the Executive Order. In 2006, John Doe #2’s uncle and cousin were killed in Iraq, after which he also received threats. Three days after his uncle and cousin were killed, John Doe #2 fled to Syria, where he lived for three years. Because he continued to feel threatened in Syria,
John Doe #2 applied for refugee status in 2007, was approved in 2009, and arrived in the United States in August 2009.

135. In March 2015, Plaintiff John Doe #2 filed a petition for family-based immigration visas for his parents, still in Iraq, so they could join him and his family in the United States. Plaintiff John Doe #2’s parents are Iraqi nationals and retired teachers who worked in the United States in the 1980s. Plaintiff John Doe #2’s parents had an immigration interview at the U.S. Embassy in Baghdad in September 2016, and their visas were subsequently approved, although the visas have not yet been issued. As of December 2016, the embassy told John Doe #2 that his parents’ applications were still being processed.

136. Expecting to be allowed to join Plaintiff John Doe #2 in the United States in early 2017, John Doe #2’s parents sold their furniture and prepared for their move. When they learned about the Executive Order, they realized that the travel ban would prevent them from joining their son and his family in the United States.

137. Plaintiff John Doe #2’s parents continue to face threats and harassment in Iraq. His parents are moving between the houses of various friends and relatives to ensure they are not targeted. John Doe #2 is unable to return to Iraq to see his parents for fear of putting himself, his family in Iraq, or his wife and children in danger. Leaving the United States also puts John Doe #2 in danger of not being able to return because of the Executive Order.

138. Plaintiff John Doe #3, a lawful permanent resident, has suffered and will continue to suffer harm because of the Executive Order. John Doe #3 recently applied to become a naturalized citizen, and that petition remains pending with USCIS. Should the Executive Order be fully implemented, the processing of that petition, and therefore John Doe #3’s naturalization, will be delayed.

139. In the summer of 2014, John Doe #3 married a national of Iran. In October 2014, John Doe #3 applied for an immigration visa on her behalf. Approximately 19 months later, in
May 2016, she had her interview at the U.S. Embassy. At that time, she was informed that her documentation was complete and she needed to wait for administrative processing, but that she should be able to join her husband in two to three months. She therefore resigned from her job and began preparing to join her husband in the United States. The Executive Order, however, puts the couple’s plans in peril, as it has at least delayed, and could prevent, John Doe #3’s wife from obtaining her visa and joining her husband in United States.

140. Since moving to the United States, John Doe #3 has returned to Iran on several occasions to visit his wife, but is now fearful of leaving the United States. He had planned to visit her in February 2017, but put his plans on hold in light of the Executive Order. John Doe #3 is afraid that if he leaves the United States to see his wife, he will not be permitted to reenter the United States or could be detained by immigration officials at the airport upon his return.

141. The Executive Order marginalizes the Individual Plaintiffs and their families, and subjects them to baseless suspicion, scrutiny, and social isolation on the basis of religion and national origin, and inflicts stigmatic and dignitary injuries.

Class Allegations

142. Individual Plaintiffs bring this action as a class action pursuant to Federal Rule of Civil Procedure 23(b) (1) and (b) (2), on behalf of themselves and all other persons in the United States for whom the Executive Order either interferes with family reunification or the ability to travel internationally and return to the United States. This class includes:

a. Individuals in the United States who currently have an approved or pending petition to the United States government to be reunited with family members who are nationals of Iran, Iraq, Libya, Somalia, Sudan, Syria or Yemen (the “Designated Countries”), or who will soon file such petition;

b. Refugees in the United States who have currently pending, or will soon file, a petition to the United States government to be reunited with family members; and
c. Nationals of the Designated Countries who reside in the United States and who wish to travel abroad and return to United States or who, prior to issuance of the Executive Order, did travel abroad with the intent to return and are currently abroad.

143. The Plaintiff Class is so numerous that joinder is impracticable. According to the Annual Report of the Visa Office, in 2015, the last year for which data are available, the United States issued approximately 85,000 immigrant and non-immigrant visas to nationals from the seven Designated Countries. The U.S. government has estimated that between 60,000 and 100,000 people are affected by Section 5 of the Executive Order.

144. The claims of the Plaintiff Class members share common issues of law, including but not limited to whether the Executive Order violates their associational, religious exercise and due process rights under the First and Fifth Amendments, the Religious Freedom Restoration Act, the Immigration and Nationality Act and the Administrative Procedure Act.

145. The claims of the Plaintiff Class members share common issues of fact, including but not limited to whether the Executive Order is being or will be enforced so as to prevent them or their family members from entering the United States from abroad or from re-entering the United States should they choose to leave the United States briefly, even though they would otherwise be admissible.

146. The claims or defenses of the named Plaintiffs are typical of the claims or defenses of members of the Plaintiff Class.

147. The named Plaintiffs will fairly and adequately protect the interests of the Plaintiff class. The named Plaintiffs have no interest that is now or may be potentially antagonistic to the interests of the Plaintiff class. The attorneys representing the named Plaintiffs include experienced civil rights attorneys who are considered able practitioners in federal constitutional litigation. These attorneys should be appointed as class counsel.
148. Defendants have acted, have threatened to act, and will act on grounds generally applicable to the Plaintiff Class, thereby making final injunctive and declaratory relief appropriate to the class as a whole. The Plaintiff Class may therefore be properly certified under Fed. R. Civ. P. 23(b) (2).

149. Prosecution of separate actions by individual members of the Plaintiff Class would create the risk of inconsistent or varying adjudications and would establish incompatible standards of conduct for individual members of the Plaintiff Class. The Plaintiff Class may therefore be properly certified under Fed. R. Civ. P. 23(b)(1).

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF
(Establishment Clause, First Amendment to the U.S. Constitution)

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

151. The Executive Order violates the Establishment Clause by singling out Muslims for disfavored treatment and granting special preferences to non-Muslims. It is neither justified by, nor closely fitted to, any compelling governmental interest.

152. In addition, Sections 5(b) and 5(e) of the Executive Order discriminate between “minority religions” and majority religions, explicitly granting official preference to foreign adherents of minority faiths in the refugee-application process. This express preference is neither justified by, nor closely fitted to, any compelling governmental interest.

SECOND CLAIM FOR RELIEF
(Equal Protection, Fifth Amendment to the U.S. Constitution)

153. The foregoing allegations are repeated and incorporated as though fully set forth herein.
154. The Due Process Clause of the Fifth Amendment to the U.S. Constitution provides that “No person shall . . . be deprived of life, liberty, or property, without due process of law.” The Clause contains an equal protection component.

155. The Executive Order discriminates on the basis of religion and national origin, each a suspect classification, and is not narrowly tailored to serve a compelling governmental interest, and thereby violates the equal protection component of the Due Process Clause.

156. Additionally, the Executive Order was substantially motivated by an intent to discriminate against Muslims, on whom it has a disparate effect, in further violation of the equal protection component of the Due Process Clause.

THIRD CLAIM FOR RELIEF
(Immigration and Nationality Act & Administrative Procedure Act)

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

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

159. Several clients of IRAP are otherwise eligible and approved for refugee status, but pursuant to the Executive Order, their entry to the United States will be denied or delayed. The Executive Order on its face purports to deny entry to these clients of IRAP because of their nationality, place of birth, and/or place of residence, in violation of § 1152(a)(1)(A).

160. Plaintiffs Takaloo, John Does #1 through #4, and Jane Doe #1 have filed petitions for immigrant visas for members of their families, some of whom have subsequently received visas. Pursuant to the Executive Order, the processing of those petitions and/or the subsequent issuance of visas will be delayed or denied, and/or their family members with facially valid visas will be
denied entry. The Executive Order on its face purports to deny or delay these Plaintiffs’
petitions for their family members to receive immigrant visas and/or to use previously-issued,
facially valid immigrant visas because of their nationality, place of birth, and/or place of
residence, in violation of § 1152(a)(1)(A).

161. The Executive Order on its face mandates discrimination against those who apply for
and/or hold immigrant visas on the basis of their nationality, place of birth, and/or place of
residence, in violation of § 1152(a)(1)(A).

162. The actions of Defendants, as set forth above, are arbitrary, capricious, an abuse of
discretion, or otherwise not in accordance with law; contrary to constitutional right, power,
privilege, or immunity; in excess of statutory jurisdiction, authority, or limitations, or short of
statutory right; and without observance of procedure required by law, in violation of the

FOURTH CLAIM FOR RELIEF

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

164. The Executive Order will have the effect of imposing a special disability on the basis
of religious views or religious status, by denying or impeding Muslim Plaintiffs, on account of
their religion, from accessing benefits relating to their own or their family members’ immigration
status. In doing so, the Executive Order places a substantial burden on Muslims’ exercise of
religion in a way that is not the least restrictive means of furthering a compelling governmental
interest.

165. This substantial burden is not imposed in furtherance of a compelling governmental
interest, and is not the least restrictive means of furthering a compelling governmental interest, in
FIFTH CLAIM FOR RELIEF
(Refugee Act & Administrative Procedure Act)

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

167. The Executive Order purports to limit the number of refugees who may be admitted in fiscal year 2017 to 50,000, despite an earlier proclamation setting a limit of 110,000, in violation of the Refugee Act, 8 U.S.C. § 1157(a)(2).


169. President Trump did not engage in “appropriate consultation” prior to altering the number and allocation of refugee admissions for fiscal year 2017, in violation of the Refugee Act, 8 U.S.C. § 1157(a)(3).

170. The Executive Order’s preference for Christian refugees in the resettlement process, and the disfavoring of Muslim and Syrian refugees, violate the congressional mandate that refugee resettlement services “shall be provided to refugees without regard to race, religion, nationality, sex, or political opinion.” 8 U.S.C. § 1522(a)(5).

171. The Executive Order makes other alterations to the refugee admission process that are not authorized by the Refugee Act and are in violation of the Refugee Act.

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

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

174. The actions of Defendants that are required or permitted by the Executive Order, as set forth above, are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A).

175. The actions of Defendants that are required or permitted by the Executive Order, as set forth above, are contrary to constitutional right, power, privilege, or immunity, including rights protected by the First and Fifth Amendments to the U.S. Constitution, in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(B).

176. The actions of Defendants that are required or permitted by the Executive Order, as set forth above, are in excess of statutory jurisdiction, authority, or limitations, or short of statutory right, in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(C).

177. The actions of Defendants that are required or permitted by the Executive Order, as set forth above, were without observance of procedure required by law, in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(D).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for the following relief:

A. A preliminary and permanent injunction enjoining Defendants, their officials, agents, employees, assigns, and all persons acting in concert or participating with them from implementing or enforcing any portion of the Executive Order;

B. A declaration pursuant to 28 U.S.C. § 2201 that the entire Executive Order is unlawful and invalid;
C. An order awarding Plaintiffs costs of suit, and reasonable attorneys' fees and expenses pursuant to any applicable law;

D. Such other and further relief as the Court deems equitable, just, and proper.

Respectfully submitted,

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Dated: February 7, 2017

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Counsel for Plaintiffs
Thank you very much. This is — great to be with people I truly feel comfortable with. Please sit down. They’ll say I didn’t get a standing ovation because they never sat down. And I say, I got one standing ovation because they never sat down.

But I want to thank you. I have great, great love for what you do and the way you do it. And when I’m with the police chiefs and I’m with the sheriffs of our country — and these are the big ones. These are the really big ones. I just want to thank you very much. And I thought before I spoke about what we’re really here
to speak about, I would read something to you. Because you can be a lawyer, or
you don’t have to be a lawyer; if you were a good student in high school or a bad
student in high school, you can understand this.

And it’s really incredible to me that we have a court case that’s going on so long.
As you know, in Boston, we won it with a highly respected judge and a very
strong opinion, but now we’re in an era that, let’s just say, they are interpreting
things differently than probably 100 percent of the people in this room. I’d like to
almost know, does anybody disagree when I read this.
But I’m going to read what’s in dispute, what’s in question. And you will see this
— it’s INA 212(f) 8 U.S.C. 1182(f): “Suspension of entry or imposition of
restrictions by the President” — okay, now, this isn’t just me, this is for Obama,
for Ronald Reagan, for the President. And this was done, very importantly, for
security — something you people know more about than all of us. It was done for
the security of our nation, the security of our citizens, so that people come in who
aren’t going to do us harm.

And that’s why it was done. And it couldn’t have been written any more precisely.
It’s not like, oh, gee, we wish it were written better. It was written beautifully. So
just listen, here’s what it says. This is what they’re arguing:

"Whenever the President finds that the entry of any aliens" — okay, the entry, the
entry of any aliens — "or of any class of aliens" — so any aliens, any class of aliens
— "into the United States" — so the entry of people into the United States. Let’s
say, just to be precise, of aliens into the United States.

So any time — "whenever the President finds that the entry of any alien or any
class of aliens into the United States would be detrimental to the interests of the
United States" — right? So if I find, as President, that a person or group of people
will be detrimental to the interests of the United States — and certainly there’s lots
of examples that we have, but you shouldn’t even have them, necessarily — he
may be — and "he may by proclamation, and for such period as he shall deem
necessary..." Now, the only mistake is they should have said "he or she." But
hopefully, it won’t be a she for at least another seven years. After that, I’m all —
(laughter and applause.) See? I just noticed that, actually. I just noticed it. I’m
saying, whoa, this is not politically correct. It’s correct, but it’s not politically
correct, you know, this is the old days.

He may by proclamation and for such period as he shall deem necessary — so
here it is, people coming in — suspend the entry of all aliens. Right? That’s what it
says. It’s not like — again, a bad high school student would understand this.
Anybody would understand this. Suspend the entry of all aliens or any class of
aliens as immigrants or nonimmigrants, or impose on the entry of aliens. Okay, so
you can suspend the aliens, right? You can suspend the aliens from coming in —
very strong — or impose on the entry of aliens any restrictions he may deem to
be appropriate.

Okay. So you can suspend, you can put restrictions, you can do whatever you
want. And this is for the security of the country — which, again, you’re the chiefs,
you’re the sheriffs. You understand this.

And I listened to lawyers on both sides last night, and they were talking about
things that had just nothing to do with it. I listened to a panel of judges, and I’ll
comment on that — I will not comment on the statements made by certainly one
judge. But I have to be honest that if these judges wanted to, in my opinion, help
the court in terms of respect for the court, they’d what they should be doing. I
mean, it’s so sad.

They should be — when you read something so simple and so beautifully written,
and so perfectly written — other than the one statement, of course, having to do
with he or she — but when you read something so perfectly written and so clear
to anybody, and then you have lawyers and you watched — I watched last night
in amazement, and I heard things that I couldn’t believe, things that really had
nothing to do with what I just read.
And I don’t ever want to call a court biased, so I won’t call it biased. And we haven’t had a decision yet. But courts seem to be so political, and it would be so great for our justice system if they would be able to read a statement and do what’s right. And that has to do with the security of our country, which is so important.

Right now, we are at risk because of what happened. General Kelly is an extremely talented man and a very good man — now Secretary Kelly, Homeland Security. We are doing our job. He’s a great man. We’re doing our job. And one of the reasons you probably heard that we did it so quickly — in fact, I said, let’s give a one-month notice, and then law enforcement — and General Kelly was so great because he said, we totally knew about it. We knew about everything. We do things well. We did things right.

But the law enforcement people said to me, oh, you can’t give a notice, because if you give a notice that you’re going to be really tough in one month from now, or in one week from now — I suggested a month and I said, well, what about a week? They said, no, you can’t do that, because then people are going to pour in before the toughness goes on. Do you people agree? I mean, you know more about law than anybody, law enforcement.

So I wanted to give, like, a month. Then I said, well, what about a week? They said, well, then you’re going to have a whole pile of people perhaps — perhaps — with very evil intentions coming in before the restrictions.

So there it is, folks. It’s as plain as you can have it. I didn’t — and I was a good student. I understand things. I comprehend very well, okay? Better than I think almost anybody. And I want to tell you, I listened to a bunch of stuff last night on television that was disgraceful. It was disgraceful. Because what I just read to you is what we have, and it just can’t be written any plainer or better. And for us to be going through this — and, by the way, a highly, highly respected judge in Boston ruled very strongly in our favor. You heard that.
In fact, I said to my people, why don’t you use the Boston case? And there were reasons why they couldn’t use the Boston case. This one came later for various reasons. But use the Boston case. And I won’t read that, but there were statements made by that judge — who, again, highly respected — that were right on. They were perfect. They were perfect.

So I think it’s sad. I think it’s a sad day. I think our security is at risk today. And it will be at risk until such time as we are entitled and get what we are entitled to as citizens of this country. As chiefs, as sheriffs of this country, we want security.

One of the reasons I was elected was because of law and order and security. It’s one of the reasons I was elected. Also jobs and lots of other things. But I think one of the strongest reasons is security. And they’re taking away our weapons one by one, that’s what they’re doing. And you know it and I know it, and you people have been very unhappy for a long period of time. And I can read the polls maybe better than anybody because it seems that I understood the polls a lot better than many of the pollsters understood the polls — assuming they were honest polls, which I think probably many of them weren’t. I really believe that.

But we need security in our country. We have to allow you folks to do your job. You’re great people, great people. Great men and women. And we have to allow you to do your job. And we have to give you the weapons that you need. And this is a weapon that you need. And they’re trying to take it away from you, maybe because of politics or maybe because of political views. We can’t let that happen.

So with that, let’s get on to business, right? It’s really something. Thank you.

I want to thank Sheriff Sandra Hutchens and Chief Tom Manger for your leadership and, frankly, for the service. You have had great service. Everyone has told me about you two legendary people. All of us here today are united by one shared mission: to serve and protect the public of the United States.
During my campaign for President, I had the chance to spend time with law enforcement officials all across our country. They are the most incredible people you will ever meet. And I just wanted to say to all of them right now, from the bottom of my heart, thank you, thank you, thank you.

There are many actions we in the federal government can take to help improve safety in your communities. But I believe that community safety begins with moral leadership. Our police officers, sheriffs and deputies risk their lives every day. And they’re entitled to an administration that has their back.

The first step in restoring public safety is affirming our confidence in the men and women charged with upholding our laws. And I’m going to add justices, judges in that category. And I’m very proud to have picked Judge Gorsuch, who I think is going to be an outstanding member of the Supreme Court — outstanding.

So I’d like to begin my remarks with a declaration issued to all of you, and delivered to every member of the law enforcement community all across the United States. My message today is that you have a true, true friend in the White House. You have. I stand with you. I support our police. I support our sheriffs. And we support the men and women of law enforcement.

Right now, many communities in America are facing a public safety crisis. Murders in 2015 experienced their largest single-year increase in nearly half a century. In 2016, murders in large cities continued to climb by double digits. In many of our biggest cities, 2016 brought an increase in the number of homicides, rapes, assaults and shootings. In Chicago, more than 4,000 people were shot last year alone, and the rate so far this year has been even higher. What is going on in Chicago?

We cannot allow this to continue. We’ve allowed too many young lives to be claimed — and you see that, you see that all over — claimed by gangs, and too many neighborhoods to be crippled by violence and fear. Sixty percent of murder
victims under the age of 22 are African American. This is a national tragedy, and it requires national action. This violence must end, and we must all work together to end it.

Whether a child lives in Detroit, Chicago, Baltimore, or anywhere in our country, he or she has the right to grow up in safety and in peace. No one in America should be punished because of the city where he or she is born. Every child in America should be able to play outside without fear, walk home without danger, and attend a school without being worried about drugs or gangs or violence.

So many lives and so many people have been cut short. Their potential, their life has been cut short. So much potential has been sidelined. And so many dreams have been shattered and broken, totally broken. It’s time to stop the drugs from pouring into our country. And, by the way, we will do that. And I will say this: General, now Secretary, Kelly will be the man to do it, and we will give him a wall. And it will be a real wall. And a lot of things will happen very positively for your cities, your states, believe me. The wall is getting designed right now. A lot of people say, oh, oh, Trump was only kidding with the wall. I wasn’t kidding. I don’t kid. I don’t kid. I watch this, and they say I was kidding. No, I don’t kid. I don’t kid about things like that, I can tell you. No, we will have a wall. It will be a great wall, and it will do a lot of — will be a big help. Just ask Israel about walls. Do walls work? Just ask Israel. They work — if it’s properly done.

It’s time to dismantle the gangs terrorizing our citizens, and it’s time to ensure that every young American can be raised in an environment of decency, dignity, love and support. You have asked for the resources, tools and support you need to get the job done. We will do whatever we can to help you meet those demands. That includes a zero tolerance policy for acts of violence against law enforcement. We all see what happens. We all see what happens and what’s been happening to you. It’s not fair.
We must protect those who protect us. The number of officers shot and killed in the line of duty last year increased by 56 percent from the year before. Last year, in Dallas, police officers were targeted for execution — think of this. Who ever heard of this? They were targeted for execution. Twelve were shot and five were killed. These heroic officers died as they lived — protecting the innocent, rushing into danger, risking their lives for people they did not even know, but for people that they were determined to save. Hats off to you people.

These slain officers are an eternal monument to all of the men and women who protect our streets and serve our public. We will not forget them, and we will not forget all of the others who made that final sacrifice in the line of duty.

God has blessed our nation to put these heroes among us. Those who serve in law enforcement work long hours. You work long hours. I know so many sheriffs, so many chiefs, so many police who work long hours and dangerous hours, oftentimes in difficult conditions and for not that much pay relative to what you’re doing. They do it because they care.

We must work with them, not against them. They’re working against you. For many years they’ve been working against you. We must support them, not undermine them. And instead of division and disunity — and which is so much disunity — we must build bridges of partnership and of trust. Those who demonize law enforcement or who use the actions of a few to discredit the service of many are hurting the very people they say that they want to help. When policing is reduced, crime is increased, and our poorest citizens suffer the most. And I see it all the time. When the number of police goes down, crime goes up.

To build needed trust between law enforcement and the communities they serve, it is not enough for us to merely talk to each other. We must listen to each other. All of us share the view that those in uniform must be held to the highest possible standard of conduct — so important.
You're the role models to young Americans all across this country, many of whom want to go into law enforcement, many of whom want to be a sheriff or a police chief, many of whom — they have great respect for you. Tremendous respect. You don't even realize it, but I will tell you, they have great respect and admiration for the people in this room and the people that you represent. And don't let anyone ever tell you different. Don't let the dishonest media try and convince you that it's different than that, because it's not.

That is why our commitment to law and law enforcement also includes ensuring that we are giving departments the resources they need to train, recruit and retain talent. As part of our commitment to safe communities, we will also work to address the mental health crisis. Prisons should not be a substitute for treatment. We will fight to increase access to life-saving treatment to battle the addiction to drugs, which is afflicting our nation like never ever before — ever.

I've been here two weeks. I've met a lot of law enforcement officials. Yesterday, I brought them into the Oval Office. I asked a group, what impact do drugs have in terms of a percentage on crime? They said, 75 to 80 percent. That's pretty sad. We're going to stop the drugs from pouring in. We're going to stop those drugs from poisoning our youth, from poisoning our people. We're going to be ruthless in that fight. We have no choice.

And we're going to take that fight to the drug cartels and work to liberate our communities from their terrible grip of violence. You have the power and knowledge to tell General Kelly — now Secretary Kelly — who the illegal immigrant gang members are. Now, you have that power because you know them, you're there, you're local. You know the illegals, you know them by their first name, you know them by their nicknames. You have that power. The federal government can never be that precise. But you're in the neighborhoods — you know the bad ones, you know the good ones.
I want you to turn in the bad ones. Call Secretary Kelly's representatives and we'll get them out of our country and bring them back where they came from, and we'll do it fast. You have to call up the federal government, Homeland Security, because so much of the problems — you look at Chicago and you look at other places. So many of the problems are caused by gang members, many of whom are not even legally in our country.

And we will work with you on the frontlines to keep America safe from terrorism, which is what I began this with. Terrorism — a tremendous threat, far greater than people in our country understand. Believe me. I've learned a lot in the last two weeks. And terrorism is a far greater threat than the people of our country understand. But we're going to take care of it. We're going to win. We're going to take care of it, folks.

Let today be the beginning of a great national partnership. Let today serve as a great call to action. And let this moment represent a new beginning in relations between law enforcement and our communities. I want you to know the American public totally stands with you. I want you to know the American people support you. I want you to know how proud we are, truly proud, to know you.

We applaud your efforts. We thank you for your service. And we promise that you will always find an open door at the White House — an open invitation to our great cops and sheriffs nationwide. They're great people. You are great people.

Thank you. God bless you. And God bless America. Thank you very much. Thank you.

*The views expressed by Contributors are their own and are not the views of The Hill.*
These cases involve challenges to Executive Order No. 13780, Protecting the Nation From Foreign Terrorist Entry Into the United States. The order alters practices concerning the entry of foreign nationals into the United States by, among other things, suspending entry of nationals from six designated countries for 90 days. Respondents challenged the order in two separate lawsuits. They obtained preliminary injunctions barring enforcement of several of its provisions, including the 90-day suspension of entry. The injunctions were upheld in large measure by the Courts of Appeals.

The Government filed separate petitions for certiorari, as well as applications to stay the preliminary injunctions
entered by the lower courts. We grant the petitions for certiorari and grant the stay applications in part.

I

A

On January 27, 2017, President Donald J. Trump signed Executive Order No. 13769, Protecting the Nation From Foreign Terrorist Entry Into the United States. 82 Fed. Reg. 8977 (EO–1). EO–1 addressed policies and procedures relating to the entry of foreign nationals into this country. Among other directives, the order suspended entry of foreign nationals from seven countries identified as presenting heightened terrorism risks—Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen—for 90 days. §3(c). Executive officials were instructed to review the adequacy of current practices relating to visa adjudications during this 90-day period. §3(a). EO–1 also modified refugee policy, suspending the United States Refugee Admissions Program (USRAP) for 120 days and reducing the number of refugees eligible to be admitted to the United States during fiscal year 2017. §§5(a), (d).

EO–1 was immediately challenged in court. Just a week after the order was issued, a Federal District Court entered a nationwide temporary restraining order enjoining enforcement of several of its key provisions. Washington v. Trump, 2017 WL 462040 (WD Wash., Feb. 3, 2017). Six days later, the Court of Appeals for the Ninth Circuit denied the Government’s emergency motion to stay the order pending appeal. Washington v. Trump, 847 F. 3d 1151 (2017). Rather than continue to litigate EO–1, the Government announced that it would revoke the order and issue a new one.

A second order followed on March 6, 2017. See Protecting the Nation From Foreign Terrorist Entry Into the United States, Exec. Order No. 13780, 82 Fed. Reg. 13209 (EO–2). EO–2 describes “conditions in six of the . . . coun-
tries” as to which EO–1 had suspended entry, stating that these conditions “demonstrate [that] nationals [of those countries] continue to present heightened risks to the security of the United States,” §1(e), and that “some of those who have entered the United States through our immigration system have proved to be threats to our national security,” §1(h).

Having identified these concerns, EO–2 sets out a series of directives patterned on those found in EO–1. Several are relevant here. First, EO–2 directs the Secretary of Homeland Security to conduct a global review to determine whether foreign governments provide adequate information about nationals applying for United States visas. §2(a). EO–2 directs the Secretary to report his findings to the President within 20 days of the order’s “effective date,” after which time those nations identified as deficient will be given 50 days to alter their practices. §§2(b), (d)–(e).

Second, EO–2 directs that entry of nationals from six of the seven countries designated in EO–1—Iran, Libya, Somalia, Sudan, Syria, and Yemen—be “suspended for 90 days from the effective date” of the order. §2(c). EO–2 explains that this pause is necessary to ensure that dangerous individuals do not enter the United States while the Executive is working to establish “adequate standards . . . to prevent infiltration by foreign terrorists”; in addition, suspending entry will “temporarily reduce investigative burdens on agencies” during the Secretary’s 20-day review. Ibid. A separate section provides for case-by-case waivers of the entry bar. §3(c).

Third, EO–2 suspends “decisions on applications for refugee status” and “travel of refugees into the United States under the USRAP” for 120 days following its effective date. §6(a). During that period, the Secretary of State is instructed to review the adequacy of USRAP application and adjudication procedures and implement
whatever additional procedures are necessary “to ensure that individuals seeking admission as refugees do not pose a threat” to national security. *Ibid.*

Fourth, citing the President’s determination that “the entry of more than 50,000 refugees in fiscal year 2017 would be detrimental to the interests of the United States,” EO–2 “suspend[s] any entries in excess of that number” for this fiscal year. §6(b).

Finally, §14 of EO–2 establishes the order’s effective date: March 16, 2017.

B

Respondents in these cases filed separate lawsuits challenging EO–2. As relevant, they argued that the order violates the Establishment Clause of the First Amendment because it was motivated not by concerns pertaining to national security, but by animus toward Islam. They further argued that EO–2 does not comply with certain provisions in the Immigration and Nationality Act (INA), 66 Stat. 187, as amended.

In No. 16–1436, a Federal District Court concluded that respondents were likely to succeed on their Establishment Clause claim with respect to §2(c) of EO–2—the provision temporarily suspending entry from six countries—and entered a nationwide preliminary injunction barring the Government from enforcing §2(c) against any foreign national seeking entry to the United States. *International Refugee Assistance Project v. Trump,* ___ F. Supp. 3d ___, 2017 WL 1018235 (D Md., Mar. 16, 2017) (*IRAP*). The District Court in No. 16–1540—likewise relying on the Establishment Clause—entered a broader preliminary injunction: The court enjoined nationwide enforcement of all of §§2 and 6. *Hawai‘i v. Trump,* ___ F. Supp. 3d ___, 2017 WL 1167383 (D Haw., Mar. 29, 2017) (entering preliminary injunction); ___ F. Supp. 3d ___, 2017 WL 1011673 (D Haw., Mar. 15, 2017) (entering temporary
restraining order). In addition to the §2(c) suspension of entry, this injunction covered the §6(a) suspension of refugee admissions, the §6(b) reduction in the refugee cap, and the provisions in §§2 and 6 pertaining only to internal executive review.

These orders, entered before EO–2 went into effect, prevented the Government from initiating enforcement of the challenged provisions. The Government filed appeals in both cases.

The Court of Appeals for the Fourth Circuit ruled first. On May 25, over three dissenting votes, the en banc court issued a decision in IRAP that largely upheld the order enjoining enforcement of §2(c). 857 F. 3d 554. The majority determined that respondent John Doe #1, a lawful permanent resident whose Iranian wife is seeking entry to the United States, was likely to succeed on the merits of his Establishment Clause claim. The majority concluded that the primary purpose of §2(c) was religious, in violation of the First Amendment: A reasonable observer familiar with all the circumstances—including the predominantly Muslim character of the designated countries and statements made by President Trump during his Presidential campaign—would conclude that §2(c) was motivated principally by a desire to exclude Muslims from the United States, not by considerations relating to national security. Having reached this conclusion, the court upheld the preliminary injunction prohibiting enforcement of §2(c) against any foreign national seeking to enter this country.

On June 1, the Government filed a petition for certiorari seeking review of the Fourth Circuit’s decision. It also filed applications seeking stays of both injunctions, including the Hawaii injunction still pending before the Ninth Circuit. In addition, the Government requested that this Court expedite the certiorari stage briefing. We accordingly directed respondents to file responses to the stay appli-
cations by June 12 and respondents in IRAP to file a brief in opposition to the Government’s petition for certiorari by the same day.

Respondents’ June 12 filings injected a new issue into the cases. In IRAP, respondents argued that the suspension of entry in §2(c) would expire on June 14. Section 2(c), they reasoned, directs that entry “be suspended for 90 days from the effective date of” EO–2. The “effective date” of EO–2 was March 16. §14. Although courts had enjoined portions of EO–2, they had not altered its effective date, nor so much as mentioned §14. Thus, even though it had never been enforced, the entry suspension would expire 90 days from March 16: June 14. At that time, the dispute over §2(c) would become moot. Brief in Opposition 13–14.

On the same day respondents filed, the Ninth Circuit ruled in Hawaii. ___ F. 3d ___, 2017 WL 2529640 (June 12, 2017) (per curiam). A unanimous panel held in favor of respondents the State of Hawai‘i and Dr. Ismail Elshikh, an American citizen and imam whose Syrian mother-in-law is seeking entry to this country. Rather than rely on the constitutional grounds supporting the District Court’s decision, the court held that portions of EO–2 likely exceeded the President’s authority under the INA. On that basis it upheld the injunction as to the §2(c) entry suspension, the §6(a) suspension of refugee admissions, and the §6(b) refugee cap. The Ninth Circuit, like the Fourth Circuit, concluded that the injunction should bar enforcement of these provisions across the board, because they would violate the INA “in all applications.” Id., at *28. The court did, however, narrow the injunction so that it would not bar the Government from undertaking the internal executive reviews directed by EO–2.

We granted the parties’ requests for supplemental briefing addressed to the decision of the Ninth Circuit. Before those briefs were filed, however, the ground shifted again.
On June 14, evidently in response to the argument that §2(c) was about to expire, President Trump issued a memorandum to Executive Branch officials. The memorandum declared the effective date of each enjoined provision of EO–2 to be the date on which the injunctions in these cases “are lifted or stayed with respect to that provision.” Presidential Memorandum for the Secretary of State, the Attorney General, the Secretary of Homeland Security, and the Director of National Intelligence (June 14, 2017). The memorandum further provided that, to the extent necessary, it “should be construed to amend the Executive Order.” Ibid. The Government takes the view that, if any mootness problem existed previously, the President’s memorandum has cured it.

The parties have since completed briefing, with the Government requesting that we construe its supplemental brief in Hawaii as a petition for certiorari. There is no objection from respondents, and we do so. Both petitions for certiorari and both stay applications are accordingly ripe for consideration.

II

The Government seeks review on several issues. In IRAP, the Government argues that respondent Doe lacks standing to challenge §2(c).* The Government also contends that Doe’s Establishment Clause claim fails on the merits. In its view, the Fourth Circuit should not have asked whether §2(c) has a primarily religious purpose. The court instead should have upheld EO–2 because it rests on the “facially legitimate and bona fide” justification of protecting national security. Kleindienst v. Mandel, 408

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*On June 24, 2017, this Court received a letter from counsel for Doe advising that Doe’s wife received an immigrant visa on or about June 22, 2017. The parties may address the significance of that development at the merits stage. It does not affect our analysis of the stay issues in these cases.
U. S. 753, 770 (1972). In addition, the Fourth Circuit erred by focusing on the President’s campaign-trail comments to conclude that §2(c)—religiously neutral on its face—nonetheless has a principally religious purpose. At the very least, the Government argues, the injunction is too broad.

In *Hawaii*, the Government likewise argues that respondents Hawaii and Dr. Elshikh lack standing and that (at a minimum) the injunction should be narrowed. The Government’s principal merits contention pertains to a statutory provision authorizing the President to “suspend the entry of all aliens or any class of aliens” to this country “[w]henever [he] finds that the entry of any aliens or of any class of aliens . . . would be detrimental to the interests of the United States.” 8 U. S. C. §1182(f). The Ninth Circuit held that “[t]here is no sufficient finding in [EO–2] that the entry of the excluded classes would be detrimental to the interests of the United States.” *Hawaii*, 2017 WL 2529640, at *14. This, the Government argues, constitutes impermissible judicial second-guessing of the President’s judgment on a matter of national security.

In addition to seeking certiorari, the Government asks the Court to stay the injunctions entered below, thereby permitting the enjoined provisions to take effect. According to the Government, it is likely to suffer irreparable harm unless a stay issues. Focusing mostly on §2(c), and pointing to the descriptions of conditions in the six designated nations, the Government argues that a 90-day pause on entry is necessary to prevent potentially dangerous individuals from entering the United States while the Executive reviews the adequacy of information provided by foreign governments in connection with visa adjudications. Additionally, the Government asserts, the temporary bar is needed to reduce the Executive’s investigative burdens while this review proceeds.
Per Curiam

A

To begin, we grant both of the Government’s petitions for certiorari and consolidate the cases for argument. The Clerk is directed to set a briefing schedule that will permit the cases to be heard during the first session of October Term 2017. (The Government has not requested that we expedite consideration of the merits to a greater extent.) In addition to the issues identified in the petitions, the parties are directed to address the following question: “Whether the challenges to §2(c) became moot on June 14, 2017.”

B

We now turn to the preliminary injunctions barring enforcement of the §2(c) entry suspension. We grant the Government’s applications to stay the injunctions, to the extent the injunctions prevent enforcement of §2(c) with respect to foreign nationals who lack any bona fide relationship with a person or entity in the United States. We leave the injunctions entered by the lower courts in place with respect to respondents and those similarly situated, as specified in this opinion. See infra, at 11–12.

Crafting a preliminary injunction is an exercise of discretion and judgment, often dependent as much on the equities of a given case as the substance of the legal issues it presents. See Winter v. Natural Resources Defense Council, Inc., 555 U. S. 7, 20, 24 (2008); 11A C. Wright, A. Miller, & M. Kane, Federal Practice and Procedure §2948 (3d ed. 2013). The purpose of such interim equitable relief is not to conclusively determine the rights of the parties, University of Tex. v. Camenisch, 451 U. S. 390, 395 (1981), but to balance the equities as the litigation moves forward. In awarding a preliminary injunction a court must also “consid[er] . . . the overall public interest.” Winter, supra, at 26. In the course of doing so, a court “need not grant the total relief sought by the applicant but may mold its
decree to meet the exigencies of the particular case.” Wright, supra, §2947, at 115.

Here, of course, we are not asked to grant a preliminary injunction, but to stay one. In assessing the lower courts’ exercise of equitable discretion, we bring to bear an equitable judgment of our own. Nken v. Holder, 556 U. S. 418, 433 (2009). Before issuing a stay, “[i]t is ultimately necessary . . . to balance the equities—to explore the relative harms to applicant and respondent, as well as the interests of the public at large.” Barnes v. E-Systems, Inc. Group Hospital Medical & Surgical Ins. Plan, 501 U. S. 1301, 1305 (1991) (Scalia, J., in chambers) (internal quotation marks omitted). This Court may, in its discretion, tailor a stay so that it operates with respect to only “some portion of the proceeding.” Nken, supra, at 428.

The courts below took account of the equities in fashioning interim relief, focusing specifically on the concrete burdens that would fall on Doe, Dr. Elshikh, and Hawaii if §2(c) were enforced. They reasoned that §2(c) would “directly affect[ ]” Doe and Dr. Elshikh by delaying entry of their family members to the United States. IRAP, 857 F. 3d, at 585, n. 11; see Hawaii, 2017 WL 2529640, at *7–*8, *24. The Ninth Circuit concluded that §2(c) would harm the State by preventing students from the designated nations who had been admitted to the University of Hawaii from entering this country. These hardships, the courts reasoned, were sufficiently weighty and immediate to outweigh the Government’s interest in enforcing §2(c). Having adopted this view of the equities, the courts approved injunctions that covered not just respondents, but parties similarly situated to them—that is, people or entities in the United States who have relationships with foreign nationals abroad, and whose rights might be affected if those foreign nationals were excluded. See Mandel, 408 U. S., at 763–765 (permitting American plaintiffs to challenge the exclusion of a foreign national on the
ground that the exclusion violated their own First Amendment rights).

But the injunctions reach much further than that: They also bar enforcement of §2(c) against foreign nationals abroad who have no connection to the United States at all. The equities relied on by the lower courts do not balance the same way in that context. Denying entry to such a foreign national does not burden any American party by reason of that party’s relationship with the foreign national. And the courts below did not conclude that exclusion in such circumstances would impose any legally relevant hardship on the foreign national himself. See id., at 762 (“[A]n unadmitted and nonresident alien . . . ha[s] no constitutional right of entry to this country”). So whatever burdens may result from enforcement of §2(c) against a foreign national who lacks any connection to this country, they are, at a minimum, a good deal less concrete than the hardships identified by the courts below.

At the same time, the Government’s interest in enforcing §2(c), and the Executive’s authority to do so, are undeniably at their peak when there is no tie between the foreign national and the United States. Indeed, EO–2 itself distinguishes between foreign nationals who have some connection to this country, and foreign nationals who do not, by establishing a case-by-case waiver system primarily for the benefit of individuals in the former category. See, e.g., §§3(c)(i)–(vi). The interest in preserving national security is “an urgent objective of the highest order.” Holder v. Humanitarian Law Project, 561 U. S. 1, 28 (2010). To prevent the Government from pursuing that objective by enforcing §2(c) against foreign nationals unconnected to the United States would appreciably injure its interests, without alleviating obvious hardship to anyone else.

We accordingly grant the Government’s stay applications in part and narrow the scope of the injunctions as to
§2(c). The injunctions remain in place only with respect to parties similarly situated to Doe, Dr. Elshikh, and Hawaii. In practical terms, this means that §2(c) may not be enforced against foreign nationals who have a credible claim of a bona fide relationship with a person or entity in the United States. All other foreign nationals are subject to the provisions of EO–2.

The facts of these cases illustrate the sort of relationship that qualifies. For individuals, a close familial relationship is required. A foreign national who wishes to enter the United States to live with or visit a family member, like Doe’s wife or Dr. Elshikh’s mother-in-law, clearly has such a relationship. As for entities, the relationship must be formal, documented, and formed in the ordinary course, rather than for the purpose of evading EO–2. The students from the designated countries who have been admitted to the University of Hawaii have such a relationship with an American entity. So too would a worker who accepted an offer of employment from an American company or a lecturer invited to address an American audience. Not so someone who enters into a relationship simply to avoid §2(c): For example, a nonprofit group devoted to immigration issues may not contact foreign nationals from the designated countries, add them to client lists, and then secure their entry by claiming injury from their exclusion.

In light of the June 12 decision of the Ninth Circuit vacating the injunction as to §2(a), the executive review directed by that subsection may proceed promptly, if it is not already underway. EO–2 instructs the Secretary of Homeland Security to complete this review within 20 days, after which time foreign governments will be given 50 days further to bring their practices into line with the Secretary’s directives. §§2(a)–(b), (d). Given the Government’s representations in this litigation concerning the resources required to complete the 20-day review, we fully expect that the relief we grant today will permit the Exec-
Per Curiam

Necessary to conclude its internal work and provide adequate notice to foreign governments within the 90-day life of §2(c).

C

The Hawaii injunction extends beyond §2(c) to bar enforcement of the §6(a) suspension of refugee admissions and the §6(b) refugee cap. In our view, the equitable balance struck above applies in this context as well. An American individual or entity that has a bona fide relationship with a particular person seeking to enter the country as a refugee can legitimately claim concrete hardship if that person is excluded. As to these individuals and entities, we do not disturb the injunction. But when it comes to refugees who lack any such connection to the United States, for the reasons we have set out, the balance tips in favor of the Government’s compelling need to provide for the Nation’s security. See supra, at 9–11; Haig v. Agee, 453 U. S. 280, 307 (1981).

The Government’s application to stay the injunction with respect to §§6(a) and (b) is accordingly granted in part. Section 6(a) may not be enforced against an individual seeking admission as a refugee who can credibly claim a bona fide relationship with a person or entity in the United States. Nor may §6(b); that is, such a person may not be excluded pursuant to §6(b), even if the 50,000-person cap has been reached or exceeded. As applied to all other individuals, the provisions may take effect.

* * *

Accordingly, the petitions for certiorari are granted, and the stay applications are granted in part.

It is so ordered.
Opinion of THOMAS, J.

SUPREME COURT OF THE UNITED STATES

Nos. 16–1436 (16A1190) and 16–1540 (16A1191)

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL.

No. 16–1436 (16A1190) v.
INTERNATIONAL REFUGEE ASSISTANCE PROJECT, ET AL.

ON APPLICATION FOR STAY AND PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL.

No. 16–1540 (16A1191) v.
HAWAII, ET AL.

ON APPLICATION FOR STAY AND PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[June 26, 2017]

JUSTICE THOMAS, with whom JUSTICE ALITO and JUSTICE GORSUCH join, concurring in part and dissenting in part.

I agree with the Court that the preliminary injunctions entered in these cases should be stayed, although I would stay them in full. The decision whether to stay the injunctions is committed to our discretion, ante, at 9–10, but our discretion must be “guided by sound legal principles,” Nken v. Holder, 556 U. S. 418, 434 (2009) (internal quotation marks omitted). The two “most critical” factors we must consider in deciding whether to grant a stay are “(1) whether the stay applicant has made a strong showing that [it] is likely to succeed on the merits” and “(2) whether the applicant will be irreparably injured
THOMAS, J., concurring in part and dissenting in part

2 TRUMP v. INTERNATIONAL REFUGEE ASSISTANCE PROJECT

Opinion of THOMAS, J.

absent a stay.” Ibid. (internal quotation marks omitted). Where a party seeks a stay pending certiorari, as here, the applicant satisfies the first factor only if it can show both “a reasonable probability that certiorari will be granted” and “a significant possibility that the judgment below will be reversed.” Barnes v. E-Systems, Inc. Group Hospital Medical & Surgical Ins. Plan, 501 U. S. 1301, 1302 (1991) (Scalia, J., in chambers). When we determine that those critical factors are satisfied, we must “balance the equities” by “explor[ing] the relative harms to applicant and respondent, as well as the interests of the public at large.” Id., at 1304–1305 (internal quotation marks omitted); cf. Nken, supra, at 435 (noting that the factors of “assessing the harm to the opposing party and weighing the public interest” “merge when the Government is the opposing party”).

The Government has satisfied the standard for issuing a stay pending certiorari. We have, of course, decided to grant certiorari. See ante, at 8–9. And I agree with the Court’s implicit conclusion that the Government has made a strong showing that it is likely to succeed on the merits—that is, that the judgments below will be reversed. The Government has also established that failure to stay the injunctions will cause irreparable harm by interfering with its “compelling need to provide for the Nation’s security.” Ante, at 13. Finally, weighing the Government’s interest in preserving national security against the hardships caused to respondents by temporary denials of entry into the country, the balance of the equities favors the Government. I would thus grant the Government’s applications for a stay in their entirety.

Reasonable minds may disagree on where the balance of equities lies as between the Government and respondents in these cases. It would have been reasonable, perhaps, for the Court to have left the injunctions in place only as to respondents themselves. But the Court takes the addi-
Opinion of THOMAS, J.

ational step of keeping the injunctions in place with regard to an unidentified, unnamed group of foreign nationals abroad. No class has been certified, and neither party asks for the scope of relief that the Court today provides. “[I]njunctive relief should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs” in the case, *Califano v. Yamasaki*, 442 U. S. 682, 702 (1979) (emphasis added), because a court’s role is “to provide relief” only “to claimants . . . who have suffered, or will imminently suffer, actual harm.” *Lewis v. Casey*, 518 U. S. 343, 349 (1996). In contrast, it is the role of the “political branches” to “shape the institutions of government in such fashion as to comply with the laws and the Constitution.” *Ibid.*

Moreover, I fear that the Court’s remedy will prove unworkable. Today’s compromise will burden executive officials with the task of deciding—on peril of contempt—whether individuals from the six affected nations who wish to enter the United States have a sufficient connection to a person or entity in this country. See ante, at 11–12. The compromise also will invite a flood of litigation until this case is finally resolved on the merits, as parties and courts struggle to determine what exactly constitutes a “bona fide relationship,” who precisely has a “credible claim” to that relationship, and whether the claimed relationship was formed “simply to avoid §2(c)” of Executive Order No. 13780, ante, at 11, 12. And litigation of the factual and legal issues that are likely to arise will presumably be directed to the two District Courts whose initial orders in these cases this Court has now—unanimously—found sufficiently questionable to be stayed as to the vast majority of the people potentially affected.