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By: Natalia Ramirez Lee, Global Justice Program

1. INTRODUCTION

The following memo outlines President Trump’s Executive Order (EO) regarding immigration, signed January 27, 2017\(^1\) in the context of the Haas Institute’s ongoing Islamophobic Legislation Project. It also outlines ongoing litigation challenging the order.

2. SUMMARY OF THE EXECUTIVE ORDER

The EO’s stated objective is the prevention of terrorism. It focuses on the regulation of immigration as a means of curbing terrorism, mainly through the modification of processes relating to the admission of noncitizens and visa issuance. The following are some of the key issues outlined in the EO:

Visa Issuance

- The order mentions that **visa issuance plays a crucial role in detecting individuals with terrorist ties**. It mentions September 11, 2001 and adduces that at the time of the attack, State Department policy prevented consular officers from properly scrutinizing the visa applications of several of the foreigners who perpetrated the attacks.\(^2\)
  - The EO mentions an intent to reduce bigoted practices like “honor killings” and gender violence through the denial of admission to those who engage in such acts of bigotry and hatred.\(^3\)

- To prevent infiltration by terrorists and criminals during this review period, the EO **temporarily suspends entry of aliens from countries referred to in section 217(a)(12) of the INA for 90 days** from issuance of EO and excludes diplomats.\(^4\)
  - INA 212(f) allows the President to prohibit entry into the U.S. of any foreign national he deems would be detrimental to U.S. interests.\(^5\)

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\(^{1}\) Exec. Order No. 13769, 82 FR 8977 (Jan. 27, 2017).
\(^{2}\) Exec. Order No. 13769, 82 FR 8977, 8977.
\(^{3}\) Exec. Order No. 13769, 82 FR 8977, 8977.
\(^{4}\) Exec. Order No. 13769, 82 FR 8977, 8978.
\(^{5}\) INA § 212(f), 8 U.S.C. 1187(a)(12)
o INA 217(a) refers to the visa waiver program.
o INA 217(a) was recently amended by the “Visa Waiver Program and Terrorist Travel Protection Act of 2015” or H.R. 158 which served to exclude from the U.S. visa waiver program, those present in Iraq, Syria or other countries of concern as designated by DHS or the Secretary of State.6

o A D.H.S. factsheet entitled “Protecting The Nation From Foreign Terrorist Entry To The United States” clarifies that travelers, except U.S. citizens, traveling on passports from Iraq, Syria, Sudan, Iran, Somalia, Libya, and Yemen will be suspended from entry to the United States for a 90-day period following the issuance of the EO.7

• The Secretary of D.H.S, the Secretary of State and the Director of National Intelligence shall conduct a review of the U.S. visa issuance process and must present a report within 30 days with information needed for adjudication of visas and list of countries that do not comply with the provision of this information.8
  o Once the report is submitted, countries that do not comply will have 60 days to provide information. After the 60 day period, people from non-complying countries will be excluded from U.S.9
  o After submitting the report, the Secretary of D.H.S or the Secretary of State may provide the names of additional countries for exclusion. However, they will also have the authority to issue visas on a case-by-case basis, even if country is banned.10
  o After the order, the Secretary of State and the Secretary of D.H.S shall submit four joint reports on their progress in the implementation of the EO in regards to the visa issuance process every 30 days: after 30 days, after 60 days, after 90 days and after 120 days from issuance of the EO.11

New Immigrant Screening Practices
  • The EO calls for implementation of new screening standards to identify those with intent to cause harm or who are at risk to cause harm including tools such as in-person interviews; a database of identity documents to ensure that duplicate documents are not used by multiple applicants; amended application

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8 Exec. Order No. 13769, 82 FR 8977, 8977.
9 Exec. Order No. 13769, 82 FR 8977, 8978.
10 Exec. Order No. 13769, 82 FR 8977, 8978.
11 Exec. Order No. 13769, 82 FR 8977, 8978.
forms which 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.\(^{12}\)

- The Secretary of State, Secretary of D.H.S, Director of National Intelligence and FBI shall submit three joint reports on the progress of the implementation of new screening practices: after 60 days, 100 days and 200 days from the issuance of the EO.\(^{13}\)

**USRAP**

- **USRAP (the U.S. Refugee Program) is suspended for 120 days from the issuance of the EO.** The Secretary of State, the Secretary of D.H.S. and National Intelligence shall conduct a review of the refugee program and implement new procedures to safeguard national security. **After the new procedures have been put in place, USRAP will resume only for nationals of countries that have been determined can enter and not pose harm.** D.H.S shall submit three reports on USRAP: after 100 days, 200 days and 365 days from issuance of EO. After the first three reports, D.H.S shall submit a report every 180 days.\(^{14}\)
  - Claims of religious persecution shall be prioritized, **if the person is a religious minority in their home country.**\(^{15}\)
  - **The EO states that the entry of Syrian refugees is detrimental to National Security and is specifically indefinitely suspended under INA 212(f).**\(^{16}\)
  - It caps the entry of refugees at 50,000 indefinitely because of national security concerns.\(^{17}\)
  - The Secretary of D.H.S and the Secretary of State have discretion to admit refugees, especially religious minorities or those who are already in transit and would suffer an undue burden, if not against national interest.\(^{18}\)
  - The Secretary of State shall submit two religious-based persecution reports due after 100 days and 200 days from the issuance of the EO.\(^{19}\)

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\(^{12}\) Exec. Order No. 13769, 82 FR 8977, 8978-79.

\(^{13}\) Exec. Order No. 13769, 82 FR 8977, 8979.

\(^{14}\) Exec. Order No. 13769, 82 FR 8977, 8979.

\(^{15}\) Exec. Order No. 13769, 82 FR 8977, 8979-80.

\(^{16}\) Exec. Order No. 13769, 82 FR 8977, 8979-80.

\(^{17}\) Exec. Order No. 13769, 82 FR 8977, 8979-80.

\(^{18}\) Exec. Order No. 13769, 82 FR 8977, 8979-80.

\(^{19}\) Exec. Order No. 13769, 82 FR 8977, 8979-80.
State and local jurisdictions shall have more say in resettlement process and D.H.S. shall ensure their involvement to the extent permitted by law. 20

**Review of Reciprocity Programs**
- The EO suspends visa waiver programs and requires in-person interviews for all visa petitioners. 21
  - It expands consular fellows program to ensure that non-immigrant visa wait times are not unduly affected. 22
  - It calls for the revision of visa reciprocity programs to make sure they are actually reciprocal. 23

**Publicizing Negative Information about Immigrants**
- The Secretary of D.H.S and the Secretary of State will make public information on foreign nationals:
  - Charged with terrorism–related offenses or removed for terrorism-related offenses. 24
  - Information about those radicalized after entering the U.S. 25
  - Information about gender-based violence and honor killings committed by foreigners. 26
  - Information about foreigners charged with major offenses. 27
  - The Secretary of State must provide a report of the long-term costs of the USRAP program at the federal, state and local levels. 28

3. **ONGOING LITIGATION CHALLENGING THE ORDER**

IRAP (the International Refugee Assistance Project), The National Immigration Law Center and the ACLU (American Civil Liberties Union) and other organizations that represent the interests of immigrants have commenced litigation against President Trump and D.H.S in federal court. The following outlines the legal actions commenced:

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20 Exec. Order No. 13769, 82 FR 8977, 8979-80.
21 Exec. Order No. 13769, 82 FR 8977, 8980.
22 Exec. Order No. 13769, 82 FR 8977, 8979-80.
23 Exec. Order No. 13769, 82 FR 8977, 8980.
24 Exec. Order No. 13769, 82 FR 8977, 8980-81.
26 Exec. Order No. 13769, 82 FR 8977, 8980-81.
27 Exec. Order No. 13769, 82 FR 8977, 8980-81.
28 Exec. Order No. 13769, 82 FR 8977, 8980-81.
Darweesh Complaint (EDNY)\textsuperscript{29}
On Jan 28\textsuperscript{th}, Petitioners, Iraqis with ties to the U.S. military, filed a writ of habeas corpus challenging unlawful detention, in Federal Court (U.S. District Court for the Eastern District of New York). They claim that their indefinite detention pursuant to the Jan. 27\textsuperscript{th} EO violates their substantive and procedural due process rights and goes beyond the authority granted to the President under the INA. Petitioners had special immigrant visas and F2A visas (following to join spouse). They fear returning to Iraq for fear of being labeled as American collaborators and targeted for violence. They make several claims under domestic and international law, including:

- **Procedural Due Process Claim – Denial of Opportunity to Apply for Asylum**
  - Under Domestic and International law, the U.S. must hear asylum claims at border and ports of entry.

- **Procedural Due Process Claim – Denial of Right to Withholding**
  - Under Domestic and international law, the U.S. may not return (refoul) someone who may face persecution or torture in their home country.

- **Equal Protection Claim**
  - Order is motivated by animus towards Muslims and discriminates based on country of origin.

- **APA (Administrative Procedure Act) Claim**
  - INA does not allow discrimination in visa issuance based on race, nationality, etc.
  - Order goes beyond scope of INA.

Darweesh Order Granting Stay\textsuperscript{30}
Pursuant to the Darweesh Complaint, the court granted a stay of removal on January 28\textsuperscript{th}. The order enjoins and restrains the government from removing petitioners or others similarly situated who possess a USCIS approved refugee application or any immigrant or non-immigrant visa.

Darweesh Emergency Motion for Clarification and Enforcement of Order\textsuperscript{31}
On January 29\textsuperscript{th}, Petitioners filed a motion for clarification and enforcement of its Jan. 28\textsuperscript{th} order. Essentially, Petitioners are asking the court to clarify that its January 28\textsuperscript{th}


emergency order is nationwide due to reports that people have been placed on planes and deported at LAX and JFK airports.

Darweesh Motion for Class Certification
Petitioners argue that under the EO, people may be deported within hours of their arrival to the U.S., making it particularly difficult to challenge their situation during their “fleeting period of detention.” They are requesting certification as a class in order to challenge the EO through class action lawsuits. Based on Dept. of State statistics, they estimate that over 25 thousand people could be affected by the 90-day ban.

Aziz Temporary Restraining Order
On January 28th, a Federal Court in Virginia (the United States District Court For The Eastern District Of Virginia) issued a temporary restraining order forbidding state employees from removing lawful permanent residents at Dulles International Airport, for a period of 7 days.

Mass Temporary Restraining Order
On January 29th, a Federal Court (U.S. District Court of Massachusetts) issued a temporary restraining order, forbidding state employees from removing anyone who, absent the EO, are otherwise authorized to enter the U.S., at Logan Airport for a period of 7 days.

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