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TRAVEL BAN: FAQS - UPDATED 07/19/2017

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These updated FAQs reflect the situation with regard to President Trump's executive orders entitled "Protecting the Nation From Foreign Terrorist Entry Into the United States," banning entry to the United States by certain individuals traveling from Syria, Iran, Sudan, Libya, Somalia, and Yemen, as of 3 pm Eastern Standard Time (EST) on July 19, 2017. New developments are expected to continue to rapidly change the situation.

What are the key points of these Executive Orders?

President Trump signed an Executive Order (EO1) the afternoon of Friday, January 27, 2017, available at https://www.whitehouse.gov/the-press-office/2017/01/27/executive-order-protecting-nation-foreign-terrorist-entry-united-states, which, according to its introduction, was intended to "protect Americans." After Judge James Robart of the U.S. District Court for the Western District of Washington, on February 3, 2017, issued a TRO that temporarily blocked the government from enforcing EO1, and the Court of Appeals for the Ninth Circuit on February 9 refused to stay the injunction pending appeal , President Trump signed a second Executive Order (EO2) on March 6, 2017, available at https://www.whitehouse.gov/the-press-office/2017/03/06/executive-order-protecting-nation-foreign-terrorist-entry-united-states.

EO2 was to become effective as of March 16, 2017, and replaced EO1, though much of EO2 is currently not in effect due to injunctions discussed further below. Certain portions of EO2 came into effect on the morning of June 29, 2017, approximately 72 hours after a Supreme Court decision discussed below that stayed a portion of the injunctions. A Presidential Memorandum issued on June 14, 2017 had indicated that the provisions of EO2 would take effect 72 hours after the lifting of an injunction against them, to provide time for orderly

implementation.

Among EO1's key provisions were:

- A 90-day ban on the issuance of U.S. visas to and entry to the United States of anyone who is a national of one of seven (7) "designated" countries—Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen. Iraq was subsequently removed from the list when EO2 was issued.
- An immediate review by the U.S. Department of Homeland Security (DHS) of the information needed from any country to adequately determine the identity of any individual seeking a visa, admission or other immigration benefit and that they are not "security or public-safety threat." This report must be submitted within 30 days and must include a list of countries that do not provide adequate information.
- The suspension of the U.S. Refugee Admissions Program (USRAP) for 120 days.
- The implementation of "uniform screening standards for all immigration programs" including reinstituting "in person" interviews.
- A requirement that all individuals who need visas apply for them in person at U.S. consulates, rather than allowing "mail-in" or drop-box applications.

EO2 added a number of exemptions and discretionary waivers that limited the effect of EO1 in an effort to address some of the concerns raised by Judge Robart in his TRO and by the Court of Appeals for the Ninth Circuit. According to EO2, the 90-day ban on issuance of visas and entry into the United States for nationals of the six designated countries would only apply to those who

- Were outside the United States on the effective date of EO2;
- Did not have a valid visa at 5 p.m., Eastern Standard Time on January 27, 2017 (when EO1 was first promulgated); and
- Did not have a valid visa on the effective date of EO2.

EO2 further exempted several classes of persons from its entry ban:

- Any lawful permanent resident of the United States (LPR);
- Anyone admitted to or paroled into the United States after the effective date of EO2;
- Anyone with a document other than a visa permitting travel to the United States, such as an advance parole document, valid on the effective date of

EO2 or afterwards;
- Any dual national traveling on a passport from a non-designated country;
- Anyone traveling on a diplomatic or diplomatic-type visa, NATO visa, C-2 visa for travel to the UN, or G-1, G-2, G-3 or G-4 visa;
- Anyone granted asylum, admitted as a refugee, or granted withholding of removal, advance parole, or protection under the Convention Against Torture.

The references to the effective date of EO2 have been complicated by subsequent developments, especially the June 14, 2017 presidential memorandum , so anyone potentially affected by exemptions linked to the effective date should consult an immigration attorney.

The Supreme Court has temporarily left in place part of two injunctions against EO2, as described in more detail below, so as to create an additional exemption. Under the modified injunctions, the travel ban and refugee ban of EO2 do not apply to "foreign nationals who have a credible claim of a bona fide relationship with a person or entity in the United States." In its decision issued on June 26, 2017 , the Supreme Court elaborated further on the requirements of such a bona fide relationship:

- For a bona fide relationship with an individual person to qualify under the modified injunction, "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 wife or mother-in-law, clearly has such a relationship."
- For a bona fide relationship with an entity, "the relationship must be formal, documented, and formed in the ordinary course, rather than for the purpose of evading EO-2." According to the Supreme Court, this could include:
    - Students admitted to a U.S. university;
    - "a worker who has accepted an offer of employment from an American company"; or
    - "a lecturer invited to address an American audience".

  The list is not necessarily an exclusive one, but the concept of a bona fide relationship will not stretch so far as to cover, for example, a nonprofit which adds affected immigrants to its client list for the purpose of claiming harm from their exclusion.

In a cable issued the evening of June 28, 2017 and obtained by Reuters , the Department of State at first interpreted the "close family" aspect of this Supreme-Court-created exemption to extend only to "a parent (including parent-in-law), spouse, child, adult son or daughter, son-in-law, daughter-in-law, sibling, whether whole or half" and "includ step relationships." The DOS cable stated that ""Close family" does not include grandparents, grandchildren, aunts, uncles, nieces, nephews, cousins, brothers-laws and sisters-in-law, fiancés, and any other "extended" family members." Fiancés were subsequently added by later DOS guidance to the DOS definition of "close family", but DOS continued to take the position that grandparents, grandchildren, and the other listed sorts of relatives were not included. As discussed in more detail below, however, the U.S. District Court for the District of Hawaii has recently ordered, and DOS has acknowledged , that "grandparents, grandchildren, brothers-in-law, sisters-in-law, aunts and uncles, nephews and nieces, and cousins also be included in the definition of "close familial relationship." (Cousins, for this purpose, has been interpreted by DOS to mean first-cousins, and half- or step-status is included for all listed relatives, per a DOS cable.) The same district court order indicates that refugees for whom a formal sponsorship undertaking has been given by a U.S. refugee resettlement agency qualify as having a bona fide relationship with a U.S. entity, but that aspect of the district court's ruling has been stayed by the Supreme Court.

In addition to the exemptions, EO2 provides a consular officer or CBP official with the authority to grant discretionary waivers of the ban on a case-by-case basis. It lists various circumstances under which waivers might be appropriate, including:

- One previously admitted to the United States for work, study, or other long-term activity, who seeks to enter the United States to resume that activity and whose activities would be impaired by denial of entry during the suspension period;
- One who seeks to enter the United States "for significant business or professional obligations" which would be impaired by denial of entry during the suspension period;
- One who "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";
- The case of "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";
- One who has been employed by the United States government and "can document that he or she has provided faithful and valuable service to the United States Government";
- One traveling for purposes related to certain international organizations;
- "a landed Canadian immigrant who applies for a visa at a location within Canada"; or
- One "traveling as a United States Government-sponsored exchange visitor."

Some of these categories of potential waivers may be rendered unnecessary by the modified injunction left in place by the Supreme Court, but others remain potentially relevant.

What is an Executive Order? Can it be challenged?

Does the EO change the law or regulations?

While the president may have the authority to issue such orders if the administration deems the action to be in the public interest, EO1 and EO2 did not change, replace, or repeal existing statutes (laws) or regulations.

A number of legal challenges have been made to EO1 and EO2. Many believe that wide sweeping bans such as the travel ban effectively discriminate against individuals on a religious basis, as all the countries affected are predominantly Muslim. Others have maintained that the travel ban and change in refugee admissions rules are beyond the President's statutory authority.

On Saturday, January 28, 2017, U.S. federal judge Ann Donnelly of the U.S. District Court for the Eastern District of New York in Brooklyn issued an emergency stay that temporarily blocked the government from sending people out of the country under EO1 after they had landed at a U.S. airport with valid visas or green cards. On Friday, February 3, 2017, Judge James Robart of the U.S. District Court for the Western District of Washington issued a Temporary Restraining Order (TRO) that blocked the government from enforcing the travel ban at all. Several other federal courts also issued stays or TROs. In light of the Western District of Washington TRO, which applied nationwide, DHS

announced on February 4 that it had "suspended any and all actions implementing the affected sections of the Executive Order" .

The federal government appealed to the Court of Appeals for the Ninth Circuit and asked the Court of Appeals for an emergency stay of the Western District of Washington TRO, but on February 5, the Court of Appeals denied the request for an immediate administrative stay pending review of the emergency motion for stay , and on February 9, the Court of Appeals issued a published Order denying the motion for stay pending appeal . Rather than pursuing the appeal regarding EO1, the Administration in March promulgated EO2 in place of EO1 and withdrew the appeal regarding EO1.

EO2 was also challenged in the courts before it could take effect. A TRO against most of its provisions , and then a preliminary injunction against the same provisions , were issued by Judge Derrick K. Watson of the U.S. District Court for the District of Hawaii in the case of *Hawaii v. Trump*, and that injunction was upheld almost in its entirety by the Court of Appeals for the Ninth Circuit , although the Court of Appeals narrowed the Hawaii injunction so as to allow the government to conduct the internal reviews provided for by EO2. The travel ban in section 2(c) of EO2 was also enjoined by Judge Theodore D. Chuang of the U.S. District Court for the District of Maryland in the case of *IRAP v. Trump* , and that injunction was upheld by the *en banc* Court of Appeals for the Fourth Circuit .

The government sought review of the Hawaii and Maryland injunctions against EO2 in the U.S. Supreme Court. On June 26, 2017, the Supreme Court issued a decision which granted the government's petitions for writs of certiorari to review the injunctions and, pending that review, partially stayed the injunctions, narrowing them so that they only applied to those having a bona fide relationship with a person or entity in the United States, as discussed above.

After a challenge to the government's interpretation of the term "bona fide relationship", Judge Watson of the U.S. District Court for the District of Hawaii issued an order on July 13, 2017 which enjoined the government from "Applying section 2(c), 6(a) and 6(b) of to exclude grandparents, grandchildren, brothers-in-law, sisters-in-law, aunts, uncles, nieces, nephews, and cousins of persons in the United States." The order also enjoined the government from "Applying Section 6(a) and 6(b) of to exclude refugees who: (i) have a formal assurance from an agency within the United States that the agency will provide, or ensure

the provision of, reception and placement services to that refugee; or (ii) are in the U.S. Refugee Admissions Program through the Lautenberg Program." Judge Watson rejected, however, the request to apply a similar blanket exemption to refugees in USRAP through the Iraqi Direct Access Program for U.S.-Affiliated Iraqis or the Central American Minors Program as for the Lautenberg Program, finding that not all refugees in those other two programs would necessarily have the requisite bona fide relationship with a close relative in the U.S. or a U.S. entity.

The government sought review of the July 13 order of the U.S. District Court for the District of Hawaii to the Supreme Court. On July 19, 2017, the Supreme Court issued an order which denied the government's motion seeking clarification, thus leaving the July 13 order of the Hawaii district court in place in most respects, but stayed the "District Court order modifying the preliminary injunction with respect to refugees covered by a formal assurance . . . pending resolution of the Government's appeal to the Court of Appeals for the Ninth Circuit." Thus, the expanded list of family members covered by the July 13 Hawaii order remains in place, as does the blanket exemption for refugees in the Lautenberg Program, but the broader exemption regarding refugees covered by a formal assurance is not currently in effect.

The 90-Day Travel Ban

What exactly does the 90-day ban prohibit?

The ban halts visa issuance and entry to the United States for affected individuals.

When the ban is effective, the U.S. Department of State's (DOS) consulates around the world are not permitted to issue visas to individuals who are nationals of a designated country and otherwise fall within the scope of the ban. Consulates will deny pending visa applications of any individuals who fall within the scope of the EO—both nonimmigrant (temporary) visas, *and* immigrant visas for those seeking to become U.S. permanent residents.

When EO1 was in effect, DOS had initially indicated that all visas already issued to those within the scope of EO1 were provisionally revoked. The number of revoked visas is subject to significant uncertainty, although it is clear that it is large: a lawyer for the Department of Justice advised a judge hearing one of the above-referenced cases that more than 100,000 visas had been revoked, but

DOS then said the number was fewer than 60,000. . Following the TRO against EO1, however, DOS indicated that it had lifted the provisional revocation, and that the visas were now valid again if they had not been physically cancelled. . (In instances where visas were physically cancelled, individuals would require either a new visa, or a waiver from U.S. Customs and Border Protection (CBP) at the port of entry.)

At times when the relevant sections of EO1 were not subject to a TRO, stay, or injunction with respect to particular individuals, CBP officers at border crossings, U.S. airports, and pre-flight inspection at certain foreign airports were not permitted to admit such individuals who are nationals of designated countries or allow them to enter the United States, even if they have a facially valid visa. The same will now apply to EO2.

Who is affected by the 90-day ban?

This ban applies to nationals of the six (6) designated countries: Iran, Libya, Somalia, Sudan, Syria, and Yemen. (EO1 had also included a seventh country, Iraq, but EO2 removed Iraq from the list.) It does not apply to those subject to the various EO2 exceptions listed above. Under the Supreme Court's modification of the injunctions issued by the Hawaii and Maryland courts, it also does not apply to those who have a credible claim of a bona fide relationship with a person or entity in the United States.

What does it mean to be a "national"?

A national is a citizen of a particular country, someone entitled to hold the country's passport. This encompasses someone born in the country or who is a citizen of the country. This may include individuals who were *not* born in the country but whose parents were, if such parentage entitles them to citizenship in that country. For example, someone born in Germany but whose parents were born in Iran may be considered an Iranian under Iranian law, and therefore may be considered subject to the ban.

Does the ban include "dual" nationals? What if the individual was born in one of the seven countries but is now a citizen of another country (e.g., Canada) and only holds that passport?

According to section 3(b)(iv) of EO2, the ban does not include "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." The situation

under EO1 was less clear.

Does the ban include permanent residents ("green card" holders)?

Section 3(b)(1) of EO2 specifically exempts LPRs from the ban. EO1 as originally written did seem to ban the entry of affected lawful permanent residents (LPRs), and was applied to at least some LPRs in practice. However, an "authoritative guidance" memorandum subsequently issued by Counsel to the President Donald F. McGahn on February 1, 2017, "clarif" that EO1 did not ban entry by LPRs.

Does the ban apply to someone who has just traveled to a designated country?

No. Unless the individual is a national of a designated country, the ban does not apply solely because he or she has visited one or more of the six countries. Travel to one of the six countries, however, may increase the likelihood of being questioned by CBP about the nature of the visit—why the person was in the country, for how long, etc., as already provided for in the December 2015 Visa Waiver Program Improvement and Terrorist Travel Prevention Act. Such individuals may be placed in secondary inspection on arrival at a U.S. airport so that CBP may question them about the purpose and nature of such travel.

How are the U.S. consulates implementing the ban as it applies to visas?

Many visa categories, by their nature, require a relationship with a U.S. family member or U.S. entity such as an employer or school, such that the exemption from EO2 created by the Supreme Court's modification of the Hawaii and Maryland injunctions will necessarily apply to anyone otherwise eligible for a visa in such categories. In its June 28, 2017 cable, the DOS advised consular officers that "If you determine an applicant has established eligibility for a nonimmigrant visa in a classification other than a B, C-1, D, I, or K visa, then the applicant is exempt from the E.O., as their bona fide relationship to a person or entity is inherent in the visa classification. Eligible derivatives of these classifications are also exempt. Likewise, if you determine an applicant has established eligibility for an immigrant visa in the following classifications -- immediate relatives, family-based, and employment-based (other than certain self-petitioning employment-based first preference applicants with no job offer in the United States and SIV applicants under INA 101a(27)) -- then the applicant and any eligible derivatives are exempt from the E.O."

The reference to K visas is outdated, since it was a result of fiancés not being

included as close relatives in the initial DOS guidance, as they were shortly thereafter. Thus, following the addition of K visas to the exempt list, the only nonimmigrant visa categories not automatically exempt from E02 under the Supreme Court's modification of the injunctions are B visas issued to visitors for business or pleasure, C-1 visas issued to persons in transit through the United States, D visas issued to crewmen, and I visas issued to certain representatives of foreign press, radio, film, or other information media. With respect to I visa applicants, the cable explicitly recognizes that many, although not all, of them may be exempt as well due to a bona fide relationship with a U.S. entity, stating that "an eligible I visa applicant employed by foreign media that has a news office based in the United States would be covered by this exemption." Thus, the only I visa applicants subject to the ban will be those whose foreign media employer has no news office based in the United States (and who also lack any other qualifying bona fide relationship with a U.S. entity or family member).

With respect to immigrant visas, the only categories not recognized as entirely exempt from EO2 are certain self-petitioning applicants having extraordinary ability in their field, diversity lottery winners, and certain special immigrant visa applicants, a variety of miscellaneous categories set out in INA 101(a)(27). Some such visa applicants will indeed have a bona fide relationship with a U.S. close relative or entity, but DOS has determined that not all necessarily will. Indeed, with respect to diversity lottery winners, DOS has stated in its June 28, 2017 cable that "Based on the Department's experience with the DV program, we anticipate that very few DV applicants are likely to be exempt from the E.O.'s suspension of entry or to qualify for a waiver." This statement, however, was made prior to the July 13, 2017 order of the U.S. District Court for the District of Hawaii rejecting the government's earlier narrow interpretation of "close relative" and making clear that "grandparents, grandchildren, brothers-in-law, sisters-in-law, aunts, uncles, nieces, nephews, and cousins of persons in the United States" are exempt from EO2 under the Supreme Court's modification of the prior Hawaii and Maryland injunctions. There may be more DV applicants who fall under this broader interpretation of the "close relative" exemption than DOS had anticipated under its earlier narrower interpretation of that exemption.

For those visa categories that are potentially affected by E02, visa appointments continue to be scheduled, according to the State Department, because an

interview is required in order to determine whether a visa applicant falls under one of the exceptions contained in EO2 or the exemptions created by the Supreme Court's modification of the injunctions. This differs from what initially occurred while EO1 was in effect, when consulates were advised to stop scheduling and conducting interviews of affected individuals. They also would stop issuing (printing) visas for anyone who was already interviewed but who has not yet received the visa. Courier services were instructed to return the unadjudicated applications to the affected individuals. Consular posts posted alerts on their websites to advise individuals of the suspension of visa issuance "effective immediately and until further notification." With regard to immigrant visas for those affected by the ban, the DOS had initially indicated that it would cancel currently scheduled interviews and would not schedule immigrant visa interviews for March or April. While the TRO and injunctions completely barring enforcement of the ban under EO1 were in effect, however, visa processing resumed, and the State Department announced that "U.S. embassies and consulates will resume scheduling visa appointments" for nationals of the countries that had been affected by EO1.

Can an affected individual still board a plane and try to enter upon arrival at a U.S. airport?

There were reports of airlines refusing to board individuals who appeared to be affected by EO1's ban. Before making any travel plans, individuals should consult with an immigration attorney for individual counsel and advice. It is relatively unlikely that anyone with a travel document appearing to be valid on its face, which would allow them to board a plane for an international flight, will be affected by EO2, but the details of an individual's situation must be considered in order to determine whether that individual faces rarer circumstances in which this might occur.

Should affected individuals travel outside the United States?

Individuals who are affected by this ban must understand that if they depart the United States during the 90-day period, and if the ban is in effect when they attempt to return, they will most likely not be able to return. We caution potentially affected individuals who are in the United States, and who believe they qualify as having a bona fide relationship with a person or entity in the United States or qualify for another exception to EO2, to consult with an immigration attorney before making a decision to travel abroad.

What about individuals who are outside the United States and want to return?

While the ban is in effect, U.S. consular posts may refuse to issue visas to anyone who appears to be affected by the ban, and airlines may refuse to board anyone who appears to be affected by the ban. Those who are able to board a plane may be refused admission (entry) to the United States on arrival at a U.S. airport. Anyone affected by the ban who is outside the United States at a time when the ban is in effect should consult with an immigration attorney before attempting to return in order to understand the current state of affairs and the risks involved, and to develop a strategy based upon his or her individual circumstances.

What will happen to those who are refused entry by CBP?

Individuals who are refused admission by CBP will be instructed to make arrangements to return on the next outbound flight to the destination from which they arrived. While waiting to return abroad or for a decision on a waiver that would allow their entry (see below regarding exceptions to the ban), they will be held or detained by CBP. They will not necessarily be able to make phone calls or send emails or text messages. CBP's view is that there is no right to an attorney for individuals who arrive at U.S. airports or land ports-of-entry and seek admission to the United States. In practice, many CBP officers will agree to speak with lawyers representing such individuals. Wherever possible, advance planning will be critical.

Are there any exceptions to the ban?

EO2 as written contains a number of exceptions for persons already having various sorts of lawful status or documentation, as discussed above. The injunctions modified by the Supreme Court further exempt from the application of EO2 anyone having a bona fide relationship with a person or institution in the United States.

EO2 also permits DOS and DHS to issue visas, or other immigration benefits, to affected individuals on a "case-by-case" basis, as discussed above, when an applicant establishes that "a.) Denying entry during the 90-day suspension would cause undue hardship; b.) His or her entry would not pose a threat to national security; and c.) His or her entry would be in the national interest." The

June 28th DOS cable indicates that such waivers may be granted to a "high-level government official traveling on official business who is not eligible for the

diplomatic visa normally accorded to foreign officials of national governments (A or G visa)" such as "governors and other appropriate members of sub-national (state/local/regional) governments; and members of sub-national and regional security forces." Such waivers may also be granted in other cases where the three criteria listed at (a.)-(c.) above are met and "the Chief of Mission or Assistant Secretary of a Bureau supports the waiver." At this time, it is not clear how requests for such waivers will be adjudicated. Anyone seeking to make such a request during a time when the travel ban is in effect is advised to consult with an immigration attorney in order to prepare a strategy and supporting documentation.

Can CBP detain individuals?

Individuals who are refused admission and who agree to return on an outbound flight will be detained or held by CBP until they can depart.

At this time, we do not know how CBP will be dealing with those who seek to challenge the refusal of admission. When EO1 was first implemented, there were credible reports that CBP was detaining LPRs notwithstanding the court cases and Secretary Kelly's statement of January 29, 2017 . It is also possible that CBP may agree to defer the inspection of individuals who seek to challenge the refusal of admission, which means that CBP will give them an appointment to return to CBP at a later date to review their case. At this time, it is not known how CBP will be handling such situations; different CBP officers and airports may take different actions.

Any affected individual thinking of traveling to the United States should consult with an immigration attorney about his or her individual circumstances. EO2, like EO1, does not change the existing immigration law, including the right to apply for asylum.

How will EO2 affect applications pending before U.S. Citizenship and Immigration Services (USCIS)?

According to credible reports, including conversations with USCIS officers at local USCIS Field Offices, when EO1 was first implemented, DHS leadership initially received email instructions over the weekend to suspend the adjudication of immigration applications by affected individuals from any of the seven designated countries. However, on February 2, 2017, Acting USCIS Director Lori Scialabba issued a memorandum indicating that the entry bar

would not affect adjudication of benefits for persons in the United States, adjudication of benefits for LPRs, or adjudication of visa petitions for persons outside the United States (since those petitions do not directly confer travel authorization). The same should apply to EO2: the entry ban will not affect most applications pending before USCIS, although refugee adjudications will be affected, and adjudication of I-730 refugee/asylee relative petitions for beneficiaries outside the United States may still be subject to further guidance.

What does EO2 mean for the immigration status of someone who is in the United States?

EO2, like EO1, only directly affects those who are applying for visas (nonimmigrant and immigrant) or seeking entry. It is theoretically possible that revocation of nonimmigrant visas could lead to holders of those visas who were in the United States being subjected to removal proceedings under section 237(a)(1)(B) of the Immigration and Nationality Act, but this charge of deportability could then be contested in those removal proceedings, as explained in a blog post by Cyrus D. Mehta . During the period when the EO1 travel ban was in effect, before the TRO was entered, it does not appear that such removal proceedings were instituted.

Might the ban be longer than 90 days?

EO2 states that the ban on visa issuance and entry is in place for 90 days. The ban, however, will not be lifted automatically at the end of the 90 days. Instead, DHS is required to report to the President within 20 days what additional information may be needed from particular countries for adjudications of a visa, admission or other benefit under the INA in order to determine that the individual seeking the benefit “is not a security or public-safety threat." Each country will then be requested to provide such information, and will have 50 days to do so. After that 50-day period, “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.”

Will the ban be extended to include other countries?

EO2's call for a DHS report based, in part, on information provided by other countries that the U.S. government says it needs to properly review and vet individuals appears to allow for DHS to recommend including additional countries in the ban, until they provide the U.S. government with information DHS is requesting of them. This certainly leaves open the possibility and even likelihood of additional countries being included in the ban, should the other countries either not cooperate or not provide information deemed to be adequate by the U.S. government.

Suspension of the U.S. Refugee Admissions Program (USRAP)

Who is affected by the suspension of USRAP?

All refugees being processed abroad and seeking admission to the United States would be affected. However, the suspension of USRAP, like the entry ban, has been enjoined as it relates to any refugees with a bona fide relationship with persons or entities in the United States. Pursuant to the Hawaii District Court's order of July 13, 2017, this includes all refugees classified under the Lautenberg Program. However, other refugees who have a formal assurance from a refugee resettlement agency, but cannot meet the bona fide relationship requirement in any other way, are at the moment covered by the suspension of USRAP, given the Supreme Court's July 19 stay of the portion of the Hawaii District Court's order that would otherwise have exempted them.

How long is the suspension of USRAP?

To the extent that it is not preserved by the injunctions as modified by the Supreme Court and clarified by the portion of the Hawaii District Court's order which the Supreme Court has allowed to remain in effect, the USRAP would be suspended for 120 days, subject to case-by-case waivers in which "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." During this time, the DOS and DHS are required to review the application and adjudication process to determine what additional procedures to take to ensure that refugees "do not pose a threat to the security and welfare of the United States" and to implement those procedures. After the 120 days, DOS can resume refugee admissions only for nationals of countries that are found to have sufficient safeguards to ensure

the security and welfare of the United States.

How many refugees will be let into the United States?

Both EO1 and EO2 stated that DOS and DHS may admit only 50,000 refugees for fiscal year 2017 (after the suspension is lifted). This represents a more than 50% reduction in the number of refugee admissions, and the purported 50,000 ceiling for the fiscal year has now already been reached. However, the Supreme Court clarified in its decision that refugees having a bona fide relationship with a person or entity in the United States are exempt from this numerical limit under the modified injunction, just as they are exempt from the overall suspension of USRAP. Following the July 13, 2017 order of the U.S. District Court for the District of Hawaii, this exemption includes all refugees classified under the Lautenberg Program. The aspect of the Hawaii order that would cause the exemption to include all refugees who have a formal assurance from a refugee resettlement agency, however, has been stayed by the Supreme Court.

Elimination of Mailed-In Visa Applications or the "Drop-Box" Application

EO2, like EO1, eliminates the ability of some individuals who need visas to apply for their visas at a U.S. consulate *without* an in-person interview. Previously, some individuals—due to age, or the fact that they were repeat applicants—could mail in their passports to the U.S. consulate or use a "drop-box" system when applying for a visa. This visa interview waiver program has been suspended. Now, anyone who needs a U.S. visa will be required to make an appointment at a U.S. consulate and appear in person for the visa interview.

The impact of this change may be significant, imposing increased burdens on consular staff, longer wait times to schedule visa appointments, and longer waits for individuals to receive their passports and visas back from the consulate. U.S. employers who await the arrival or return of employees may also be negatively affected given these anticipated slowdowns in the process to obtain U.S. visas.

Does the Executive Order change the Visa Waiver Program or ESTA?

No. The "visa interview waiver program" is different from the Visa Waiver Program (VWP), which allows citizens of 38 named countries to travel to the United States. The VWP is still in effect. Citizens of most Western European countries, and others (e.g., Australia, New Zealand, Japan, Singapore), may still seek admission to the United States on the basis of their passports and an ESTA

clearance.