

Lisa Reinsberg, Executive Director
International Justice Resource Center
39 Drumm Street
San Francisco, CA 94111
lisa@ijrcenter.org

Jamil Dakwar, Director, Human Rights Program
American Civil Liberties Union
125 Broad Street, 18th Floor
New York, NY 10004
jdakwar@aclu.org

February 6, 2017

President James L. Cavallaro
Commissioner Margarete May Macaulay
Commissioner Enrique Gil Botero
Executive Secretary Paulo Abrão
Inter-American Commission on Human Rights
1889 F Street, N.W.
Washington, D.C. 20006

Re: Convening an Emergency Hearing on U.S. Executive Order “Protecting the Nation from Foreign Terrorist Entry into the United States” at March 2017 Period of Sessions

Dear Commissioners Cavallaro, Macaulay and Gil Botero and Executive Secretary Abrão,

We, the undersigned civil society organizations, urge the Inter-American Commission on Human Rights to convene, at its own initiative, an emergency public hearing on the United States government’s recent and alarming actions suspending refugee admissions and discriminatorily banning entry for citizens of seven Muslim-majority countries. This executive order violates fundamental human rights principles on its face and its implementation has already had arbitrary and cruel consequences for many people fleeing persecution or seeking to enter the United States to reunite with family, receive medical treatment, or pursue professional and educational opportunities. Moreover, there is startlingly little clarity regarding the way in which authorities will interpret and implement this order, exactly how many people stand to be affected and in what ways, and what new restrictions may follow the initial bans. In light of the urgency of this matter and the Commission’s plans to hold its sessions away from headquarters in the remainder of 2017, we urge the Commission to convene an emergency hearing at its upcoming 161st Ordinary Period of Sessions, to be held in March 2017.

Background on the Executive Order

On January 27, 2017, the President of the United States signed an executive order¹ with three primary components: 1) a 90-day ban on entry by citizens of Iran, Iraq, Libya, Somalia, Sudan,

¹ Executive Order: Protecting the Nation from Foreign Terrorist Entry into the United States (Jan. 27, 2017), available at <https://www.whitehouse.gov/the-press-office/2017/01/27/executive-order-protecting-nation-foreign-terrorist-entry-united-states> [hereinafter Executive Order].

Syria, and Yemen;² 2) a 120-day suspension of all refugee admissions;³ and, 3) an indefinite suspension of the admission of Syrian refugees⁴. As initially interpreted and explained publicly by federal authorities, the order applies to all classes of individuals seeking to enter the United States, including recognized refugees, immigrant and nonimmigrant visa holders (except those with various diplomatic visas), lawful permanent residents, and individuals who hold dual citizenship with a country not subject to the ban.⁵

The order's provisions extend beyond the initial temporary bans. The text directs the relevant national authorities to review current procedures and make recommendations concerning which countries' nationals should continue to be denied immigrant and nonimmigrant visas.⁶ Recently, U.S. authorities have publicly indicated that the temporary bans may be extended indefinitely with respect to some countries.⁷ Further, the order states that, when refugee resettlement is resumed, preference will be given to individuals who are members of a religious minority in their country of origin.⁸ Particularly in light of public comments by President Trump and his surrogates and the order's focus on Muslim-majority countries, this provision is widely understood to give preference to Christians from Muslim-majority countries.⁹

While the order allows authorities to issue waivers on an individual basis, these provisions include vague, undefined terms and have, to date, not been complemented by comprehensive guidance on when such waivers should be granted.¹⁰ The relevant provision on refugee admissions allows the secretaries of the Department of State and Department of Homeland Security to "jointly" agree on individual waivers "in their discretion" and when "in the national interest," such as when the individual is facing persecution as a religious minority or to avoid "undue hardship" to the individual, provided the person poses no "risk to the security or

² *Id.* § 3(c) (citing 8 U.S. Code § 1187(a)(12), available at <https://www.law.cornell.edu/uscode/text/8/1187>, which specifically excludes from the visa waiver program nationals of Iraq and Syria and individuals who have traveled to those countries on or after March 1, 2011, and applies the same restriction with regard to other countries identified by the Secretary of State or Secretary of Homeland Security, which include Iran, Libya, Somalia, Sudan, and Yemen. See Press Release, Department of Homeland Security, Protecting the Nation from Foreign Terrorist Entry to the United States (Jan. 29, 2017), available at <https://www.dhs.gov/news/2017/01/29/protecting-nation-foreign-terrorist-entry-united-states>).

³ Executive Order § 5(a).

⁴ *Id.* § 5(c).

⁵ See Executive Order §§ 3(c), 5(a). See also, e.g., Dan Merica, *How Trump's Travel Ban Affects Green Card Holders and Dual Citizens*, CNN, Jan. 29, 2017, <http://www.cnn.com/2017/01/29/politics/donald-trump-travel-ban-green-card-dual-citizens/>; *Green Card Holders Will Need Additional Screening: White House*, REUTERS, Jan. 29, 2017, <http://www.reuters.com/article/us-usa-trump-immigration-greencard-idUSKBN15C0KX>.

⁶ Executive Order §§ 3(a), 3(b), 3(d), 5(a).

⁷ See Brian Bennett, *Trump Administration Signals that Some Temporary Bans on Entry into the U.S. Could Become Permanent*, LOS ANGELES TIMES, Jan. 31, 2017, available at <http://www.latimes.com/politics/washington/la-na-trailguide-updates-1485885194-htm1story.html>.

⁸ Executive Order § 5(b).

⁹ See, e.g., Laurie Goodstein, *Christian Leaders Denounce Trump's Plans to Favor Christian Refugees*, NEW YORK TIMES, Jan. 29, 2017, available at <https://www.nytimes.com/2017/01/29/us/christian-leaders-denounce-trumps-plan-to-favor-christian-immigrants.html>; Interview with Rudolph Giuliani, originally broadcast on Fox News, available at <https://www.youtube.com/watch?v=I9GKL6i38pl&feature=youtu.be>.

¹⁰ Executive Order §§ 3(g), 5(e).

welfare of the United States.”¹¹ These secretaries may also grant entry to nationals of the seven banned countries on a case-by-case basis “when in the national interest.”¹² No further explanation is given. The Secretary of the Department of Homeland Security, on January 29, issued guidance to the effect that the entry of lawful permanent residents is presumed to be in the national interest, although they will nonetheless have to undergo screening, but this guidance did not extend to existing holders of immigrant and nonimmigrant visas.¹³

The Executive Order’s Implementation

The executive order took effect immediately, even in the absence of written guidance to the agencies responsible for its implementation or consistent messaging from the White House on the provisions’ meaning and scope. This has resulted in inconsistent and arbitrary treatment of travelers to the U.S., including lawful permanent residents, foreign dual nationals, as well as visitors and refugees with proper travel documents and official visas. Hundreds of people both in the U.S. and at airports abroad, have been detained, placed on return flights, had their visas revoked, or been denied permission to travel to the U.S. even if they are lawful permanent residents or had already been fully vetted and granted visas or accepted for resettlement.

While the true impact of this executive order, to date and going forward, remains unclear due to persistent confusion and lack of reporting by government agencies, it is nonetheless evident that its consequences are significant. At least 100 migrants, visitors, and refugees have been detained at airports across the country.¹⁴ An estimated 700-plus would-be travelers with valid documents have been prevented from boarding, or removed from, flights destined for the United States.¹⁵ An additional 200 or more individuals were denied entry to the U.S. upon landing at American airports.¹⁶ Individuals have reportedly been returned to foreign destinations upon arriving in the United States with valid immigration documents.¹⁷

Many of these consequences, it appears, are the result of a State Department memo that was only publicly reported on February 1st, and which orders the revocation of at least tens of

¹¹ *Id.* § 5(e).

¹² *Id.* § 3(g).

¹³ See Press Release, Department of Homeland Security, Protecting the Nation from Foreign Terrorist Entry to the United States (Jan. 29, 2017), available at <https://www.dhs.gov/news/2017/01/29/protecting-nation-foreign-terrorist-entry-united-states>.

¹⁴ See Maquita Peters & Colin Dwyer, *Federal Judge Stays Deportations, Blocking Part of Trump’s Immigration Order*, NATIONAL PUBLIC RADIO, Jan. 28, 2017, <http://www.npr.org/sections/thetwo-way/2017/01/28/512158238/arrivals-to-u-s-blocked-and-detained-as-trumps-immigration-freeze-sets-in>.

¹⁵ See Press Release, Department of Homeland Security Office of the Press Secretary, Transcript of Media Availability on Executive Order with Secretary Kelly & DHS Leadership (Jan. 30, 2017), available at <https://www.dhs.gov/news/2017/01/31/transcript-media-availability-executive-order-secretary-kelly-and-dhs-leadership>; Ron Nixon, *More People Were Affected by Travel Ban Than Trump Initially Said*, NEW YORK TIMES, Jan. 31, 2017, available at <https://www.nytimes.com/2017/01/31/us/politics/trump-ban-immigrants-refugees.html>.

¹⁶ See Betsy Woodruff, *White House Lowballs Impact of Trump Ban*, DAILY BEAST, Jan. 30, 2017, <http://www.thedailybeast.com/articles/2017/01/30/white-house-lowballs-impact-of-trump-ban.html>.

¹⁷ See Evan Perez, Pamela Brown & Kevin Liptak, *Inside the Confusion of the Trump Executive Order and Travel Ban*, CNN, <http://www.cnn.com/2017/01/28/politics/donald-trump-travel-ban/>.

thousands of valid immigrant and non-immigrant visas already issued to citizens of the seven countries.¹⁸ This order affects individuals, such as students, who found themselves temporarily outside the U.S. when the executive order was signed. To avoid being barred from reentry, tens of thousands of people are reportedly “effectively trapped” in the United States as a result of the executive order and memo, even though U.S. authorities have not warned such individuals of the potential consequences if they travel outside the U.S.¹⁹

The order, of course, also impacts those who have yet to plan their travel. In suspending the admission of all refugees, it is already having consequences in the Americas and around the world. For example, the order halts the Central American Minors program, which involves in-country processing of child refugees and those in urgent humanitarian situations in El Salvador, Guatemala, and Honduras, to reunite them with parents living in the United States.²⁰ The United Nations High Commissioner for Refugees estimates that, overall, 800 refugees would have traveled to the U.S. in the first week of the order’s implementation, and that the order will prevent the resettlement of 20,000 refugees in the U.S. over the 120-day period.²¹ In 2015, approximately 90,000 citizens of the seven banned countries were granted immigrant or nonimmigrant visas, meaning that approximately 22,500 individuals would enter the U.S. from those countries in a normal 90-day period.²² This figure does not include dual nationals.²³ As many as 100,000 or more previously issued visas have already been revoked under the order.²⁴

While authorities have granted waivers to refugees and to other migrants, their practices and reasoning are unclear and inconsistent, and are reportedly based – at least in part – on screening travelers based on their political views and reviewing their social media accounts.²⁵

¹⁸ See U.S. Dep’t of State, Memo Dated January 27, 2017, available at <http://d279m997dpfwgl.cloudfront.net/wp/2017/02/memo.jpg>; Shannon Dooling, *All Visas Revoked for People from 7 Barred Countries*, *Per State Dept.*, WBUR, Feb. 1, 2017, <http://www.wbur.org/news/2017/02/01/visas-revoked-state-department>; Mica Rosenberg & Lesley Wroughton, *Trump’s Travel Ban Has Revoked 60,000 Visas for Now*, REUTERS, Feb. 3, 2017, <http://www.reuters.com/article/us-usa-immigration-visas-idUSKBN15I2EW>.

¹⁹ Nicholas Kulish, Gardiner Harris & Ron Nixon, *Foreigners Trapped in the United States by New Policy*, NEW YORK TIMES, Feb. 2, 2017, available at https://www.nytimes.com/2017/02/02/us/foreigners-trapped-in-the-united-states-by-new-policy.html?_r=0.

²⁰ Kate Linthicum, *Also Barred by Trump’s Executive Order: These Heavily Vetted Kids from Central America*, LOS ANGELES TIMES, Feb. 1, 2017, available at <http://www.latimes.com/world/mexico-americas/la-fg-central-american-refugees-20170131-story.html>.

²¹ Press Release, United Nations High Commissioner for Refugees, UNHCR Alarmed at Impact of U.S. Refugee Suspension Program (Jan. 30, 2017), available at <http://www.unhcr.org/en-us/news/press/2017/1/588f78ee4/unhcr-alarmed-impact-refugee-program-suspension.html>.

²² Glenn Kessler, *The Number of People Affected by Trump’s Travel Ban: About 90,000*, WASHINGTON POST, Jan. 30, 2017, available at https://www.washingtonpost.com/news/fact-checker/wp/2017/01/30/the-number-of-people-affected-by-trumps-travel-ban-about-90000/?utm_term=.6385107b5df3.

²³ See *id.*

²⁴ See Shannon Dooling, *All Visas Revoked for People from 7 Barred Countries*, *Per State Dept.*, WBUR, Feb. 1, 2017, <http://www.wbur.org/news/2017/02/01/visas-revoked-state-department>; Mica Rosenberg & Lesley Wroughton, *Trump’s Travel Ban Has Revoked 60,000 Visas for Now*, REUTERS, Feb. 3, 2017, <http://www.reuters.com/article/us-usa-immigration-visas-idUSKBN15I2EW>.

²⁵ See David Z. Morris, *Border Agents Reportedly Using Facebook to Screen Travelers Blocked by Trump Order*, FORTUNE, Jan. 28, 2017, <http://fortune.com/2017/01/28/trump-ban-facebook-screening/>.

State and federal authorities have questioned the order's legality and sought to limit its implementation. Four states – Massachusetts, New York, Virginia, and Washington – have filed or joined suits to challenge the bans.²⁶ On February 3, Judge James L. Robart of the United States District Court for the Western District of Washington granted a temporary restraining order, enjoining the implementation of the executive order nationwide because it “adversely affects [Washington and Minnesota’s] residents in areas of employment, education, business, family relations, and freedom to travel.”²⁷ While authorities are reportedly complying with this order, the U.S. government immediately appealed and the White House labeled Judge Robart’s decision “outrageous;” a final outcome is pending.²⁸ Earlier, on January 28, 2017, Judge Ann Donnelly of the United States District Court for the Eastern District of New York granted an emergency stay of removal, concluding that the two petitioners had a “strong likelihood of success in establishing that the removal of the petitioner and others similarly situated violates their due process and equal protection;” that allowing removal would cause imminent and irreparable injury to refugees, visa-holders, and others subject to the order; and that it was “appropriate and just” to enjoin the U.S. from further “acts and misconduct in violation of the Constitution,” including preventing the entry of those legally authorized to do so.²⁹

Federal courts in Massachusetts, Virginia, and California handed down similar rulings.³⁰ One decision temporarily enjoins U.S. authorities from “removing, detaining or blocking the entry” of any person from one of the seven blocked countries who has a valid immigrant visas, prohibits the cancellation of such visas, and requires the return of confiscated passports.³¹ The

²⁶ See Joanna Walters, *Four States Sue Trump Administration over ‘Un-American’ Travel Ban*, GUARDIAN, Jan. 31, 2017, available at <https://www.theguardian.com/us-news/2017/jan/31/trump-travel-ban-state-lawsuits>.

²⁷ *States of Washington & Minnesota v. Trump (Temporary Restraining Order)*, No. 2:17-cv-00141 (W.D. Wash. Feb. 3, 2017), available at <https://www.clearinghouse.net/chDocs/public/IM-WA-0029-0005.pdf>.

²⁸ Colin Dwyer, *Court Denies DOJ Request for Stay; Trump Immigration Order Remains Suspended*, NATIONAL PUBLIC RADIO, Feb. 4, 2017, <http://www.npr.org/sections/thetwo-way/2017/02/04/513415447/airlines-again-board-travelers-barred-by-travel-order-as-trump-vows-to-fight>; Amy B. Wang, *Trump Lashes out at ‘So-Called Judge’ Who Temporarily Blocked Travel Ban*, WASHINGTON POST, Feb. 4, 2017, available at https://www.washingtonpost.com/news/the-fix/wp/2017/02/04/trump-lashes-out-at-federal-judge-who-temporarily-blocked-travel-ban/?utm_term=.11a6b4fa496c.

²⁹ *Darweesh v. Trump (Decision and Order)*, No. 17 Civ. 480 (E.D.N.Y. Jan. 28, 2017), available at <https://www.clearinghouse.net/chDocs/public/IM-NY-0053-0002.pdf> and <https://www.aclu.org/legal-document/darweesh-v-trump-decision-and-order>.

³⁰ See *Tootkaboni v. Trump (Temporary Restraining Order)*, No. 17-cv-10154 (D. Mass. 29 Jan. 2017), available at <https://www.clearinghouse.net/chDocs/public/IM-MA-0007-0002.pdf>; *Aziz v. Trump (Temporary Restraining Order)*, No. 1:17-cv-116 (E.D. Va. 28 Jan., 2017), available at <https://www.clearinghouse.net/chDocs/public/IM-VA-0004-0001.pdf>; *Vayeghan v. Kelly (Order)*, No. CV 17-0702 (C.D. Cal. Jan. 29, 2017), available at <https://www.clearinghouse.net/chDocs/public/IM-CA-0083-0001.pdf>; *Mohammed v. United States (Temporary Restraining Order)*, No. CV 17-00786 (C.D. Cal. Jan. 31, 2017), available at <http://documents.latimes.com/read-federal-judges-temporary-restraining-order-against-trumps-travel-ban/>.

³¹ *Mohammed v. United States (Temporary Restraining Order)*, No. CV 17-00786 (C.D. Cal. Jan. 31, 2017), available at <http://documents.latimes.com/read-federal-judges-temporary-restraining-order-against-trumps-travel-ban/>.

U.S. government has reportedly not yet indicated how it will address these decisions and pending suits.³²

On January 30, former Acting U.S. Attorney General Sally Yates issued a memorandum barring attorneys of the Department of Justice (DOJ) from defending the order on the basis that doing so would be inconsistent with the DOJ's "solemn obligation to seek justice and stand for what's right."³³ This memorandum was rescinded when Yates was fired and replaced.³⁴

However, there have been numerous reports of failure to comply with the court orders restricting the order's implementation, in spite of assurances by the Department of Homeland Security.³⁵ Director of the International Refugee Assistance Project (IRAP), Becca Heller, confirmed the non-compliance of Customs and Border Protections (CBP) officers who continued to detain individuals in airports, handcuff individuals, and attempt to force "voluntary departures" by insisting individuals give up their green cards.³⁶ Director of the National Immigration Law Center, Marielena Hincapie, stated that the non-compliance has caused irrevocable harm and chaos.³⁷ Members of the U.S. Congress reported that CBP officials would not meet with them at Dulles Airport to answer questions about the names and number of persons detained, and whether they had access to lawyers.³⁸ Individuals with previously-granted visas have had those visas revoked and been denied travel, even after courts have ordered that such visas be honored.³⁹ The ACLU has gathered additional personal accounts of the harms caused by the order.⁴⁰

Again, the true number of individuals and families affected is not known at this time due to incomplete information provided by the Trump Administration. A public hearing before the

³² See Jennifer Medina, *Judge Orders U.S. to Let in Immigrant Visa Holders*, NEW YORK TIMES, Feb. 1, 2017, available at https://www.nytimes.com/2017/02/01/us/politics/california-judge-trump-immigrant-visa-holders.html?_r=1.

³³ *Letter from Sally Yates*, NEW YORK TIMES, Jan. 30, 2017,

https://www.nytimes.com/interactive/2017/01/30/us/document-Letter-From-Sally-Yates.html?_r=0.

³⁴ Press Release, Department of Justice Office of Public Affairs, Acting Attorney General Boente Issues Guidance to Department on Executive Order (Jan. 30, 2017), available at <https://www.justice.gov/opa/pr/acting-attorney-general-boente-issues-guidance-department-executive-order>.

³⁵ Office of the Press Secretary, Department of Homeland Security, *DHS Response to Recent Litigation*, Jan. 29, 2017, <https://www.dhs.gov/news/2017/01/29/departments-homeland-security-response-recent-litigation>.

³⁶ Edward Helmore & Alan Yuhas, *Border Agents Defy Courts on Trump Travel Ban, Congressmen and Lawyers Say*, GUARDIAN, Jan. 29, 2017, available at <https://www.theguardian.com/us-news/2017/jan/29/customs-border-protection-agents-trump-muslim-country-travel-ban>.

³⁷ *Id.*

³⁸ Brady Dennis & Jerry Markon, *Amid Protests Confusion, Trump Defends Executive Order: 'This is Not a Muslim Ban'*, WASHINGTON POST, Jan. 29, 2017, available at https://www.washingtonpost.com/national/health-science/trump-gives-no-sign-of-backing-down-from-travel-ban/2017/01/29/4ffe900a-e620-11e6-b82f-687d6e6a3e7c_story.html.

³⁹ Maria Sacchetti & Milton J. Valencia, *With Visas Revoked, Travelers Barred Entry Despite Court Order*, BOSTON GLOBE, Feb. 1, 2017, available at <https://www.bostonglobe.com/metro/2017/02/01/document-filed-boston-court-reveals-visas-were-revoked-for-people-from-banned-countries/D6NBbEBA1HrF4lUrJjulj/story.html>.

⁴⁰ ACLU, *Here Is Some of the Human Misery Caused by President Trump's Muslim Ban From Those Most Impacted*, SPEAK FREELY, Jan. 30, 2017, <https://www.aclu.org/blog/speak-freely/here-some-human-misery-caused-president-trumps-muslim-ban-those-most-impacted>.

Inter-American Commission on Human Rights would provide a much-needed opportunity to clarify the scope and impact of this executive order and of any potential measures subsequently implemented, including accurate information concerning the number of people affected by the order.

Regional Human Rights Norms Implicated by the Ban

The executive order's enactment and implementation raise serious concerns regarding its compatibility with the United States' regional human rights commitments. As a Member State of the Organization of American States (OAS), the United States has an obligation to respect and to ensure the human rights of every person within its jurisdiction, pursuant to the OAS Charter⁴¹ and the American Declaration of the Rights and Duties of Man⁴² (American Declaration).⁴³ This obligation extends to all individuals regardless of nationality, migratory status, or other social condition,⁴⁴ and includes the rights to, *inter alia*: equality and non-discrimination,⁴⁵ due process of law and judicial protection,⁴⁶ seek asylum⁴⁷ (including the rights not to be subjected to *refoulement*⁴⁸ or collective expulsion⁴⁹), liberty,⁵⁰ freedom of expression

⁴¹ Charter of the Organization of American States, adopted at the Ninth International Conference of American States (1948), reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L/V/I.4 rev.13 at 106 (2010).

⁴² American Declaration of the Rights and Duties of Man, O.A.S. Res. XXX adopted by the Ninth International Conference of American States (1948), reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L/V/I.4 rev.13 at 13 (2010) [hereinafter American Declaration].

⁴³ See I/A Court H.R., *Interpretation of the Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights*, Advisory Opinion OC-10/89, Series A No. 10, 14 July 1989, paras. 35-45.

⁴⁴ American Declaration, art. II. See also I/A Court H.R., *Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection*, Advisory Opinion OC-21/14, Series A No. 21, 19 August 2014, paras. 61, 62; I/A Court H.R., *Juridical Condition and Rights of Undocumented Migrants*, Advisory Opinion OC-18/03, Series A No. 18, 17 September 2003, paras. 101, 119.

⁴⁵ American Declaration, art. II; IACHR, Merits Report No. 51/96, Case 10.675, *Haitian Interdiction* (United States), 13 March 1997. See also IACHR, *Report on Immigration in the United States: Detention and Due Process* (2010), para. 94; I/A Court H.R., *Juridical Condition and Rights of the Undocumented Migrants*, Advisory Opinion OC-18/03, *supra*, paras. 83, 87, 97-101.

⁴⁶ American Declaration, art. XVII; IACHR, Merits Report No. 63/08, Case 12.534, *Andrea Mortlock* (United States), 25 July 2008, para. 78 (citing IACHR, *Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System* (2000)).

⁴⁷ American Declaration, art. XXVII. See also IACHR, *Human Rights Situation of Refugee and Migrant Families and Unaccompanied Children in the United States of America* (2015), para. 96; IACHR, *Report on the Situation of Human Rights of Asylum Seekers Within the Canadian Refugee Determination System* (2000), para. 104.

⁴⁸ See, e.g., IACHR, Merits Report No. 51/96, Case 10.675, *Haitian Interdiction* (United States), 13 March 1997, paras. 101, 157; IACHR, *Human Rights Situation of Refugee and Migrant Families and Unaccompanied Children in the United States of America* (2015), paras. 96, 99, 100.

⁴⁹ The IACHR has stated that the prohibition on collective expulsions is grounded in Article VIII of the American Declaration protecting the right to residence and freedom of movement, and may also implicate the rights to life, liberty, and personal security established in Article I; the right to seek and receive asylum and the principle of *non-refoulement*; Articles XXVI and XVIII, protecting the right to due process and fair trial; the right to family life and the protection of the family unit established in Articles V and VI; Article V protecting the right to private life; and Article VII, establishing the right of the child to special protection, care, and aid. See IACHR, *Human Rights Situation*

and opinion,⁵¹ freedom of religion,⁵² freedom from torture and cruel or degrading treatment,⁵³ special protection for children,⁵⁴ and respect for family life.⁵⁵

The recent executive order likely violates these fundamental rights. As indicated above, the ban applies to all refugees and to all nationals of seven specific countries and appears to give preference to Christian refugees. Individuals subject to the ban have been detained at U.S. airports, prohibited from boarding U.S.-bound flights overseas, or expelled, reportedly without due process or access to judicial recourse in most instances. These actions have seemingly been undertaken based on their nationality and religion and in some cases based on political views and without due regard for their humanitarian need, family ties or the risks they face if expelled. Indeed, in a recent press release, the Commission expressed its concern that the recent executive action “puts migrants and refugees at grave risk of violation of their rights to non-discrimination, personal liberty, due process, judicial protection, special protection for families and children, the right to seek and receive asylum, the principle of *non-refoulement*, the prohibition of cruel, inhuman and degrading treatment, and the right to freedom of movement, among others.”⁵⁶

Universal Human Rights Norms Implicated by the Ban

The United States has ratified, among other instruments, the International Covenant on Civil and Political Rights (ICCPR); the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); and the 1967 Protocol to the 1951 Convention Relating to the Status of Refugees (Refugee Convention). Collectively, these instruments require

of Refugee and Migrant Families and Unaccompanied Children in the United States of America (2015), paras. 103, 105 (citing ECtHR, *Hirsi Jamaa v. Italy*, no. 27765/09, Judgment of 23 February 2012, para. 180).

⁵⁰ American Declaration, arts. I, XXV. *See also* IACHR, Principles on the Protection of Persons Deprived of Liberty in the Americas, Principle III; IACHR, *Human Rights Situation of Refugee and Migrant Families and Unaccompanied Children in the United States of America* (2015), paras. 59, 62, 64, 65, 77 *et seq.*

⁵¹ American Declaration, art. IV. *See, e.g.*, IACHR Declaration of Principles on Freedom of Expression, Principles 1, 2. *See also* UN Human Rights Committee, General Comment No. 34, UN Doc. CCPR/C/GC/34, 12 Sept. 2011, para. 9, available at <http://www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf>; ACommHPR, *Kenneth Good v. Botswana*, Communication No. 313/05, Merits Decision, 47th Ordinary Session (2010), available at http://www.achpr.org/files/sessions/47th/comunications/313.05/achpr47_313_05_eng.pdf.

⁵² American Declaration, arts. II, III.

⁵³ American Declaration, art. I. *See* IACHR, Merits Report No. 51/96, Case 10.675, *Haitian Interdiction* (United States), 13 March 1997; IACHR, Merits Report No. 78/11, Case 12.586, *John Doe et al.* (Canada), 21 July 2011, para. 102.

⁵⁴ American Declaration, art. VII. *See* IACHR, Merits Report No. 85/09, Case 11.607, *Victor Hugo Maciel* (Paraguay), 6 August 2009 (citing I/A Court H.R., *Case of the Gómez Paquiyauri Brothers v. Peru*. Merits, Reparations and Costs. Judgment of July 8, 2004. Series C No. 110, paras. 162, 163); IACHR, Merits Report No. 85/09, Case 11.607, *Victor Hugo Maciel* (Paraguay), 6 August 2009 (citing IACHR, Third Report on the Human Rights Situation in Colombia (1999), Ch. XIII, para. 1).

⁵⁵ American Declaration, arts. V, VI. *See, e.g.*, IACHR, Merits Report No. 81/10, Case 12.562, *Wayne Smith, Hugo Armendariz, et al.* (United States), 12 July 2010.

⁵⁶ Press Release, IACHR, IACHR Expresses Concern over Executive Orders on Immigration and Refugees in the United States (Feb. 1, 2017), http://www.oas.org/en/iachr/media_center/PReleases/2017/008.asp.

the United States to respect and ensure the rights to, *inter alia*: equal protection and non-discrimination,⁵⁷ due process in immigration proceedings,⁵⁸ liberty,⁵⁹ family life,⁶⁰ freedom of thought and religion,⁶¹ freedom of expression and opinion,⁶² judicial protection,⁶³ *non-refoulement*,⁶⁴ and to seek asylum⁶⁵. These rights are implicated, and may already have been violated, by the issuance of this executive order and its implementation.

Xenophobia, Islamophobia, and Impact on Human Rights Enjoyment

More generally, the executive order raises legitimate concerns that national authorities are fostering an environment incompatible with respect for human rights. United Nations special procedure mandate holders have warned that the order “leads to increased stigmatization of Muslim communities.”⁶⁶ The UN Secretary General has similarly stated that the recent developments could “trigger widespread anxiety and anger that may facilitate the propaganda of the very terrorist organizations we all want to fight against.”⁶⁷ The UN High Commissioner for Human Rights has recently warned that an emerging “wave of racism, xenophobia, anti-Muslim hatred and other forms of intolerance, triggered by populism” threatens enjoyment of human rights.⁶⁸

The Commission’s Authority to Convene a Hearing

Article 61 of the Rules of Procedure of the Inter-American Commission on Human Rights allows the Commission to hold hearings “on its own initiative.” Article 66 states, “The Executive Secretariat shall inform the party or parties as to the date, place, and time of the hearing at least one month in advance. However, under exceptional circumstances, that time period may be reduced.”

⁵⁷ See, e.g., International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976), 999 UNTS 171, arts. 4, 26 [hereinafter ICCPR]; International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969), 660 UNTS 195, arts. 1(3), 2, 5 [hereinafter ICERD]; Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954), 189 UNTS 137, art. 3 [hereinafter Refugee Convention]; Protocol relating to the Status of Refugees (adopted 31 January 1967, entered into force 4 October 1967), 606 UNTS 267, art. 1(1) [hereinafter 1967 Protocol].

⁵⁸ See, e.g., ICCPR, art. 13; Refugee Convention, art. 32; 1967 Protocol, art. 1(1).

⁵⁹ See, e.g., ICCPR, art. 9(1)

⁶⁰ See, e.g., ICCPR, arts. 17(1), 23.

⁶¹ See, e.g., ICCPR, art. 18; ICERD, art. 5(d)(vii); Refugee Convention, art. 4; 1967 Protocol, art. 1(1).

⁶² See, e.g., ICCPR, art. 19; ICERD, art. 5(d)(viii).

⁶³ See, e.g., ICCPR, arts. 9(4), 14; ICERD, art. 6; Refugee Convention, art. 16; 1967 Protocol, art. 1(1).

⁶⁴ See, e.g., CAT, art. 3; Refugee Convention, art. 33; 1967 Protocol, art. 1(1).

⁶⁵ See Refugee Convention, art. ; 1967 Protocol, art. 1(1)

⁶⁶ *US Travel Ban a ‘Significant Setback’ for Those Needing International Protection – UN Rights Experts*, UN NEWS CENTRE, Feb. 1 2017, <http://www.un.org/apps/news/story.asp?NewsID=56082>.

⁶⁷ *Managing National Borders ‘Cannot be Based on Any Form of Discrimination’ – UN Chief Guterres*, UN NEWS CENTRE, Jan. 31, 2017, <http://www.un.org/apps/news/story.asp?NewsID=56077>.

⁶⁸ *Warning against Rising Intolerance, UN Remembers Holocaust and Condemns Anti-Semitism*, UN NEWS CENTRE, Jan. 27, 2017, <http://www.un.org/apps/news/story.asp?NewsID=56058>.

The Commission has, of course, exercised this authority on numerous occasions in the past, including to address country-specific urgent situations. For example, in October 2015, the Commission held a hearing at its own initiative on the right to nationality in the Dominican Republic to address the crisis in that country concerning the citizenship rights of persons of Haitian descent.⁶⁹

We urge the Commission to consider convening an emergency hearing on this deeply troubling executive order at its March 2017 period of sessions, and confirm our willingness and ability to participate in such a hearing. We also ask that the Commission extend an invitation to representatives of the United States government to participate in this hearing.

Sincerely,

International Justice Resource Center
American Civil Liberties Union (ACLU)
The Advocates for Human Rights
Albuquerque Center for Peace and Justice
American Friends Service Committee
Benjamin B. Ferencz Human Rights and Atrocity Prevention Clinic, Cardozo Law
Black Women's Blueprint
Center for Gender & Refugee Studies
Center for Justice & Accountability
Center for Justice and International Law (CEJIL)
Central Arizona National Lawyers Guild
Columbia Law School Human Rights Institute
Four Freedoms Forum
Global Justice Center
Human Rights Advocates
Human Rights Center, UC Berkeley School of Law
International Human Rights Clinic, Loyola Law School
International Human Rights Clinic, University of Chicago Law School
International Institute on Race, Equality and Human Rights
International Justice Network
International Migrants Bill of Rights (IMBR) Initiative
Labour, Health and Human Rights Development Centre
Latin Advocacy Network
The Leadership Conference on Civil and Human Rights
National Center for Law and Economic Justice
National Coalition to Protect Civil Freedoms
National Domestic Workers Alliance

⁶⁹ See IACHR, Schedule of Hearings: 156 Period of Sessions, <http://www.oas.org/en/iachr/sessions/docs/Calendario-156-audiencias-en.pdf>.

National Jericho Amnesty Movement
Pozen Family Center for Human Rights, University of Chicago
Project South
Racial Justice NOW!
Release Aging People in Prison Campaign
Robert F. Kennedy Human Rights
Urban Justice Center
Urgent Action Fund for Women's Human Rights
Vermont Worker's Center
We Belong Together
Women's Link Worldwide
Woodhull Freedom Foundation

Cc: Mario López-Garelli, Senior Human Rights Specialist, IACHR
Álvaro Botero Navarro, Human Rights Specialist, IACHR