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The U.S. Commission on Civil Rights Expresses Concern Over Executive Orders Promoting Religious and National Origin Discrimination

The U. S. Commission on Civil Rights expresses deep concern that recently issued Executive Orders – particularly Orders 13768 and 13769 -- promote and endorse religious and national origin discrimination in contravention of our nation’s core anti-discrimination principles.

Executive Order 13769 sets out different treatment for persons coming to the United States from specified, Muslim-majority countries without any lawful justification or basis for that different treatment.¹ By singling out seven overwhelmingly Muslim-majority countries² for exclusion, the Executive Order itself raises the specter of government endorsement of religious and possibly national origin discrimination.

This infirmity is compounded by the Executive Order’s prioritization of refugees who claim religious persecution, so long as they belong to “a minority religion” in their home country.³ Moreover, as courts have already recognized, extrinsic evidence also suggests that the EO was motivated by prohibited bias, inconsistent with the Nation’s anti-discrimination principles.⁴

Executive Order 13768 calls for denying federal funding to any “sanctuary jurisdiction” and, among other measures, requires a public weekly report of criminal actions alleged to have been committed by undocumented immigrants.⁵ Elevating mere allegations of

¹ Executive Order 13769 – 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>.

² The seven countries are Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen. According to the CIA’s World Factbook, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/xx.html>, the percentage of Muslims in the populations of the seven specified countries are as follows: Iran (99%); Iraq (99%); Libya (96.6%); Somalia (official religion of state); Sudan (official religion of state); Syria (87%); Yemen (99.1%).

³ Executive Order 13769 – 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>.

⁴ *Tareq Aqel Mohammed Aziz, et al. v. Donald Trump, et al.*, Case No. 1:17-CV-116, Memorandum Opinion, Dkt. 111, 2017 WL 580855 (E.D. Va. Feb. 13, 2017)

⁵ Executive Order 13768 – Border Security and Immigration Enforcement Improvements, Jan. 25, 2017, available at <https://www.whitehouse.gov/the-press-office/2017/01/25/executive-order-border-security-and-immigration-enforcement-improvements>.

criminality to a special federal reporting status, particularly when directed at any persons alleged to lack immigration status, raises national origin discrimination concerns.

The White House has announced its intention to supersede recently issued EOs and the Commission encourages the Administration to use this new opportunity to carefully assess the serious civil rights concerns that the initial set of EOs present and to cure any such infirmities prior to issuance.

Chair Catherine E. Lhamon expressed her concerns: “Government action that communicates animus rather than equity strikes against our core national ideals. This Commission calls for adherence to constitutional principles in our national interest.”

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