January 29, 2018

MEMORANDUM

TO: L. Francis Cissna  
Director  
U.S. Citizenship and Immigration Services

FROM: Kirstjen M. Nielsen  
Secretary  
U.S. Department of Homeland Security

SUBJECT: 90-Day Refugee Review

(U) On October 24, 2017, the President issued Executive Order (EO) 13,815 allowing for the general resumption of the U.S. Refugee Admissions Program (USRAP). Simultaneously, Section 3, “Addressing the Risks Presented by Certain Categories of Refugees,” required that I determine within 90 days, as appropriate and consistent with applicable law, whether to modify or terminate any actions taken to address the security risks posed by refugee admissions, in consultation with the Secretary of State and the Director of National Intelligence.

(U) As you know, in the ensuing 90 days, DHS Components, including the DHS Office of Strategy, Policy, and Plans (PLCY) and U.S. Citizenship and Immigration Services (USCIS), the Department of State (DOS), and our law enforcement and intelligence community partners conducted a review to assist me in determining which additional safeguards, if any, are necessary to ensure that the admission of nationals of, and certain stateless persons who last habitually resided in, 11 particular countries\(^1\) does not pose a threat to the security and welfare of the United States. The 90-day review included an in-depth threat assessment of each Security Advisory Opinion (SAO) country from the intelligence community, as well as a review of all relevant information related to ongoing or completed investigations involving refugees admitted to the United States. The review was conducted consistent with all judicial orders in effect.

(U) Based on the results of the review and in consultation with my counterparts, I have made the following determinations:\(^2\)

\(^1\) (U//FOUO) These 11 particular countries were previously identified as posing a higher risk to the United States through their designation on the Security Advisory Opinion (SAO) list. The SAO list for refugee applicants was first established following the September 11\(^{th}\) terrorist attacks and has evolved over the years through interagency consultations which include risk assessments and analysis from the intelligence and law enforcement communities.

\(^2\) (U) Any actions shall be undertaken consistent with the nationwide injunction issued by the United States District Court for the Western District of Washington, which prohibits the defendants from “enforcing those provisions of the Agency Memo (Memorandum to Donald Trump, President of the United States, from the Secretary of State, the Acting Secretary of Homeland Security, and the Director of National Intelligence) that suspend or inhibit, including through the diversion of resources, the processing of refugee applications or the admission into the United States of
1. (U) Additional screening and vetting actions are required for certain nationals of high-risk countries.
2. (U) The USRAP should continue to be administered in a risk-based manner.
3. (U) The Refugee SAO list and selection criteria should be reviewed and updated.

I. (U) Additional Screening and Vetting Actions

(U) The Immigration and Nationality Act (INA) as amended provides that the Secretary of DHS "may, in the [Secretary’s] discretion...admit any refugee who is not firmly resettled in any foreign country, is determined to be of special humanitarian concern to the United States, and is admissible." Even if the applicant has demonstrated that he or she is statutorily eligible for refugee status, the ultimate decision on each application for refugee status by USCIS—and admission of each potential refugee at the port of entry by Customs and Border Protection—involves the exercise of discretion. As with all elements of the refugee adjudication, the burden of proof rests with the applicant to demonstrate that he or she merits admission as a refugee. As such, I am hereby directing that USCIS co-administer the USRAP with the Department of State’s Bureau of Population, Refugees, and Migration in a manner consistent with these determinations and DHS statutory authorities—and in consultation with the Attorney General and Director of National Intelligence. More specifically, I am instructing USCIS to implement certain screening and vetting enhancements to the USRAP to more effectively prevent fraud and to identify potential national security risks, criminals, and other nefarious actors. Prior to the start of FY2018 3rd quarter refugee processing, USCIS shall:

- (U) Provide officers adjudicating refugee applications ("officers") with additional training and guidance on national security indicators identified as a result of the review.
- (U) Provide for more in-depth refugee eligibility interviews, as well as additional time for officers to conduct interviews for certain nationals of SAO countries to allow for further exploration of potential national security, inadmissibility, and credibility issues at interview.
- (U/FORU) Issue guidance to its officers emphasizing the importance of eliciting testimony from derivative applicants, including certain RE-3 applicants (unmarried, under 21, derivative children) apart from the principal refugee applicant (his or her parent) to further explore potential national security, identity, inadmissibility, and credibility issues.

refugees from SAO countries." Doe, et al. v. Trump, et al., No. 17-178 (W.D. Wash.); Jewish Family Services, et al. v. Trump, et al., No. 17-1707 (W.D. Wash.). In addition, any commitments made by the United States to implement the injunction will be honored. The court made clear, however, that this portion of the preliminary injunction only applies to the restrictions imposed by the prior Joint Memorandum with respect to refugees with a bona fide relationship to a person or entity within the United States. Additionally, the preliminary injunction does not apply to the defendants' "efforts to conduct a detailed threat assessment for each SAO country" pursuant to the Joint Memorandum.

3 (U) These instructions are issued pursuant to 8 U.S.C. § 1103(a)(3) in order to carry out my statutory authorities relevant to the USRAP, including 8 U.S.C. §§ 1101(a)(42), 1157, and 1182(a)(2), (3). Where applicable and consistent with these authorities related to processing petitions for Form I-730, Refugee/Asylee Relative Petitions filed by refugees for following-to-join family members, USCIS will work with DOS to develop and implement processes to apply these enhancements to the processing of those petitions.
• (U) Issue supplementary guidance and train officers on when it may be appropriate to deny refugee applicants as a matter of discretion based on the totality of the circumstances.

• (U//FOUO) Work with DOS and relevant vetting partners to ensure relevant derogatory information is considered in the decision-making process, similar to the current Interagency Check (IAC) procedure.

• (U//FOUO) Ensure that any previously undisclosed wounds or injuries identified by an International Organization for Migration or other panel physician during an applicant’s medical examination will be documented on the appropriate DOS medical forms. DOS will then coordinate the reporting of the information to USCIS.

• (U) Determine which SAO nationals who have already undergone a USCIS interview will require a re-interview in light of the modifications listed above.

(U) In addition, I am directing USCIS to coordinate with USRAP program partners and vetting agencies to:

• (U//FOUO) Work with DHS PLCY, DOS, and relevant vetting partners to initiate a review of SAO adjudication thresholds and update them as appropriate to ensure they are in line with thresholds applied to other security checks, most notably the IAC.

• (U//FOUO) Identify whether there are additional indicators that would trigger a "deep dive" review by vetting agencies.

• (U) Continue ongoing discussions with the Office of the United Nations High Commissioner for Refugees (UNHCR) to integrate biometrics collected by UNHCR into USRAP identity management for those cases referred by UNHCR.

(U) USCIS will interview and adjudicate cases of SAO nationals under these new procedures. The 90-day review of SAO countries, as provided in the Joint Memorandum, is no longer in effect by its terms, and the prioritization set forth in the Memorandum is not hereby renewed. As with other new screening and vetting enhancements implemented by the Department and interagency partners in the past, these modifications may lengthen processing times and will take time to implement, but I have determined that they are critical to strengthening the security and integrity of the USRAP and should be put in place as expeditiously as possible.

II. (U) Risk-Based Approach to USRAP Administration

(U) The aforementioned enhancements will improve the security of the U.S. homeland. It is also my judgment that the USRAP is not being administered in a sufficiently risk-based manner informed by past experience or ongoing analysis of threats to U.S. interests. As such, USCIS should work with DOS to adopt a more risk-based approach to the USRAP when it develops the annual report to Congress on proposed refugee admissions for FY2019. The report should take into consideration national security risk as well as operational and resource realities when considering the overall refugee admissions ceiling, regional allocations, and the groups of refugee applicants that will be considered for resettlement next fiscal year.
III. (U) Review of Refugee SAO List

(U//FOUO) Finally, I have recommended to my interagency counterparts that DHS and DOS conduct a full review of the SAO list and, within six months, propose an updated SAO list as necessary based on broader public safety and national security considerations, including terrorism threats, transnational organized crime, and other relevant factors. I have also recommended that this list be reviewed, and updated, as appropriate, every six months thereafter to better inform screening and vetting policies and procedures based on any changes in risk factors and the overseas threat landscape. USCIS participation in these discussions will be critical.

IV. (U) No Private Right of Action

(U) In implementing this guidance, I direct DHS Components to consult with legal counsel to ensure compliance with all applicable laws, including all judicial orders in effect. In addition, USCIS shall, through the Office of the General Counsel, ensure that the Department of Justice is informed of the measures described herein and the proposed timelines for implementation.

(U) This document provides only internal DHS policy guidance, which may be modified, rescinded, or superseded at any time without notice. This guidance is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter. Likewise, no limitations are placed by this guidance on the otherwise lawful enforcement or litigation prerogatives of DHS.