

**Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the human rights of migrants; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Special Rapporteur on freedom of religion or belief; the Special Rapporteur on the promotion and protection of human rights while countering terrorism; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

REFERENCE:  
UA USA 2/2017

31 January 2017

Dear Mr. Allegra,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Special Rapporteur on the human rights of migrants; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; Special Rapporteur on freedom of religion or belief; Special Rapporteur on the promotion and protection of human rights while countering terrorism; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 33/30, 26/19, 25/32, 31/16, 31/3, and 25/13.

In this connection, we would like to bring to the attention of your Government information we have received concerning **the Executive Order of 27 January 2017 which *inter alia* stops the entire US refugee programme for 120 days, indefinitely bans Syrian refugees, and suspends all nationals from entering the United States of America from seven Muslim-majority countries: Iran, Iraq, Libya, Somalia, Sudan, Syria and Yemen.**

According to information received:

The Executive Order of 27 January 2017 which aims “to protect the American people from terrorist attacks by foreign nationals admitted to the United States” states the following:

Section 3 (c) of the Executive Order of 27 January 2017 suspends all nationals from entering the United States of America-whether refugees, migrants or holiday makers -from seven Muslim-majority countries as defined by 8 U.S.C. § 1187(a)(12). As determined by the Department of Homeland Security this affects the nationals of the following countries: Iran, Iraq, Libya, Somalia, Sudan, Syria and Yemen.<sup>1</sup> It is alleged that those with dual nationality who either have a

---

<sup>1</sup> <https://www.dhs.gov/news/2016/02/18/dhs-announces-further-travel-restrictions-visa-waiver-program>

passport from one of those countries or are travelling from one of those countries will be affected by this Executive Order. We further received information that such persons travelling to the United States of America will be subject to detention for an undefined period of time and in some cases are separated from their families.

We are further concerned by Section 5 (a) of the Executive Order of 27 January 2017 which stops the U.S. Refugee Admissions Program (USRAP) for 120 days; Section 5 (b) of the Executive Order of 27 January 2017 which prioritizes refugee claims on the basis of religious-based persecution made by individuals from a minority religion in the country of nationality; Section 5 (d) of the Executive Order of 27 January 2017 halts the “entry of more than 50,000 refugees in fiscal year 2017 detrimental to the interests of the United States”; and Section 5 (c) of the Executive Order of 27 January 2017 which indefinitely bans Syrian refugees because they are “detrimental to the interests of the United States”.

We are gravely concerned that this Executive Order leads to significant and multiple violations of international and human rights law.

More particularly, we are gravely concerned that the Executive Order risks significant and systemic violations of the customary non-refoulement principle which is also codified in various international legal instruments ratified by the United States of America. We also wish to recall that the United States of America is a State Party to, among other treaties, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and International Covenant on Civil and Political Rights (ICCPR) and that violations of the principle of non-refoulement regularly expose the concerned persons to a substantial risk of being subjected to torture and other cruel, inhuman or degrading treatment. We would like to further highlight article 2 (1) of ICCPR that each State Party to the Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. In addition, article 13 of the ICCPR establishes that a non-citizen lawfully in the territory of a State Party may be expelled therefrom only in pursuance of a decision reach in accordance with law and shall be allowed to submit the reasons against his expulsion and to have his case reviewed.

The Executive Order also risks violation of the right not to be deprived arbitrarily of liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the ICCPR.

We are further concerned with regard to the Executive Order which appears discriminatory and will lead to increased discrimination based on religion, race and nationality and stigmatization of Muslim communities and wish to recall that the United States of America, is a State party to the International Convention on the Elimination of All forms of Racial Discrimination (ICERD), in particular articles 2, 4, 5 (b) and 6. Furthermore we would like to draw the attention of your Government to General Recommendation No. 30 on Discrimination Against Non-Citizens of the Committee on the Elimination of Racial Discrimination which recommends to: “7. Ensure that legislative guarantees against racial discrimination apply to noncitizens regardless of their immigration status and that the implementation of legislation does not have a discriminatory effect on non-citizens”; “18. Ensure that non-citizens enjoy equal protection and recognition before the law and in this context, to take action against racially motivated violence and to ensure the access of victims to effective legal remedies and the right to seek just and adequate reparation for any damage suffered as a result of such violence”; “25. To ensure that laws concerning deportation or other forms of removal of non-citizens from the jurisdiction of the State party do not discriminate in purpose or effect among non-citizens on the basis of race, colour or ethnic or national origin, and that non-citizens have equal access to effective remedies, including the right to challenge expulsion orders, and are allowed effectively to pursue such remedies”; “26. To ensure that non-citizens are not subject to collective expulsion, in particular in situations where there are insufficient guarantees that the personal circumstances of each of the persons concerned have been taken into account”; “28. To avoid expulsions of non-citizens, especially of long-term residents, that would result in disproportionate interference with the right to family life”.

We also recall paragraph 30 of the Durban Programme of Action which “urges States to develop and implement policies and action plans and to [...] implement preventive measures in order to foster greater harmony and tolerance between migrants and host societies, with the aim of eliminating manifestations of racism, racial discrimination, xenophobia and related intolerance, including acts of violence, perpetrated [...] by individuals or groups [...]; (c) implement specific measures involving the host community and migrants in order to encourage respect for cultural diversity, to promote the fair treatment of migrants and to develop programmes, where appropriate, that facilitate their integration into social, cultural, political and economic life”.

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://www.ohchr.org) or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Government to safeguard the rights of the above-mentioned person(s) in compliance with international instruments.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide all information or additional comments in relation to these allegations.
2. Please explain how the Executive Order is an effective counter-terrorism measure in accordance with the United States of America's obligations under international human rights law, particularly with regard to the rights of migrants, asylum seekers and children, as well as broader fundamental standards and principles such as the non-derogability of international human rights standards.
3. Please provide specific details about how the Executive Order will respect the international obligations of United States of America, in particular the principle of non-refoulement, the prohibition of torture and other cruel, inhuman or degrading treatment, the principle of non-discrimination, the principle of the presumption of innocence, the principle of the best interest of the child and international standards regarding the arrest and detention of people.
4. Please explain whether any analysis and/or consultation has been undertaken to assess the impact of the Executive Order on the human rights of vulnerable migrants and asylum seekers and refugees. Please share the outcome of any such analysis or consultation.
5. Please provide information of any measures taken to ensure the due process rights of concerned individuals.
6. Please indicate whether the Executive Order has been reviewed in light of United States of America's international human rights obligations, especially the International Convention on the Elimination of All forms of Racial Discrimination (ICERD), to which the United States is a party Please share the outcome of any such review.
7. Please also explain the justification to prioritize on refugee claims based on minority religions only. How do the measures proposed by the Executive Order contribute to non-stigmatisation of Muslim communities?
8. Please indicate what measures your Government intends to take to foster diversity, to promote respect and acceptance for cultural and religious diversity between citizens and non-citizens.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

We intend to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Government's to clarify the issue/s in question.

Your Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Mr. Allegra, the assurances of our highest consideration.

José Antonio Guevara Bermúdez  
Vice Chair of the Working Group on Arbitrary Detention

François Crépeau  
Special Rapporteur on the human rights of migrants

Mutuma Ruteere  
Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia  
and related intolerance

Ahmed Shaheed  
Special Rapporteur on freedom of religion or belief

Ben Emmerson  
Special Rapporteur on the promotion and protection of human rights while countering  
terrorism

Nils Melzer  
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or  
punishment