

EXHIBIT 3



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Travel Ban Is Based on Executive Whim, Not Objective Criteria

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President Trump's [travel ban proclamation](#) states that the Department of Homeland Security (DHS) developed a global baseline for visa vetting that all governments must meet before their nationals can travel to the United States. The proclamation states that the president then applied DHS's baseline to all countries and then restricted travel to all those that failed them. This explanation is untrue.

DHS created nine baseline criteria grouped into three categories (see the Appendix for a detailed explanation of each one). Here they are:

- **Category 1:** Identity management: 1) Use of electronic passports embedded with data; 2) Reports lost and stolen passports; 3) Makes available upon request identity-related information.
- **Category 2:** National security information: 4) Makes available terrorist and criminal information upon request; 5) Provides identity document exemplars; 6) Allows U.S. government's receipt of information about passengers and crew traveling to the U.S.
- **Category 3:** Risk indicators: 7) Is a known or potential terrorist safe haven; 8) Is a participant in the Visa Waiver Program that meets all of its

The proclamation states that the president then applied the DHS baseline to every country and banned all those—and only those—that fail its criteria. *This never happened.*

Despite statements to the contrary, the proclamation admits that the president did not ban all countries that failed the requirements and did ban others that met them. It applies higher-than-the-baseline criteria to the countries on the list, but never applies those more stringent criteria to other countries that remained off the list. The president's proclamation also applies mitigating factors to avoid banning every failing country but then didn't apply those new mitigating factors to the other banned countries. Even when applying all of these additional criteria, no set of failed or met factors can explain the proclamation's choices of which countries to ban. The travel ban simply lacks an objective grounding.

The presidential proclamation did not apply the DHS baseline to every country.

The proclamation states that Iraq failed the baseline, but it did not ban Iraqis. It is the only country that it claims to have failed yet not banned. By itself, this proves that the baseline is not automatically applied, but we know that many other countries also failed.

At least 86 countries did not issue electronic passports in 2017, and many others had nationals still using older non-electronic passports. At least 16 countries never report lost or stolen passports and, as of mid-2014, about 150, including large countries China, India, and Indonesia, rarely did. In May 2017, 12 countries regularly refused to accept U.S. deportees—only one of which was a travel ban country—and on September 13, 2017, just before the travel ban came out, the U.S. sanctioned four non-travel ban countries for this reason. None of those four were travel ban countries. In 2017, 153 countries did not participate in the Visa Waiver Program, and as of December 2015, a third of participating countries did not meet its requirements. In 2016, the State Department identified 13 terrorist safe havens—only three made the list.

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The proclamation tells us that some countries decided to share information or passport samples, but it makes no mention of countries complying with the above criteria. It tells us that DHS initially identified 16 failing countries, but then settled on nine and exempted Iraq, implying that seven countries moved from failing to passing. Even if all of these seven countries initially failed each criterion above and then corrected the failure, 75 non-travel ban countries would still not be issuing e-passports; six would still not be reporting passports; and four would still not be accepting deportees. The number of terrorist safe havens appears to have remained the same.

Either the proclamation misrepresents how the baseline applies to each country (i.e. countries don't need to meet all of its requirements) or the proclamation misrepresents how the president applied the baseline (i.e. he didn't apply it to each country).

The proclamation did not apply the DHS baseline to travel ban countries.

Not only do many of these countries meet most of the baseline requirements, the proclamation did not actually apply the baseline to them. The administration applied something else entirely. Here are a few examples:

- Somalia issues e-passports but fails this requirement because “the United States and many other countries do not recognize it.” This is a much higher standard than the baseline.
- Libya and Venezuela do not “*regularly* refuse to receive their nationals” whom the United States deports—which is why Immigration and Customs Enforcement does not list either as an offender in this regard—but we are told that they are “not *fully* cooperative with respect to receiving their nationals,” and so they are banned. Here, the baseline allows some refusals, but when the proclamation then applies this criterion, it requires total or full cooperation.
- Chad is not a “terrorist safe haven,” according to the State Department, and actively partners with the United States against terrorists, but apparently *still* fails this requirement because terrorists “are active within Chad or in the surrounding region.” Under the DHS criteria, a country must be a terrorist safe haven or potential safe haven. But according to

the proclamation, the mere presence of “active” terrorists nearby can ban nationals from a nation even if the terrorists are *outside* of the country.

This is moving the goalposts to an entirely different field.

- Somalia “satisfies the information-sharing requirements of the baseline” but its “lack of territorial control... compromises Somalia’s ability... to share.” In other words, Somalia *shares* what it can, but due to its limitation, it cannot *collect* the information that the United States wants. Thus, this is about capacity, not cooperation, in terrorist surveillance. This higher-than-baseline standard also appears to apply to Libya which “faces challenges” to sharing. Again, the ability to collect is substantially different than the baseline requirement to share upon request.
- Iran is not a safe haven for terrorists, but the proclamation justifies its inclusion by stating that it is a State Sponsor of Terrorism. This is a very different standard than a “terrorist safe haven,” which requires “ungoverned, under-governed, or ill-governed physical areas where terrorists are able to organize, plan, raise funds, communicate, recruit, train, transit, and operate in relative security.” Iran does not fit this description, yet the proclamation still found it to have failed the baseline.

The point here is that the proclamation did not actually apply the DHS standards. It applied wholly different requirements that are not part of the baseline.

The proclamation did not apply its own criteria to every non-travel ban country.

Applying the proclamation’s additional criteria to every country adds no more clarity. Indeed, if these more stringent requirements become part of the baseline then more countries would fail and be banned. Thus, the selection of these eight countries becomes even *more* arbitrary than it already is. Another 125 non-travel ban countries don’t have e-passports or have e-passports that many countries don’t recognize. Like Syria, Sudan is also a State Sponsor of Terrorism. Active terrorists “in the surrounding region” would add at least the 31 non-travel ban countries where Foreign Terrorist Organizations are based and probably a half dozen more. The same must also be true for the higher-than-baseline deportee acceptance requirement.

Yet even if we apply these higher than baseline criteria, still not all of the travel ban countries fail them. Iran issues an internationally recognized electronic passport. North Korea has no terrorist groups in its vicinity.

The proclamation did not apply his own criteria to every travel ban country.

The proclamation explains that it did apply the baseline to Iraq because Iraq meets four mitigating factors and that it did not ban any Venezuelans, except for a few bureaucrats, because they meet a fifth mitigating factor. Yet meeting any or even all of these mitigating factors does not mean that the country is off the list. Here are the mitigating factors:

- One mitigating factor is having a “cooperative relationship” with the United States. This would apply to Chad, Libya, Yemen, and Somalia. The first three the proclamation itself describes as “counterterrorism partners,” and Somalia is a member of the U.S. Global Coalition to Defeat ISIS.
- Another mitigating factor is having a “commitment to combating” ISIS. This factor would apply to six of the travel ban countries, all of the counterterrorism partners listed above as well as Syria and Iran, both of whom are committing significant resources to defeating ISIS in Syria and Iraq.
- Another mitigating factor is the presence of U.S. troops. This would apply at least to Chad, Syria, Yemen, Libya, and Somalia, and possibly even Venezuela.
- Another mitigating factor is the presence of U.S. diplomats. This would also apply to Chad and Venezuela.
- Finally, the existence of “alternative sources of information” about Venezuelan travelers mitigates against their governments’ failure to meet the baseline. But this mitigating factor would also apply to some travelers from every other country. The fact that sources of information exist about some travelers and immigrants from these countries is precisely why there was not already a ban in place. Travelers face the burden of proof in

Every travel ban country meets one of the mitigating factors. Chad meets all of them. Libya, Yemen, and Somalia meet four of the five, every factor except the presence of U.S. diplomats. Syria meets three of the conditions. Iran and Venezuela meet two of them. Thus, we have no idea how these mitigating factors matter, when they are applied, or what they can compensate for.

No combination of factors explains the proclamation’s travel ban selections.

Not all travel ban countries fail all of the baseline criteria, and not all of the other non-banned countries meet the baseline criteria. The next most logical explanation is that some combination of factors explains the list. The proclamation hints at this possibility, asserting that these eight countries “have ‘inadequate’ identity-management protocols, information-sharing practices, **and** risk factors.” At a minimum, this means that each country on the list has failed at least one criterion in each of the three baseline categories. Yet once again, the proclamation then admits that this is not true.

It states that DHS “determined that Somalia satisfies the information-sharing requirements of the baseline and states that Venezuela met “the baseline standards identified,” except for those relating to public-safety and terrorism-related information sharing and risk criteria. In addition, Iran appears to meet the identity management requirements. It uses an electronic passport that is recognized by other countries, and according to INTERPOL, Iran’s cooperation with lost or stolen passports is “quite strong,” and that it is “able to get information from Iran” on criminals. North Korea and Chad don’t appear to meet any of the risk criteria (except for complying with the rules of the Visa Waiver Program, which at least according to the State Department only applies to VWP countries).

In the table below, I mark *failed* criteria with Ns and those that the countries meet with Ys. Each country has two columns, the left (P) for what’s in the proclamation itself, and the right (R) for what I was able to identify independently or where I have no reason to doubt the proclamation (see the

Appendix for a full explanation). Question marks signify that either the proclamation is unclear or, in the case of the (R) column, the answer is unknown or uncertain. The blanks indicate that the proclamation is silent on the issue. See the annex for an explanation of each factor. “Total fails” in the last column refer to all countries in the world failing that criterion.

Other than not complying with the requirements of the Visa Waiver Program—which appears to only apply to VWP countries—there is no single factor that all eight countries fail. That’s true even if you focus only the statements that the proclamation itself makes or add in the higher-than-baseline requirements. Even if we combine all the terrorism requirements into one criterion, not all the countries on the list would fit that requirement. Introducing the mitigating factors only muddies the picture even further, as there is also no consistent application of those.

Table: Factors for Each Country Mentioned in the Travel Ban Proclamation

DHS Baseline	Chad		Iran		Libya		Syria		Yemen		Somalia		North Korea		Venezuela		Iraq		Total Fails
Proclamation-Research	P	R	P	R	P	R	P	R	P	R	P	R	P	R	P	R	P	R	R
1. E-Passports	N	N		Y	Y	Y	Y	N	N	N	Y	Y	N	N	Y	Y		N	81
2. Stolen Passports		?		Y	?	Y	?	Y	?	?	Y	Y	N	N	Y	Y		?	16
3. Other Info	Y	Y		Y	Y	Y	?	?		Y	Y	Y	N	N	Y	Y		Y	?
4. Terrorist info	N	Y	N	?	Y	Y	N	?	N	Y	Y	Y	N	N	N	?		Y	?
5. Passport Samples		?		?		?		?		?	Y	Y	N	N		?		?	?
6. Airline info		Y		Y		Y		Y		Y	Y	Y	N	?		Y		Y	191
7. Visa Waiver	?	?	?	?	?	?	?	?	?	?	?	?	?	?	?	?		?	?
8. Refuses deportees		Y	N	N	Y	Y		Y		Y		Y	?	?		Y		Y	12
9. No haven		Y		Y	N	N	N	N		N	N	N		Y	Y	Y		N	15
Subtotal Ns	2	1	2	1	1	1	3		2	2	1	1	6	5	1	0	0	2	
Trump Criteria	Chad		Iran		Libya		Syria		Yemen		Somalia		North Korea		Venezuela		Iraq		Total Fails
Proclamation & Research	P	R	P	R	P	R	P	R	P	R	P	R	P	R	P	R	P	R	R
1. Recognize E-Passport		N		Y	N	N	N	N	N	N	N	N	N	N		N		N	135
2. Not unable to collect info	N	N		Y	N	N	N	N	N	N	N	N		Y		N		N	>15
3. No state sponsor		Y	N	N	Y	Y	N	N	Y	Y		Y		Y		Y		Y	3
4. Terrorists not nearby	N	N	?	N	N	N	N	N	N	N	N	N		Y		N		N	44
5. Terrorist threats	?	?	N	?	?	?	N	?	?	?	N	N		Y		?		N	?
6. Fully aid deportees	?	Y	N	N	N	?	?	?		Y		?		Y	N	?		?	>14
Subtotal Ns	2	3	3	3	4	3	5		3	3	4	4	1	1	1	3	0	4	
Total Ns	4	4	5	4	5	4	8		5	5	5	5	7	6	2	3	0	6	
Mitigate	Chad		Iran		Libya		Syria		Yemen		Somalia		North Korea		Venezuela		Iraq		Total Met
Cooperative	Y	Y		N	Y	Y		N	Y	Y	Y	Y		N		N	Y	Y	?
U.S. Military		Y		N		Y		Y		Y		Y		N		Y	Y	Y	112
Diplomats		Y		N		N		N		N		N		N		Y	Y	Y	183
Combats ISIS		Y		Y		Y		Y	Y	Y	Y	Y		N		N	Y	Y	72
Add. info sources		Y		Y		Y		Y		Y		Y		Y	Y	Y		Y	191
Total Ys	1	5	0	2	1	4	0		2	4	2	4	0	1	1	3	4	5	

Sources: International Civil Aviation Organization; White House; U.S. Department of State; Immigration and Customs Enforcement; Department of Defense; U.S. Department of State; Customs and Border Protection; See Appendix

Conclusion

For countries on the list, and for any country wishing to remain off the list, it is vitally important that they understand which factors led to their inclusion or exclusion. If the United States is acting in good faith—seeking to change behavior as opposed to looking for an excuse to ban people—its criteria should be clearly explained and understood. The Iran nuclear deal, for example, has very precise requirements for Iran to avoid sanctions, down to the exact percentage of purity for its enriched uranium. This is very far from the case here.

No consistent combination of factors or mitigating factors triggers the ban. Not every country needs to meet the baseline requirements, and while certain mitigating factors can protect a country from the ban, meeting some or all of them doesn't always result in exclusion. The travel ban simply lacks an objective standard of application.

APPENDIX: TRAVEL BAN CRITERIA

Nine Primary Baseline Requirements

Category 1: “Identity management information”/“Integrity of documents”

1) “Use of electronic passports embedded with data”: The International Civil Aviation Organization is a United Nations agency responsible for tracking travel documents. According to the ICAO, 86 countries fail to issue an electronic passport embedded with data. Of the travel ban countries, Venezuela, Iran, Libya, and Somalia do issue electronic passports. This criterion lacks even a vague quantification aspect, so we cannot know what share of passports must possess these capabilities. For example, certain nationals of the United Kingdom still rely on non-electronic passports, despite the country now issuing such passports.

2) “Reports lost and stolen passports to the appropriate entities”: This criterion lacks a quantification aspect—what share of lost or stolen passports must be reported and how regularly must the country report? According to INTERPOL on whose database the U.S. government relies on for this information, 174 countries share this information, meaning that 16 INTERPOL member states and at least one other do not. (The U.S. admits travelers from 191

countries.) Of the 174 sharing countries, as of mid-2014, only a small minority were regularly contributing to the database, and the most populous countries in the world—China, India, and Indonesia, contribute few. In 2014, at least India did not participate at all.

In December 2015, DHS reported that all 38 Visa Waiver Program countries shared lost or stolen passport information. INTERPOL itself doesn't report on individual member participation in a systematic way, but it did release data in 2011 to researchers, showing that 101 countries, including Syria, were using INTERPOL's passport screening system in some fashion. In 2014, INTERPOL described Iran's reporting compliance as "very strong." Somalia is said to have met all information sharing requirements, and Venezuela is described as lacking only one of the information sharing requirements. Syria also appears to report lost or stolen passports. Libya also uses INTERPOL's Stolen and Lost Travel Document database.

3) "Makes available upon request identity-related information not included in its passports": There doesn't appear to be any systematic reporting on this requirement, and again, there's not even vague quantification aspect to this criterion. However, the order indicates that Somalia met all information sharing requirements and that Venezuela only failed one information sharing requirement. I assumed that the counterterrorism partner countries—Yemen, Libya, Chad—also share this information as Somalia does. Chad and Yemen utilize the U.S. Personal Identification Secure Comparison and Evaluation System (PISCES), which is a border control screening system that the U.S. created to aid information sharing between itself and countries with porous borders. At least 32 countries use PISCES.

Category 2: "National security and public-safety information"

4) "Makes available, directly or indirectly, known or suspected terrorist and criminal-history information upon request": This requirement focuses on the *willingness* of a government to *share* information with the United States unlike secondary baseline criterion #2 below, which requires an ability to collect. We know this because Somalia is said to have met this requirement despite being said to be *unable* to share as much information as the U.S. would

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like. As far as criminal history information goes, all 192 INTERPOL member countries, including all travel ban countries except North Korea, share information regarding felons via “red notices” to INTERPOL that all members, including the United States, receive. This has been the case for all countries except Somalia since 2007. All 38 Visa Waiver Program countries have entered into agreements to share information directly with the U.S. Terrorist Screening Center, though more than a third of them were not doing so as of December 2015, according to DHS. DHS officials told the GAO, however, that some countries report this information through other means.

Other countries also share this information, but there does not appear to be systematic reporting on it. According to section 1(f) the proclamation, 11 countries agreed to share this information in response to U.S. requests. Libya does contribute to INTERPOL’s databases for criminals, terrorists, and war criminals. Somalia does as well. The proclamation asserts that six travel ban countries—Chad, Iran, Syria, Yemen, North Korea, and Venezuela—fail this requirement.

We know, however, that Yemen and Chad are misclassified because, as counterterrorism partners, they do share when they can, and both countries utilize the U.S. Personal Identification Secure Comparison and Evaluation System (PISCES), which the U.S. has funded and introduced specifically for watch-listing purposes. At least 32 countries use PISCES. According to INTERPOL, only 52 countries last year reported individuals to its foreign terrorist fighter database. The State Department’s embassy cable about the proclamation asks specifically about participation in this.

It’s also unclear whether Iran, Syria, and Venezuela *never* share this information. The U.S.-backed Iraqi government is coordinating with both Iran and Syria against ISIS, and Iran is helpful in sharing information about its passport abusers. But again, there’s not even vague quantification aspect to this criterion: how much information or how often.

5) “Provides passport and national-identity document exemplars”: The Department of Homeland Security’s Immigration and Customs Enforcement Forensic Laboratory accepts and analyzes foreign passport samples to identify

fraudulent documents and alert immigration inspectors to them. Other than Visa Waiver Program countries, all of which do so, there does not appear to be systematic reporting on this criterion. According to section 1(f) the proclamation, 29 countries provided samples in response to the U.S. request. The proclamation itself does not describe any travel ban country as failing this requirement, except for perhaps North Korea.

6) “Impedes the United States Government’s receipt of information about passengers and crew traveling to the United States”: DHS vets the biographic information (19 data fields) of travelers to the United States using its Advance Passenger Information and Passenger Name Records system. Airlines, not governments, must provide this information to fly to the United States. Foreign governments may “impede” the delivery of this information through privacy laws or other measures that bar its transfer. The European Union entered into protracting negotiations with the United States on this point. However, according to DHS, by mid-2013, compliance was “near 100 percent.”

Category 3: “National security and public-safety risk assessment”/“National security risk indicators”

7) “Is a known or potential terrorist safe haven”: The idea of a “potential” terrorist safe haven is not a phrase that appears in any of the State Department’s Country Reports on Terrorism from which the idea of a “safe haven” originates. I considered any country a “potential safe haven” if the State Department at any time in the last decade has considered it a safe haven. In 2016, there were 13 “safe havens”: 1) Somalia, 2) Egypt, 3) Iraq, 4) Indonesia, 5) Malaysia, 6) the Philippines, 7) Lebanon, 8) Libya, 9) Yemen, 10) Afghanistan, 11) Pakistan, 12) Colombia, and 13) Venezuela. Additionally, Mali was a safe haven in 2015. No other country was removed from the list in the last five years. The State Sponsors of Terrorism are automatically not included on this list, and it appears that the reasons for Iraq’s inclusion—the existence of the Islamic State—would apply to Syria. The other two state sponsors, Sudan and Iran, do not meet the definition of a terrorist safe haven.

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8) **“Is a participant in the Visa Waiver Program that meets all of its requirements”**: The United States must invite a country to participate in the Visa Waiver Program, which allows for visa-free travel to the United States. Only 38 countries out of 191 fulfill this requirement. As of December 2015, 13 or 14 countries didn’t fulfill the requirements of the program. The State Department cable implies that this requirement actually only applies to Visa Waiver Program countries, which would make more sense, but the proclamation itself doesn’t say that and, given how much else has changed, we can’t know for sure that it means that.

9) **“Regularly fails to receive its nationals subject to final orders of removal from the United States”**: According to Immigration and Customs Enforcement (ICE), 12 countries failed this requirement as of May 2017: Cuba, Burma, Cambodia, Eritrea, Guinea, Iran, Laos, Morocco, South Sudan, Vietnam, China, and Hong Kong. In September 2017, four countries—Eritrea, Cambodia, Guinea, and Sierra Leone—were sanctioned for it. In May, Sierra Leone was not on the list but was sanctioned in September. Iran is on the May 2017 list. It is the only travel ban country listed as uncooperative by ICE.

Six Higher-Than-Baseline Requirements

Category 1: Identity systems

1) **“Issues an electronic passport the United States, and many other countries, recognize”**: The proclamation states that Somalia fails this higher-than-baseline requirement. It is unclear how many countries would also fail this requirement. However, according to the ICAO, only 58 countries participated the ICAO’s Public Key Directory as of 2017, which “ensures that border authorities around the world can validate ePassports.” The State Department’s cable asks about the country’s use of this directory. Of the travel ban countries, only Iran is a participant.

Category 2: Security sharing

2) **“Compromised ability... to share information about its nationals who pose criminal or terrorist risks”**: The proclamation tells us that Somalia and Libya fail this higher-than-baseline requirement. As distinct from criterion #4

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above, it focuses on the inability to collect and then share information, not the willingness to share it. It is too vague to assess in any particularly rigorous way. Of the travel ban countries, Libya, Chad, and Yemen are counterterrorism partners. This implies that although the proclamation describes Chad and Yemen as failing criterion #4 above, they actually fail this higher-than-baseline requirement.

Category 3: Other risks

3) “Designated as a state sponsor of terrorism”: Iran and Syria are said to have failed this unlisted requirement. Sudan is also a State Sponsor of Terrorism, but after being on prior versions, this new version of the travel ban removed it.

4) “Terrorist groups are active within [the country] or in the surrounding region”: Chad is said to have failed this higher-than-baseline requirement. This requirement is much broader than baseline criterion #7, regarding terrorist safe havens. This criterion appears to have been added by the president or White House officials because it does not appear in the State Department cable instructing U.S. embassies to request certain information from foreign governments related to the proclamation. It brings in activities of terrorists outside of the borders of the country. The terrorist groups listed as threats from Chad are neither based in Chad nor composed of Chadians.

According to the U.S. Department of State, terrorist groups in 2016 based their operations in 37 countries. Here they are in order of most groups to least groups: Pakistan, Afghanistan, Palestine, Lebanon, **Syria, Libya**, India, Iraq, Israel, Mali, Niger, Algeria, Burkina Faso, Colombia, Egypt, Indonesia, **Iran**, Nigeria, Philippines, Tunisia, Turkey, Bangladesh, Cameroon, Cote D’Ivoire, France, Greece, Ireland, Japan, Nepal, Peru, Russia, **Somalia**, Spain, Sri Lanka, United Kingdom, **Venezuela**, and **Yemen**. The first 22 countries have at least two terrorist organizations operating in their country. In addition, it mentions groups that sometimes threaten, cross into, operate on the borders of, or have in the past made attacks, or host individual leaders in Malaysia, Ivory Coast, Mauritania, Brazil, Ecuador, Qatar, and “European countries.” Of the travel ban countries, only North Korea is not on this list.

5) **“Not fully cooperative with respect to receiving its nationals subject to final orders of removal from the United States”**: Libya and Venezuela are said to have failed this higher-than-baseline requirement, which is more stringent than baseline criterion number #9 that stipulates that must “regularly” fail to respect removal orders, while this criterion requires “full” or complete compliance. The government does not report how many countries are not fully cooperative with deportees, but back in May 2016, DHS listed 23 countries as uncooperative—perhaps some of the 11 that dropped from the list by May 2017 are now not “fully” cooperative. It’s noteworthy that Sierra Leon was on the list in May 2016, off in May 2017, and then separately sanctioned in September 2017. The same was true for Libya, but Venezuela has not appeared on any of the lists. In any case, this more stringent category would sweep in several more non-travel ban countries.

6) **“Lack of territorial control”**: This unlisted criterion justifies the inclusion of Somalia. It is duplicative, however, because Somalia is a terrorist safe haven and part of the definition of a safe haven is ungoverned or under-governed areas. For this reason, this would also apply to all 12 of the known or potential terrorist safe havens listed in criterion #4. There are, however, several other areas in various countries around the world that are not under the control of the central government. However, for our purposes here, I will assume that any country that is not a potential or known safe haven has territorial control.

BONUS #7) “Fails to satisfy at least one key risk criterion”: The proclamation repeats the phrase that six countries fail “at least one *key risk criterion*” without specifying which one. “Risk criterion” relates only to the category #3 national security risk factors. It does not use this phrase for Somalia and North Korea, but it appears that they would each fail two of these criteria. It becomes even more difficult to figure out which criteria the other governments failed given the vague phrase “*at least one*”—meaning that it could be more than one—and the fact that we know that the order is not applying the risk factors as actually detailed in section 1(c).

The proclamation throws in additional uncertainty by saying that the security risks “include” the three listed, implying that there could be more. But the fact that the proclamation lists these three risks implies that it considers them to be

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the “key” risks. It would be very strange, but not out of character for this strange proclamation—to list non-key risks and not key ones. In any case, the State Department cable to embassies requesting information about each country for this proclamation lists slightly different versions of these three as the “three security risk indicators,” so this does appear to be comprehensive list (in the cable, the Visa Waiver Program requirement applies only to the Visa Waiver Program countries).

If it is true that this criterion doesn’t apply to non-Visa Waiver Program countries, then there are only two risk criteria that each country *could* fail. In this case, Chad, Libya, and Venezuela don’t fail any risk criteria, even though the proclamation claims that they do.

Five Mitigating Factors

1) “Commitment to combating the Islamic State of Iraq and Syria”: Section 1(g) of the proclamation explains that this factor mitigates the fact that Iraq failed the baseline, keeping it out of the ban. This phrase would also apply to Somalia and Chad, each of which are members of the U.S.-led Global Coalition to Defeat ISIS, as well as Syria and Iran. Syrian government forces are the primary opposition forces to ISIS in Syria, and according to the Pentagon, Iran is backing almost 100,000 troops in Iraq.

2) “Close cooperative relationship”: This factor also is also said to have mitigated the fact that Iraq failed the baseline. A total of 69 countries have defense agreements with the United States, though some of these include countries like Cuba and Venezuela. There are also 72 coalition partners in the U.S.-led Global Coalition to defeat ISIS. The State Department describes a large number of countries as counterterrorism partners. The United States certainly has “cooperative relationships” with travel ban governments in Chad, Libya, Yemen, and Somalia. The first three the order itself describe as “counterterrorism partners,” and Somalia is a member of the U.S. Global Coalition to Defeat ISIS as is Chad. Mitigating factor #3 further highlights the cooperation between these four governments and the United States. The United States does not have cooperative relationships with the other travel ban governments: North Korea, Iran, Syria, or Venezuela.

3) “Presence of United States forces”: This factor also mitigates the fact that Iraq failed the baseline. According to the Defense Department, the United States has military personnel in 178 countries, including six travel ban countries: Chad, Libya, Somalia, Venezuela, Syria, and Yemen. Only North Korea and Iran have no U.S. troops. The Pentagon has underreported the true numbers of U.S. troops in countries, and there are some 51,490 troops reported as occupying an “unknown” location, so identifying the exact number of troops in any particular country is difficult. But it lists 112 countries with double-digit personnel figures. For the purposes of the table below, I considered only these 112 as having a U.S. “military presence.” It also has military “bases” in 74 countries. These include bases in Libya, Iraq, Chad, Yemen, and Somalia.

- In Chad, the U.S. has held annual military “exercises” in Chad since 2005, has conducted special operations in Chad for several years, and has a drone base there. About 2,000 U.S. special forces and Chadian soldiers conducted counterterrorism raids together in April 2017.
- In Yemen, U.S. troops are on the ground fighting with the Yemeni government against militants there, and in August, they engaged in a joint operation against al Qaeda. U.S. soldiers were seriously wounded there in May, and in January, one died. From 2009 to 2017, the U.S. has carried out 214 drone attacks in Yemen.
- The U.S. has involved itself militarily in Somalia for decades. In Somalia, U.S. forces have carried out 24 counterterrorism raids and 32 drone strikes. In April 2017, the Trump administration sent “dozens” of new soldiers there.
- In Libya, U.S. forces were instrumental in the overthrow of Libyan dictator Muammar Qaddafi in 2011. U.S. forces are still carrying air strikes in the country and also carry out special operations on the ground. President Trump is considering increasing the ground presence.

4) “United States diplomatic presence”: This factor also mitigates the fact that Iraq failed the baseline. The United States also has a diplomatic presence in Chad and in Venezuela. The United States maintains limited or no diplomatic

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presence in Antigua and Barbuda; Dominica; Grenada; St. Kitts and Nevis; St. Lucia; St. Vincent and the Grenadines; Guinea-Bissau; Bhutan; North Korea; Iran; Yemen; Syria; Libya; Netherlands Antilles, Curaçao; and Belarus.

5) “Alternative sources for obtaining information to verify the citizenship and identity”: Once again, there is absolutely no doubt that this factor applies to all eight travel ban countries. As mentioned at the top, no one can receive a visa to travel to the United States without proving their identity and eligibility, so if no one from these countries could do so, there would already be a travel ban. This is why the basic premise of the travel ban is wrong.

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