

## President Trump's Executive Order on Refugees Harms Our Iraqi Allies

Recognizing the importance of protecting Iraqi allies who served alongside the U.S. Military, U.S. agencies, media, and non-governmental organizations, Congress passed the bipartisan Refugee Crisis in Iraq Act of 2008, creating two pathways to resettle these individuals in the United States: the Special Immigrant Visa (SIV) program, and direct access program to the U.S. Refugee Admissions Program (USRAP).

### The Iraqi Special Immigrant Visa Program

- ☑ For Iraqis who were employed by or on behalf of the U.S. government in Iraq for over one year between March 20, 2003 and September 30, 2013 and who experienced threats due to that employment, the SIV program allows for resettlement and legal permanent residence (“green card”) in the United States.
- ☑ While the Iraqi SIV program stopped accepting applications as of September 2014, there are under 700 visas left to be issued. For qualified Iraqis that missed the deadline to apply for an SIV, or who served the U.S. in other capacities, direct access to the U.S. Refugee Admissions Program is the avenue for protection.

### Direct Access to the U.S Refugee Admissions Resettlement Program

- ☑ The Refugee Crisis in Iraq Act directed the Administration to create a direct access program (also known as a priority 2 (P2) category) of the U.S. Refugee Admissions Program (USRAP) to allow qualified U.S.-affiliated Iraqis, who work or worked for the U.S. government, military, mission contractors, and U.S.-based media or non-governmental organizations, to directly apply to the United States for resettlement (not requiring a referral from UNHCR). As of now, nearly 60,000 Iraqis are waiting to be processed for resettlement through this program.
  - Both SIV and USRAP processing involve extensive requirements, interviews, and vetting. These procedures are lengthy and have been regularly reviewed and enhanced.

### How the Executive Orders Affect U.S. Affiliated Iraqis

- ☑ The Trump administration’s executive order signed on March 6<sup>th</sup>, 2017, would effectively:
  - Suspend the entire U.S. Refugee Admissions Program for at least 120 days, halting resettlement of U.S.-affiliated Iraqis. Due to the complex and rigorous vetting process employed at USRAP, halting the screening processes ensures security and medical clearances will expire. This prevents these individuals from completing the screening process and will force many to recomplete previous steps in the vetting process ensuring they will not be eligible for admission for several additional months or years.
  - Cut the total number of refugees who will be admitted into the U.S. in FY17 by more than half from 110,000 to 50,000 drastically reducing the ability to resettle vulnerable U.S.-affiliated Iraqis. As of July 12, 2017, 50,087 refugees had been admitted to the U.S. in FY17, reaching the admissions cap.
  - Iraqi SIV holders are not specifically targeted in this executive order, but Iraqis will be “subjected to thorough review, including, as appropriate, consultation with a designee of the Secretary of Defense” which could prolong their already extensive visa application process.

### The United States Supreme Court Rules on the Executive Order

- ☑ On June 26, 2017, the Supreme Court decided to allow parts of the Order to take effect.

- The Court issued a temporary partial stay of the preliminary injunctions on the Executive Order, which allows parts of the Order to take effect – with certain limitations:
    - While the 120-day ban on refugee admissions and reduction of the refugee admissions cap to 50,000 can go into effect, the Court stated that the Administration cannot bar the entry of individuals with a bona fide relationship with a U.S. person or entity.
  - The Court defined a relationship with a U.S. person to be a “close familial relationship” and with a U.S. entity to be “formal, documented, and formed in the ordinary course”.
- After the Supreme Court decision, the Trump Administration issued legally suspect guidance regarding its implementation of the Court’s decision which:
- Narrows the definition of close familial relations to exclude grandparents, grandchildren, aunts, uncles, nieces, nephews, and cousins.
  - Denies the relationship incoming refugees have with resettlement agencies, faith-based groups, and other communities that have committed to co-sponsor refugees, as well as U.S.-based attorneys or legal assistance organizations.
  - Does not include U.S.-affiliated Iraqis on the list of types of individuals the resettlement service centers overseas can continue to process for resettlement during the 120-day ban.
    - This exclusion was made despite U.S.-affiliated Iraqis meeting the Supreme Court bona fide relationship definition of having a relationship that is formal, documented, and formed in the ordinary course. Their direct and formal working ties with the U.S. made them targets and formed the original basis for their eligibility for refugee admissions.

### **Challenging the Trump Administration's Guidance**

- On July 13, 2017, the U.S. District Court of Hawaii expanded the definition of a bona fide relationship and determined that:
- The Trump Administration's definition of a close familial relationship represented "the antithesis of common sense." The Court determined that the Trump Administration could not bar entry of grandparents, grandchildren, aunts, uncles, and other relatives of people in the U.S.
  - An assurance – or guarantee of resettlement services – from a resettlement agency satisfies the "formal, documented, and formed in the ordinary course" requirement for a relationship with a U.S. entity. This would allow approximately 26,000 refugees in the admissions pipeline who have been cleared for travel to access resettlement in the United States.
    - Under this ruling, U.S.-affiliated Iraqis who have received assurances could continue to access resettlement in the United States.
  - U.S.-affiliated Iraqis who have yet to complete all steps in the refugee admissions process are not categorically exempt from the 120-day ban as they do not have a "current and existing relationship" with a U.S. entity, leaving many of the 60,000 vulnerable Iraqis awaiting processing without protection and in legal limbo.
- Following the U.S. District Court of Hawaii's ruling, the Trump Administration skipped the appellate level and directly appealed the ruling to the Supreme Court. On July 19, the Supreme Court returned the case to the Court of Appeals for the Ninth Circuit and split its decision with respect to the U.S. District Court of Hawaii's ruling. The Supreme Court:

- Upheld the U.S. District Court of Hawaii's interpretation of a close familial relationship, ensuring that the Trump Administration could not bar the entry of those who have grandparents, grandchildren, aunts, uncles, or other relatives in the United States.
- Paused the admission of refugees who have assurances from a resettlement agency, but who do not have family members in the United States. Under this order, many of the 26,000 refugees in the pipeline will not be able to access the resettlement program until the Court of Appeals for the Ninth Circuit issues their ruling, leaving them in danger abroad.
  - When the case is taken to the appellate level, advocates will assert that refugees who have assurances from a resettlement agency do satisfy the Supreme Court's definition of a bona fide relationship with a U.S. entity. They will also argue that U.S.-affiliated Iraqis should be categorically exempt from the 120-day ban as they demonstrate a formal and documented bona fide relationship with U.S. entities through their service.

**Where Things Stand Now**

- Only refugees – including U.S.-affiliated Iraqis – with U.S. family ties can be resettled to the U.S. until the Court of Appeals for the Ninth Circuit issues a decision in the coming weeks.



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**FACT SHEET: JULY 2017**