

**STATEMENT OF FORMER ASSISTANT UNITED STATES ATTORNEYS
IN OPPOSITION TO ENFORCEMENT OF THE EXECUTIVE ORDER
TITLED “PROTECTING THE NATION FROM FOREIGN
TERRORIST ENTRY INTO THE UNITED STATES”**

We are former Assistant United States Attorneys, many of whom held supervisory positions in various United States Attorneys' Offices. Collectively, our Department of Justice tenure spans more than 40 years, from the 1970s to the recent past. Representing the United States of America was a privilege and an honor. In that job our highest duty as government lawyers was not to win, but to seek justice. It was to make our case based on the law and the evidence, fairly, without favor or prejudice. It was to speak with candor to the courts that questioned the positions we took. And always, it was to follow the law and the fundamental tenets upon which our nation was founded, embodied in our Constitution.

Now the Justice Department is called upon to defend an Executive Order signed by President Trump on January 27, “Protecting the Nation from Foreign Terrorist Entry into the United States.” Acting Attorney General Sally Yates, a career government lawyer, declined to enforce it because she was not convinced that it was lawful—and for that was summarily fired yesterday by the President. Struck by one stunning headline after another, we stopped to think: if we were called upon to defend the Executive Order, could we do it within the guidelines we learned and lived by as lawyers for the United States? We could not.

We could not candidly tell a court, consistent with these principles, that the Executive Order is not, in fact, a thinly veiled attempt to exclude Muslims from certain countries based on their religion. We could not candidly tell a court that the United States has the right to turn away refugees fleeing grave danger, even though they have already been fully vetted and approved for admission. We could not candidly tell a court, consistent with these principles, that the United States has the right to bar admission to people who are otherwise lawfully permitted to enter the

United States, based solely on the fact that others of their religion are perceived to be potential security threats. We could not candidly tell a court that the United States has the right to detain or forcibly return people who have lawfully traveled here, based solely on their religion and country of origin. If asked whether the language of the Executive Order would permit the President to give preference to Christians over Muslims for admission to the United States, a position the President has publicly expressed, we would have to say, yes, the language would allow that. If asked whether such a religious preference comports with our Constitution, we would have to say we do not believe so.

In short, the Executive Order is inimical to the values of the Justice Department and the United States, most significantly, that individuals may not be treated more harshly under the law solely on account of their religion. In our view that is exactly what the Executive Order does, and is intended to do. It would be our job, if we were representing the United States today, to say, no, this Executive Order is wrong and should not be defended. Acting Attorney General Yates was right to refuse to do so. If her successor wishes to follow in the finest traditions of the Justice Department, he will reverse course and do the same.

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