

Congress of the United States
Washington, DC 20515

July 8, 2022

Joseph R. Biden Jr.
President of the United States

The White House
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

RECEIVED
By ESEC at 5:06 pm, Jul 08, 2022

Dear President Biden,

We are writing to you out of grave concern with an order jointly issued on June 23rd by the Department of State and Department of Homeland Security: Exercise of Authority Under Section 212(d)(3)(B)(i) of the Immigration and Nationality Act.¹

This order creates new carve out categories that would exempt those who have provided “insignificant material support” to terrorists or “limited material support under circumstances involving certain routine commercial transactions” or “social transactions” from the automatic immigration ban under Foreign Terrorist Organization designation.

In practice, these loose and overly broad definitions will open the floodgates for supporters of terrorism to enter the United States. Such a general waiver, if implemented, would create additional difficulty in immigration vetting process, have catastrophic consequences on border security and put American families at increased risk from terrorism.

This order was also released just weeks before negotiations with Iran over restoring the nuclear deal recommenced. Iran has yet to officially stop demanding its Islamic Revolutionary Guards Corps (IRGC) be delisted as a Foreign Terrorist Organization (FTO), though your administration has said that the IRGC will remain as such.

Your administration may be trying to entice Iran back to the nuclear deal by using broad executive authorities to weaken the penalties connected to the FTO designation without requiring the IRGC and other Iran supported terrorist organizations to verifiably cease their terrorist activities.

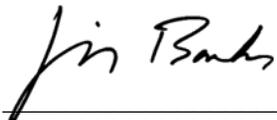
¹ <https://www.federalregister.gov/documents/2022/06/23/2022-13472/exercise-of-authority-under-section-212d3bi-of-the-immigration-and-nationality-act>

Exercising broad executive authorities to weaken the legal force of FTO designations is bound to increase risks to US national security. We underscore that all FTO restrictions and sanctions must apply to a designated Foreign Terrorist Organizations in full effect until that organization ceases to exist or completely and verifiably abandons terrorism. The removal of penalties and sanctions connected to any FTO, or its delisting, must be a behavior based, case by case decision made according to law and with congressional oversight.

In connection with the joint release of the order in question, I would like to request that you kindly respond to the following questions by July 22nd:

- (1) Why do the Departments of Homeland Security and the Department of State find it is in the national interest to allow any supporters of terrorism into the United States?
- (2) Does this action undermine incentives not to affiliate or provide services to designated FTOs and their members?
- (3) How many individuals have already qualified for relief under this determination? How many does your administration estimate will qualify each year? How many are from Afghanistan, how many are from Iran, and how many are from other countries?
- (4) What groups are intended beneficiary of this order? If, as the State Department spokesperson commented, this order is intended to benefit Afghan Special Immigration Visa applicants and holders, why is this group not explicitly mentioned?
- (5) Does your administration intend to issue any immigration related waivers for IRGC and its affiliates? If, as State Department Spokesperson commented, this order is not intended to benefit the IRGC and its affiliates, why are IRGC and its affiliates not explicitly excluded from this order?
- (6) Has the Department of Justice issued, or does it intend to issue any guidance on criminal prosecution related to persons providing support to IRGC (or entities linked to IRGC e.g., Hezbollah)?
- (7) Does your administration intend to issue any waivers for economic restrictions and sanctions on IRGC and its affiliates as part of a political agreement with Iran to restore the nuclear deal without IRGC having to first abandon terrorism completely and verifiably?
- (8) Has your administration taken any action to obtain relief for victims of IRGC terrorism from persons and entities linked to IRGC that may benefit from lessened FTO penalties as a result of your administration's exercise of executive power to issue broad waivers?

Sincerely,



Jim Banks
Member of Congress



W. Gregory Steube
Member of Congress



Claudia Tenney
Member of Congress



Robert Wittman
Member of Congress

CC:

U.S. Secretary of State Anthony Blinken

U.S. Secretary of Homeland Security Alejandro Mayorkas



September 9, 2022

The Honorable Jim Banks
U.S. House of Representatives
Washington, DC 20515

Dear Representative Banks:

Thank you for your July 8, 2022 letter to the U.S. Department of Homeland Security (DHS). U.S. Citizenship and Immigration Services (USCIS) is principally responsible for implementation of this exercise of authority regarding Section 212(d)(3)(B)(i) of the Immigration and Nationality Act (INA), and Secretary Mayorkas asked that I respond on his behalf.

On June 14, 2022, DHS and the U.S. Department of State (DOS) announced exemptions allowing eligible Afghan nationals to qualify for protection and immigration benefits.¹ Specifically, the new exemptions may apply to certain individuals including Afghan nationals who supported U.S. military interests, individuals employed as civil servants in Afghanistan during certain time periods, and individuals who provided insignificant or certain limited material support to a designated terrorist organization.

Following that announcement, DHS and DOS published a notice of determination in the Federal Register on the exercise of authority under Section 212(d)(3)(B)(i) of the INA.² Grounds of inadmissibility at section 212(a)(3)(B) of the INA bar certain individuals who may pose a national security or public safety risk due to terrorist activity from admission to the United States and from obtaining immigration benefits or other status. DHS and DOS determined in accordance with the authority granted in Section 212(d)(3) of the INA that the relevant grounds of inadmissibility will not apply with respect to certain individuals. The Federal Register notice provides detail on the exercise of authority and which individuals may be exempt from the related ground of inadmissibility. It is important to note that these exemptions are discretionary and enable, but do not require, DHS to exempt a particular application of a ground of inadmissibility for certain individuals when considering the totality of the circumstances for each

¹ DHS and DOS Announce Exemptions Allowing Eligible Afghans to Qualify for Protection and Immigration Benefits, June 14, 2022, <https://www.dhs.gov/news/2022/06/14/dhs-and-dos-announce-exemptions-allowing-eligible-afghans-qualify-protection-and>.

² Exercise of Authority Under Section 212(d)(3)(B)(i) of the Immigration and Nationality Act, June 23, 2022, 87 FR 37523.

The Honorable Jim Banks

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individual case. DHS considers each case on its own merits and makes determinations on a case-by-case basis pursuant to the applicable laws and regulations.³

Thank you again for your letter and interest in this important issue. Please see our responses to your additional questions in the attached enclosure. The cosigners of your letter will receive a separate, identical response. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative Affairs at (240) 721-3801.

Respectfully,

A handwritten signature in black ink, appearing to read "Ur M. Jaddou", with a long horizontal flourish extending to the right.

Ur M. Jaddou
Director

Enclosure

³ For additional information about Terrorism-Related Inadmissibility Grounds (TRIG) – Situational Exemptions, please access the USCIS webpage: <https://www.uscis.gov/laws-and-policy/other-resources/terrorism-related-inadmissibility-grounds-trig/terrorism-related-inadmissibility-grounds-trig-situational-exemptions>.

**The Department of Homeland Security's Response to
Representative Jim Banks July 8, 2022 Letter**

1. Why do the Departments of Homeland Security and the Department of State find it is in the national interest to allow any supporters of terrorism into the United States?

INA section 212(a)(3)(B) contains the terrorism-related inadmissibility grounds (TRIG), including definitions of terrorist activity, engaging in terrorist activity, and terrorist organizations. INA section 212(d)(3)(B)(i) precludes consideration of a TRIG exemption for persons who either are engaging in, or will engage in terrorist activity, and precludes individuals who, inter alia, voluntarily and knowingly engaged in terrorist activity on behalf of a designated terrorist organization. TRIG exemptions are discretionary and whether to grant an exemption is determined on a case-by-case basis in the totality of circumstances.

DHS and DOS published a notice of determination in the Federal Register on the exercise of authority under Section 212(d)(3)(B)(i) of the INA.¹ Grounds of inadmissibility at section 212(a)(3)(B) of the INA bar certain individuals whomay pose a national security or public safety risk because of terrorist activity from admission to the United States and from obtaining immigration benefits or other status. DHS and DOS determined in accordance with the authority granted in Section 212(d)(3) of the INA, that the relevant grounds of inadmissibility will not apply with respect to certain individuals who do not pose a national security or public safety risk. Therefore, any individual who has engaged in terrorist activity or supported such activity, as broadly described in this inquiry, is generally not eligible for a TRIG exemption and is inadmissible to the United States.

2. Does this action undermine incentives not to affiliate or provide services to designated FTOs and their members?

No. The relevant grounds of inadmissibility will apply with respect to individuals who pose a national security or public safety risk.

3. How many individuals have already qualified for relief under this determination? How many does your administration estimate will qualify each year? How many are from Afghanistan, how many are from Iran, and how many are from other countries?

Defer to Department of State (DOS) for a response on this matter.

4. What groups are intended beneficiary of this order? If, as the State Department spokesperson commented, this order is intended to benefit Afghan Special Immigration Visa applicants and holders, why is this group not explicitly mentioned?

¹ Exercise of Authority Under Section 212(d)(3)(B)(i) of the Immigration and Nationality Act, June 23, 2022, 87 FR 37523.

Defer to Department of State (DOS) for a response on this matter.

- 5. Does your administration intend to issue any immigration related waivers for IRGC and its affiliates? If, as State Department Spokesperson commented, this order is not intended to benefit the IRGC and its affiliates, why are IRGC and its affiliates not explicitly excluded from this order?**

Defer to Department of State (DOS) for a response on this matter.

- 6. Has the Department of Justice issued, or does it intend to issue any guidance on criminal prosecution related to persons providing support to IRGC (or entities linked to IRGC e.g., Hezbollah)?**

Defer to the Department of Justice (DOJ) for response on this matter as USCIS does not speak on behalf of DOJ.

- 7. Does your administration intend to issue any waivers for economic restrictions and sanctions on IRGC and its affiliates as part of a political agreement with Iran to restore the nuclear deal without IRGC having to first abandon terrorism completely and verifiably?**

Defer to the Department of Justice (DOJ) for response on this matter as USCIS does not speak on behalf of DOJ.

- 8. Has your administration taken any action to obtain relief for victims of IRGC terrorism from persons and entities linked to IRGC that may benefit from lessened FTO penalties as a result of your administration's exercise of executive power to issue broad waivers?**

Defer to the Department of Justice (DOJ) for response on this matter as USCIS does not speak on behalf of DOJ.