

Matt Adams  
Glenda Aldana Madrid  
NORTHWEST IMMIGRANT RIGHTS PROJECT  
615 Second Ave., Ste. 400  
Seattle, WA 98104  
(206) 957-8611

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

|                                              |   |                             |
|----------------------------------------------|---|-----------------------------|
| John DOE 1, John DOE 2                       | ) |                             |
|                                              | ) |                             |
| Petitioner,                                  | ) |                             |
| v.                                           | ) |                             |
|                                              | ) | Case No.: _____             |
| Donald TRUMP; President of the United States | ) |                             |
| of America; John F. Kelly, Secretary of the  | ) | Agency No. A                |
| Department of Homeland Security;             | ) |                             |
| DEPARTMENT OF HOMELAND SECURITY;             | ) | PETITION FOR WRIT OF HABEAS |
| KEVIN K. MCALEENAN, Acting                   | ) | CORPUS PURSUANT TO          |
| Commissioner of Customs and Border           | ) | 28 U.S.C. § 2241            |
| Protection; CUSTOMS AND BORDER               | ) |                             |
| PROTECTION; and the UNITED STATES OF         | ) |                             |
| AMERICA,                                     | ) |                             |
|                                              | ) |                             |
| Respondents.                                 | ) |                             |
|                                              | ) |                             |
|                                              | ) |                             |
|                                              | ) |                             |

Petitioners are two unknown individuals currently who arrived at the Sea-Tac Airport, they were detained by agents from U.S. Customs and Protection (“CBP”). Upon information and belief, CBP has now denied them entry and scheduled them for a return flight at 5:00 p.m., without providing any opportunity to challenge the pending action, or to seek administrative or

1 judicial review. This action is based solely pursuant to the Executive Order issued by President  
2 Trump, yesterday, on January 27, 2017.

3 The executive order is unlawful as applied to these individuals. Because Respondents are  
4 detaining Petitioners, and seeking to summarily remove them, due solely to the executive order,  
5 their actions violate the U.S. Constitution and the Immigration and Nationality Act.

6 Respondents' actions violate Petitioners' Fifth Amendment procedural and substantive due  
7 process rights, and is ultra vires to the immigration statutes. Further, Respondents' actions  
8 detaining Petitioners, denying them entry, and seeking to summarily remove them without any  
9 opportunity to seek administrative or judicial review, is part of a widespread pattern applied to  
10 other immigrants arriving or returning to this Country after the issuance of the January 27, 2017  
11 executive order. Therefore, on behalf of themselves and others similarly situated who are  
12 detained in the Western District of Washington, Petitioners respectfully request this Court issue a  
13 writ of habeas corpus to remedy their unlawful detention by Respondents, and for declaratory  
14 and injunctive relief to prevent such harms from recurring.

15 In support of this petition and complaint for injunctive relief, Petitioners allege as  
16 follows:  
17

18  
19  
20  
21 **CUSTODY**

- 22 1. Petitioners are currently in the custody of Respondents and the Department of Homeland  
23 Security ("DHS").  
24 2. Petitioner is detained at the SeaTac Airport, in SeaTac Washington, and faces immediate  
25 removal from this country. Petitioners are under the direct control of Respondents and  
26 their agents.  
27  
28

**JURISDICTION**

- 1
- 2 3. This action arises under the Constitution of the United States, the Immigration and
- 3 Nationality Act (“INA”), 8 U.S.C. § 1101 *et seq.*, the Administrative Procedure Act
- 4 (“APA”), 5 U.S.C. § 701 *et seq.*
- 5
- 6 4. This Court has jurisdiction under Article I, section 9, clause 2 of the United States
- 7 Constitution (Suspension Clause); 28 U.S.C. § 2241 (habeas corpus); and 28 U.S.C. §
- 8 1331 (federal question jurisdiction), as Petitioner is presently in custody under color of
- 9 the authority of the United States, and such custody is in violation of the Constitution,
- 10 laws, or treaties of the United States. This Court may grant relief pursuant to 28 U.S.C.
- 11 §§ 2201, 2241, 2243, 5 U.S.C. § 702, 28 U.S.C. § 1651(All Writs Act), and 8 U.S.C. §
- 12 1252(e).
- 13
- 14 5. No petition for habeas corpus has previously been filed in any court to review Petitioner’s
- 15 case.
- 16

17 **VENUE**

- 18 6. Venue properly lies within the Western District of Washington because a substantial part
- 19 of the events or omissions giving rise to this action occurred in this District. 28 U.S.C. §
- 20 1391(b).
- 21

22 **PARTIES**

- 23 7. Petitioner John Doe 1, upon information and belief, is a native and citizen of one
- 24 of the seven countries targeted for immediate action in the January 27, 2017 Executive Order
- 25 who has been detained at the SeaTac airport and scheduled for immediate summary removal on
- 26 January 28, 2017.
- 27
- 28

1           8.       John Doe 2, upon information and belief, is a native and citizen of one of the  
2 seven countries targeted for immediate action in the January 27, 2017 Executive Order who has  
3 been detained at the SeaTac airport and scheduled for immediate summary removal on January  
4 28, 2017.

5           9.       Respondent Donald Trump is the President of the United States, and issued the  
6 Executive Order, dated January 27, 2017, which Respondents rely on for authority to detain  
7 Peitioner.  
8

9           10.      John F. Kelly is the Secretary of the Department of Homeland Security. He is  
10 responsible for the implementation and enforcement of the INA, and oversees CBP. Mr. Kelly  
11 has immediate custody of Petitioner.  
12

13          11.      Respondent the Department of Homeland Security is the agency responsible for  
14 implementing and enforcing the INA. DHS is a Department of the Executive Branch of the  
15 United States Government, and is an agency within the meaning of 5 U.S.C. § 552(f).  
16

17          12.      Respondent Kevin M. McAleenan is the Acting Commissioner of Customs and  
18 Border Protection. He is responsible for the the actions taken by CBP agents in detaining  
19 Petitioner at the SeaTac airport.

20          13.      Respondent Customs and Border Protection is a Department of the Executive  
21 Branch of the United States Government, and an agency within DHS and within the meaning of  
22 5 U.S.C. § 552(f). CBP  
23

24          14.      Respondent the United States of America includes all government agencies and  
25 departments responsible for the implementation of the INA and detention of Petitioner.

26               **President Trump's January 27, 2017 Executive Order**  
27  
28

1           15.     12. On January 20, 2017, Donald Trump was inaugurated as the forty-fifth  
2 President of the United States.

3           16.     One week later, on January 27, President Trump signed an executive order  
4 entitled, “Protecting the Nation from Foreign Terrorist Entry into the United States,” which is  
5 attached hereto as Exhibit A and is hereinafter referred to as the “EO.”  
6

7           17.     Citing the threat of terrorism committed by foreign nationals, the EO directs a  
8 variety of changes to the manner and extent to which non-citizens may seek and obtain  
9 admission to the United States, particularly (although not exclusively) as refugees. Among other  
10 things, the EO imposes a 120-day moratorium on the refugee resettlement program as a whole;  
11 proclaims that “that the entry of nationals of Syria as refugees is detrimental to the interests of  
12 the United States,” and therefore “suspend[s]” indefinitely their entry to the country; similarly  
13 proclaims that “the entry of more than 50,000 refugees in fiscal year 2017 would be detrimental  
14 to the interests” of the country.  
15

16           18.     Most relevant to the instant action is Section 3(c) of the EO, in which President  
17 Trump proclaims “that the immigrant and nonimmigrant entry into the United States of aliens  
18 countries referred to in section 217(a)(12) of the INA, 8 U.S.C. 1187(a)(12), would be  
19 detrimental to the interests of the United States,” and that he is therefore “suspend[ing] entry into  
20 the United States, as immigrants and nonimmigrants, of such persons for 90 days from the date  
21 of this order,” with narrow exceptions not relevant here. There are seven countries that fit the  
22 criteria in 8 U.S.C. § 1187(a)(12): Iraq, Iran, Libya, Somalia, Sudan, Syria, and Yemen.  
23 According to the terms of the EO, therefore, the “entry into the United States” of non-citizens  
24 from those countries is “suspended” from 90 days from the date of the EO.  
25  
26  
27  
28

**CLAIMS FOR RELIEF**

**COUNT ONE**

**FIFTH AMENDMENT – PROCEDURAL DUE PROCESS**

57. Petitioners repeat and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

58. Procedural due process requires that the government be constrained before it acts in a way that deprives individuals of liberty interests protected under the Due Process Clause of the Fifth Amendment.

59. The United States government is obligated by United States and international law to hear the asylum claims of noncitizens presenting themselves at United States borders and ports of entry. The Immigration and Nationality Act provides that “[a]ny alien who is physically present in the United States or who arrives in the United States. . . irrespective of such alien’s apply for asylum in accordance with this section or, where applicable, section 235(b).” 8 U.S.C. § 1158(a)(1); see also id. § 1225(b)(1)(A)(ii). Moreover, Under United States law as well as human rights conventions, the United States may not return (“refoul”) a noncitizen to a country where she may face torture or persecution. See 8 U.S.C. § 1231(b); United Nations Convention Against Torture (“CAT”), implemented in the Foreign Affairs Reform and Restructuring Act of 1998 (“FARRA”), Pub. L. No. 105-277, div. G, Title XXII, § 2242, 112 Stat. 2681, 2681-822 (1998) (codified as Note to 8 U.S.C. § 1231).

60. Consistent with these United States statutory and international law obligations, individuals arriving at United States ports of entry must be afforded an opportunity to apply for

1 asylum or other forms of humanitarian protection and be promptly received and processed by  
2 United States authorities.

3 61. Having presented themselves at a United States port of entry, Petitioners are entitled  
4 to apply for asylum and to be received and processed by United States authorities.

5 62. Respondents' actions in denying Petitioners the opportunity to apply for asylum,  
6 withholding of removal, and relief under the Convention Against Torture, taken pursuant to the  
7 EO, violate the procedural due process rights guaranteed by the Fourteenth  
8 Amendment. status, may the analysis purports only to provide a per centile estimate as to whether  
9 the individual has already reach 18 years of age.  
10

11 **COUNT TWO**

12 **STATUTORY VIOLATION**

13 63. Petitioner re-alleges and incorporates by reference paragraphs 1 through 62 above.

14 64. Petitioners repeat and incorporate by reference each and every allegation  
15 contained in the preceding paragraphs as if fully set forth herein.  
16

17 65. The Immigration and Nationality Act and implementing regulations, including 8  
18 U.S.C. § 1225(b)(1) (expedited removal), 8 C.F.R. §§ 235.3(b)(4), 208.30, and 1003.42; 8 U.S.C.  
19 § 1158 (asylum), and 8 U.S.C. § 1231(b)(3) (withholding of removal), and the United Nations  
20 Convention Against Torture ("CAT"), implemented in the Foreign Affairs Reform and  
21 Restructuring Act of 1998 ("FARRA"), Pub.L. No. 105-277, div. G, Title XXII, § 2242, 112  
22 Stat. 2681, 2681-822 (1998) (codified at 8 U.S.C. § 1231 note), entitle Petitioners to an  
23 opportunity to apply for asylum, withholding of removal, and CAT relief. These provisions also  
24 entitle Petitioners to a grant of withholding of removal and CAT relief upon a showing that they  
25  
26  
27  
28

1 meet the applicable legal standards. Respondents' actions in seeking to remove Petitioners, taken  
2 pursuant to the EO, deprive Petitioners of their statutory and regulatory rights.

3 **COUNT THREE**

4 **FIFTH AMENDMENT—EQUAL PROTECTION**

5 66. Petitioner re-alleges and incorporates by reference paragraphs 1-65 above.

6 67. The Executive Order discriminates against Petitioners on the basis of their  
7 country origin, and without sufficient justification, and therefore violates the equal protection  
8 component of the Due Process Clause of the Fifth Amendment.  
9

10 68. Additionally, the Executive Order was substantially motivated by animus  
11 toward—and has a disparate impact on—Muslims, which also violates the equal protection  
12 component of the Due Process Clause.  
13

14 **COUNT FOUR**

15 **ADMINISTRATIVE PROCEDURE ACT**

16 69. Petitioner re-alleges and incorporates by reference paragraphs 1 through 68  
17 above.  
18

19 70. The INA forbids discrimination in issuance of visas based on a person's race,  
20 nationality, place of birth, or place of residence. 8 U.S.C. § 1152(a)(1)(A).

21 71. Respondents' detention and mistreatment of Petitioners, as set forth above, is not  
22 authorized by the INA.  
23

24 72. Respondents' actions in detaining and mistreating Petitioners as set forth above  
25 were arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;  
26 contrary to constitutional right, power, privilege, or immunity; in excess of statutory jurisdiction,  
27  
28

1 authority, or limitations, or short of statutory right; and without observance of procedure required  
2 by law, in violation of the Administrative Procedure Act, 5 U.S.C. §§ 706(2)(A)-(D).

3  
4  
5  
6 **PRAYER FOR RELIEF**

7 WHEREFORE, Petitioner prays that this Court grant the following relief:

- 8 (1) Assume jurisdiction over this matter;  
9  
10 (2) Grant Petitioners a writ of habeas corpus directing the Respondents to  
11 immediately release Petitioner from DHS custody;  
12 (3) Issue an injunction ordering Respondents to refrain from removing Petitioners;  
13 (4) Enter a judgment declaring that Respondents' detention and efforts to deny entry  
14 to Petitioners is unauthorized by statute and contrary to law;  
15  
16 (5) Award Petitioners reasonable costs and attorney's fees; and  
17 (7) Grant any other and further relief that this court deems just and proper.  
18

19 Dated this 28th day of January, 2016.  
20

21  
22 S/ Matt Adams  
23 Matt Adams  
24 Northwest Immigrant Rights Project  
25 615 Second Ave., Ste 400  
26 Seattle, WA 98104  
27 Tel: (206) 957-8611  
[matt@nwirp.org](mailto:matt@nwirp.org)  
[betsy@nwirp.org](mailto:betsy@nwirp.org)

28 Attorney for Petitioners

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

**RE: B.I.C. v. Johnson, et al.**

I, **Matt Adams**, am an employee of Northwest Immigrant Rights Project. My business address is 615 Second Ave., Ste. 400, Seattle, Washington, 98104. I hereby certify that on **January 28, 2017**, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to:

Office of the United States Attorney  
700 Stewart St., Ste. 5220  
Seattle, WA 98101-3903

I also served a copy of the foregoing by mailing it express U.S. mail, postage pre-paid to:

Office of the United States Attorney  
700 Stewart St., Ste. 5220  
Seattle, WA 98101-3903

Office of the General Counsel  
U.S. Department of Homeland Security  
Washington, DC 20528

Health & Human Services  
701 5<sup>th</sup> Ave., Suite 1600 MS-01  
Seattle, WA 98121

Lowell Clarke, Warden  
Northwest Detention Center  
1420 East J Street  
Tacoma, WA 98421

Executed in Seattle, Washington, on January 28, 2017.

s/Matt Adams  
Matt Adams, Attorney for Petitioner