

**UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK**

HAMEED KHALID DARWEESH, et al.,

on behalf of themselves and others similarly
situated,

Case No. 1:17-cv-00480

Petitioners,

v.

Date: February 7, 2017

DONALD TRUMP, President of the United
States, et al.,

Respondents.

PETITIONERS' NOTICE OF MOTION AND
MOTION TO ENFORCE COURT ORDER

NOTICE IS HEREBY GIVEN that on February 7, 2017, Petitioners will and hereby do move this Honorable Court to enforce its January 28, 2017 order pursuant to Rule 7 of the Federal Rules of Civil Procedure. Petitioners, on behalf of themselves and other similarly situated, move this Court to order Respondents to provide Petitioners' counsel with a list of all individuals detained pursuant to the January 27, 2017 Executive Order, including those previously released or removed. ECF No. 8.2. Petitioners also move this Court to order Respondents to return individuals removed after the motion for class certification was filed in this case.

This motion is based on the accompanying Memorandum of Law, the attached Declarations and Exhibits, and any other evidence that may be presented to the Court before or at the hearing on this motion.

For the reasons stated in the contemporaneously filed Memorandum of Law in Support of the Motion to Enforce Court Order, this Court should grant the motion.

DATED: February 7, 2017
New Haven, Connecticut

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Counsel for Petitioners

CERTIFICATE OF SERVICE

I, Michael Wishnie, hereby certify that on February 7, 2017 the foregoing motion, the accompanying memorandum of law, and the accompanying declarations and exhibits were filed and served through the CM/ECF system. Parties may access the filings through the Court's CM/ECF System.

/s/ Michael Wishnie

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UNITED STATES DISTRICT COURT FOR THE
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**Memorandum of Law in Support of
Motion to Enforce Court Order**

Case No. 1:17-cv-00480 (CBA)

Date: February 7, 2017

**MEMORANDUM OF LAW IN SUPPORT OF PETITIONERS' MOTION TO ENFORCE
COURT ORDER BY COMPELLING (1) DISCLOSURE OF LIST OF INDIVIDUALS
DETAINED; AND (2) RETURN OF INDIVIDUALS REMOVED**

Pursuant to Federal Rule of Civil Procedure 7(b) and Local Rule 7.1, Petitioners Hameed Khalid Darweesh and Haider Sameer Abdulkhaleq Alshawi, on behalf of members of the proposed class, respectfully move this Court to enforce its January 28, 2017 order requiring Respondents to provide Petitioners' counsel with a list of all individuals detained and/or removed pursuant to the January 27, 2017 Executive Order ("EO"). Docket Text Order, Jan. 28, 2017, 10:15 PM (EST). Petitioners also request that the Court order the return of individuals removed on the basis of the EO and its implementing instructions after Petitioners' motion for class certification was filed, at which point this Court's jurisdiction over the putative class had attached.

First, Petitioners request that, pursuant to its January 28 order, the Court order Respondents to produce a list of all putative class members who have been held by Respondents

at any U.S. airport pursuant to the EO. *See id.*; *see also* Decl. of My Khanh Ngo (“Ngo Decl.”), Ex. A (Order, *Aziz v. Trump*, No. 1:17-cv-116 (LMB/TCB) (E.D. Va. Feb. 3, 2017) (Brinkema, J.), ECF No. 38, (requiring the government to provide a “list of all persons who have been denied entry to or removed from the United States since” the EO in litigation similar to this case)). It has now been ten days since this Court issued its order and, despite repeated written requests by Petitioners’ counsel (including after the February 2 status conference), Respondents have yet to produce the list.

Second, as stated in Petitioners’ previous Emergency Motion for Clarification and Enforcement of Order, ECF No. 9, multiple putative class members were removed pursuant to the EO after the filing of the motion for class certification. Petitioners have compiled several declarations documenting removals after the commencement of this action or entry of the Court’s nationwide order on January 28. *See infra* Part II. Many were detained by the government for hours without food, coerced into signing forms they did not understand, and expressly denied the opportunity to consult with counsel. In light of the troubling circumstances of these removals, Petitioners respectfully request that this Court order the return of all individuals who were removed pursuant to the EO since the filing of Petitioners’ motion for class certification at 5:43 AM on January 28, 2017.¹

¹ As ordered by the U.S. District Court in Seattle, *see* Order at 5-6, *Washington v. Trump*, No. 2:17-cv-00141 (W.D. Wash. Feb. 3, 2017), ECF No. 52, the government has offered to assist with the return of individuals that Petitioners identify as having had their visas revoked. *See* Ngo Decl., Ex. I (Letter from Steven A. Platt to Muneer Ahmad (Feb. 6, 2017)); *see also infra* Parts II, II.D. However, the Seattle order may be vacated at any time, and Petitioners have not received a list of all individuals who were returned to their countries of origin, making it impossible to identify the full list of individuals unlawfully removed.

I. Disclosure of List of Names Pursuant to This Court's Order

The government has already been ordered to produce a list of “individuals detained, pursuant to the January 27, 2017 Executive Order, to the petitioner’s counsel.” Docket Text Order, Jan. 28, 2017, 10:15 PM (EST). However, despite repeated written requests for this list, Respondents have yet to provide Petitioners’ counsel with *even one name* of any person held at any U.S. airport or returned to a foreign port. *See* Ngo Decl., Exs. B–I (email and letter correspondence with government counsel). To date, Petitioners still have not received the list in spite of multiple subsequent requests. *See* Ngo Decl. Ex. I (Letter from Steven A. Platt to Muneer Ahmad (Feb. 6, 2017)) (reiterating the government’s position that no individuals are currently detained, and declining to provide the names of all those detained since the motion for class certification was filed).

The government’s attempts to justify its failure to comply with this Court’s order are untenable. The government’s stated position is that persons who have been held at airports, often for hours, are merely being “processed,” and so fall outside the order. *See* Ngo Decl., Ex. E (Email from Steve Platt to My Khanh Ngo, (Jan. 31, 2017)) (“At this time, we are not aware of CBP [or ICE] detaining any individual anywhere in the country under the Executive Order. By ‘detained’, I do not mean individuals who are being processed at a port of entry.”). Similarly, the government contends that Judge Donnelly intended merely a one-time snapshot of persons held now, rather than a cumulative list of those who have been held at airports pursuant to the EO. *Id.* (“ICE can confirm that it is not *currently detaining* any individuals under the Executive Order.” (emphasis added)). Later, before the Court, counsel for the government argued that its disclosure obligation was limited to those held “*solely* on the basis of [the] Executive Order,” Status Conf. Tr. 21:10, Feb. 2, 2017 (emphasis added), adding limitations not present in Judge Donnelly’s

order. Finally, in a letter to Petitioners' counsel dated February 6, 2017, the government represented that it did not consider individuals who "voluntarily" agreed to removal to fall within Judge Donnelly's order. Ngo. Decl., Ex. I.

As explained below, the government's cramped reading of this Court's order is incorrect. Whether Respondents deem the confinement of class members at airports as "processing" or "detention," putative class members in this habeas action were plainly in Respondents' custody, and the Court's order plainly was intended to require the production of a list of class members' names. Nor can the government seriously argue that Judge Donnelly intended to compel the disclosure of putative class members based on a one-time snapshot of those held at a particular instant in time, days after the order issued, rather than as a list of all those who have been and are being held pursuant to the EO.

Finally, this case challenges the holding or return of anyone based on the January 27 EO and its implementing instructions, including a directive issued that same day revoking tens of thousands of visas. *See* Letter of Edward J. Ramotowski, Deputy Asst. Sec'y, Bureau of Consular Affairs, Dep't of State (Jan. 27, 2017), ECF No. 20-1. This revocation, which was subsequently reversed, *see* Letter of Edward J. Ramotowski, Deputy Asst. Sec'y, Bureau of Consular Affairs, Dep't of State (Feb. 3, 2017), ECF No. 50-1, affected many putative class members, who remain stranded abroad. *See infra* Part II. The Court therefore should order the government to provide a list of all those putative class members who have been held by Respondents at any U.S. airport pursuant to the EO, including those returned, whether based on a purported "voluntary" withdrawal of an application for admission, visa revocation pursuant to the Department of State's instruction implementing the EO, or otherwise. Although the government has offered to assist in returning any removed individuals, *see* Ngo Decl., Ex. I, only

by providing such a list can the parties effectuate the purpose of the TRO: to “preserve [the] status quo” before the issuance of the EO. Stay Hr’g Tr. 18:15, Jan. 28, 2017, ECF No. 17.

A. There Is No Relevant Distinction Between Detention and “Processing”

As an initial matter, the government’s position that individuals being “processed at a port of entry” are not being held is untenable. An individual who is referred to secondary inspection, questioned, and held (often for hours) would be considered held or “detained” under any reasonable understanding of that term. Moreover, the U.S. Customs and Border Protection (“CBP”) Inspector’s Field Manual (“IFM”)—an official CBP publication—specifically explains that “[d]uring an inspection at a port-of-entry, detention begins when the applicant is referred into secondary or waits for processing.” Ngo Decl., Ex. J at 17.8 (CBP Inspector’s Field Manual); *see also id.* (explaining that when a person is “referred by an officer for further inspection” and is taken to “a secondary inspection area, POE [‘point-of-entry’] hold room, or any other designated and/or assigned secure area for less than 24 hours,” they are in “short-term detention”).² The declarations attached to this motion demonstrate that many individuals subject to the EO were held in just this way, often for hours. *See, e.g.,* Decl. of Sara Yarjani (“Yarjani Decl.”) ¶ 39. Accordingly, “processing” is simply holding by another name. The Court’s order,

² While CBP may change how it defines “detention” for its own purposes or for consistency in its manuals, CBP is not free to change the definition of detention in the broader context of habeas actions such as this one. In this context, the most natural interpretation of the Court’s order is that it encompasses all individuals who had been subject to the challenged detention. *See* 28 U.S.C. § 2241 (extending writ of habeas corpus to individuals “in custody under or by color of the authority of the United States”). However, CBP has not been transparent regarding even its own terminology. In 2013, CBP began to phase out use of the IFM and phase in use of the Officer’s Reference Tool (“ORT”). Despite a 2013 FOIA request pursuant to 5 U.S.C. § 552 by the American Immigration Lawyers Association, CBP still has refused to release the ORT, making the IFM the most recent public evidence of CBP’s interpretation of the meaning of “detention.” Complaint, *American Immigration Law Association v. Dep’t Homeland Security*, 1:16-cv-02470 (D.D.C. Dec. 19, 2016), ECF No. 1.

issued as an exercise of its habeas authority, concerned all putative class members whom Respondents held or had held pursuant to the EO. As a result, the names of these individuals “processed” under the EO must be disclosed to Petitioners.

B. The Court’s Order Requires Disclosure of All Individuals Who Have Been Detained Under the EO Since the Filing of the Motion for Class Certification

The context of the Court’s order for the list makes clear the broad scope of the relief contemplated. This suit was brought on behalf of all individuals who were stopped at an airport, held there, and threatened with removal from the country. By issuing a stay based on Petitioners’ habeas petition, Judge Donnelly conveyed the Court’s concern about maintaining the status quo for all individuals held in government custody pursuant to the EO. The Court’s order was not limited to a snapshot of individuals detained at one point in time. At the hearing held on January 28, 2017 preceding the Court’s order, Respondents’ counsel stated it would be “more difficult than it sounds” to provide a list of who was being detained, because “[p]eople are coming in all the time.” Stay Hr’g Tr. 17:14–15. The Court, aware that the list of individuals held was likely to fluctuate, nevertheless ordered the government to produce the list. *Id.* at 17:17; Order, ECF No. 8.

Moreover, at the January 28 hearing, Petitioners specifically requested that the Court order production of a list for the purpose of facilitating “communicat[ion] with specific individuals.” Stay Hr’g Tr. 16:21. Counsel for Petitioner pointed out at the hearing that the manner of locating class members at that time was primarily through “happenstance,” *id.* at 17:2–3, and indicated that a reason for the list was to identify class members that counsel would not know of otherwise, *id.* at 16:22–17:3. When Respondents’ counsel resisted, the Court agreed with Petitioners that “the whole point of this hearing is to preserve this status quo[.]” *id.* at 18:14–15, and that it would not be “unduly burdensome to identify the people that we’re talking

about here within the specific class[.]” *id.* at 18:17–19. Counsel for Petitioner further expressed his concern “about the person and probably other people who are about to get on the plane,” *id.* at 19:9–10, and the Court clarified that “[n]obody is to be removed in this class,” *id.* at 19:15–16 (emphasis added). The Court’s order for a list of detained individuals was thus intended to preserve the status of individuals who had rightful permission to enter the United States prior to the EO—a purpose that could only be achieved through disclosure of the names of *all* individuals held by CBP and ICE, including those held for any amount of time or otherwise “in custody” under the EO.

In similar litigation, Judge Brinkema of the Eastern District of Virginia has ordered the government to produce a similar list covering anyone denied entry or removed under the EO, since the EO was issued. *See* Ngo Decl., Ex. A. Similar to this Court’s order, the order issued in *Aziz* was not limited in time, and, as such, the order issued in this case should likewise be interpreted to encompass all individuals held pursuant to the EO.

C. The Order is Not Limited to Requiring Disclosure of Individuals Held Based “Solely” Under the Executive Order

Contrary to the plain text of the Court’s order and this Court’s instructions during the January 28 hearing, Respondents seek to limit the order further by adding qualifications the Court never imposed. *Compare* Docket Text Order, Jan. 28, 2017, 10:15 PM (EST) (directing Respondents “to provide a list of individuals detained, pursuant to the January 27, 2017 Executive Order, to the petitioner’s counsel”), *with* Steven Platt, Status Conf. Tr. 21:11–14 (asserting list would be a “null set” because “neither [CBP] or [ICE] . . . are *detaining* anyone *solely* under this executive order” (emphases added)) *and* Ngo Decl., Ex. I (Feb. 6, 2017, Letter from Steven A. Platt to Muneer I. Ahmad) (asserting that individuals who “voluntarily withdrew

their applications for admission and departed for a foreign destination” were not removed pursuant to the EO, and thus not part of the required list).

First, the government appears to draw a spurious distinction between denying entry “solely” under the EO and, for example, turning an individual away for lack of a valid travel document, such as a visa that had been revoked pursuant to the EO. *See* Letter of Edward J. Ramotowski, Deputy Asst. Sec’y, Bureau of Consular Affairs, Dep’t of State (Jan. 27, 2017), ECF No. 20-1 (noting the provisional visa revocation was undertaken “in implementation of section 3(c) of the Executive Order”). The government’s distinction is hollow, as either procedure derives from the EO. The Court’s order also does not in any way qualify the clause “pursuant to the January 27, 2017 Executive Order.” Docket Text Order, Jan. 28, 2017, 10:15 PM (EST). Rather, as Judge Donnelly noted, the purpose of the TRO is to “preserve [the] status quo.” Stay Hr’g Tr. 18:15. Thus, it is intended to preserve the status of individuals who had rightful permission to enter the United States prior to the EO. As a result, Petitioners respectfully ask that the Court require Respondents to disclose the names of all individuals held for any period of time as a result of this directive and any other implementing instructions pursuant to the EO.

Second, the government claims that some removed individuals departed “voluntarily” by withdrawing their applications for admission and departing the United States, and that disclosure of such individuals is not required. Ngo Decl., Ex. I. But as the declarations included with this motion indicate, several proposed class members were intimidated and coerced into withdrawing their applications under conditions that cannot, under any reasonable interpretation, be construed

as voluntary.³ *See infra* Part II. In some cases, the EO itself was the coercive instrument used by the government to procure the “voluntary” withdrawals of applications for admission. Decl. of Snober ¶ 12; Abushamma Decl. ¶ 8. The government’s effort to evade the Court order by characterizing the removals as “voluntary” highlights the need for disclosing the list of all putative class members who have been held by Respondents at any U.S. airports. Without such a list, Petitioners will be unable to identify all the individuals who were denied entry on the basis of the EO, whether through its direct application or through coercion.

D. The Purpose of the List Requires Broad Disclosure

The original and continuing need for the list is clear. Petitioners’ counsel seeks information solely in the possession of the government in order to identify and communicate with class members, monitor compliance with the Court’s stay order, and seek remedy for noncompliance and other violations of class members’ rights. But the government’s interpretation stymies each of these purposes. A single snapshot of those held at a given moment of Respondents’ choosing provides Petitioners’ counsel no meaningful information and no ability to monitor the government’s compliance; a snapshot of those “detained”—according to the government’s groundless definition—affords even less. Finally, this Court should rule that Respondents must provide Petitioners with a list of all individuals held in order to allow Petitioners to pursue appropriate remedies for class members who were wrongfully detained or returned. *Cf.* Ngo Decl., Ex. E (Email from Steven A. Platt to My Khanh Ngo (Jan. 31, 2017,

³ Shortly before this filing, on February 7, 2017, Petitioners provided Respondents with a list of individuals who were intimidated and coerced into signing withdrawal applications, some of whom have still been unable to secure transport back to the United States. While the Government offered to “discuss the prospect of facilitating [t]ravel back to the United States” for certain class members of whom Petitioners are “aware,” *see* Ngo Decl. Exh. I, the government’s failure to provide the list makes it difficult if not impossible for Petitioners and their counsel to identify all individuals who were unlawfully removed.

9:49 PM EST)) (“If you are aware of any individuals being unlawfully detained, please let us know . . .”). Without the list ordered by the Court, counsel has been able to monitor Respondents’ compliance with the Court’s order only through ad hoc reports from noncitizens, family members, and attorneys around the world who are able to contact Petitioners’ counsel.

Ultimately, the government’s position on the list is unjustifiable. In essence, the government contends it may delay more than a week after the Court’s order without providing any information about individuals detained pursuant to the EO, unilaterally modify the Court’s own words, and then invent arbitrary distinctions in order to announce that the list the Court ordered is a “null set” because no one is *currently* held as the government chooses to understand that term. Whether Respondents have taken this position as a result of the chaos engendered by this EO or for some other reason, the government’s proffered interpretations would deprive the Court’s order of any significance.

II. The Return of Individuals Removed

With this motion, Petitioners submit declarations establishing that Respondents removed eleven individuals⁴ pursuant to the EO, after the Petitioners filed their motion for class certification. *See infra* Part II.A. There are likely many more. At least one of these removals took place after the Court issued a nationwide order staying removal.⁵ Because the government has not identified individuals removed pursuant to the EO, *see supra* Part I, it is plausible that the government has carried out additional removals in violation of this Court’s order. At the

⁴ The eleven individuals include the eight named declarants and their family members.

⁵ Petitioners understand that many putative class members signed forms, often under coercion, agreeing to withdraw their applications for admission, and were then subsequently placed on planes returning them to the country from which they had traveled. Petitioners use the term “removal” to refer to the process by which Respondents implemented the EO to prohibit class members’ entry to the United States, resulting in their forced departures.

moment, the government is offering to assist with the return of some individuals, as required by the temporary restraining order entered by the U.S. District Court in Seattle. The government has filed an emergency appeal of the Seattle order, however, and because that order may be vacated at any time, and because it will soon expire in any event, Petitioners request an order from this Court for the return of putative class members. See also Stay Hr’g Tr. 13:14-15 (Judge Donnelly finding “likelihood of success” of class certification motion). Removals of class members based on the EO are unlawful, including those removals based upon State Department guidance implementing the EO through the revocation of visas. In light of Respondents’ unlawful actions, this Court should exercise its inherent and statutory authority to order the return of all those individuals removed pursuant to the EO since the filing of the motion for class certification at 5:43 AM EST on January 28, 2017.

A. Respondents Removed Numerous Class Members After the Motion for Class Certification Was Filed

Despite being on notice of putative class members’ challenge to removal based on the Executive Order, the government effectuated numerous removals after Petitioners filed their motion for class certification. The removals of Hind Elbashir, Sara Yarjani, and Yahya Aburomman, detailed below, are illustrative of the declarations accompanying this memorandum, and indicate troubling practices the government engaged in after the filing of this lawsuit and class certification motion. While some of these individuals have since returned to the United States at their own cost, and with the help of extraordinary efforts by individual lawyers, others remain abroad.

1. Hind Elbashir

Putative class member Hind Elbashir traveled to Orlando, Florida on Saturday, January 28, 2017 to care for her sister and her sister’s children. Decl. of Hind Elbashir ¶ 2, ¶¶ 4–5. Her

sister was about to give birth and needed assistance to care for her newborn baby and her son with severe autism. *Id.* ¶ 5. Ms. Elbashir received a B-2 visa on January 11, 2017 and planned to stay with her sister for one month to provide this crucial support. *Id.* ¶¶ 5–6, 8. However, when Ms. Elbashir arrived at the airport on January 28 at 10:30 AM EST, she was denied entry based on the EO, which had been issued while she was in transit. *Id.* ¶¶ 9, 11–12, 16. Ms. Elbashir was detained in a secondary processing room by CBP for approximately ten hours before being coerced into leaving the United States on Lufthansa Flight No. 465, which left on or around January 28 at 9:10 PM EST. *Id.* ¶¶ 24–28; *see also id.* Ex. B (List of Historical Flight Departure Times for Lufthansa Flight Number 465). At least ten other individuals from countries with visa bans under the EO were returned on the same flight. *Id.* ¶ 25; *see also* Decl. of Rashid Gibril Ali ¶¶ 4, 10.

2. Sara Yarjani

Putative class member Sara Yarjani, a citizen of Iran and permanent resident of Austria traveling on an F-1 student visa, landed at the Los Angeles International Airport (“LAX”) from Oslo, Norway at 8:35 PM PST on January 27, 2017. Yarjani Decl. ¶¶ 7–8. Ms. Yarjani was then detained by a CBP agent and taken to a back room. *Id.* ¶¶ 9–10. An officer who identified himself as a “case worker” questioned her and informed her that she was not admissible to the United States because her student visa was no longer valid. *Id.* ¶¶ 13–14. The officer presented Ms. Yarjani with two options: 1) comply by signing a form and agreeing to leave voluntarily, or 2) be forcibly removed with a reentry ban of one to five years or longer. *Id.* ¶ 15. Ms. Yarjani felt she had no choice but to comply and sign the form. *Id.* She was prohibited from calling anyone until her interview and paperwork had been completed. *Id.* ¶ 16. She was then sent back to the detention room. *Id.* ¶ 17. Ms. Yarjani was detained for nearly twenty-three hours at LAX before

boarding a flight departing the United States on January 28, 2017 at approximately 7:30 PM PST, after the issuance of this Court's order. *Id.* ¶¶ 37, 39.

3. Yahya Aburomman

CBP officers removed class member Yahya Aburomman after 5:00 PM CST on Monday, January 30, nearly *two full days* after the Court's order enjoining such removals was issued. Decl. of Yahya Aburomman ¶ 24. Mr. Aburomman is a Jordanian citizen holding a Jordanian passport that indicates he was born in Syria, one of the seven countries covered by the EO. *Id.* ¶¶ 1, 5. Jordan, however, is not on the list of seven countries covered by the EO. *See* EO, Sec. 3(c). Mr. Aburomman came to the United States on a B-1/B-2 visa in order to visit U.S.-citizen family members. Aburomman Decl. ¶¶ 2, 4. Upon his arrival at O'Hare Airport on January 29, 2017, CBP officers noticed his passport stated he was born in Syria and as a result held and questioned him for six hours. *Id.* ¶¶ 5, 11. The officers coerced him into signing papers agreeing to departure by threatening him with permanent banishment from the United States. *Id.* ¶ 19. After he signed the papers against his will, he was held in a locked cell in the airport for 20 hours. *Id.* ¶ 22. He was not permitted to speak to his brother, who was waiting for him at arrivals, or his lawyer. *Id.* ¶¶ 23, 25. Mr. Aburomman was subsequently returned to Jordan on January 30 via Lufthansa flight L431 to Frankfurt. *Id.* ¶ 25.

B. This Court Should Order Class Members' Return to the United States

This Court has both inherent authority and statutory authority to order relief to potential class members removed pursuant to the EO and its implementation. 28 U.S.C. § 1651; *United States v. New York Tel. Co.*, 434 U.S. 159, 173 (1977) ("The Court has consistently applied the [All Writs] Act flexibly . . ."); *Ying Fong v. Ashcroft*, 317 F. Supp. 2d 398, 404 (S.D.N.Y. 2004) (noting that courts have both inherent and statutory authority to issue rulings to effectuate

relief). Exercising these powers, courts regularly order the return of deported individuals in appropriate circumstances. *See, e.g., Sutuc v. Attorney General*, No 15-2425 (3d Cir. June 19, 2015); *Ying Fong v. Ashcroft*, 317 F. Supp. 2d 398, 408 (S.D.N.Y. 2004); *Dennis v. INS*, No. CIV.A. 301CV279SRU, 2002 WL 295100 (D. Conn. Feb. 19, 2002). Indeed, at least one other federal court has already done so for an individual removed pursuant to the EO. *See Vayeghan v. Kelly*, No. 17-0702, ECF No. 5 (C.D. Cal. Jan. 29, 2017), Ex. K (“Respondents shall transport Petitioner back to the United States and admit him under the terms of his previously approved visa.”).

Here, an order requiring Respondents to return and admit putative class members removed subsequent to the filing of Petitioners’ motion for class certification at 5:43 AM EST on January 28, 2017, *see* Mot. for Class Cert., ECF No. 4, is appropriate. Putative class members removed by the government were entitled to be heard on their application for a writ of habeas corpus. *See Boumediene v. Bush*, 553 U.S. 723, 779 (2008). The government’s removal of putative habeas class members once it was on notice that they challenge their removal is contrary to principles of habeas jurisdiction, as the court must be in control of the body of the person so that it can be assured of its ability to provide effective relief. For this reason, the Court should order the return of the individuals who, at the time of the filing of the class certification motion, became putative class members challenging their removal.

Additionally, the Court retains jurisdiction over any individuals already removed pursuant to the Executive Order. *Carafas v. LaVallee*, 391 U.S. 234, 238 (1968); *see also United States ex rel. Meadows v. State of New York*, 426 F.2d 1176, 1182 (2d Cir. 1970). Ordering return would also be consistent with this Court’s finding that class members are likely to prevail

on the merits of their claims and that there is “imminent danger” of “substantial and irreparable injury” if removed. Decision and Order, ECF No. 8; *see also* Mot. for Class Cert., ECF No. 4.

C. The Government’s Coercive Tactics Warrant Ordering Return of Putative Class Members Who Withdrew Their Applications for Admission

The attached declarations illustrate that the implementation of the EO was shot through with coercion compounded by the denial of access to counsel and translation services. Removals based on such coercion are unlawful and the Court should order the return of affected members of the proposed class.

A noncitizen’s decision to withdraw an application for admission to the United States must be voluntary, or it is not legitimate. *See* 8 C.F.R. § 235.4. Respondents subjected class members to repeated threats and barred them from accessing counsel so as to coerce them into signing waivers. *See, e.g.*, Snober Decl. ¶ 20 (stating that Mr. Snober and his young children witnessed CBP officials handcuff a man in a detention room while other CBP officials had their hands on their guns); Abushamma Decl. ¶¶ 8–9, 13–15, 20 (stating that CBP agents refused Ms. Abushamma’s repeated requests to speak with her immigration attorney, told her that she would be forcibly removed from the United States and banned from the country for five years unless she signed a waiver form, and did not provide her with any food until after she had signed a waiver form); Aburomman Decl. ¶ 19 (stating that CBP agents told Mr. Aburomman that he would be barred from reentering the United States “for the rest of [his] life” if he did not agree to his removal).

A decision made under threat—like many of the decisions made by the declarants here—is not voluntary. The government’s claim that those who “voluntarily withdrew their applications for admission” under such threats did so neither pursuant to the EO nor involuntarily, *see* Ngo Decl., Ex. I, is mistaken. As courts have explained in the analogous context of voluntary

departure, it is coercive for an immigration official to present a noncitizen with the option of leaving the United States while threatening her with the negative possible consequences of seeking to remain. *See Orantes-Hernandez v. Smith*, 541 F. Supp. 351, 373 (C.D. Cal. 1982) (describing how an “interrogative environment and the omissions in the information provided by INS agents” can constitute coercion). Voluntariness may be negated where there are threats of lengthy detention, removal regardless of efforts made to remain, and other negative immigration consequences. *See Orantes-Hernandez v. Thornburg*, 919 F.2d 549, 562 (9th Cir. 1990). Indeed, even where such threats are “accurate descriptions of what may in fact occur,” it is nonetheless true that “without any notice of rights, such accurate descriptions are improper.” *Smith*, 541 F. Supp. at 373 (internal quotation marks omitted).

In the voluntary departure setting, “any waiver of rights made pursuant to a signature on a voluntary departure form must be effectuated willingly and with full knowledge of the effects of one’s actions.” *Maria S. v. Garza*, 2015 WL 4394745 at *5 (S.D. Tex. 2015). That was not always the case here. Further, noncitizens who do not speak English must be able to understand deportation proceedings to voluntarily waive their rights. *United States v. Ramos*, 623 F.3d 672, 680-81 (9th Cir. 2010). Yet, class members who did not understand the waiver forms were denied access to translators. *See* Alhaffar Decl. ¶¶ 8–9 (stating that CBP agents denied Ms. Alhaffar’s request for a translator); *cf.* Decl. of Manar ¶ 14 (stating that CBP agents refused to explain form waiving rights). Thus, class members signed these forms without full consent or knowledge as to the consequences of so doing.

The results have been devastating for many removed individuals. As the attached declarations demonstrate, class members have been traumatized, were separated from their spouses, and missed critical family events due to their unlawful removal. *See, e.g.,* Elbashir Decl.

¶ 5 (stating at Ms. Elbashir was coming to the United States to assist her sister’s family with the birth of a new child and with care for another child with special needs); Alhaffar Decl. ¶¶ 14-15 (stating that Ms. Alhaffar has been separated from her husband, that she was “emotionally devastated” by her experience, and that she does not know when she will see him again); Snober Decl. ¶¶ 21, 24 (stating Mr. Snober’s family was “very upset[,] . . . depressed,” and that his children have remained “very agitated”).

Because Respondents coerced individuals into removal, denied them access to translation and counsel, and needlessly traumatized them, this Court should order their return. At an absolute minimum, the Court should require the government to return individuals removed after the Court issued its order on the evening of January 28.

CONCLUSION

For the foregoing reasons, Petitioners respectfully request that this Court order Respondents to:

- (1) Immediately produce a list of the names of all individuals who have been detained at any time, including those processed, pursuant to the Executive Order, and provide daily updated lists to counsel about these detainees;
- (2) Immediately produce the names of individuals removed pursuant to the Executive Order since the filing of the motion for class certification, the countries to which they were removed, the flights on which they were removed, and the times at which they were removed, and provide daily updated lists to counsel about these individuals; and
- (3) Return to the United States all individuals who were removed at any time after the filing of Petitioners’ motion for class certification because of the Executive Order.

DATED: February 7, 2017
New Haven, Connecticut

Omar C. Jadwat^{**}
Lee Gelernt (LG-8511)
Cecillia D. Wang (CW-8359)
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Respectfully submitted,

/s/ Michael J. Wishnie
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^{**} Application for admission forthcoming.

^{*} Law students working on behalf of the Legal Services Organization include Tiffany Bailey, Willem Bloom, Adam Bradlow, Catherine Chen, David Chen, Jordan Laris Cohen, Charles Du, Susanna Evarts, Katherine Haas, Amit Jain, My Khanh Ngo, Aaron Korthuis, Andrea Levien, Carolyn Lipp, Zachary Manfredi, Melissa Marichal, Adan Martinez, Joseph Meyers, Natalia Nazarewicz, Megha Ram, Victoria Roeck, Joseph (Yusuf) Saei, Thomas Scott-Railton, Yun Tang, Rachel Wilf, and Elizabeth Willis. Motions for law student appearance forthcoming.

[†] Motion for admission *pro hac vice* forthcoming.

^{††} Appearing *pro hac vice*.

[‡] For identification purposes only. This motion has been prepared by a clinic operated by Yale Law School, but does not purport to present the school's institutional views, if any.

Counsel for Petitioners

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK

HAMEED KHALID DARWEESH, et al.,

on behalf of themselves and others similarly
situated,

Case No. 1:17-cv-00480

Petitioners,

v.

DONALD TRUMP, President of the United
States, et al.,

Date: _____, 2017

Respondents.

**[PROPOSED] ORDER TO ENFORCE COURT ORDER BY
COMPELLING (1) DISCLOSURE OF LIST OF INDIVIDUALS DETAINED;
AND (2) RETURN OF INDIVIDUALS REMOVED**

This matter having been brought before the Court by Plaintiffs Hameed Khalid Darweesh, Haider Sameer Abdulkhaleq Alshawi, on behalf of members of the proposed class, pursuant to Federal Rule of Civil Procedure 7(b)(1) and Local Rule 7.1; and the Court having considered this matter, and for good cause having been shown;

IT IS on this _____ day of _____, 2017

ORDERED that, pursuant to Federal Rule of Civil Procedure 7(b)(1) and Local Rule 7.1, Defendants shall:

- (1) Immediately produce a list of the names of all individuals ever detained, including those processed, in the United States pursuant to the January 27, 2017 Executive Order, and provide daily updated lists to counsel about these detainees;
- (2) Immediately produce the names of individuals removed pursuant to the Executive

Order since the filing of the motion for class certification in this case, the countries to which they were removed, the flights on which they were removed, and the times at which they were removed, and provide daily updated lists to counsel about these individuals; and,

- (3) Return to the United States all individuals who were removed at any time after the filing of that motion because of the Executive Order.

DATED this _____ day of _____, 2017.

Honorable Carol Bagley Amon
United States District Court Judge

**UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK**

HAMEED KHALID DARWEESH and
HAIDER SAMEER ABDULKHALEQ
ALSHAWI,

on behalf of themselves and others similarly
situated,

Case No. 1:17-cv-00480

Petitioners,

v.

Date: February 7, 2017

DONALD TRUMP, President of the United
States; U.S. DEPARTMENT OF
HOMELAND SECURITY (“DHS”); U.S.
CUSTOMS AND BORDER PROTECTION
(“CBP”); JOHN KELLY, Secretary of DHS;
KEVIN K. MCALEENAN, Acting
Commissioner of CBP; JAMES T.
MADDEN, New York Field Director, CBP,

Respondents.

DECLARATION OF MY KHANH NGO

I, My Khanh Ngo, upon my personal knowledge and in accordance with 28 U.S.C. § 1746, hereby declare as follows:

1. I am a law student intern with the Jerome N. Frank Legal Services Organization at Yale Law School. I am over eighteen years of age and I understand the obligations of an oath.
2. All of the exhibits attached hereto are true and accurate copies of the originals.
3. Exhibit A is a true and accurate copy of the Order, *Aziz v. Trump*, No. 1:17-cv-116 (LMB/TCB) (E.D. Va. Feb. 3, 2017), ECF No. 38.
4. Exhibit B is a true and accurate copy of the Email from My Khanh Ngo, Law Student Intern, Jerome N. Frank Legal Services Organization, to Scott Dunn, Assistant U.S. Attorney, E.D.N.Y. (Jan. 30, 2017, 7:20 A.M. EST).

5. Exhibit C is a true and accurate copy of the Email from Steven A. Platt, Trial Attorney, U.S. Dep't of Justice, to My Khanh Ngo (Jan. 30, 2017, 9:33 P.M. EST).
6. Exhibit D is a true and accurate copy of the Email from My Khanh Ngo to Steven A. Platt (Jan. 31, 2017, 9:23 A.M. EST).
7. Exhibit E is a true and accurate copy of the Email from Steven A. Platt to My Khanh Ngo (Jan. 31, 2017, 9:49 P.M. EST).
8. Exhibit F is a true and accurate copy of the Email from My Khanh Ngo to Steven A. Platt (Feb. 1, 2017, 3:51 P.M. EST).
9. Exhibit G is a true and accurate copy of the Letter from Muneer I. Ahmad, Supervising Attorney, Jerome N. Frank Legal Services Organization, to Steven A. Platt (February 2, 2017, 11:47 P.M. EST).
10. Exhibit H is a true and accurate copy of the Letter from Steven A. Platt to Muneer I. Ahmad (February 3, 2017, 3:59 P.M. EST).
11. Exhibit I is a true and accurate copy of the Letter from Steven A. Platt to Muneer I. Ahmad (February 6, 2017, 7:46 P.M. EST).
12. Exhibit J is a true and accurate copy of the of the table of contents and Chapter 17 of the Customs and Border Protection Inspector's Field Manual (Apr. 19, 2007).
13. Exhibit K is a true and accurate copy of the District Court Order, *Vayeghan v. Kelly*, No. 17-0702 (C.D. Cal. Jan. 29, 2017), ECF No. 5.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, based on my personal knowledge.

Dated: February 7, 2017

Respectfully submitted,



My Khanh Ngo, Law Student Intern
Jerome N. Frank Legal Services Org.
Yale Law School
P.O. Box 209090
New Haven, Connecticut 06520
Phone: (203) 432-4800

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

TAREQ AQEL MOHAMMED AZIZ, et al.,

Petitioners,

v.

DONALD TRUMP, President of the
United States, et al.,

Defendants.

1:17-cv-116 (LMB/TCB)

ORDER

For the reasons stated in open court, it is hereby

ORDERED that the Temporary Restraining Order entered by this Court on January 28, 2017, be and is extended through Friday, February 10, 2017; and it is further

ORDERED that the defendants provide the Commonwealth of Virginia with a list of all persons who have been denied entry to or removed from the United States since the Executive Order entitled "Protecting the Nation from Foreign Terrorist Entry into the United States" was signed and who, as of 8:00 a.m. Eastern Standard Time, on Friday, January 27, 2017, had a residence in the Commonwealth of Virginia and had lawful permanent resident status, an immigrant visa (or accompanying family or spousal visa), a valid student visa (or accompanying family or spousal visa), or a valid work visa (or accompanying family or spousal visa) by the close of business on Thursday, February 9, 2017.

The Clerk is directed to forward copies of this Order to counsel of record.

Entered this 3rd day of February, 2017.

Alexandria, Virginia

/s/ LMB
Leonie M. Brinkema
United States District Judge

EXHIBIT B

Wednesday, February 1, 2017 at 10:49:38 PM Eastern Standard Time

Subject: [Wirac] Order regarding List of Detained and/or Removed Class Members

Date: Monday, January 30, 2017 at 7:20:09 AM Eastern Standard Time

From: My Khanh Ngo (sent by wirac-bounces@mailman.yale.edu <wirac-bounces@mailman.yale.edu>)

To: Scott.Dunn@usdoj.gov, steven.a.platt@usdoj.gov

CC: wirac@mailman.yale.edu, Karen Tumlin, Stephen Poellot, Keaney, Lee Gelernt, Becca Heller, Cecillia Wang, Justin Cox, Melissa@ahi.its.yale.edu, Jadwat, Omar@ahi.its.yale.edu

Mr. Dunn and Mr. Platt,

At the motion hearing on the evening of January 28, 2017, Judge Donnelly instructed the Government "to provide a list of individuals detained, pursuant to the January 27, 2017 Executive Order, to the petitioner's counsel." We are contacting you to request that you immediately send us a list, updated daily, of all individuals detained across the country based on the Executive Order, including anyone previously detained and removed.

Many thanks,
My Khanh

==

My Khanh Ngo
Law Student Intern
Jerome N. Frank Legal Services Organization
mk.ngo@ylsclinics.org


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EXHIBIT C

Wednesday, February 1, 2017 at 10:49:59 PM Eastern Standard Time

Subject: Re: [Wirac] Order regarding List of Detained and/or Removed Class Members
Date: Monday, January 30, 2017 at 9:33:31 PM Eastern Standard Time
From: Platt, Steven A. (CIV) (sent by wirac-bounces@mailman.yale.edu <wirac-bounces@mailman.yale.edu>)
To: My Khanh Ngo, Dunn, Scott (USANYE)
CC: wirac@mailman.yale.edu, Karen Tumlin, Stephen Poellot, Melissa Keaney, Lee Gelernt, Becca Heller, Cecillia Wang, Justin Cox, Omar Jadwat

Dear Ms. Ngo,

I wanted to touch base about your request. Unfortunately, I do not have anything to provide you yet, but I will keep you updated.

Best,

Steve

Steven A. Platt

Trial Attorney

U.S. Department of Justice | Civil Division | Office of Immigration Litigation | District Court Section

P.O. Box 868 | Ben Franklin Station | Washington, DC 20044

[REDACTED] | (202) 305-7000 (fax) | steven.a.platt@usdoj.gov

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From: My Khanh Ngo [<mailto:mk.ngo@ylsclinics.org>]

Sent: Monday, January 30, 2017 7:20 AM

To: Dunn, Scott (USANYE) <Scott.Dunn@usdoj.gov>; Platt, Steven A. (CIV) <splatt@CIV.USDOJ.GOV>

Cc: wirac@mailman.yale.edu; Cecillia Wang <cwang@aclu.org>; Lee Gelernt <LGELERNT@aclu.org>; Omar Jadwat

<OJadwat@aclu.org>; Justin Cox <cox@nilc.org>; Becca Heller <Bheller@refugeerights.org>; Stephen Poellot

<spoellot@refugeerights.org>; Melissa Keaney <keaney@nilc.org>; Karen Tumlin <tumlin@nilc.org>

Subject: Order regarding List of Detained and/or Removed Class Members

Mr. Dunn and Mr. Platt,

At the motion hearing on the evening of January 28, 2017, Judge Donnelly instructed the Government "to provide a list of individuals detained, pursuant to the January 27, 2017 Executive Order, to the petitioner's counsel." We are contacting you to request that you immediately send us a list, updated daily, of all individuals detained across the country based on the Executive Order, including anyone previously detained and removed.

Many thanks,

My Khanh

==

My Khanh Ngo

Law Student Intern

Jerome N. Frank Legal Services Organization
mk.ngo@ylsclinics.org<<mailto:mk.ngo@ylsclinics.org>>


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Wirac mailing list

Wirac@mailman.yale.edu

<http://mailman.yale.edu/mailman/listinfo/wirac>

EXHIBIT D

Subject: Re: [Wirac] Order regarding List of Detained and/or Removed Class Members
Date: Tuesday, January 31, 2017 at 9:23:42 AM Eastern Standard Time
From: My Khanh Ngo (sent by wirac-bounces@mailman.yale.edu <wirac-bounces@mailman.yale.edu>)
To: Platt, Steven A. (CIV)
CC: wirac@mailman.yale.edu, Karen Tumlin, Stephen Poellot, Keaney, Lee Gelernt, Melissa@ahi.its.yale.edu, Becca Heller, Dunn, Scott (USANYE), Justin Cox, Cecillia Wang, Jadwat, Omar@ahi.its.yale.edu

Mr. Platt:

Thank you for your message. It has already been two and a half days since the Court ordered Respondents to provide these lists. Please confirm that you will provide us a list by [5 p.m. today](#) of all individuals detained under the Executive Order, including those previously detained and released or removed, and confirm that you will update this list daily. If we don't receive a list by [5 p.m. today](#), we will be seeking intervention from the Court.

My Khanh

On Jan 30, 2017, at 21:36, Platt, Steven A. (CIV) <Steven.A.Platt@usdoj.gov> wrote:

Dear Ms. Ngo,

I wanted to touch base about your request. Unfortunately, I do not have anything to provide you yet, but I will keep you updated.

Best,

Steve

Steven A. Platt

Trial Attorney

U.S. Department of Justice | Civil Division | Office of Immigration Litigation | District Court Section
P.O. Box 868 | Ben Franklin Station | Washington, DC 20044

[REDACTED] | (202) 305-7000 (fax) | steven.a.platt@usdoj.gov

[Description: Description: Description: cid:image001.jpg@01CA8936.0709C300]

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From: My Khanh Ngo [<mailto:mk.ngo@ylsclinics.org>]

Sent: Monday, January 30, 2017 7:20 AM

To: Dunn, Scott (USANYE) <Scott.Dunn@usdoj.gov>; Platt, Steven A. (CIV) <splatt@CIV.USDOJ.GOV>

Cc: wirac@mailman.yale.edu; Cecillia Wang <cwang@aclu.org>; Lee Gelernt <LGELERNT@aclu.org>;

Omar Jadwat <OJadwat@aclu.org>; Justin Cox <cox@nilc.org>; Becca Heller

<Bheller@refugeerights.org>; Stephen Poellot <spoellot@refugeerights.org>; Melissa Keaney

<keaney@nilc.org>; Karen Tumlin <tumlin@nilc.org>

Subject: Order regarding List of Detained and/or Removed Class Members

Mr. Dunn and Mr. Platt,

At the motion hearing on the evening of January 28, 2017, Judge Donnelly instructed the Government "to provide a list of individuals detained, pursuant to the January 27, 2017 Executive Order, to the petitioner's counsel." We are contacting you to request that you immediately send us a list, updated daily, of all individuals detained across the country based on the Executive Order, including anyone previously detained and removed.

Many thanks,
My Khanh

==

My Khanh Ngo
Law Student Intern
Jerome N. Frank Legal Services Organization
mk.ngo@ylsclinics.org<<mailto:mk.ngo@ylsclinics.org>>


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EXHIBIT E

Subject: Re: [Wirac] Order regarding List of Detained and/or Removed Class Members
Date: Tuesday, January 31, 2017 at 9:49:55 PM Eastern Standard Time
From: Platt, Steven A. (CIV) (sent by wirac-bounces@mailman.yale.edu <wirac-bounces@mailman.yale.edu>)
To: My Khanh Ngo
CC: wirac@mailman.yale.edu, Karen Tumlin, Stephen Poellot, Melissa Keaney, Lee Gelernt, Becca Heller, Dunn, Scott (USANYE), Justin Cox, Omar Jadwat, Cecillia Wang

Dear Ms. Ngo,

Judge Donnelly has ordered us to provide a list of persons who are detained under the January 27 Executive Order. There are two agencies relevant to this list: Customs and Border Protection, and Immigration and Customs Enforcement. At this time, we are not aware of CBP detaining any individual anywhere in the country under the Executive Order. By "detained", I do not mean individuals who are being processed at a port of entry.

CBP hopes to confirm this statement within the next day. CBP can confirm at this time, however, that there are no individuals being detained under the Executive Order at JFK Airport in New York.

ICE can confirm that it is not currently detaining any individuals under the Executive Order.

As you know, Judge Donnelly directed the parties to work together concerning this matter. If you are aware of any individuals being unlawfully detained, please let us know and we will find out what's going on.

We are doing our best to give you concrete information and firm assurances. I will provide a status update tomorrow, by 5pm EST at the latest but hopefully earlier.

Best,

Steve

----- Original message -----

From: "Platt, Steven A. (CIV)" <splatt@CIV.USDOJ.GOV>
Date: 1/31/17 5:03 PM (GMT-05:00)
To: My Khanh Ngo <mk.ngo@ylsclinics.org>
Cc: "Dunn, Scott (USANYE)" <Scott.Dunn@usdoj.gov>, wirac@mailman.yale.edu, Cecillia Wang <cwang@aclu.org>, Lee Gelernt <LGELERNT@aclu.org>, Omar Jadwat <OJadwat@aclu.org>, Justin Cox <cox@nilc.org>, Becca Heller <Bheller@refugeerights.org>, Stephen Poellot <spoellot@refugeerights.org>, Melissa Keaney <keaney@nilc.org>, Karen Tumlin <tumlin@nilc.org>
Subject: RE: Order regarding List of Detained and/or Removed Class Members

Dear Ms. Ngo,

We are still working to get confirmation from our client agencies. We hope to have that later tonight for you.

Steve

From: My Khanh Ngo [<mailto:mk.ngo@ylsclinics.org>]
Sent: Tuesday, January 31, 2017 9:24 AM
To: Platt, Steven A. (CIV) <splatt@CIV.USDOJ.GOV>
Cc: Dunn, Scott (USANYE) <Scott.Dunn@usdoj.gov>; wirac@mailman.yale.edu; Cecillia Wang <cwang@aclu.org>; Lee Gelernt <LGELERNT@aclu.org>; Omar Jadwat <OJadwat@aclu.org>; Justin Cox <cox@nilc.org>; Becca Heller

<Bheller@refugeerights.org>; Stephen Poellot <spoellot@refugeerights.org>; Melissa Keaney <keaney@nilc.org>;
Karen Tumlin <tumlin@nilc.org>
Subject: Re: Order regarding List of Detained and/or Removed Class Members

Mr. Platt:

Thank you for your message. It has already been two and a half days since the Court ordered Respondents to provide these lists. Please confirm that you will provide us a list by 5 p.m. today of all individuals detained under the Executive Order, including those previously detained and released or removed, and confirm that you will update this list daily. If we don't receive a list by 5 p.m. today, we will be seeking intervention from the Court.

My Khanh

On Jan 30, 2017, at 21:36, Platt, Steven A. (CIV) <Steven.A.Platt@usdoj.gov<<mailto:Steven.A.Platt@usdoj.gov>>>
wrote:

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I wanted to touch base about your request. Unfortunately, I do not have anything to provide you yet, but I will keep you updated.

Best,

Steve

Steven A. Platt

Trial Attorney

U.S. Department of Justice | Civil Division | Office of Immigration Litigation | District Court Section

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[Description: Description: Description: cid:image001.jpg@01CA8936.0709C300]

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From: My Khanh Ngo [<mailto:mk.ngo@ylsclinics.org>]

Sent: Monday, January 30, 2017 7:20 AM

To: Dunn, Scott (USANYE) <Scott.Dunn@usdoj.gov<<mailto:Scott.Dunn@usdoj.gov>>>; Platt, Steven A. (CIV) <splatt@CIV.USDOJ.GOV<<mailto:splatt@CIV.USDOJ.GOV>>>

Cc: wirac@mailman.yale.edu<<mailto:wirac@mailman.yale.edu>>; Cecillia Wang

<cwang@aclu.org<<mailto:cwang@aclu.org>>>; Lee Gelernt <LGELERNT@aclu.org<<mailto:LGELERNT@aclu.org>>>;

Omar Jadwat <OJadwat@aclu.org<<mailto:OJadwat@aclu.org>>>; Justin Cox <cox@nilc.org<<mailto:cox@nilc.org>>>;

Becca Heller <Bheller@refugeerights.org<<mailto:Bheller@refugeerights.org>>>; Stephen Poellot

<spoellot@refugeerights.org<<mailto:spoellot@refugeerights.org>>>; Melissa Keaney

<keaney@nilc.org<<mailto:keaney@nilc.org>>>; Karen Tumlin <tumlin@nilc.org<<mailto:tumlin@nilc.org>>>

Subject: Order regarding List of Detained and/or Removed Class Members

Mr. Dunn and Mr. Platt,

At the motion hearing on the evening of January 28, 2017, Judge Donnelly instructed the Government "to provide a

list of individuals detained, pursuant to the January 27, 2017 Executive Order, to the petitioner's counsel." We are contacting you to request that you immediately send us a list, updated daily, of all individuals detained across the country based on the Executive Order, including anyone previously detained and removed.

Many thanks,
My Khanh

==

My Khanh Ngo
Law Student Intern
Jerome N. Frank Legal Services Organization
mk.ngo@ylsclinics.org<<mailto:mk.ngo@ylsclinics.org>><<mailto:mk.ngo@ylsclinics.org>>


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Wirac mailing list
Wirac@mailman.yale.edu
<http://mailman.yale.edu/mailman/listinfo/wirac>

EXHIBIT F

MK

From: My Khanh Ngo mk.ngo@ylsclinics.org
Subject: Re: Order regarding List of Detained and/or Removed Class Members
Date: February 1, 2017 at 3:51 PM
To: Platt, Steven A. (CIV) Steven.A.Platt@usdoj.gov
Cc: Dunn, Scott (USANYE) Scott.Dunn@usdoj.gov, wirac@mailman.yale.edu, Cecillia Wang cwang@aclu.org, Lee Gelernt LGELERNT@aclu.org, Omar Jadwat OJadwat@aclu.org, Justin Cox cox@nilc.org, Becca Heller Bheller@refugeerights.org, Stephen Poellot spoellot@refugeerights.org, Melissa Keaney keaney@nilc.org, Karen Tumlin tumlin@nilc.org

Dear Mr. Platt,

Thank you for the current information and the promise to provide further and more concrete information.

However, the government's delay in providing this information makes this response unfortunately inadequate. The Court ordered this information produced to us on Saturday. It is now Wednesday. The government's delay has meant that we have been unable to adequately confirm whether the government has been complying with the stay order, which was the point of the ordered list. Under these circumstances, we understand the Court's order to require a list of everyone who is or was detained under the Executive Order since the stay was entered, including those who were detained and deported.

In light of the long delay in hearing from the government and this non-response, we intend to seek intervention from the Court.

Best,
My Khanh

On Jan 31, 2017, at 9:49 PM, Platt, Steven A. (CIV) <Steven.A.Platt@usdoj.gov> wrote:

Dear Ms. Ngo,

Judge Donnelly has ordered us to provide a list of persons who are detained under the January 27 Executive Order. There are two agencies relevant to this list: Customs and Border Protection, and Immigration and Customs Enforcement. At this time, we are not aware of CBP detaining any individual anywhere in the country under the Executive Order. By "detained", I do not mean individuals who are being processed at a port of entry.

CBP hopes to confirm this statement within the next day. CBP can confirm at this time, however, that there are no individuals being detained under the Executive Order at JFK Airport in New York.

ICE can confirm that it is not currently detaining any individuals under the Executive Order.

As you know, Judge Donnelly directed the parties to work together concerning this matter. If you are aware of any individuals being unlawfully detained, please let us know and we will find out what's going on.

We are doing our best to give you concrete information and firm assurances. I will provide a status update tomorrow, by 5pm EST at the latest but hopefully earlier.

Best,

Steve

----- Original message -----

From: "Platt, Steven A. (CIV)" <splatt@CIV.USDOJ.GOV>
Date: 1/31/17 5:03 PM (GMT-05:00)
To: My Khanh Ngo <mk.ngo@ylsclinics.org>
Cc: "Dunn, Scott (USANYE)" <Scott.Dunn@usdoj.gov>, wirac@mailman.yale.edu, Cecillia Wang <cwang@aclu.org>, Lee Gelernt <LGELERNT@aclu.org>, Omar Jadwat <OJadwat@aclu.org>, Justin Cox <cox@nilc.org>, Becca Heller <Bheller@refugeerights.org>, Stephen Poellot <spoellot@refugeerights.org>, Melissa Keaney <keaney@nilc.org>, Karen Tumlin <tumlin@nilc.org>
Subject: RE: Order regarding List of Detained and/or Removed Class Members

Dear Ms. Ngo,

We are still working to get confirmation from our client agencies. We hope to have that later tonight for you.

Steve

From: My Khanh Ngo [<mailto:mk.ngo@ylsclinics.org>]
Sent: Tuesday, January 31, 2017 9:24 AM
To: Platt, Steven A. (CIV) <splatt@CIV.USDOJ.GOV>
Cc: Dunn, Scott (USANYE) <Scott.Dunn@usdoj.gov>; wirac@mailman.yale.edu; Cecillia Wang <cwang@aclu.org>; Lee Gelernt <LGELERNT@aclu.org>; Omar Jadwat <OJadwat@aclu.org>; Justin Cox <cox@nilc.org>; Becca Heller <Bheller@refugeerights.org>; Stephen Poellot <spoellot@refugeerights.org>; Melissa Keaney <keaney@nilc.org>; Karen Tumlin <tumlin@nilc.org>
Subject: Re: Order regarding List of Detained and/or Removed Class Members

Mr. Platt:

Thank you for your message. It has already been two and a half days since the Court ordered Respondents to provide these lists. Please confirm that you will provide us a list by 5 p.m. today of all individuals detained under the Executive Order, including those previously detained and released or removed, and confirm that you will update this list daily. If we don't receive a list by 5 p.m. today, we will be seeking intervention from the Court.

My Khanh

On Jan 30, 2017, at 21:36, Platt, Steven A. (CIV) <Steven.A.Platt@usdoj.gov<<mailto:Steven.A.Platt@usdoj.gov>>> wrote:

Dear Ms. Ngo,

I wanted to touch base about your request. Unfortunately, I do not have anything to provide you yet, but I will keep you updated.

Best,

Steve

Steven A. Platt
Trial Attorney
U.S. Department of Justice | Civil Division | Office of Immigration Litigation | District Court Section
P.O. Box 868 | Ben Franklin Station | Washington, DC 20044
[REDACTED] | (202) 305-7000 (fax) | steven.a.platt@usdoj.gov<<mailto:steven.a.platt@usdoj.gov>>
[Description: Description: Description: [cid:image001.jpg@01CA8936.0709C300](#)]

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Cc: wirac@mailman.yale.edu<<mailto:wirac@mailman.yale.edu>>; Cecillia Wang <cwang@aclu.org<<mailto:cwang@aclu.org>>>; Lee Gelernt <LGELERNT@aclu.org<<mailto:LGELERNT@aclu.org>>>; Omar Jadwat <OJadwat@aclu.org<<mailto:OJadwat@aclu.org>>>; Justin Cox <cox@nilc.org<<mailto:cox@nilc.org>>>; Becca Heller <Bheller@refugeerights.org<<mailto:Bheller@refugeerights.org>>>; Stephen Poellot <spoellot@refugeerights.org<<mailto:spoellot@refugeerights.org>>>; Melissa Keaney <keaney@nilc.org<<mailto:keaney@nilc.org>>>; Karen Tumlin <tumlin@nilc.org<<mailto:tumlin@nilc.org>>>
Subject: Order regarding List of Detained and/or Removed Class Members

Mr. Dunn and Mr. Platt,

At the motion hearing on the evening of January 28, 2017, Judge Donnelly instructed the Government "to provide a list of individuals detained, pursuant to the January 27, 2017 Executive Order, to the petitioner's counsel." We are

contacting you to request that you immediately send us a list, updated daily, of all individuals detained across the country based on the Executive Order, including anyone previously detained and removed.

Many thanks,
My Khanh

==

My Khanh Ngo
Law Student Intern
Jerome N. Frank Legal Services Organization
mk.ngo@ylsclinics.org<<mailto:mk.ngo@ylsclinics.org>><<mailto:mk.ngo@ylsclinics.org>>


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EXHIBIT G

The Jerome N. Frank Legal Services Organization

YALE LAW SCHOOL

cc

February 2, 2017

Via Email (Steven.A.Platt@usdoj.gov)

Stephen Platt, Esq.

U.S. Department of Justice, Civil Division

Office of Immigration Litigation – District Court

P.O. Box 868, Ben Franklin Station

Washington, DC 20044

Re: *Darweesh et al. v. Trump et al.*, 17-cv-00480 (CBA)

Dear Mr. Platt,

We are writing to follow up on our email correspondence on January 30, January 31, and February 1, in which we have asked the government to provide Plaintiffs' counsel with the list of names ordered by Judge Donnelly on January 28. Following today's status conference, we reiterate this request. Specifically, we request that the government provide us with the names of the following: (1) all individuals who have been held in the government's custody upon arrival at a U.S. port of entry on the basis of the January 27 Executive Order or its implementing instructions (including but not limited to the Department of State visa revocation letter of January 27), regardless of whether they were ultimately released into the United States or not; and (2) all individuals who have been removed from the United States on the basis of the January 27 Executive Order or its implementing instructions (including but not limited to the Department of State visa revocation letter of January 27). Please confirm that you will update these lists on a daily basis.

Because this is the fourth time we are requesting the government's compliance with the court's order, we ask that you provide the requested information by 2 pm on Friday, February 3rd. If we do not receive the information by then, we plan to file an appropriate motion with the court.

Sincerely,



Muneer I. Ahmad, Esq.

Counsel for Plaintiffs

EXHIBIT H



U.S. Department of Justice
Civil Division
Office of Immigration Litigation
District Court Section

*P.O. Box 868, Ben Franklin Station
Washington, D.C. 20044*

Via email

February 3, 2017

Muneer I. Ahmad, Esq.
P.O. Box 208215
New Haven, CT 06250

Re: *Darweesh, et al. v. Trump, et al.*, 17 Civ. 480 (CBA)

Dear Mr. Ahmad,

I am in receipt of your letter dated February 2, 2017. Judge Donnelly's January 28, 2017, order directed us to provide a list of all individuals the Government is currently detaining solely on the basis of the January 27, 2017, Executive Order. We reiterate that the number of individuals on the list is zero. As of yesterday—and as of today to the best of our knowledge—U.S. Customs and Border Protection is not detaining anyone in a U.S. airport on the basis of the Executive Order or any of its implementing instructions.

Although the requests you make in your letter are better suited for discovery, we are evaluating whether it is possible to provide that information now. We are contacting our clients to determine what information is available. We are not able to provide a response by today at 2:00pm as you ask, but we should have a response by Monday, February 6, 2017.

We remain committed to working with you and remaining in compliance with court orders. Your co-counsel have repeatedly referenced "reports" of individuals being unlawfully detained. As I said in my email on Tuesday evening, if you think that is happening, please let us know, including the names of the specific travelers, and we will find out what is going on. Starting that dialogue—not seeking court intervention—will be the most expeditious way for us to resolve any disconnect.

Very truly yours,

Steven A. Platt

Steven A. Platt
Counsel for Respondents

EXHIBIT I



U.S. Department of Justice
Civil Division
Office of Immigration Litigation
District Court Section

*P.O. Box 868, Ben Franklin Station
Washington, D.C. 20044*

Via email

February 6, 2017

Muneer I. Ahmad, Esq.
P.O. Box 209090
New Haven, CT 06250

Re: *Darweesh, et al. v. Trump, et al.*, 17 Civ. 480 (CBA)

Dear Mr. Ahmad,

I write in further response to your letter dated February 2, 2017.

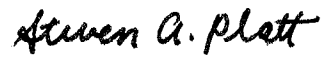
As of 12:00 PM on Monday, February 6, 2017, U.S. Customs and Border Protection ("CBP") records reflect that no individual subject to the Executive Order, who arrived and applied for admission at a United States airport after the signing of the Executive Order, was placed in a removal proceeding by CBP or otherwise removed from the United States.

As of 12:00 PM on Monday, February 6, 2017, CBP records reflect that CBP is not currently detaining any individual subject to the Executive Order who arrived and applied for admission at a United States airport.

These representations do not include individuals who were admitted to the United States, or individuals who were denied entry, voluntarily withdrew their applications for admission and departed for a foreign destination. With that said, for those individuals who were in transit when the Executive Order was issued and upon landing were denied entry, withdrew their applications, and departed for a foreign destination, CBP has been facilitating their travel back to the United States on an individual basis and subject to approval by CBP leadership. If you are aware of any individuals who were in transit when the Executive Order was issued and upon landing were denied entry, withdrew their applications, and departed for a foreign destination, but have received no assistance from CBP in traveling back to the United States, please provide me with

the identity of such individuals and we can discuss the prospect of facilitating their travel back to the United States.

Very truly yours,

A handwritten signature in black ink that reads "Steven A. Platt". The signature is written in a cursive, slightly slanted style.

Steven A. Platt
Counsel for Respondents

EXHIBIT J

Chapter 1. Organization and Content of the U.S. Customs and Border Protection (CBP) Inspector's Field Manual (IFM).

Chapter 2. Mission and Conduct of Inspections Officers.

- 2.1 Mission Statement
- 2.2 Authority
- 2.3 Reserved
- 2.4 The Inspector and the Public
- 2.5 Uniforms, Badges and Identification
- 2.6 The Work Environment
- 2.7 Reporting Unusual Incidents
- 2.8 Hostage Situations
- 2.9 Dealing with Attorneys and Other Representatives
- 2.10 Land Border Integrity Program (Added 6/23/99; IN99-22)

Chapter 3. The Organization of Inspections.

- 3.1 (Chapter removed and reserved 2/10/06; CBP 17-06)
- 3.2 (Chapter removed and reserved 2/10/06; CBP 17-06)
- 3.3 (Chapter removed and reserved 2/10/06; CBP 17-06)
- 3.4 (Chapter removed and reserved 2/10/06; CBP 17-06)

Chapter 4. Conducting Research.

- 4.1 General Considerations
- 4.2 Sources and Organization of Immigration Law
- 4.3 Basic Research Methods
- 4.4 Factual Research and Service Data Bases
- 4.5 (Removed 2/10/06; CBP 17-06)

I. Policies and Procedures: Application for Admission. Each chapter from 11 through 18 describes the policies and procedures peculiar to persons included in the chapter title. Other special topics discussed within each chapter are noted in the chapter descriptions.

Chapter 11. Persons Exempt Inspection.

- 11.1 Inspection and Examination
- 11.2 Members of the U.S. and NATO Armed Forces
- 11.3 American Indians Born in Canada

Chapter 12. United States Citizens and Other Nationals.

- 12.1 Inspection of U.S. Citizens
- 12.2 Evidence of Citizenship

- 12.3 Oral Testimony
- 12.4 United States Passports
- 12.5 United States Passport Waivers
- 12.6 Other Documentary Evidence
- 12.7 Loss of Citizenship
- 12.8 Non-Citizen Nationals
- 12.9 Northern Mariana Islanders
- 12.10 Nationals of Former Trust Territories

Chapter 13. Returning Residents.

- 13.1 Inspection of Returning Lawful Permanent Residents (LPRs)
- 13.2 Returning Residents Lacking Evidence of Alien Registration
(Revised 5/16/05; CBP 9-05)
- 13.3 Returning Military Dependents
- 13.4 Question of Meaningful Departure
- 13.5 Returning Residents with SB-1 Visas
- 13.6 Readmission of Temporary Residents
- 13.7 Conditional Residents

Chapter 14. New Immigrants.

- 14.1 Inspecting New Immigrant Applicants
- 14.2 Passport Requirements
- 14.3 Inspection of Family Groups
- 14.4 Immigrant Visa Admission Processing Procedures
- 14.5 Admission of Certain Immigrant Children without Immigrant Visas
- 14.6 Conditional Residents
- 14.7 Immigrant Commuters

Chapter 15. Nonimmigrants and Border Crossers.

- 15.1 General Considerations and Processing Instructions (Revised 5/16/05; CBP 9-05)
- 15.2 Passports
- 15.3 Visas
- 15.4 Requirements and Procedures for Nonimmigrant Classes
- 15.5 NAFTA Admissions
- 15.6 Transit without Visa Admissions
- 15.7 Visa Waiver Program
- 15.8 Guam Visa Waiver Program
- 15.9 Border Crossing Card (BCC) Admissions
- 15.10 Entry of Nonimmigrant Workers during Labor Disputes
- 15.11 Special Interest Aliens (Revised IN02-34)
- 15.12 Correction of Erroneous Admissions
- 15.13 Nationals of Former Trust Territories

- 15.14 Hong Kong Travel Documents
- 15.15 Cancellation of Nonimmigrant Visas under Section 222(g) of the Act.
- 15.16 Student and Exchange Visitor (SEVIS) Processing

Chapter 16. Special Classes.

- 16.1 Parole
- 16.2 Refugee Admissions
- 16.3 Asylees and Asylum Applicants
- 16.4 Temporary Protected Status (TPS) Cases

Chapter 17. Inadmissible Aliens.

- 17.1 Deferred Inspection (Revised 5/16/05; CBP 9-05)
- 17.2 Withdrawal of Application for Admission
- 17.3 Fraudulent Documents
- 17.4 False Claims to U.S. Citizenship
- 17.5 Waivers
- 17.6 Preparing Removal or Prosecution Hearings
- 17.7 Temporary Inadmissibility under section 235(c)
- 17.8 Detention of Aliens at Ports-of Entry
- 17.9 Medical Referrals
- 17.10 Abandonment of Lawful Permanent Resident Status
- 17.11 Asylum Claims/Safe Third Country Agreement with Canada.
(Revised 2/23/05; CBP 8-05)
- 17.12 Bonds
- 17.13 Visa Waiver Program Cases
- 17.14 Lookout Intercepts
- 17.15 Expedited Removal
- 17.16 Members and Representatives of Terrorist Organizations
- 17.17 Technical Notes
- 17.18 Use of Interpreters and Interpreter Services

Chapter 18. Criminal Prosecution (Added INS-TM2)

- 18.1 General
- 18.2 Criminal Offenses Under the INA
- 18.3 Types of Arrest
- 18.4 Arrest Authority
- 18.5 Arrests Based on IBIS or National Crime Information Center
(NCIC) Information
- 18.6 Warrantless Searches and Seizures
- 18.7 Degrees of Suspicion
- 18.8 Criminal Action Procedures
- 18.9 Procedures after the Arrest

- 18.10 Jurisdiction and Venue
- 18.11 Case Presentation
- 18.12 General Rules of Evidence
- 18.13 Definitions

II. Special Policies and Procedures for Land, Air, Sea, Preinspection and Preclearance Stations, Special Programs. Each chapter from 21 through 27 contains a discussion of policies and procedures specific to the type of inspection named in the chapter heading. Other special topics for each chapter are noted.

Chapter 21 Land Border Inspection (Added INS-TM2)

- 21.1 Land Border Inspection Procedures
- 21.2 Secondary Inspection
- 21.3 Persons Arriving by Common Carrier
- 21.4 Land Border Inspection Responsibilities
- 21.5 Mexican Border Crossing Cards
- 21.6 Canadian Border Crossing Cards
- 21.7 Use of Form I-94
- 21.8 Commuters
- 21.9 Northern Border Inspection System (NorBIS)
- 21.10 Secure Electronic Network for Traveler's Rapid Inspection (SENTRI)
- 21.11 Facilities Inspections
- 21.12 Emergency Procedures during Canadian Air Traffic Controller Strikes
- 21.13 Entry of Commercial Truck Drivers into the United States

Chapter 22. Airport Procedures.

- 22.1 General
- 22.2 Inspection Systems
- 22.3 Primary Inspection Procedures
- 22.4 Secondary Referrals
- 22.5 Inspection of Air Crewmembers
- 22.6 Processing Arrival Manifests and Flight Logs
- 22.7 Departure Manifest Procedures
- 22.8 Progressive Clearance
- 22.9 Emergency Procedures during Canadian Air Traffic Controller Strikes
- 22.10 Inspection of International-to-International (ITI) Transit Passengers (Heading changed 11/17/98; IN99-04)

Chapter 23. Seaport Inspection.

- 23.1 General
- 23.2 Exceptions to Inspection Requirements

- 23.3 Inspecting Cargo Vessels
- 23.4 Inspecting Cruise Ships
- 23.5 Payoff and Discharge of Crewmembers
- 23.6 Refusals
- 23.7 Deserters and Abscondee
- 23.8 Stowaways
- 23.9 Mustering
- 23.10 Revocation of Landing Permits
- 23.11 Performance of Longshore Work by Crewmembers
- 23.12 Parole of Alien Crewmembers
- 23.13 Vessels Remaining beyond 29 Days
- 23.14 Ship Intelligence Cards
- 23.15 Departure Manifests
- 23.16 United States-Based Fishing Vessels
- 23.17 Vessels Serving on the Outer Continental Shelf (OCS)
- 23.18 Asylum Claims by Vessel Crewmembers or Stowaways
- 23.19 Special Interest Vessels/Non-Entrant Countries
- 23.20 Seaport database queries

Chapter 24. Preinspection and Preclearance (Added INS-TM2)

- 24.1 General
- 24.2 Foreign Preinspection and Preclearance Procedures
- 24.3 Departure Controls at Guam, Puerto Rico, and the U.S. Virgin Islands
- 24.4 Emergency Procedures during Canadian Air Traffic Controller Strikes

Chapter 25. Private Aircraft and Vessels (Added INS-TM2)

- 25.1 Canadian Small Boat Permit Program
- 25.2 Procedures for Inspecting Private Aircraft
- 25.3 Inspection of Private Vessels
- 25.4 Snowmobiles
- 25.5 GATE Program

Chapter 26. Special Programs (Added INS-TM2)

- 26.1 INS Port Passenger Accelerated Service System (PORTPASS, DCL, APP SENTRI)
- 26.2 Advance Passenger Information System (APIS)
- 26.3 Carrier Consultant Program (CCP)
- 26.4 Inspections Response Teams (IRT)
- 26.5 Immigration and Naturalization Service Passenger Accelerated Inspection System (INSPASS)
- 26.6 Inspections Canine Program

Chapter 27 Departure Controls (Added INS-TM2)

- 27.1 General
- 27.2 Prevent Departure Procedures
- 27.3 Aliens Seeking to Depart without Evidence of Compliance with Federal Income Tax Laws
- 27.4 Protective Custody
- 27.5 Verification of Departure
- 27.6 Departure Controls at Guam, Puerto Rico and the U.S. Virgin Islands

Chapter 28 Missing or Abducted Children and Runaways (Added INS-TM2)

- 28.1 Introduction
- 28.2 Related Legislation
- 28.3 Abductions, Internal Abductions and Runaways
- 28.4 Primary Inspection
- 28.5 Secondary Inspection
- 28.6 Lookouts
- 28.7 Sources of Assistance
- 28.8 Child Sex Tourism

III. Support Services, Tools and Equipment.

Chapter 31 Service Records (Added INS-TM2)

- 31.1 Introduction to Service Records Systems
- 31.2 Systems Security Requirements
- 31.3 Introduction to Service Automated Systems
- 31.4 Image Storage and Retrieval System
- 31.5 Posting, Maintaining, and Cancellation of Lookouts
- 31.6 Lookout Intercepts
- 31.7 Responding to Inquiries Concerning Lookout Records
- 31.8 Regional Random Quality Review of INS Permanent Lookout Records
- 31.9 [REDACTED] (Added 2/16/06; CBP 18-06)

Chapter 32. Intelligence (Added INS-TM2)

- 32.1 INS Intelligence Program - General
- 32.2 Intelligence Collection Requirements; Instructions for Completing an Intelligence Report (Forms G-392 and G-392A)
- 32.3 The OASIS Database [Reserved]
- 32.4 Headquarters INS Intelligence Bulletin Board
- 32.5 INS Forensic Document Laboratory (INS/FDL)

32.6 EPIC Operations; Instructions for Completing Report of Documented False Claim to Citizenship (Form G-329)

32.7 Interpol

Chapter 33 Multi-Agency Automated Systems (Added INS-TM2)

33.1 Interagency Border Inspection System (IBIS)

33.2 National Crime Information Center (NCIC)

33.3 National Law Enforcement Telecommunications System (NLETS)

33.4 The California Law Enforcement Telecommunication System (CLETS)

Chapter 34 Tools and Equipment (Added INS-TM2)

34.1 General

34.2 Firearms and Other Defensive Equipment

34.3 [REDACTED]

34.4 [REDACTED]

34.5 [REDACTED]

34.6 [REDACTED]

34.7 Photophones

34.8 Machine Readable Document Readers

34.9 [REDACTED]

34.10 Admission Stamps and Security Ink

34.12 Government Vehicles

34.13 Audio Visual Equipment

IV. Management and Administrative Activities.

Chapter 41 Liaison Activities (Added INS-TM2)

41.1 Liaison with Federal Inspection Agencies

41.2 International Agreements and Border Liaison

41.3 Liaison with International Air and Sea Carriers and Foreign Governments

41.4 Liaison with Other Federal Agencies

41.5 Liaison with Port Authorities; Inspectional Facilities

Chapter 42 Transportation Agreements (Added INS-TM2)

42.1 General Considerations

42.2 Transit Agreements

42.3 Visa Waiver Program (VWP) Agreements

42.4 Guam Visa Waiver Program (GVWP) Agreements

42.5 Preinspection or Preclearance Agreements

- 42.6 Foreign Territory or Adjacent Islands Agreements
- 42.7 Landing Rights and Carrier Requirements
- 42.8 Progressive Clearance
- 42.9 Section 273(e) Memorandum of Understanding (MOU) (Added IN99-34)

Chapter 43. Fines and Liquidated Damages (Added INS-TM2)

- 43.1 General
- 43.2 Administrative Fine Violations
- 43.3 Processing Administrative Fines at Ports-of-Entry
- 43.4 Passengers Arriving from Contiguous Territory
- 43.5 Processing Administrative Fines at the National Fines Office
- 43.6 Processing Liquidated Damages at Ports-of-Entry
- 43.7 Processing of Liquidated Damages by National Fines Office
- 43.8 Civil Document Fraud Penalties

Chapter 44 Conveyance Seizures (Added INS-TM2)

- 44.1 Background
- 44.2 Violations
- 44.3 Probable Cause
- 44.4 Seizure Justification
- 44.5 Procedure
- 44.6 Conveyance Appraisal
- 44.7 Custody and Storage
- 44.8 Notification
- 44.9 Personal Interview
- 44.10 Returns Prior to Forfeiture
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References:

INA: Sections 212, 235, 240, 241.

Regulations: 8 CFR 212, 235, 240, 241.

17.1 Deferred Inspection. (Revised 5/16/05; CBP 9-05)

(a) General. A deferred inspection may be used when an immediate decision concerning admissibility cannot be made at a port-of-entry (POE) and the officer has reason to believe that doubts about the alien's admissibility can be overcome through:

- presentation of additional evidence;
- further review of the case (including perhaps a review of an existing A file);

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- the posting of a maintenance of status and departure bond; or
- other similar action that can only be conducted at the onward location.

In such cases the inspecting officer shall defer the inspection to the office having jurisdiction over the area where the alien will be staying. Deferred inspections may be necessary to review an existing file or some other documentary evidence essential to clarifying admissibility. The inspecting officer shall defer for a specific purpose, and not as a way to transfer a difficult case to another office. The inspecting officer should normally only use deferrals when it appears the case would probably be resolved in the alien's favor, with limited exceptions. The officer shall not defer an alien who is not expected to establish his or her admissibility. Before an alien is deferred, the inspecting officer shall consider the likelihood that the alien will abscond or pose a security risk.

When deferring an alien, the inspecting officer shall query at a minimum the IDENT, SQ11, Central Index and IAFIS, if available, databases in order to determine if any adverse information exists that would preclude the alien being paroled into the United States for deferred inspection and to provide additional information regarding the case. The deferring officer shall note the results on Form I-546, Order to Appear for Deferred Inspection as noted below.

The deferring officer should take the following factors into consideration when making a decision on whether to defer the inspection:

- The likelihood that the alien will be able to establish admissibility;
- The type of documents lacking, and the ability to obtain necessary documentation;
- The alien's good faith efforts to obtain necessary documents prior to arrival at the POE;
- The verification or establishment of the alien's identity and nationality;
- Age, health, and family ties;
- Other humanitarian considerations;
- The likelihood that the alien will appear;
- The nature of possible inadmissibility (i.e. criminal history, previous violations, etc.); and,
- The potential danger posed to society if the alien were to be paroled.

If the alien is clearly inadmissible or may pose a security risk or danger to society, the officer shall not defer the inspection. Instead, the officer shall place the alien in removal proceedings or allow him or her to withdraw his or her application for admission. For information regarding clearance of certain air cargo crewmembers, see Chapter 22.5(f)

(b) Deferral Procedures.

(1) Authorization: The responsibility to authorize a deferred inspection is delegated to the level of port director, assistant port director, or chief inspector at the GS-13 level and above. Express approval from the designated official is required before any inspection can be deferred. Current field guidance on approval authority can be found in CBP policy memorandum "Delegation of Immigration Authority Under Customs and Border Protection (CBP) (T# 03-0495)" dated May 22, 2003 and Exercise of Discretion – Additional Guidance, dated July 20, 2004.

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(2) A-file: If an A-file does not exist, the deferring officer shall open one. To determine if an A-file exists, query the Central Index System. If there is an existing A-file, the deferring officer should indicate the file number and files control office on the Form I-546 so that the onward office can locate or request the file before the alien appears. In the event of an existing A-file, the deferring officer shall place all documentation in a temporary "T" file (unless the deferring officer has access to the A-file itself). The deferring officer shall forward the A-file or T-file containing the Form I-546 to the onward office within 24-hours of the scheduling of the deferred inspection.

(3) Each applicant whose inspection is deferred shall be photographed and fingerprinted on Form FD-249. Only one set needs to be completed. The set of fingerprints shall be maintained with the other information related to the alien and forwarded to the onward office in the A-file. This set of fingerprints is kept in the A-file or T-file (until consolidated with the A-File) and used if the alien fails to appear for his or her scheduled deferred inspection.

(4) Form I-94: Parole the applicant for a brief period, generally not to exceed 30 days, sufficient for the paperwork to arrive at the onward office and for the applicant to obtain any necessary evidence to establish admissibility (additional guidelines related to parole can be found in Chapter 16.1 of this field manual).

Stamp the departure and arrival portion of the Form I-94, with a parole stamp and endorse to indicate:

- Date to which deferred/paroled
- "DE, Deferred Inspection" (Purpose)
- Deferring port code
- Action date
- The officer's admission stamp number
- Onward office code

Place the alien's right index fingerprint on the reverse of the departure portion of the Form I-94.

(5) Deferred Inspection Documentation. All individuals scheduled for a deferred inspection are to be enrolled in the Enforcement Tracking System (ENFORCE). Generally, deferred inspections are documented on a Form I-546 and a Form I-259, Notice to Detain, Remove or Present Alien, if appropriate. General guidelines for creating a deferred inspection record in ENFORCE are as follows:

(A) Complete the Biographical Screen; an A-number is required. When finished, click on the Apprehension Screen.

(B) Apprehension Screen:

- Record the documents presented and arrival information.
- The Arrival/Departure Form I-94 number is mandatory.

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- Click "Charges" then record the section of law and description of the inadmissibility.
- Record the U.S. and foreign address fields.
- Capture as much information as possible on the remaining tabs i.e. relatives, work information, scars etc.

(C) Select "Forms", then generate the forms necessary to document the deferred inspection.

i. Form I-546 Data Collection Screen: A deferred inspection places additional unscheduled work on the onward office. Appearance for deferred inspection may place additional burdens on the applicant who may, in many cases, be required to spend considerable time and money to comply with the required deferral procedures. Ensure that the information provided to the onward office is sufficient to allow the onward office to complete the deferred inspection in a single appearance.

ENFORCE contains a table of all deferred inspection sites. To retrieve the list, type in the first three-letters of the desired deferred inspection location or scroll through the alphabetical list in the "Address (Site)" data entry field. When selecting the "deferred inspection" disposition category, ENFORCE will display only deferred inspection sites in the "Reporting Address" drop down menu. Specific scheduling information such as hours and days of operation, telephone number and zip code are not encoded in the table. Some local offices conduct deferred inspections only on certain days of the week, or during certain hours, and may have specific room numbers for deferred applicants. Therefore, all secondary stations at POEs are to have current information on hours of operation, addresses and telephone numbers of CBP offices that handle deferred inspections available to verify scheduling information. Refer to http://cgovstaging/xp/cgov__Stage/toolbox/contacts/deferred_inspection/ for a complete listing. When scheduling the deferred inspection, identify a specific reporting date and a time block, rather than a specific time. There may be instances where the applicant is required to call the deferred inspection office directly to schedule an appointment. All individuals scheduled for a deferred inspection are to be given the telephone number of the onward office's deferred inspection unit.

The recommending officer must complete the "Detail" block in the following manner:

- Ensure that the information is complete and accurate for the inspector at the onward office by specifically stating the purpose of the deferral;
- Identify any documentation that the applicant is expected to produce;
- Record the results of the database queries;
- Annotate the name and title of the official that authorized the deferred inspection;
- Record the telephone number of the deferred inspection office; and,
- Identify the FCO of the existing A-file, if available.

ii. Form I-259 Data Collection Screen: The creation of the Form I-259 is required for deferred inspections created at the air and sea ports-of-entry. Form I-259 shall be served on the affected carrier or on the captain of a private aircraft or vessel. Generally,

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the CBP Officer should select the fourth block "Notice of potential liability under section 241(c), (d), or (e) of the Act". In the event the alien is formally ordered removed, an amended Form I-259 should be created by checking the second block "Notice to Remove the Alien from The United States on __ at __", inserting the appropriate date and POE. The amended Form I-259 should be issued to the carrier responsible for removing the alien to the last port of embarkation prior to arrival in the United States. Follow local guidelines and procedures for authorization to detain an alien for removal.

iii. Q & A: Depending on the complexity of the case, the deferring office may wish to capture additional information using a question and answer format.

(E) Print Forms:

- Review the data for accuracy.
- Place a legible parole stamp in the "Details" block of the applicant's copy of the Form I-546. Endorse in the same manner as the Form I-94, as described above.
- Attach copies of the amended Form I-259 to the Form I-546 in the A-file or T-file.
- The CBP Officer processing the deferred inspection is to sign the line identified as "Signature of Recommending Officer".

The supervisory CBP Officer will verify that the details on the forms are correct and sign the Form I-546 in the space provided.

(F) Return to the IDENT screen and perform a search and enroll. Do not book the individual in IAFIS.

(6) Close Out:

(A) Verify that the applicant understands what documentation is necessary to overcome the inadmissibility when appearing for the deferred inspection. Prior to departing the secondary processing area, the applicant shall be given:

- the departure section of the Form I-94
- the appointment copy of the Form I-546 with a specific reporting date and a time block, rather than a specific time. In some instances, the applicant will need to contact the deferred inspection office to schedule the appointment.

(B) The deferring officer shall complete the Interagency Border Inspection System (IBIS) secondary screen indicating a deferral. In the remarks section, enter the office deferred to, date of inspection, and reason for deferral.

(C) A-file/T-file: The deferring officer shall include all forms generated in the A-file or T-file along with any other documents relevant to the inspection. The A-file or T-file is to be forwarded to the onward office within 24 hours of scheduling the deferred inspection. Follow local procedures for deferrals within the same field office.

(D) Reporting Requirements: The Form G-22.1 should be completed to indicate the I-LINK

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category and reason for the deferred inspection.

(E) Retention Requirements: A copy of Form I-546 shall be maintained at the deferring office until the ENFORCE record reflects that the case has been completed. Once completed, the deferring office may shred/destroy the original paperwork. POEs are responsible for monitoring the cases deferred to an onward office by reviewing the results of the deferred inspection in IO-95 or ENFORCE.

(c) Processing a Deferred Inspection at the Onward Office. The inspecting officer at the onward office should have received the deferral paperwork in advance of the applicant's appearance. It is the responsibility of the onward office to locate and request an already existing A-file, which should be reviewed prior to the applicant's appearance.

- If the applicant is found admissible, a new Form I-94 shall be executed using the office symbol of the onward office and the current date as the date of admission. The officer should ensure that the name, date of birth and country of citizenship written on the new Form I-94 is exactly the same as the information recorded on the Form I-94 issued at the time of the deferred inspection.
- If the inspecting officer concludes that the alien is inadmissible, the officer shall complete processing according to appropriate guidelines, which can be found in Chapters 17.2 through 17.17 of this field manual.

Upon completion of the deferred inspection, use IO-95 to create a new record within IBIS to show the deferred inspection results. Indicate the disposition on the Form I-546 included in the A-file. Forward the original deferred Form I-94 departure section and the new arrival section to the recipient indicated in Appendix 15-8 for data entry, if required. Record the final disposition of the deferral in ENFORCE. Query by event number, then record the outcome of the deferred inspection in the disposition data entry field located in the Form I-546 Data Collection Screen.

The Form G-22.1 should be completed to indicate the disposition of the deferred inspection. The disposition shall be noted on the Form G-22.1 under other (PORT = Other) secondary inspections operation report, complete other columns as appropriate.

(d) No Shows. The onward office is to monitor the cases referred for a deferred inspection. Cases should not be pending longer than 30 days after the expiration of the scheduled appointment, unless the applicant has requested an extension. If an alien fails to appear for his or her deferred inspection, a Form I-862, Notice to Appear shall be executed using the information listed on the Form I-546 and mailed to the address provided. All information related to the case shall be added to the A-file. A lookout must be posted in IBIS. All aliens who have lookouts posted shall be reported on the G-22.1 under "IBIS lookout entered". Criminal penalties and the possible pursuit of a criminal warrant under 8 U.S.C. 1325 shall be pursued on a case-by-case basis. All related information shall be forwarded to the CBP Prosecutions Unit (CBP Enforcement Officers) and/or U.S. Immigration and Customs Enforcement to allow further follow-up of the case. All aliens who fail to appear and for whom prosecution is pursued shall be reported of the Form G-22.1 under "Prosecutable Cases Referred to INV". Query ENFORCE by event number, in the "disposition" data entry field located in the Form I-546 Data Collection Screen, to record the action taken.

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(e) Attorney Representation at Deferred Inspection. At a deferred inspection, an applicant for admission is not entitled to representation. See 8 CFR 292.5(b). However, an attorney may be allowed to be present upon request if the supervisory CBP Officer on duty deems it appropriate. The role of the attorney in such a situation is limited to that of observer and consultant to the applicant.

(f) Medical Deferrals. When deferring inspection for a medical ground of inadmissibility under INA Section 212(a)(1), consult with the Public Health Service (PHS) before permitting the alien to proceed. If the alien is required to submit to further medical examination prior to reporting to the onward office, return all medical documents including local PHS certification and x-rays to the applicant in a sealed envelope for presentation to the doctor, medical clinic, or PHS facility as instructed. If the alien is to report first to the onward CBP office, forward the medical documents with the deferral papers directly to the onward office.

17.2 Withdrawal of Application for Admission.

(a) General. A nonimmigrant applicant for admission who does not appear to the inspecting officer to be admissible may be offered the opportunity to withdraw his or her application for admission rather than be detained for a removal hearing before an immigration judge or placed in expedited removal. An alien cannot, as a matter of right, withdraw his or her application for admission, but may be permitted to withdraw if it is determined to be in the best interest of justice that a removal order not be issued. Before allowing an alien to withdraw, you must be sure that the alien has both the intent and the means to depart immediately from the United States. See section 235(a)(4) of the Act and 8 CFR 235.4.

Withdrawal is strictly voluntary and should not be coerced in any way. It may only be considered as an alternative to removal proceedings when the alien is not clearly admissible. Occasionally, POE workload, personnel resources, and availability of detention space may affect whether you will allow withdrawal or pursue removal proceedings before an immigration judge. However, in cases where the alternative to withdrawal is expedited removal, workload and detention space are less significant considerations.

In exercising your discretion to permit withdrawal, you should carefully consider all facts and circumstances related to the case to determine whether permitting withdrawal would be in the best interest of justice, or conversely, that justice would be ill-served if an order of removal were issued. In light of the serious consequences of issuing an expedited removal order, which includes a 5-year bar to re-entry, the decision of whether to permit withdrawal should be based on a careful balancing of relevant favorable and unfavorable factors in order to reach an equitable decision. Such factors might include, but are not limited to:

- (1) The seriousness of the immigration violation;
- (2) Previous findings of inadmissibility against the alien;
- (3) Intent on the part of the alien to violate the law;

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- (4) Ability to easily overcome the ground of inadmissibility (i.e., lack of documents);
- (5) Age or poor health of the alien; and
- (6) Other humanitarian or public interest considerations.

An expedited removal order should ordinarily be issued, rather than permitting withdrawal, in situations where there is obvious, deliberate fraud on the part of the applicant. For example, where counterfeit or fraudulent documents are involved, an expedited removal order is normally the appropriate response. On the other hand, in a situation where the alien may have innocently or through ignorance, misinformation, or bad advice obtained an inappropriate visa but has not concealed information during the course of the inspection, withdrawal should ordinarily be permitted. Where an immigration violation has not yet occurred, and the determination of inadmissibility is based on the alien's ignorance of permissible activities or on a judgment of the alien's future intent, the factors cited above should be carefully weighed in deciding whether to permit withdrawal or issue an expedited removal order. Where the travel documents presented are prima facie valid, you should consider whether the violation warrants the serious consequences of a formal removal. If the alien may readily overcome the inadmissibility by obtaining proper documents, the alien may be permitted to withdraw his or her application for admission and should also be appropriately advised of the necessary forms and requirements to overcome the grounds of inadmissibility.

Under section 222(g) of the INA, as amended by IIRIRA, when an alien has remained in the United States beyond the period of his or her authorized stay, the alien's visa is considered to be void, even though no action may have been taken to physically cancel the visa. In a case when an alien could not have been reasonably expected to know that his or her visa is void, but the alien is otherwise admissible except for the lack of valid nonimmigrant visa, withdrawal of application for admission may be considered. However, if the facts of the case indicate particularly egregious immigration violations, such as long-term or repeated previous overstays, unauthorized employment in the United States, or that the alien is again likely to remain beyond his or her authorized stay or otherwise violate his or her status, an expedited removal order may be appropriate.

An applicant who withdraws his or her application for admission is not considered formally removed and therefore does not require permission to reapply for admission to the United States. Once the reason for the inadmissibility is overcome, the alien may be eligible to apply for a new visa or admission to reenter the United States.

(b) Jurisdiction. Generally, a withdrawal will be taken at the port-of-entry or following a deferred inspection. However, there will be instances where a detained alien, prior to or during the expedited removal credible fear process, is permitted to withdraw his or her application for admission. Any INS officer involved in the continuing processing of an arriving alien may, after obtaining authorization in accordance with local procedures, offer withdrawal if the situation warrants. Withdrawal during the later stages of the expedited removal and credible fear process should be the exception rather than the normal course of action. All facts,

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circumstances, and factors relating to the case should be carefully considered. In expedited removal cases, several units within INS may have already invested considerable time and resources in pursuing expedited removal of the alien. In order to preserve a unified expedited removal process and uniformity of decision, asylum officers may wish to consult with other units involved to obtain any additional information concerning the case which may affect the decision to permit withdrawal.

(c) Withdrawal Procedures. If, after obtaining supervisory concurrence in accordance with local procedures, you decide to permit an applicant to withdraw, complete the necessary paperwork. Once an applicant is granted permission to withdraw, prepare Form I-275, Withdrawal of Application for Admission/Consular Notification. The I-275 must clearly state the reasons for inadmissibility in the remarks block. A sworn statement should be taken and attached to the I-275. If the alien is inadmissible under section 212(a)(6)(C) or (7) and would have been subject to expedited removal if not permitted to withdraw, the sworn statement should be taken using Form I-867A&B. Check any appropriate boxes on the I-275. The alien must sign the I-275, acknowledging that the action is entirely voluntary. The alien should be given a copy of the I-275 and any sworn statement taken, unless the Form I-275 contains classified or sensitive information. Prepare and serve an I-259 on the appropriate carrier to effect removal. Complete the I-94, endorsing both sections with: "WD - Application for Admission Withdrawn. (Stamp number), (Port), and (Date)." On the reverse of the I-94, indicate the file number, if appropriate, in Block 20. In Block 26, under Itinerary/Comments, write the grounds of inadmissibility, and "I-275 served. To be removed via (flight number) on (date)". Also include removal flight information on the front of the departure portion of the I-94. Cancel the nonimmigrant visa, and note the visa page "22 CFR 41.122(h)(3)." In a case where the alien may, through ignorance, bad advice, or misinformation, have inadvertently arrived with inadequate documents or an improper visa, and there was no fraud involved and you are satisfied that the alien will depart in order to comply with admissibility requirements, a visa may be left intact for future use.

Prepare a packet in a sealed envelope for immigration officials in the country to which the alien is being returned, containing the alien's travel document and a copy of the Form I-275 or other relevant information that may be needed by the immigration officials in the ongoing country. Where practical, advise INS offices overseas by phone or fax of aliens moving through their jurisdiction. Forward the original of the I-275 and sworn statement to the consulate where the visa was issued. Route the arrival I-94 for data entry and deliver the departure I-94 to the carrier to be submitted with other departure I-94s for the outbound flight. Maintain a copy of all relating documents, including the pertinent passport pages and other evidence at the port of arrival for 6 months. Refer to Chapter 21.2 for special Canadian border procedures and to Chapter 17.15(f) for specific instructions relating to withdrawal of application for admission by minors.

(d) Return Transportation Arrangements. An alien who is permitted to withdraw must depart immediately from the United States, or as soon as return transportation can be arranged. If the alien arrived at an airport or seaport, arrange for departure on the next available transportation either back to the country where the alien boarded the flight or vessel, or to another country if the alien is entitled to enter that country. In instances where the alien is being returned to a third country through a foreign transit point, every possible effort must be made to ensure that

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an immediate and continuous transit will be ensured. If the alien does not have either a return ticket or the carrier has not otherwise agreed to transport the alien, removal proceedings should be instituted. If the alien has an open ticket, make sure satisfactory confirmed return transportation arrangements are made. If the alien arrived at a land border port-of-entry, he or she is not permitted to enter the United States, and is simply returned to the contiguous territory from which he or she arrived.

(Chapter 17.2 revised 12/22/97; IN98-05)

17.3 Fraudulent Documents.

(a) General. Any passport, visa, alien registration card, or other document presented by an applicant for admission is potentially a counterfeit or altered document, a document procured by fraud or a genuine document being presented by an imposter. As document quality has improved, so has the ability of document vendors to create better quality counterfeits. Tools for detecting fraudulent documents are discussed in Chapter 34. A discussion of the Forensic Document Laboratory and other Intelligence support activities are contained in Chapter 32. The El Paso Intelligence Center (EPIC) can also be of assistance in detecting fraudulent documents. EPIC may be contacted in writing at: EPIC; 11339 SSG Sims St.; El Paso, TX 79908-8098; Att: ICS or by calling (915) 564-2000. See Chapter 32 for further discussion of EPIC functions.

Once you have determined a document is fraudulent or is being presented by other than the rightful holder, in addition to processing the holder as an inadmissible alien, you must insure that information about the document is properly routed to INS Intelligence for dissemination to others. It is important that information be distributed promptly, since document vendors often produce multiple documents using the same techniques. In order to effectively identify such documents, one of the most valuable assets is current, accurate intelligence information. Local ports generally have one or more designated inspectors assigned as collateral intelligence officers to insure such information is properly routed to and from other officers.

Local ports tend to have patterns for the types of documents encountered which are most likely to be fraudulent. Birth and baptismal certificates, which have no national standards, are the most commonly counterfeited, altered, or improperly issued documents. Familiarize yourself with security checkpoints of documents regularly presented at your port-of-entry. (Revised IN98-13)

(b) Counterfeit or Altered Document. Alteration of documents occurs in several ways: changing data on a valid document to fit the description of the alien applicant, photo substitution, and page substitution are the most common. Counterfeiting of birth records and other similar documents is also commonplace, counterfeiting of entire passports happens less frequently. Some attempts are excellent, others fairly crude. Always examine documents with laminated photos, such as border crossing cards, outside any case or holder so you can feel any relamination. This is a good practice, even at land border primary locations. Familiarity with document alerts and passport studies provided by the Intelligence Division will also make

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detection of this type of fraudulent document easier. Following are tips for passport examination.

- Examination of a passport begins with the cover. Look for the quality and clarity of printing, color, thickness and even spelling. Check the shape and cut of corners.
- Next inspect the inside pages for known watermarks and background printing, as well as any other known security checkpoints. Again, examine spelling and print quality. Check the alignment of pages and the shape and cut of corners. Perforations should generally be sharp, distinct and evenly aligned.
- Review the data page or pages of the document. Handwritten entries should be made with the same color ink, without overwritten or blotched entries. Typed entries should all be with the same typeface and consistency of ink.
- Examine the photo page for signs of double lamination, cuts in the lamination, excessive glue, or wrinkling. Inspect wet or dry seals overlapping the photo. Seals should be aligned and distinct. The seal impression on the reverse side of the page should match that of the front.
- Examine the page immediately opposite the photo page for grommet or staple indentations. Such indentations should match the grommet or staple attaching the photo.
- Examine the binding for jagged or enlarged stitching holes. Stitching should be evenly spaced.

(c) Genuine Document Presented by Imposter. Careful questioning of an applicant regarding the nature of the visit and the particulars of how the visa was obtained, and close scrutiny of the photo and biographic data on the travel document will assist you in determining if the bearer is the rightful holder of the passport or visa. Immigration officers have delegated authority, pursuant to 22 CFR 41.122(h) to cancel genuinely issued visas which have been removed from the original travel document or which are presented by other than the rightful holder. Whenever such action is taken, prepare Form I-275 to advise the issuing consulate.

(d) Genuine Document Obtained by Fraud. Among the more difficult tasks you face as an inspector is making a determination that a passport, visa or, other document issued by competent authority was based on a fraudulent application or agency error. While it is not possible for you to readjudicate the underlying basis of eligibility for every document presented, you should be aware of the general requirements for various immigration benefits and know what relevant questions to ask an applicant for admission when you become suspicious. As INS automated systems improve, you have at your disposal more information from agency files upon which to inquire. Access to INS automated systems is discussed in Chapter 31. Your observation of the applicant's demeanor and his or her responses to simple questions are the best tool for uncovering this type of fraud.

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(e) H-1B Fraud Refusal Notification Report. Pursuant to Section 108 of the "American Competitiveness in the Twenty-First Century Act" (Public Law 106-313), when an H-1B petition is revoked because the alien obtained the H-1B visa through fraud or misrepresentation, the Service will recapture the H-1B visa number. Any revocation based on fraud will restore an H-1B visa number to the total number of aliens who may be issued a visa in the fiscal year in which the petition is revoked. The H-1B Fraud Refusal Notification Report (Appendix 17-7) shall be used in all cases where an H-1B visa fraud determination has been made at a Port-of-Entry. A copy of Form I-275, Withdrawal of Application for Admission/Consular Notification, shall be included to further indicate the basis for the action. This information substantiating an incident of H-1B fraud shall be forwarded, via facsimile, to the service center where the petition was approved. That service center will notify the petitioner of the revocation and will update the computer system to correctly reflect the H-1B visa numerical limitation change.

(Added IN01-14)

17.4 False Claims to U.S. Citizenship.

(a) General. You must always be alert to the possibility that an alien may attempt entry by falsely claiming United States citizenship. The claim may be either an oral claim or one supported by an authentic or fraudulent document. The best defense against false claims to U.S. citizenship is your own instinct as an inspector. The most obvious clues in detecting a false claim are nervous actions or reactions on the part of the applicant or language patterns that don't fit the claim to citizenship.

[REDACTED] If the applicant claims recent naturalization, that may be sufficient to convince you he or she is a U.S. citizen or it may prompt further questions, or a check of the Central Index.

Become familiar with the persons at your port who can assist you in the questioning of a suspected false claim. A native Spanish speaker, familiar with various local accents and idioms, is more likely to quickly detect, for example, a Central American claiming birth in Puerto Rico. Learn the procedures used by various local officials involved in issuing citizenship documents; request original or certified copies of documents which are presented.

A word of caution -- Never refer a person to secondary as a false claim simply because the person is belligerent, disrespectful or suspected of being under the influence of alcohol or other drugs. Refer him or her when you have some reason to believe the person is an alien attempting to commit a fraud.

A new ground of inadmissibility for false claims to U.S. citizenship was added to §212(a)(6)(C)(ii) of the Act by IIRIRA, for representations made on or after the date of enactment, September 30, 1996. Aliens who make a false claim to U.S. citizenship therefore are subject to the expedited removal provisions of §235(b)(1) of the Act. See Chapter 17.15 for expedited removal procedures.

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(b) Procedures. Once you have made a determination that an applicant for admission is making an false claim U.S. citizenship, process the case as an expedited removal case or permit withdrawal of application for admission. In order to prevent the improper removal of a U.S. citizen without hearing or review, a provision was added to the regulations in 8 CFR 235.3(b)(5) to provide for a review of the expedited removal order by an immigration judge. As with any claim to U.S. citizenship, every effort should be made to either verify or disprove the claim prior to proceeding with issuance of a removal order. Only those cases where you are absolutely not satisfied that the person is a U.S. citizen should result in a removal order. To refer the case to a judge, use Form I-863, executing block 4 of the form. In cases of claims supported by documentation, in addition to the above, complete Form G-329, Documented False Claim to Citizenship, and forward it to the appropriate address listed in Appendix 15-8. Attach the original documents, unless they are being used as evidence, a complete set of the alien's fingerprints on Form FD-249, and a photograph. If original documents are needed for other purposes, attach a photocopy. If a genuine document is being presented by an imposter, obtain, if possible, biographic and family information relating to the person to whom the document relates. [Detailed instructions on preparing Form G-329 are contained in Chapter 32.6.]

17.5 Waivers.

(a) General. The grounds of inadmissibility applicable to aliens are established by §212 of the Act. There are a series of exemptions and waivers for various grounds of inadmissibility. Exemptions refer to statutory or regulatory constructions whereby certain classes of aliens are not subject to inadmissibility, under specific circumstances, based on certain general provisions relating to inadmissibility. No application or adjudication is needed when an alien is exempt from a ground of inadmissibility. For example, many aliens are, by regulation, exempt the general passport and visa requirements. Generally, waivers refer to specific applications, filed individually, and adjudicated to remove temporarily or permanently one or more specific grounds of inadmissibility. Waivers are available to immigrants pursuant to sections 211(b), 212(a)(3)(D)(iv), 212(a)(9)(B)(v), 212(d)(11), 212(d)(12), 212(e), (g)(1), (g)(2), (g)(3), (h), (i), and (k). Waivers are available to nonimmigrants under sections 212(d)(1), (d)(3), (d)(4), and (l). Additionally, certain qualifying aliens are eligible for automatic waivers under sections 212(m) and (o). No application or fee is required for such automatic waivers. There are a variety of situations involving inspection of aliens requiring waivers of inadmissibility. In many instances the need for a waiver has been determined and adjudication of a waiver has been completed before the alien arrives at the port-of-entry. In such cases, the nonimmigrant visa will be noted or the alien will possess a notice of action approving the waiver. In other instances, the need for a waiver will be determined during the inspection process and the matter can often be resolved during secondary inspection.

(b) Permanent Residents Without Valid Alien Registration Documents. During the inspection process, you may be required to process a waiver under section 211(b) of the Act if a returning resident is not in possession of his or her alien registration card or reentry permit. If the applicant is otherwise admissible, complete Form I-193, Application for Waiver of Passport and/or Visa, collect the required fee, stamp the I-193 and passport with your admission stamp

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and endorse them "211(b)." Before approving such a waiver, query the applicant's status in Central Index to verify the validity of his or her lawful permanent residence. See Chapter 13.2 for a discussion of this and other options for admitting returning residents. If you deny a waiver under section 211(b) of the Act, the application may be renewed in removal proceedings before an immigration judge.

There are a number of precedent decisions relating to section 211(b) waivers. In *Matter of Abdoulin*, 17 I&N Dec 458 (BIA 1981), the Board ruled that denial of a waiver by the district director did not constitute a definitive adjudication of abandonment of permanent residence. In *Matter of Muller*, 16 I&N Dec. 637 (BIA 1978), the Board discussed factors to be considered in determining the issue of abandonment. Other relating precedents relating to abandonment of residence and entitlement to a waiver include: *Matter of Davis*, 16 I&N Dec. 514 (BIA 1978); *Matter of Delgadillo*, 15 I&N Dec. 395 (BIA 1975); *Matter of Galvan*, 14 I&N Dec. 518 (BIA 1974); *Matter of Castro*, 14 I&N Dec. 492 (BIA 1974); *Matter of Montero*, 14 I&N Dec. 399 (BIA 1973); *Matter of Wu*, 14 I&N Dec. 290 (Regional Commissioner 1973); *Matter of Hoffman-Arvalo*, 13 I&N Dec. 750 (BIA 1971); *Matter of Wighton*, 13 I&N Dec. 683 (BIA 1970, 1971); *Matter of Salviejo*, 13 I&N Dec. 557 (BIA 1970); *Matter of Escalante*, 13 I&N Dec. 223 (BIA 1969); and *Matter of Vielma-Ortiz*, 11 I&N Dec. 414 (BIA 1965).

(c) Waivers for New Immigrants. An alien inadmissible from the U.S. under section 212(a)(5)(A) or (7)(A)(i), who is in possession of an immigrant visa may, if otherwise admissible, be admitted by applying to the district director at the port-of-entry at which the alien arrived for a waiver on Form I-193, under the conditions described in §212(k) of the Act and 8 CFR 212.10. This waiver is available to correct such technical defects as when a consular official has placed an improper classification symbol on the visa or where classification has changed due to the alien turning 21 years of age subsequent to visa issuance. It is available both at a port-of-entry at the time of initial admission or nunc pro tunc. No fee is required. Adjudicate the application and attach the form to the immigrant visa packet. If denied, application for a section 212(k) waiver may be renewed before an immigration judge in removal proceedings.

Precedent decisions involving application for a section 212(k) waiver of section 212(a)(5)(A) include: *Matter of Morgan*, 13 I&N Dec. 283, (BIA 1979); *Matter of Ortega*, 13 I&N Dec. 606 (BIA 1970); *Matter of Ulanday*, 13 I&N Dec. 729 (BIA 1971); *Matter of Paco*, 12 I&N Dec. 599 (BIA 1968); *Matter of Thompson*, 13 I&N Dec. 1 (BIA 1968); *Matter of Welcome*, 13 I&N Dec. 352 (BIA 1969); and *Matter of Rodriques*, 13 I&N Dec. 746 (BIA 1971).

Precedent decisions involving application for a section 212(k) waiver of section 212(a)(7)(A)(i) include: *Matter of Pierce*, 17 I&N Dec. 456 (BIA 1980); *Matter of S- B-*, 7 I&N Dec. 298 (BIA 1956); *Matter of Alarcon*, 17 I&N Dec. 574 (BIA 1980); and *Matter of Khan*, 14 I&N Dec. 122 (BIA 1972).

A waiver of the passport requirement, using the I-193 procedure described above, is also provided in 8 CFR 211.2. Other waiver provisions applicable to new immigrants are normally adjudicated in advance. Approval of such waivers should be indicated by the consular official on the immigrant visa, OF-155A.

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(d) Nonimmigrants

(1) Section 212(d)(3)(A). Nonimmigrants who are inadmissible to the United States, and who require a visa, must apply in advance for a waiver under section 212(d)(3)(A) of the Act. Joint concurrence by the Secretary of State and the Attorney General is required for approval. The alien usually applies for the waiver in conjunction with the application for a nonimmigrant visa. Once approved, the section of law under which the waiver was approved and any special limitations will be noted on the visa. If otherwise admissible, enter the waiver information and any restrictions on the reverse side of the I-94 in the appropriate blocks.

(2) Section 212(d)(3)(B). Inadmissible nonimmigrants who are already in possession of a nonimmigrant visa, or who are exempt the requirement for a visa, must apply for authorization under section 212(d)(3)(B) of the Act to the district director having jurisdiction over the intended port-of-entry. Application is made on Form I-192, Application for Advance Permission to Enter as a Nonimmigrant. Adjudication procedures are discussed in detail in Chapter 42 of the *Adjudicator's Field Manual*. If such application has been approved, the alien will be in possession of Form I-194, Notice of Approval of Advance Permission to Enter as a Nonimmigrant. If otherwise admissible, enter the section 212(d)(3) authorization information, the file number, and the FCO code on the reverse side of the Form I-94, along with any conditions or restrictions.

[IN 02-08]

(3) Section 212(d)(4)(A) Waiver of Passport and/or Visa

(A) An authorizing official, as designated in the memorandum Delegation of Immigration Authority Under Customs and Border Protection (CBP) (TC#03-0495), dated May 22, 2003, has the discretion to grant a 212(d)(4)(A) waiver only if the alien clearly demonstrates that an unforeseen emergency prevented him or her from acquiring the appropriate passport or visa. Currently, this authority is delegated to the port director at the GS-13 level and above. See generally *Matter of LeFloch*, 13 I. & N. Dec. 251, 255-56 (BIA 1969) (212(d)(4)(A) waiver of student visa denied after U.S. consulate incorrectly informed B visa holder that no student visa was necessary; no unforeseen emergency); *Matter of V*, 8 I. & N. Dec. 485, 485-87 (BIA 1959) (no unforeseen emergency where alien had ample opportunity in advance of travel to obtain a visa). The term "unforeseen emergency" as used in 8 CFR 212.1(g) generally means:

- (i) an alien arriving for a medical emergency;
- (ii) an emergency or rescue worker arriving in response to a community disaster or catastrophe in the United States;
- (iii) an alien accompanying or following to join a person arriving for a medical emergency;
- (iv) an alien arriving to visit a spouse, child, parent, or sibling who within the

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past 5 days has unexpectedly become critically ill or who within the past 5 days has died; or

(v) an alien whose passport or visa was lost or stolen within 48 hours of departing the last port of embarkation for the United States.

(B) In a case where a section 212(d)(4)(A) waiver is under consideration, the alien should complete Form I-193 and remit the appropriate fee. In the remarks block of the Form I-193, the immigration officer shall precisely describe the unforeseen emergency that prevented the alien from obtaining the proper documentation before arriving in the United States. In addition, the officer shall describe precisely why a reasonable person in the alien's position could not have anticipated the emergency that predicated his or her arrival in the United States without the proper documents. Mark "n/a" in the block designated for Department of State concurrence on the Form I-193. Where an authorizing official favorably adjudicates an application for a section 212(d)(4)(A) waiver, the admitting officer shall stamp the passport using the regular admission stamp, note the class of admission (i.e., B-1, B-2, etc.), and write, "212(d)(4)(A) unforeseen emergency waiver" in the alien's passport under the admission stamp. The admitting officer shall also make the same notation on the reverse side of both the arrival and departure portion of Form I-94.

(C) An authorizing official may also, on a case-by-case basis, approve a 212(d)(4)(A) waiver should individual unforeseen emergency circumstances arise that do not fall within the scope of an unforeseen emergency as described above. This authority shall also apply to those individuals who are officially acting in the capacity of the port director (GS-13 and above) or higher level.

(D) The official who authorizes a waiver under paragraph (d)(3)(C) of this chapter (i.e., the previous paragraph) shall maintain a log that precisely describes the emergency that prevented the alien from acquiring the required documents before arriving in the United States. In addition, before granting any such waiver, the authorizing official shall describe precisely why a reasonable person in the alien's position could not have anticipated the emergency that predicated his or her arrival in the United States without the proper documents. Finally, the official who authorizes a waiver under paragraph (d)(3)(C) of this chapter shall adhere to the procedures identified in paragraph (d)(3)(B) of this chapter regarding the execution of the Form I-193 and marking the passport.

(e) Headquarters Responsibility for Certain Waivers under Section 212(d)(3)(A) of the Act.

(1) General. Oversight of waivers of inadmissibility for nonimmigrants is the responsibility of the Inspections Program. The Act stipulates that the Secretary of State may recommend

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the waiver and the Attorney General may grant or deny. Normally, the recommendations are made to the Service at the overseas districts. Certain categories, however, are elevated to the "seat of government" level as detailed below. [See 8 CFR 212.8.]

In making the recommendation to the Service, Section 40.111 of the Foreign Affairs Manual (FAM) instructs State Department officers to include:

- The relevant humanitarian, political, economic or public relations factors;
- a statement (where applicable) that DOS is satisfied the alien has a residence abroad which he or she has no intention of abandoning;
- a statement that the alien is properly classified as a nonimmigrant;
- the officer's precise recommendation and the reasons therefor.

FAM guidance to consular officers specifies that a waiver may be requested (except as precluded by statute) for any nonimmigrant alien whose presence would not be detrimental to the United States and that the law does not require that recommendations be limited to exceptional, humanitarian or national interest cases. It further states: "Thus, while the exercise of discretion and good judgment is essential, generally, consular officers may recommend waivers for any legitimate purpose such as family visits, medical treatment (whether or not available abroad), business conferences, tourism, etc." It goes on, however: "In cases of ineligibility for other than security reasons, the consular officer must weigh additional considerations as recency and seriousness of the crime or offense, type of disability, reasons for the proposed travel to the United States and the probable consequences, if any, to the public interests of the United States."

Although the FAM provides guidance for State Department officers, the Service is not bound by it. The inspector should consider all of the above and also consider that the Congress has deemed these aliens inadmissible to the United States. In considering the waiver weigh the benefit, if any, to the United States should the waiver be granted. In situations where the proposed visit is for the purpose of medical treatment, consider whether such treatment is available to the alien abroad. Granting of waivers of these grounds should not be routine and available just for the asking.

(2) Mandatory Referrals. Although any case may be referred to the Department of State Visa Office by a consular officer for consideration of a recommendation to HQINS, there are certain cases in which the FAM mandates the referral:

- Any case where it is requested by the alien or an interested party in the U.S. that it be forwarded;
- Any case where the consular officer knows or has reason to believe that pertinent considerations not available at the post may be available to or through the Department;

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- Prior refusals;
- Any case where the alien's presence or activities in the U.S. might become a matter of public interest or of foreign relations significance;
- Any case in which the Department has mandated an advisory opinion be sought;
- The case of any alien who is a national of a country which the U.S. does not recognize or with which we have no diplomatic relations;
- The case of any alien not classifiable under INA Section 101 (a) (15) (A) or (G) but destined on official business to the United Nations;
- Cases of any SILEX or BUSVIS/SILEX alien and of certain CHINEX or BUSVIS/CHINEX aliens;
- The case of any Soviet applying for an I visa;
- Any case involving 212(a)(3)(B);
- Any cases in which the consular officer recommends a term of greater than one year.

(3) Limitations. Multiple entry waivers are not to be given to an alien who:

- Has a mental or physical disorder;
- Is a narcotic drug addict or a narcotic trafficker (multiples have been granted before in special cases with DEA/Customs/FBI involvement);
- Is afflicted with a communicable disease;
- Was convicted of a CIMT and is less than 5 years post-release;
- Prostitution related activity within 10 years of visa application.

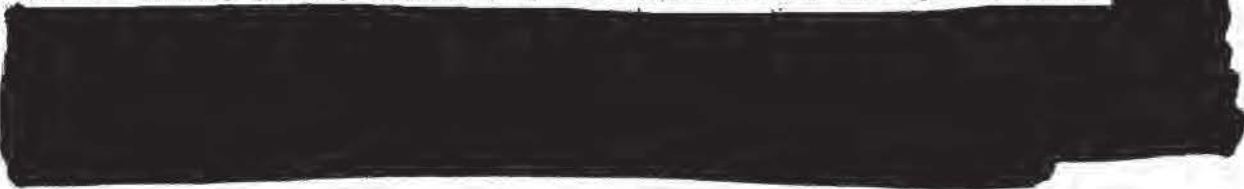
(4) Silent Waivers. The majority of cases referred to HQINS involve either aliens involved with terrorism or illegal drug activity in which the Drug Enforcement Agency or another federal agency requests a "silent waiver" or some other special handling for cases in which the consular officer recommends greater than one year validity. In the terrorist-related cases, request the FBI position on the recommendation and consider any objections presented. If the objections of the FBI cannot be overcome to their satisfaction by travel restrictions or some other consideration, the case should be referred to the Department of Justice's Office of Intelligence Policy and Review (OIPR). In the drug cases, require

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detailed information as to what the alien is expected to do and what benefit exists for the U.S. Do not accept simple assurances. If the requesting law enforcement agency is requesting the "silent waiver" to effect an alien's arrest, the alien to be arrested should be at such a significant level within the criminal organization that the arrest materially affects it, or there should be some other significant gain in the case to justify the expense to the United States.

In all cases, place any restrictions that you feel are necessary. Some examples might be: geographical (4 block radius of the U.N.); port-of-entry (arrive at JFK only); time (3 days); advance itinerary (usually requested by the FBI), etc. on a case-by-case basis.



(Paragraph (e) added by IN97-08)

17.6 Preparing Removal or Prosecution Hearings.

(a) General. If you determine that an alien is inadmissible, and the grounds of inadmissibility cannot be resolved readily and the alien does not elect to withdraw (or is not afforded the opportunity), you must prepare necessary paperwork for a removal proceeding before an immigration judge or for prosecution. Most often, an alien will be detained or paroled until the hearing date. An alien who is inadmissible under section 212(a)(6)(C) or (7) is subject to the expedited removal provisions of section 235(b)(1) and should be processed in accordance with Chapter 17.15. If such an alien is also being charged with additional grounds of inadmissibility, follow the procedures below.

(b) Preparing the Case. There are a number of steps to be taken to refer a case for a removal hearing or for prosecution. Complete, accurate case preparation is extremely important. Prepare cases for prosecution according to guidelines set by the local U.S. Attorney. The following steps must be taken in each case referred to an immigration judge for removal proceedings:

(1) Take a complete sworn statement from the alien, concerning all pertinent facts. Collect any additional evidence relevant to the case which is discovered during the inspection process. Use Form I-263A as a jurat to close the statement. Provide a copy of the statement to the alien and retain copies for the Service file and record of proceedings.

(2) Prepare three copies of Form I-862, Notice to Appear. If the alien is being held in Service custody, indicate that fact and location of the facility where the alien is detained in the address block. If the alien is not being held in Service custody, enter the complete address and phone number where the alien can be reached and provide the alien with Form EOIR-33 to report any change of address. If the alien's mailing address is different than

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the physical address, include both. Check the first box and provide a brief narrative description of the facts of the alien's arrival and inadmissibility under description of charges. Standard language for all charges under section 212(a) is available through most automated forms systems used by the Service. Fill in the complete citation for the provision of law (e.g. 212(a)(2)(A)(i)(I)) under which the alien is being charged. Enter the complete address of the appropriate Immigration Court in the space provided. The Notice to Appear must ordinarily include the time and place of the hearing. Obtain a date and time for the hearing using the EOIR ANSIR system, or following established local procedures. In unusual situations when a hearing date and time cannot be obtained, such as when there is a computer system outage, indicate "to be set" in the appropriate data field. Advise the alien, in a language that he or she can understand, of the time and place of the hearing and of the consequences of failure to appear. Sign and date the I-862. Normally, a hearing may not be conducted sooner than 10 days after service of the Notice to Appear. If the alien wishes to waive this time period and have an immediate hearing (or as soon as one can be arranged), have the alien sign the section entitled "Request for Prompt Hearing." Serve the I-862 on the alien and provide him or her with a current list of organizations and programs prescribed in 8 CFR 292 which provide free legal services.

Serve one copy of the I-862 on the alien, unless the alien is to be released and deferred to an onward office, in which case the service is accomplished by the onward office.

(3) Photograph and fingerprint the alien on FD-249 fingerprint cards (three sets). Distribution of the fingerprints should be made in accordance with the procedures set forth in chapter 18.9(c). Be sure to properly code the fingerprint cards with the proper United States Code citation, since the FBI will not clear cards without such codes. Following are examples of codes that may be used:

- 18 U.S.C. 1544 Photo substitutions
- 18 U.S.C. 1546 Counterfeit immigrant visa
- 8 U.S.C. 1306 Counterfeit INS documents, such as alien registration
- 18 U.S.C. 911 False claims to U.S. citizenship (imposters, photo substitution of U.S. passport)
- 18 U.S.C. 1001 Other (fraudulent documents, imposter, no documents, etc.)

(4) If the alien is to be detained, consult 8 CFR 236.1(e) to ensure that, if required, the appropriate consular official is immediately notified of the alien's detention, even if the alien requests that this not be done. Notify the alien that he or she may communicate with a

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consular official.

(5) Complete local procedures for authorization and arrangement of detention, if appropriate. If the alien is being detained pending the removal hearing, complete a Form I-94 for NIIS entry notated: "I-862 served - Detained at _____ for removal proceedings on (date). (Date), (Place), (Officer)." Section 235(b)(2) of the Act, as amended by IIRIRA, provides the detention authority for arriving aliens placed into removal proceedings under section 240. This provision is functionally equivalent to the old 235(b), and does not require issuance of a Warrant of Arrest.

(6) In cases involving fraudulent documents, if the sworn statement includes an admission of the fraud, no forensic analysis may be required prior to the hearing. If there is no admission, consider forwarding the fraudulent document to the Forensic Document Laboratory (FDL) for analysis. [See Chapter 32 for details on using FDL services.]

(7) Search for existing Service records in CIS and other appropriate automated systems. If an "A" file exists, create a temporary file and request the permanent file for the hearing, otherwise, open a new file. [Chapter 31 contains detailed information on use of Service data bases.]

(8) At air and seaports, serve the carrier with Form I-259, Notice to Detain, Remove, or Present Aliens, and check the appropriate boxes to advise the carrier of potential liability for removal and to order the carrier to remove the alien when the removal process is finished.

(9) If the alien is to be released for an removal hearing at an onward office, complete a Form I-546, Notice to Appear for Deferred Inspection, following procedures set forth in Chapter 17.1. In such cases, the I-862 will be served by the onward office. Although ordinarily not an option, this procedure is may be appropriate for determining whether to institute removal proceedings in cases involving returning permanent residents.

(10) Prepare two identical sets of all documents to be submitted as evidence: one for the Service file, and one for the Immigration Court.

(c) Post-hearing actions.

(1) Alien ordered admitted. Complete the inspection process as you would any other admission, including processing a new Form I-94, noting the remarks block "ordered admitted by immigration judge". Collect any prior departure I-94, stamp the reverse with your admission stamp and forward for data entry.

When the immigration judge orders the admission of a detained alien or an alien at a land border, and the decision is not final because the Service's appeal time has not tolled, an appeal has not been decided, or the decision has been certified to the Board of Immigration Appeals, release and parole the alien unless particular facts, such as an alien's serious criminal background, warrant other action.

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(2) Alien ordered removed. Complete and serve Form I-296, Notice to Alien Ordered Removed/Departure Verification, on the alien, checking the appropriate box to indicate the duration of the penalty imposed and the reason for such penalty. The penalty for an aggravated felony may be imposed on such felon, even if the alien was not charged as being inadmissible as an aggravated felon in this proceeding. Forward one set of fingerprints on Form FD-249 to the FBI. At the time of actual removal, a photograph and a pressed print of the alien's right index finger should be placed on the Service copy of the I-296, the alien should sign the form, and the particulars of the departure entered on the form for retention in the file. Cancel the alien's visa or border crossing card, if appropriate, and complete and distribute Form I-275 as described in Chapter 17.2. Note the passport with the file number and action taken, for example: "Ordered Removed 12/1/97 NYC/Section 212(a)(2)(A)(i)(I)". Forward a copy of the removal order with the I-275 to the Department of State. Prepare a new I-94, endorse it with a parole stamp and note the stamp "For removal from the U.S. by (carrier name)", the date of removal, stamp number, port, and action date. Serve Form I-259 on the affected carrier, if appropriate.

In the case of an alien with an immigrant visa ordered removed, the immigrant visa packet, noted by the immigration judge, is retained in the file of the Executive Office for Immigration Review. Other procedures outlined above are the same.

(3) Alien permitted to withdraw during removal hearing. In a case where the immigration judge permits the alien to withdraw his or her application for admission prior to conclusion of a hearing, follow procedures described in Chapter 17.2.

(d) Removal proceedings involving lawful permanent residents.

(1) Meaningful Departure. If a returning lawful permanent resident appears inadmissible, first determine if he or she is an applicant for admission within the meaning of section 101(a)(13)(C) of the Act. See discussion in Chapter 13.

(2) Procedures. If you find that a lawful permanent resident is considered to be seeking admission and appears to have abandoned his or her permanent residence in the United States, there are several possible courses of action: deferred inspection, removal proceedings, nonimmigrant admission or parole and, occasionally, withdrawal of application for admission. In any case, temporarily lift, but do not destroy or return to the card facility, the Alien Registration Receipt Card (Form I-551). In instances where detention is not warranted, defer inspection for institution of removal proceedings, as described above in paragraph (b)(10) and Chapter 17.1. If you are going to schedule a removal hearing, follow applicable procedures above. In addition, issue a temporary I-551 in accordance with 8 CFR 264.5(g) and local procedures. Note the reverse of the temporary card: "Alien is scheduled for removal hearing - do not admit as LPR." Parole the alien for the time necessary to conclude the removal proceeding. Abandonment of residence is discussed in Chapter 17.10, below.

(3) If a lawful permanent resident appears to be inadmissible under section 212(a)(3)(A) (except clause (ii)), (B) or (C), notify your regional director, through the district director, of

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the facts of the case.

(e) Proceedings Involving VWP Applicants Claiming Asylum. When the immigration judge denies asylum to a refused VWP applicant, arrange for the alien to be removed on the first available transportation to the point of embarkation.

17.7 Temporary Inadmissibility under section 235(c).

(a) General. An immigration officer must, pursuant to section 235(c) of the Act, temporarily deny admission to the United States to any nonimmigrant who appears to be inadmissible under section 212(a)(3)(A) (other than clause (ii)), (B) or (C). Such actions, although rare, are extremely serious and sensitive.

(b) Procedures. Basic procedures for temporary denial of entry are set forth in 8 CFR 235.8. Take a brief sworn statement from the alien, if possible. Exercise caution in asking questions to insure you do not compromise classified information or confidential sources. Complete and serve the alien with Form I-147, Notice of Temporary Inadmissibility. Explain the action being taken and the right to submit a written representation. Complete actions to remove the alien on the first available transportation. Immediately prepare and submit a short memorandum to the district director containing the alien's name, date and place of birth, residence address, file number if known, port and date of temporary inadmission, and a summary of all pertinent facts developed during the inspection. If the alien was entering as a delegate to a convention, provide the date and place of the convention and the sponsoring organization. In sensitive, high profile cases, follow the procedures for reporting incidents described in Chapter 2.7. Institute checks with other law enforcement agencies to develop further information. Prepare Form G-325A, mark it "Special Handling- I-147 served pursuant to 8 CFR 235.8" and forward it expeditiously to the district director. Photocopy the data page, visa page, and any other pertinent pages from the alien's travel document.

If the alien previously resided in Canada, forward Form G-325B to the Service liaison officer in Ottawa. When a current Canadian resident is to be temporarily denied admission on security-related grounds, notify the liaison officer in Ottawa by phone or fax, providing available personal data. If the denial of admission is based on lookout information, the liaison officer should be so advised, and if the lookout is a temporary one, also provide a synopsis of the lookout. The liaison officer will consult available sources and provide information to the port normally within a few hours. Delay action pending receipt of the response.

After five days, or upon receipt of the alien's written statement, prepare a detailed report for submission to the regional director. In addition to the information from the summary report, include other personal data such as marital status; the destination, duration, and purpose of the proposed visit; basis for temporary inadmissibility, including sources, reliability of informants, and identify what, if any, information is classified and an assessment of whether disclosure of the information would be prejudicial to the public interest, safety, or security of the United States. Attach a copy of any sworn statement taken, or explain why there was none. Attach the results of checks with other agencies. Make a recommendation as to whether or not the alien should be accorded a hearing by an immigration judge.

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(c) Canadian "Summary Conviction". An alien who is convicted of a theft offense punishable on summary conviction under section 334(b)(ii) of the Criminal Code of Canada as the only offense committed is not inadmissible to the United States on the basis of that conviction. [See General Counsel Opinion 92-36 for a detailed discussion of this issue.] (Added IN 99-30)

17.8 Detention of Aliens at Ports-of Entry.

(a) General. During an inspection, officers have the authority to search without a warrant, take sworn statements, and detain applicants for admission to determine their admissibility into the United States. In cases where removal proceedings are being initiated, a decision relating to the detention of the applicant must be made. In some cases the detention needed is only of short duration (i.e., waiting for departure of flight, or preparation of case file, etc.) and transfer to a long-term detention facility is not practical. During an inspection at a port-of-entry, detention begins when the applicant is referred into secondary and waits for processing.

(b) On March 9, 2004, the Office of Field Operations issued CBP Directive No. 3340-030A, which superseded Directive No. 3340-030 issued on July 26, 2001. This directive also supersedes previous port of entry detention procedures established under the former INS. Following is Directive No. 3340-030A:

SUBJECT: SECURE DETENTION PROCEDURES AT PORTS OF ENTRY

1. **PURPOSE.** This Directive establishes national policy for the temporary detention of persons by U.S. Customs and Border Protection (CBP) in secure areas at Ports of Entry (POEs).

2. **POLICY.**

2.1 This policy shall pertain to the temporary detention of all persons who are detained in secure areas. This includes, but is not limited to, those persons suspected of terrorist activity, are under arrest, are awaiting confirmation on National Crime Information Center (NCIC) warrants, suspected as internal contraband carriers, aliens awaiting removal, transfer, or referral, or other processing involved in a secondary inspection, e.g. fuel tank exams.

3. **AUTHORITIES/REFERENCES.** 19 U.S.C. §§ 482, 1461, 1581, 1582; 8 U.S.C. § 236; Title 8 Code of Federal Regulations 236.1(e) [8 CFR 236.1]; Personal Search Handbook (PSH), CIS HB 3300-04A revised November 1999; Physical Security Handbook CIS HB 1400-02A; Enforcement Handbook, Chapter 43, Detention, Arrest, and Handling Prisoners; Customs Directive 3340-028 (Physical Control of Suspects);

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Internal Operating Procedures Notification (IOPN), 00-19, "Accountability Requirements for Lost/Stolen Evidence, Drugs, Currency and Escaped Prisoners," dated April 26, 2000; Policy Memoranda dated April 11, 2003, April 25, 2003, May 13, 2003 relating to Severe Acute Respiratory Syndrome (SARS); Inspector's Field Manual, Chapter 17.

3.1 General. CBP Officers have the combined statutory authority under Title 8 United States Code [8 USC], the Immigration and Nationality Act (INA) and Title 19 United States Code [19 USC]. It allows CBP officers to search without a warrant, take sworn statements, and detain applicants for admission to determine their admissibility into the United States, detain persons suspected of violating the customs, agriculture or other laws of the United States that are enforced at the border. In cases where removal proceedings are being initiated, a decision relating to the detention of the applicant must be made. In some cases the detention needed is only of short duration (i.e., waiting for departure of flight, or preparation of case file, etc.) and transfer to a long-term detention facility is not practical. During an inspection at a port of entry (POE), detention begins when the traveler is referred into secondary and when processing is underway or subject is waiting processing.

4 DEFINITIONS.

4.1 U.S. Customs and Border Protection Officer. Includes all legacy agency inspectors and canine enforcement officers.

4.2 Secure Area. This refers to areas such as a detention cell, search room, interview room, or security office where an individual is detained for a temporary period of time out of public view and cannot flee.

4.3 Attended Area. This refers to a location where a person is constantly in the physical presence of an officer in a secure area.

4.4 Unattended Area. This refers to a detention cell, confinement area, or secure area where a detainee may be out of view of an officer.

4.5 Juvenile. A person who has not reached his/her 18th birthday.

4.6 Patdown Search. The term refers to the act of an officer searching for merchandise, including contraband, weapons, or documents hidden in the clothing a person is wearing or on their body.

4.7 POE Short-term Detention. The temporary detention of a person at a POE while a case is being processed administratively or prepared for presentation for prosecution; pending parole, release, departure from the United States, or transfer of custody to another branch or agency; or while CBP makes arrangements for

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longer term detention. Short-term detention begins with the subject being referred by an officer for further inspection and may take place in a secondary inspection area, POE hold room, or any other designated and/or assigned secure area for less than 24 hours.

4.8 POE Hold Room. A confined area or secured room at a POE in which detained persons are temporarily held pending a secondary process, i.e., vehicle examination, adjudication, processing of documents, interviews, etc. Detention of a person in a POE hold room shall be for the least amount of time necessary.

NOTE: At a POE where no hold rooms exist, and where operationally feasible, a segregated area away from the traveling public should be established within the port. Direct supervision and control of the detainee must be maintained.

4.9 POE Detention Cell. A room where a person is placed who must be physically separated from the primary and/or secondary inspection areas, awaiting transfer to another detention facility or other Law Enforcement Agency (LEA), when constant surveillance of the subject is not feasible, and/or for ensuring the safety of both the traveling public and officers.

4.10 POE Search Room. A private designated location that is designed for extensive search of a person and that prevents all but designated necessary personnel from viewing the subject. A POE search room may serve as a temporary hold room should separation from others be required or extra room needed.

5 RESPONSIBILITIES.

5.1 The Assistant Commissioner, Office of Field Operations, is responsible for policy oversight, which includes the formulation and implementation of guidelines and procedures.

5.2 Directors, Field Operations (DFOs) and Port Directors (PDs) are responsible for managing the implementation of this program and monitoring compliance with the procedures to ensure uniformity of application.

5.3 The PDs are responsible for ensuring that all Treasury Enforcement Communication System (TECS) reports ([REDACTED]), detention logs, and any other reports pertaining to detentions are completed and reviewed. The reviews will determine the effectiveness of the procedures contained within this Directive, as well as, how well they are carried out.

5.4 Supervisors are responsible for ensuring that CBP officers under their direction are familiar with the guidelines set forth in this Directive.

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5.5 The U.S. Customs and Border Protection Basic Inspector Training Academy is responsible for incorporating this Directive into the appropriate training programs.

5.6 The PDs are responsible for identifying and ensuring that CBP officers under their direction are familiar with the areas that have been designated as detention cells, search rooms, or holding rooms. Dual designation of a particular room is authorized, i.e., a detention cell may also be used as a search room.

6 DETERMINATION TO DETAIN.

6.1 Priority of Detention. In cases where it is not possible to detain every person in a POE hold room, persons should be detained in the following priority:

6.1.1 [REDACTED]

6.1.1.1 [REDACTED]

6.1.1.2 [REDACTED]

6.1.1.3 [REDACTED]

6.1.1.4 [REDACTED]

6.1.1.5 [REDACTED]

6.1.1 [REDACTED]

6.1.2 [REDACTED]

6.1.3 [REDACTED]

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6.1.4 [REDACTED]

7 DURATION OF DETENTION.

7.1 Short-term detention begins when the traveler/applicant is referred by a CBP officer for further inspection and may take place in a secondary inspection area, POE hold room, or any other designated area; and is for the least amount of time necessary to complete the inspection or processing.

7.2 As a rule, the maximum time an individual may be held in a secure area at a POE is no longer than [REDACTED]. Accordingly, every effort will be made to transfer, transport, remove, or release those in custody as quickly as is operationally feasible.

7.3 The PD will approve all detentions in secure areas that reach or exceed [REDACTED].

7.4 The DFO must be notified through the chain of command, if the detention period at the POE extends to [REDACTED] or more.

7.5 A person placed in an unattended secure area will be checked [REDACTED], as the situation requires (see section 9.2). These checks will be annotated in the Detention Log [See Appendix 17-8]. For the purpose of tracking the duration of detention, the time will begin when the person is placed in a secure area. The tracking of time will be part of the Detention Log.

8 EXCEPTIONS TO SHORT-TERM DETENTION IN POE HOLD ROOMS.

8.1 Officers shall be sensitive to detained persons who are pregnant, on life-sustaining/lifesaving medication, appear ill, comprise family units (parent/adult with child/juvenile), or are persons of advanced age (over the age of 70) or unaccompanied juveniles (under the age of 18). [See section (9.27) of this Directive regarding Juvenile Detention Procedures and legacy Immigration Inspectors Field Manual (IFM) chapter 17.15(f)(5).]

8.2 For humanitarian reasons, the processing of secondary cases for these persons shall be expedited as quickly as operationally feasible.

8.3 To the extent possible, [REDACTED]

Officers should ask the detainee whether medical treatment is necessary. If the

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detainee replies in the affirmative, or if medical treatment appears necessary, officers shall make appropriate arrangements. [See section 9.25 of this chapter regarding Medical Emergencies.]

8.4 Family units, persons of advanced age, and unaccompanied juvenile detainees

[REDACTED]

[REDACTED] unless extraordinary and unforeseen circumstances exist.

8.5 In cases where family units are encountered but only the parent or legal guardian is detained, specific circumstances will dictate whether they should be separated from the juvenile who is not detained. If removing the juvenile from the parent or legal guardian is not feasible, arrangements should be made to keep the family unit together until a social service worker or an adult family member arrives to take custody of the juvenile.

8.6 Males and females shall be segregated at all times when in a POE detention cell (even if they claim to be married). Under no circumstances are detained persons under the age of 18 to be held with adult detainees, unless the adult is an immediate relative or recognized guardian who has been charged with the care and custody of the minor, and no other adult detainees are present in the hold room. Special treatment of juveniles is of paramount importance. [See section 9.27 of this chapter regarding Juvenile Detention Procedures.]

8 PROCEDURES.

9.1 Detention Log. Port Directors will ensure that each POE maintains a detention log (manually and/or by computer) for all detainees placed in a POE detention cell. The officer handling the case shall enter the information relating to each detainee immediately upon placing him/her in a hold room and/or holding cell. For uniformity purposes, the attached Detention Log will be used at all locations for each unattended secure area and will contain an entry for each individual detained. The Detention Log will be maintained and filed at the POE [REDACTED] Each entry will contain the information listed below.

- (a) Name of the person detained
- (b) Date of Birth (DOB)
- (c) Reason detained
- (d) Time & Date placed into hold room and/or holding cell
- (e) Time & Date removed
- (f) [REDACTED] interval checks

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- (g) Physical/Mental condition
- (h) Officer's initials and comments
- (i) Meals offered/eaten/declined

9.2 Detention Cell Monitoring. Officers shall closely supervise detention cells at the POE when in use. Officers shall monitor hold rooms [REDACTED] noting in the log the time and officer's initials. It's the responsibility of the supervisor to ensure that an officer is within visual or audible range of the hold room to allow detainees access to restroom facilities (if not incorporated in the detention cell) on a regular basis.

9.3 Individual Caution Sheet. An Individual Caution Sheet [See Appendix 17-8] will be generated and posted near the entrance to the detention cell or in the secure area for those detainees who pose a special risk, i.e. diabetic requiring injections or possible suicide risk. The sheet will be maintained until the detainee is released from CBP custody and the fact that there is a detainee with a Caution Sheet will be communicated to all CBP officers during shift change briefings/musters. After the person is released or transferred to another agency or facility the Individual Caution Sheet will be retained on file [REDACTED] For uniformity purposes, the form is attached. The Individual Caution Sheet will contain at minimum the following check-off list to flag the detainee's special risk factor:

- (a) Name and DOB
- (b) Medical condition – requires prescribed medication
- (c) Hostile or uncooperative
- (d) Depression or suicidal
- (e) Asylum Claimant
- (f) Juvenile
- (g) Communicable Disease
- (h) Other

9.4 Medical. Whenever a CBP officer has reasonable suspicion that a traveler has a respiratory illness such as Severe Acute Respiratory Syndrome (SARS), the individual will be detained, and an Individual Caution Sheet generated. In detaining and transporting them, follow established guidelines. (SARS Policies Attached).

9.4.1 All persons placed in an unattended secure area at a CBP facility will be asked whether they have a medical problem or condition that may require some attention. If they are currently taking any prescribed medications the CBP officers will identify the type of prescribed medication, when it was last taken, and when the next dosage is needed.

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9.4.2 CBP officers will **not** administer or assist in injecting or administering medication. When an injection or administration of prescribed medication is necessary, Emergency Medical Services will be contacted. Prescribed oral medication in a properly identified container, with the specific dosage indicated, may be self-administered under the supervision of a CBP officer. Administration of prescribed medication, medical assistance, or refusal of the same, will be noted in the Individual Caution Sheet.

9.4.3 Officers will closely monitor and if possible segregate any detainee exhibiting signs of hostility, depression, or other symptomatic behavior (i.e. threats of suicide). In such cases, the officer will notify the shift supervisor and execute the Individual Caution Sheet. The Individual Caution Sheet must accompany the subject when transferred to another facility.

9.5 Asylees. When an asylum applicant is encountered, the CBP officer will transfer the applicant to a secure, attended, or unattended area as appropriate and an Individual Caution Sheet will be generated. Asylum applicants will be kept separate from other detainees to the extent possible and not placed in a detention cell unless otherwise indicated by their behavior. Officers should take note of signs of trauma, anxiety, or other factors relating to the case in determining the level of detention required.

9.6 Meals. Funding for meal service is not discretionary and is the responsibility of the local office through the DFOs. Officers shall provide a meal to any person, whether in a hold room or not, who is detained more than 6 hours (including secondary time or case preparation time). Juveniles, small children, toddlers, babies, and pregnant women shall have access to snacks, milk, or juice at all times. Regardless of the time in custody, officers shall provide a juvenile with meal service. In cases where an adult detainee requests a snack or meal due to extraordinary circumstances before the next meal service, the officer shall accommodate the request. Officers should be sensitive to the culinary cultural/religious dietary restrictions and/or differences of all detainees whenever feasible. A record of what type of meal is given to the detainee shall be logged. For an alien detained in a hold room, time of feeding or declination of a meal shall also be noted in the Detention Log.

9.7 Drinking Water. Drinking water shall be available in Styrofoam or paper cups for detainees requesting water. It is the responsibility of the supervisor to ensure that drinking water is available.

9.8 Restrooms. Access to restrooms shall be available to any detainees in a hold room or in the secondary inspection area. An officer of the same sex shall escort and closely monitor a detainee when using the restroom. Detainees using the

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restrooms shall have access to toilet items such as soap, toilet paper, female hygiene items, diapers, and wipes. **NOTE:** Access to restroom facilities may be restricted if the detained person is suspected of being an internal carrier.

9.9 Telephone. Officers shall notify every alien of his or her right to communicate by telephone with the consular or diplomatic officers of country of nationality in the United States when the removal of the alien cannot be accomplished immediately, and the alien must be placed in detention for longer than 24 hours.

9.9.1 In the cases of certain nationalities, if the alien is detained longer than 24 hours at the POE, existing treaties and CBP policy require that the service notify the appropriate consular or diplomatic officers about the alien's detention, even if the alien requests that this not be done. For the list of applicable countries, see 8 CFR 236.1(e).

9.9.2 Officers shall not mention any asylum claim or fear of persecution or torture expressed by the alien when contacting a consular official, nor shall they indicate the nature of the proceedings against the alien.

9.9.3 Dependent upon the length of detention and security risks, the Supervisor will determine whether or not the detainee will be allowed to communicate by telephone or in person with any other person, including consular officials. [See IFM chapter 17.15(b)(7) and 8 CFR 236.1(e).]

9.10 Detention Cells. The secure area where the detained person is placed must be cleared of all items that could be used as a weapon, to facilitate an escape, or to do bodily harm to the detainee or others. This includes purses, handbags, backpacks, and luggage. Weapons or improvised weapons may pose a significant risk to officer safety and care must be taken to minimize the subject's potential access to them.

[REDACTED]

9.10.1 Detention cells will routinely be thoroughly cleaned and sanitized and inspected for evidence of tampering.

9.10.2 Any problems encountered must be reported to the supervisor so that corrective action may be initiated.

9.11 Attended Area. When it is necessary to detain an individual in a work area, additional caution must be exercised to ensure the safety of the person and CBP employees.

[REDACTED]

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9.11.1 The person must be monitored at all times by at least one officer. The area within the person's direct reach must be cleared of all items that could be used as a weapon or to facilitate an escape.

9.11.2 Under no circumstances will evidence or other items that can be destroyed or pose a threat to any person be kept where they are accessible to a detained individual.

9.11.3 When possible, two CBP employees should be assigned to process and monitor persons detained at a CBP facility.

9.12 Search Procedures. Searches may, under certain conditions, be necessary to meet enforcement and/or security, or safety concerns. Under section 287(c) of the INA, officers have the authority to conduct a search of the person and personal effects of a person seeking admission if the officer has reasonable ground to suspect that ground of inadmissibility exists that may be disclosed by the search. All searches of detainees in CBP custody shall be conducted in a manner that is safe, secure, humane, dignified and professional.

[REDACTED]

9.12.1 All officers are to be aware of and comply with the enforcement standard on body searches and the CBP Personal Search Policy. Below are some of the policy guidelines and procedures for searches conducted at the border and functional equivalent of the border (POE) during the time of entry of a traveler for admission.

9.12.2 If a person is temporarily detained by CBP and must be placed in a secure area, CBP officers shall conduct a patdown in accordance with the guidelines established in Chapters 2 and 3 of the Personal Search Handbook and Chapter 43 of the Enforcement Handbook.

9.12.3 When a person has undergone a personal search in accordance with this Directive, the search shall be recorded in the appropriate TECS record using the *Reason for Search* code "[REDACTED]"

9.12.4 This Directive does not supersede the authority of a CBP Officer to conduct an immediate patdown or to secure a weapon if an officer suspects that a person may be armed.

9.12.5 This Directive does not supersede the authority of a CBP officer to

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conduct a lawful search incident to an arrest.

9.12.6 If an officer reasonably suspects merchandise or contraband is present as a result of the patdown search pursuant to paragraph 6.1, the CBP officer may conduct a more intrusive search to confirm or dispel suspicions, in accordance with the guidelines established in Chapter 4 of the Personal Search Handbook.

9.12.7 To ensure safety, prior to placing a person into a detention cell, officers shall empty the detainee's pockets of all sharp objects that may be used as weapons as well as all rope-like objects that the alien could use to injure him/herself. Examples of these things are:

- (a)
- (b)
- (c)
- (d)
- (e)

9.12.8 An officer may remove and examine [REDACTED] to ensure there are no hidden items. The items shall be returned to the individual and may not be confiscated until probable cause for arrest exists. However, if there are indications or articulable facts that may lead an officer to believe that the individual may attempt to harm themselves while in an unsecured, unmonitored area, then shoelaces, belts, neckties, and scarves may be removed.

9.13 Restraints Procedures. The use of restraints on persons in CBP custody shall be conducted in a manner that is safe, secure, humane, and professional. When restraints are used, the officer must have reasonable articulable facts to support the decision. Officers should employ only the amount of restraint reasonably necessary to ensure the safety of the detainee or others, and to prevent escape. Officers should take into consideration known criminal activity, observed dangerous or violent behavior, verbal threats, and/or the nature of the inadmissibility of the individual in determining whether to use restraints, continue their use, or remove the restraints.

9.13.1 All Officers are to be aware of and comply with the Enforcement Standard on the Use of Restraints. [See Enforcement Standard for the Use of Restraints and Customs Directive 3340-028 Physical Control of Suspects.]

9.13.2 In accordance with Customs Directive 3340-028 (Physical Control of

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Suspects), if an officer uses handcuffs solely for the safety of the officer and others, the officer should inform the restrained individuals that they are not under arrest and that the restraints are a temporary measure.

9.14 Escort Procedures. Inspectors may provide escort services to remove or transport detainees. Escorting officers are responsible for determining the need and level of restraints used at any time while escorting a detainee. All detainees in CBP custody shall be escorted in a manner that is safe, secure, humane, and professional. Whenever operationally feasible the escorting of persons will be conducted by two officers.

9.14.1 All officers are to be aware of and comply with the Enforcement Standard for Escorts. [See Enforcement Standards for Escorts and the Use of Restraints for more detailed guidelines.] Below are some of the policy guidelines for the escort and transport of those apprehended at entry.

- (a) No detainee shall be transported/escorted without the assigned officer conducting a search of the detainee, except when exigent circumstances pose a safety hazard or danger to the officer, detainee or public. In that case, a search shall be conducted as soon as it is practicable. At minimum, a patdown search shall be performed and recorded in accordance with the Personal Search Policy.
- (b) When escorting detainees in CBP vehicles, especially unaccompanied detainees of the opposite sex or minors, all officers shall maintain regular radio or telephonic communication with other CBP personnel, insofar as technologically possible and resources allow.
- (c) Families, unaccompanied females, and unaccompanied minors shall be separated from unrelated adult males by separate passenger compartments or an empty row of seats. If possible, these detainees shall be transported separately from other detainees.
- (d) When transported in a CBP vehicle, detainees shall be restrained in accordance with the Use of Restraints Policy and placed in seatbelts (when practicable).
- (e) The passenger section of all empty CBP vehicles and all immediate confinement areas shall be searched prior to, as well as following, each escort to ensure that no weapons or contraband have been hidden or left behind.
- (f) When escorting a detainee in view of the general public (i.e., airport

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terminal) for removal from the United States, officers shall use care and discretion when handling and removing restraints from detainees to avoid undue concern by the traveling public and airline personnel.

9.15 Transfer Procedures. Every effort must be made to transfer, transport or release detainees in custody as quickly as possible. The DFOs or their designees shall develop local procedures in writing for authorization and arrangement for detention.

9.15.1 Once a detainee has been transferred to the custody of another agency and/or Detention and Removal, responsibility for the individual is transferred to that entity.

9.16 Control and Safeguarding Detainee Personal Property. The control and safeguarding of detainee personal property shall include the secure storage of funds, valuables, baggage and other personal property.

9.16.1 All property will be receipted on the appropriate form CBP-6051.

9.16.2 Initial and regularly scheduled inventories of all funds, valuables, and other property will be conducted and documented on a CBP-6051.

9.16.3 All items belonging to the detainee shall be placed in a properly marked plastic sealed bag, inventoried, and placed in a secure area.

9.16.4 A safe, secure designated storage area shall be assigned. [See Detention Standard on Accountability and Safeguarding of Detainee Funds and Personal Property.]

9.16.5 Officers shall use the following form:

(a) Form CBP-6051, Custody Receipt for Retained/Detained or Seized Property. Used when items or personal property are removed from a person and stored for safekeeping. CBP officers should turn over all items or evidentiary value with a CBP-6051 to the next person taking custody of the person, i.e., Special Agent or other federal, state or local law enforcement Officer. Guidelines for retaining personal effects/property from individuals that have been arrested are outlined in Customs memorandum, File: CO:TO:S:O SSJ, titled "Personal Effects," dated March 29, 1993.

(b) A logbook and inventory sheet will be maintained listing the detainee name, A-number if applicable, Form CBP-6051 number, date items were

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retained or seized, property description, name of officer(s) recording the property, and the date, time, officer(s) conducting the inventory.

9.16.6 Where operationally feasible, two officers will inspect all funds and property, including those items found in parcels, suitcases, bags, bundles and boxes, in the presence of the detainee to ensure officer safety and accountability. This procedure will also be followed when property is returned to a traveler subsequent to his or her release. All PDs or other management officials accountable for POE operations must ensure that appropriate procedures are in place and in use.

9.17 Fire, Building Evacuation and Medical Emergencies. Established written evacuation plans for the POE shall include directions for an officer to remove detainees from hold rooms in case of fire and/or other building evacuation. Such event and its duration must be annotated in the Detention Log.

9.17.1 Appropriate emergency services will be called in the event of a medical emergency (i.e., heart attack, difficulty breathing) during the detention of any person.

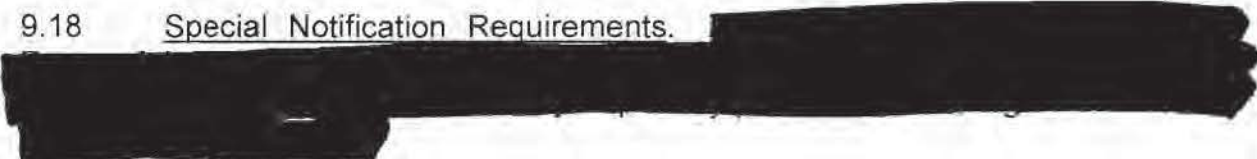
9.17.2 The CBP officer must notify the supervisor immediately of all medical emergencies.

9.17.3 If the detainee is removed for medical treatment, a CBP officer shall accompany the detainee and remain with the detainee until doctors determine whether the illness will require hospitalization.

9.17.4 If the detainee is not hospitalized the CBP officer must remain with the detainee until treatment is completed and then escort the detainee back to the POE.

9.17.5 If the detainee is hospitalized, the CBP officer shall notify the supervisor and await further instructions from the supervisor.

9.18 Special Notification Requirements.



9.19 Juvenile Detention Procedures. Special care must be exercised when processing and detaining persons under the age of 18. The CBP policy is outlined in 8 CFR 236.3 and must be strictly followed. [See IFM chapter 17.15 (f), Special Treatment of Minors.]

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9.19.1 At all stages of the inspection, detention, and removal process of a juvenile, officers shall take precautions to ensure the minor's rights are protected and that he or she is treated with respect and concern. Any detention following processing at the POE must be in accordance with the Flores v. Reno settlement. [See IFM Appendix 17-4, policy memorandum discussing Flores settlement.]

9.19.2 Minors will have access to restrooms, drinking water, food, and medical assistance if needed.

9.19.3 Minors will NOT be placed in short-term detention hold rooms, unless they have shown or threatened violent behavior, have a history of criminal activity, or there is an articulable likelihood of escape.

9.19.4 Minors will NOT be restrained unless they have shown or threatened violent behavior, have history of criminal activity, or there is an articulable likelihood of escape.

9.19.5 Minors will be allowed reasonable access to their parents or legal guardians if the supervisor believes it will be constructive. However, parent(s) or legal guardian(s) will not be allowed to inflict corporal punishment upon the juvenile while in the custody of CBP.

9.19.6 Unaccompanied minors must NOT be held with unrelated adults.

9.19.7 In situations where a female is nursing an infant, the infant will not be removed from the care of the mother (unless she poses a danger to the child). If a mother and infant must be separated for safety purposes, a social service worker must be contacted to take custody of the child.

9.20 Fingerprinting Individuals. When individuals are being fingerprinted, i.e., 10 digit hard print (excluding single digit IDENT prints), officers shall secure their firearms and chemical weapons in an approved firearms locker prior to beginning the process.

10 REPORTING REQUIREMENTS.

10.1 If a person makes a credible threat, assaults someone, is injured, is suspected of having SARS or any other communicable disease, escapes, or attempts to escape while in CBP custody, notification will be made to the PD, DFO, and Commissioner's Situation Room, [REDACTED] If a person escapes, notify all appropriate law enforcement agencies.

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10.2 If a person threatens or assaults a CBP officer, in addition to above requirements, notification will also be made to local field office of the FBI, or other Agencies as appropriate.

11 NO PRIVATE RIGHT CREATED. The procedures set forth in this Directive are for CBP internal use only and create no private rights, benefits, or privileges for any private person or party.

17.9 Medical Referrals.

(a) General. The U.S. Public Health Service (PHS) has statutory and regulatory responsibility to prevent the introduction, transmission, and spread of communicable disease from foreign countries into the United States. Applicable regulations are found in 42 CFR Parts 34 and 71. These responsibilities are delegated to the Centers for Disease Control and Prevention (CDC), National Center for Infectious Diseases, Division of Quarantine.

Quarantine stations are located at several major international airports. Each quarantine station has responsibility for all ports in an assigned geographic area. You should know which quarantine station has jurisdiction over your port. Historically, PHS quarantine stations have been referred to in the port community simply as "PHS" or "Public Health." As actual organizational names and assignments have changed over the years, that tradition has remained constant.

The Division of Quarantine is empowered to apprehend, detain, medically examine, or conditionally release individuals (including U.S. citizens) suspected of having one of the following diseases:

- Cholera and suspected cholera,
- Diphtheria,
- Infectious tuberculosis,
- Plague,
- Suspected smallpox,
- Yellow Fever,
- Suspected viral hemorrhagic fevers such as Lassa, Marburg, Ebola, Congo-Crimean and others not yet isolated or named, and
- Severe Acute Respiratory Syndrome (SARS).

Foreign quarantine regulations require that death or illness of an arriving international passenger or crew member is to be reported by the captain of the arriving ship or plane to the quarantine station having responsibility for the port of entry; however, illnesses

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are not always reported.

Whenever a Federal inspector has any questions regarding public health entry requirements for persons or importations, he or she should contact (day or night) the appropriate quarantine station or Division of Quarantine headquarters in Atlanta, Georgia. [A list of addresses and phone numbers for quarantine stations is contained in Appendix 17-2.]

(b) Inspection of Arriving Persons. The following guidelines relate to the inspection for medical purposes, of all arriving international passengers and crewmembers.

(1) Observe. Observe all arriving passengers and crew for signs and symptoms of illness, such as [REDACTED]

[REDACTED] A person is considered to be ill in terms of foreign quarantine regulations when symptoms meet the following criteria:

(A) Temperature of 100 degrees F. (38 C.) or greater which is accompanied by one or more of the following: rash, jaundice, glandular swelling, or which has persisted for 2 days or more;

(B) Diarrhea severe enough to interfere with normal activity or work.

(2) Detain. Hold ill passengers and crew, and ask for details about symptoms and itinerary. At a port-of-entry where a quarantine station is staffed, that station should be notified and a quarantine inspector will investigate. If there is no quarantine inspector at your port, the appropriate quarantine station should be notified. The quarantine station will release or conditionally release the ill person, or if the circumstances warrant, call a physician to conduct an examination and recommend appropriate action.

(3) Check Itinerary. It is sometimes necessary to check the itinerary of arriving persons because of the possibility of an outbreak of a communicable disease in a foreign area. Knowledge of the itinerary helps in determining the appropriate preventive measures. If this situation should arise, CDC will direct that each arriving person be asked if he or she has been in the infected country within a specified number of days. If so, the person is to be referred to the appropriate quarantine station.

(c) Medical Inspection of Arriving Aliens. The health-related grounds of inadmissibility of aliens under section 212(a) of the Act provide for the inadmissibility of any alien who:

(1) Is determined to have a communicable disease of public health significance

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(currently, the same diseases previously classified as "Dangerous Contagious Diseases" which are: Chancroid; Gonorrhea; Granuloma Inguinale; Human Immunodeficiency Virus (HIV) Infection; Leprosy, infectious; Lymphogranuloma Venereum; Syphilis, infectious stage; and Tuberculosis, active.); or

(2) Seeks admission or adjustment as an immigrant and who has not been vaccinated against at least the following diseases: mumps, measles, rubella, polio, tetanus, diphtheria, pertussis, influenza type B and hepatitis B, and any other vaccinations recommended by the Advisory Committee on Immunization Practices; or

(3) Has or had a physical or mental disorder with associated behavior that poses or may pose a threat to the property, safety, or welfare of the alien or others; or

(4) Is a drug abuser or addict.

(d) Procedure. Inspectors should immediately advise the appropriate quarantine station when an immigrant arrives without medical documents or with incomplete medical documents. When processing aliens, do not keep the alien's chest X-ray film. This is an important medical document that the alien should retain as part of his or her permanent health records.

Refer to the appropriate quarantine station all aliens for whom a "Medical Hold" (Form CDC 75.40) should be issued. Candidates for a "Medical Hold" are:

(1) All aliens who are not routinely required to have a medical examination and who, upon arrival in the U.S., exhibit a physical condition which may render them inadmissible under section 212(a) of the Act;

(2) All aliens who are not routinely required to have a medical examination and who, upon arrival in the U.S., exhibit variations in behavior which may indicate a physical or mental disorder that may pose a threat to the property, safety, or welfare of the alien or others, and may be inadmissible under section 212(a) of the Act;

(3) All aliens who require a medical examination overseas (immigrants, refugees, fiancé(e)s of U.S. citizens and their minor children), but who arrive without evidence or with incomplete evidence of having had one performed, or with one that has expired. Satisfactory evidence can consist of a properly completed "Medical Examination of Applicants for United States Visas" (Form OF-157), with results of chest X-ray and serologic tests for syphilis and human immunodeficiency virus (HIV) infection indicated (**Note:** Chest X-ray and serologic tests are required for aliens 15 years of age and older); and

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(4) All aliens with a Class A condition or a Class B condition including tuberculosis, not infectious; and Hansen's disease [leprosy], not infectious. These aliens should have a stamp imprinted on the face of their visa (Form OF-155A) as follows:

CLASS A OR CLASS B REQUIRES ATTENTION OF USPHS AT POE

While consular officers normally stamp the OF-155A when an immigrant has a medical condition of public health concern, this is sometimes not done. The inspector should check all OF-157's whether or not the "Attention PHS" stamp is present.

When quarantine station personnel are not available to process aliens with these medical conditions, retain a copy of the OF-157. On the reverse side, write the alien's U.S. address, sponsor's name and address, arriving flight and date, port-of entry, and the INS inspector's name. A photocopy of the alien's visa (OF-155A) is satisfactory in lieu of transcribing this information on the reverse of the OF-157 provided that the address is correct on the OF-155A and that the flight number and date of arrival are recorded on the OF-155A prior to making the photocopy. The OF-155A and/or OF-157 with requested information should be given, mailed, or sent by FAX to the appropriate quarantine station.

If the alien has a Class A communicable disease of public health significance, copies of the OF-157, OF-155A, and both sides of the Form I-601 (being changed to new Form I-724) waiver application should be given or mailed to the appropriate quarantine station. The statements to be completed by waiver applicants who are HIV positive or who have Hansen's disease will be affixed to the back of the I-601 waiver application by CDC Division of Quarantine staff. See IMMACT Wire #65 dated August 7, 1991 for further information.

If the alien has a Class A physical or mental disorder with associated harmful behavior, a copy of USPHS/CDC Form 4.422-1, "Statements in Support of Application for Waiver" should be given or mailed to the appropriate quarantine station, along with the OF-157, OF-155A, and I-601 (I-724).

Note: There is no waiver provision in the law for aliens applying for immigrant visas who are found to be excludable under section 212(a)(1)(A)(iv) of the Act for drug abuse or addiction. If an alien arrives with a visa indicating Class A drug abuse or addiction, please refer to the appropriate quarantine station.

(e) Special Procedures Pertaining to First Time Refugees and Asylees. Refugees and asylees normally arrive at ports where quarantine inspectors are assigned, but this may

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not always be the case. Notify the appropriate quarantine station of all refugees and asylees entering the U.S. for the first time. If a quarantine inspector is not available to process the refugee or asylee, you will be asked to obtain the following information, normally by making copies of documents carried by the refugee or asylee. This information is necessary to ensure that all refugees and asylees receive a health screening and any appropriate immunizations or treatment at the place of resettlement:

- Name, date, country of birth, and sex of refugee,
- Language spoken,
- "A" Number,
- Name, address, and phone number of local sponsor,
- Name of principal sponsor (Voluntary Agency), and
- Date, place of arrival, and flight number.

(f) Suspected Tubercular Parolees. Every effort should be made to determine the tuberculosis status of parolees prior to release. Refer those who are suspected of having infectious tuberculosis to the appropriate quarantine station.

[Rev. IN 03-41]

17.10 Abandonment of Lawful Permanent Resident Status.

(a) General. There are several possible actions when the inspecting officer has reason to believe an alien seeking admission with an alien registration card or SB-1 visa has actually abandoned lawful permanent residence. Refer to the discussion in Chapter 13 on this subject. In some instances, the applicant voluntarily wishes to relinquish his or her alien registration document and either enter as a nonimmigrant or depart from the U.S. immediately. Most often such aliens will already be in possession of a nonimmigrant visitor's visa. The inspecting officer must never coax or coerce an alien to surrender his or her alien registration document in lieu of a removal hearing.

(b) Procedure for Documenting Abandonment of Residence. These instructions regarding the disposition of completed I-407 forms apply not only to Inspections personnel, but to all Service or Department of State employees involved in the execution of any I-407. In a situation where the alien does voluntarily relinquish his or her alien registration card, complete the Form I-407, Abandonment by Alien of Status as Lawful Permanent Resident. The alien must sign the I-407, acknowledging that the action is strictly voluntary. Execute Form I-89, completing the appropriate blocks if the alien is surrendering Form I-551, Alien Registration Receipt Card. If the alien is surrendering a previous edition, Form I-151, no I-89 is required. Ordinarily, you should take a sworn statement in addition to completing Form I-407. Attach the Alien Registration Receipt Card to the Form I-89, if completed, or the Form I-407. Forward the I-89 (if completed), attached to the Form I-407 and additional sworn statements, to the Texas Service Center for CLAIMS/CIS data entry and document destruction. After data entry and card

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destruction, the Service Center will forward the original Form I-407, I-89 and sworn statements to the appropriate FCO for filing in the original "A" file.

If the I-407 is executed in connection with an application for admission at a port-of-entry, admit the applicant as a nonimmigrant, following normal procedures for aliens with visas; or exercise the visa waiver option pursuant to section 212(d)(4) of the Act or the Visa Waiver Program. If the alien chooses to immediately depart the U.S., advise the alien that he or she may still be entitled to issuance of a temporary alien registration card, for reentry and a removal hearing, as described above in Chapter 17.6(d).

If the I-407 is being executed for an alien who is in the United States pursuant to admission as a lawful permanent resident and is not in removal proceedings, yet who wishes to relinquish resident status and depart from the United States, the alien should be granted a suitable period of time to effect voluntary departure, in accordance with current procedures.

Occasionally, you may receive an alien registration card surrendered by a resident alien either to the Service or to a transportation line, where the bearer has expressed an intention to relinquish residence. If the bearer has not yet departed and if time permits, take a sworn statement from him or her concerning the facts surrounding the abandonment and attach it to the I-407. If the bearer has already departed the U.S. and you are sure of the facts surrounding the abandonment, execute Form I-407, noting the departure information and other relevant facts. (Paragraph (b) revised 3/5/98; IN97-04)

(c) Restriction in the San Antonio District. The U.S. District Court for the Southern District of Texas prohibits immigration officers from soliciting or taking waivers of removal hearings in INS district 14. See Leticia Sanchez-Hernandez et al c. Richard Casillas et al, Civil Action No. L-78-4 2, April 10, 1981.

17.11 Asylum Claims/Safe Third Country Agreement with Canada. (Revised 2/23/05; CBP 8-05)

(a) General. The Agreement Between the Government of the United States of America and the Government of Canada for Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries (Safe Third Country Agreement) was signed on December 5, 2002. Final implementing regulations were published on November 29, 2004, with an effective date of December 29, 2004.

The Agreement provides a framework to determine which country is responsible for consideration of asylum or torture claims. With certain exceptions, the Agreement requires asylum-seekers to make the asylum claim in the country where they were last physically present (either Canada or the United States) upon arrival at a U.S.-Canadian land border port of entry. Unless they qualify for an exception under the agreement, asylum-seekers will generally have to seek protection in Canada if attempting to enter the United States from Canada, or in the United States if attempting to enter Canada

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from the United States.

(b) Exceptions. The Agreement does not apply to persons who are citizens of Canada or the United States or who, not having a country of nationality, are habitual residents of Canada or the United States.

The Agreement contains numerous other exceptions. Persons determined to qualify for one of these exceptions will be allowed to proceed with their asylum claim in the country to which they are seeking admission.

- Persons who have a spouse, parent, child, sibling, grandparent, grandchild, aunt, uncle, niece, nephew, or legal guardian in the other country, as long as the relative has lawful status (other than B-1/B-2 visitor status) or has a pending asylum claim in the country where the alien is seeking asylum (*the relative with a pending asylum claim must be 18 years of age or older; there is no age limit for relatives with other lawful status*);
- Unaccompanied minors, defined as an unmarried asylum claimant under the age of 18 who does not have a parent or legal guardian in either the United States or Canada (*this differs somewhat from common usage of the term "unaccompanied" for other purposes under the immigration laws*);
- Persons who have a validly issued visa or other valid admission document, other than for transit (*refers to genuine visas or travel documents issued to the alien by the U.S. government, including those that may have been obtained through misrepresentation, but does not include those obtained through identity fraud or issued in fraudulent or photo-subbed passports*);
- Persons who are not required to obtain a visa for the United States, but are required to have a visa for Canada (*currently no countries fall into this exception*);
- Additionally, the Agreement specifically includes a provision allowing each country to examine, at its own discretion, any asylum claim made to that country where it deems that it is in its public interest to do so.

(c) Applicability. The Agreement applies only to arriving aliens at established land border ports of entry along the U.S.-Canada border, as defined in 8 CFR 100.4(c)(2), when the port is open for inspection and to certain aliens being deported from Canada (not pursuant to the Agreement) in transit through the United States.

Arriving aliens are defined in 8 CFR 1.1(q), and for purposes of the Agreement generally include:

- Persons presenting themselves for inspection at a port of entry;
- Persons coming or attempting to come into the United States through a port of

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entry (whether or not by presenting themselves for inspection); and

- Persons apprehended or continuously observed crossing the land border by a port official within the physical boundaries of the port, and for this purpose, in the immediate vicinity of the port. Port runners who are observed attempting entry through the port and who are apprehended immediately in the vicinity of the port are considered arriving aliens. Persons who effect entry through a port of entry without detection and who are later apprehended are not subject to the Agreement.

Arrivals by train where the passengers on the train are inspected at the border or other designated place inland where the train arrives are considered land border arrivals for this purpose.

For purposes of the Agreement, ferry crossings along the Canadian border are not considered land border ports of entry.

The Agreement does not apply at preclearance stations in Canada, nor does it apply to aliens who attempt illegal entry between the ports of entry.

It does not apply at airports, except as noted below for aliens being removed from Canada, who claim asylum while in transit through the United States,

(d) Processing aliens subject to the Agreement. There are two distinct sets of processes, depending on whether the alien is an applicant for admission arriving from Canada and applying for asylum in the United States (an arriving alien pursuant to 8 CFR 1.1(q)), or whether the alien attempted to travel from the United States to apply for asylum in Canada and is being returned to the United States pursuant to the Agreement.

Arriving Aliens - Asylum-seekers who arrive from Canada at a land border port of entry and apply for asylum in the United States.

Aliens arriving from Canada at a land border port of entry who request asylum or claim a fear of persecution or torture will be processed for expedited removal and referred to an asylum officer for a credible fear interview. Prior to proceeding with the credible fear interview, the asylum officer will conduct a threshold screening to determine whether an exception to the Agreement applies and the alien will be allowed to proceed with the credible fear interview. If the asylum officer determines that no exception applies, these individuals will be ordered removed by the asylum officer and returned to Canada and their asylum claim examined in accordance with the Canadian refugee status determination system.

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CBP Officers at ports of entry are not to attempt to determine whether the Safe Third Country Agreement applies or whether the alien qualifies for any of the exceptions; that determination will be made by an asylum officer. However, any information that CBP Officers obtain through the inspection process that may have a bearing on the eligibility for an exception under the Agreement, such as the use of fraudulent documents, should be fully documented in the file.

(1) Process for expedited removal in accordance with existing guidelines and refer for a credible fear interview. [See Chapter 17.15 concerning the expedited removal/credible fear process.]

(2) In addition to the Form M-444, Information about Credible Fear Interview, the alien shall be given a supplemental notice, Information about Threshold Screening Interview.

(3) Fax the Form I-860, I-867A&B, M-444, legal services provider list, and Information About Threshold Screening Interview to the Asylum Office having jurisdiction over the case. If there is other information in the file, such as the Form I-213 or I-275, that may assist the asylum officer in making the determination under the Agreement, fax that information as well. Information about the use of fraudulent documents or identity fraud, in particular, may have a bearing on the determination.

(4) Prepare Form I-160A, Notice of Refusal of Admission/Parole into the United States. Check the box "Refused admission and paroled into the United States", even though the alien will actually be initially detained in DHS custody rather than paroled. Give (or fax) one copy to Canadian Immigration authorities and have them stamp a second copy to be placed in the A file. This will ensure that Canada will take back the alien if no exceptions to the Agreement are found and the alien is to be returned to Canada.

(5) Seize any fraudulent documents in accordance with existing guidelines. Prepare a travel packet to include a photocopy of the document presented that includes copies of all the pages with cachets, notations, or visas on them, as well as the biometric pages. Also complete a Single Journey Letter on CBP letterhead with the traveler's photograph and fingerprints incorporated in it. Place the packet in the A file to be used if or when the alien is returned to Canada.

(6) Pursuant to existing policy, unaccompanied minors (aliens under the age of 18) are not generally subject to expedited removal, and may qualify for an exception under the Agreement. The definition of unaccompanied minor as used in the Agreement differs somewhat from the definition of juvenile used for other immigration purposes; however, officers need not consider whether the alien meets the definition under the Agreement. For general immigration purposes, a minor is

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considered unaccompanied if not traveling with an adult relative (parent, brother, sister, aunt, uncle, or grandparent) or legal guardian. Unaccompanied minors claiming asylum will normally be placed in section 240 proceedings where the immigration judge will make the determination whether any exceptions apply under the Agreement and whether they will be allowed to apply for asylum in the United States. [See Chapter 17.15(f) for processing of minors].

(7) If an asylum-seeker expresses concerns about being placed in expedited removal and detained for a credible fear interview and asks to withdraw his or her asylum claim and application for admission, CBP may permit such withdrawal, in accordance with section 235(a)(4) and 8 CFR 235.4. The decision whether to permit withdrawal of application for admission rather than issue a removal order should take into consideration the seriousness of the inadmissibility and other factors. Aliens who presented fraudulent documents should normally not be permitted to withdraw their application for admission, except under extraordinary circumstances, although they may still wish to withdraw their asylum claim and be removed immediately. The officer handling the case must ensure that there is no misunderstanding and that the alien is voluntarily making that decision. The officer may wish to consult the Asylum Office to determine whether the case should still be referred. Before allowing the withdrawal, the officer must be sure that the alien has both the intent and the means to depart immediately from the United States. When processing an asylum-seeker who wants to dissolve or withdraw his asylum claim, the officer should take a second sworn statement from the alien, using the Form I-867A&B. Ensure that all the facts of the case and the alien's willingness to withdraw are recorded. See Chapter 17.2 for procedural guidance relating to withdrawal of application for admission.

(8) Aliens applying for admission under the Visa Waiver Program (VWP) are not subject to expedited removal, regardless of their true and correct nationality. If an alien applying under the VWP indicates an intention to apply for asylum or a fear of persecution, the alien will be referred to an asylum officer using the supplemental notice, Information about Threshold Screening Interview, to determine whether an exception to the Agreement applies. If the alien does not qualify for an exception, he or she will be refused entry under the VWP and returned to Canada. If an exception applies, the asylum officer will refer the alien to an immigration judge for an asylum-only hearing using Form I-863.

- a. Search for existing records in CIS and other appropriate automated data systems. If an A file exists, create a temporary work folder. If a file does not exist, follow local procedures for creating an A file. Track the work folder in the National File Tracking System (NFTS).
- b. Complete the sworn statement using Form I-877.

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- c. Partially complete the Form I-275 with the identifying information, noting the facts of the case and the inadmissibility in the narrative. Indicate that the alien was referred for a Safe Third Country Agreement threshold screening.
- d. Fill out both portions of the Form I-94W, but do not endorse the form. Include it in the A file.
- e. Give the alien the supplemental notice, Information about Threshold Screening Interview.
- f. Arrange for detention in accordance with local procedures and fax the sworn statement, Form I-275 and the threshold screening notice to the appropriate Asylum Office.
- g. If the alien does not qualify for an exception, he or she will be returned to Canada. ICE DRO will normally transport the alien to the port of entry. The CBP Officer will complete the Form I-275, checking the box for VWP refusal. Forward a copy of the I-275 to the appropriate Consulate.
- h. Endorse both portions of the Form I-94W "refused in accordance with INA section 217"; line stamp or enter the date, POE and the officer's stamp number. Also note the reason for refusal (ground(s) of inadmissibility) in block 13 of the form.

Returnees - Aliens who entered the United States either legally or illegally and are returned from Canada pursuant to the Safe Third Country Agreement.

The courts have long held that aliens who entered the United States, either legally or illegally, then traveled to a foreign country, who were refused entry and are returned, are deemed not to have departed the United States. Matter of T, 6 I&N Dec. 638 (BIA 1955). [see also GenCo Opinion 89-17]. Thus, aliens who apply for admission to Canada but are returned to the United States after having been returned by Canada pursuant to the Agreement are not arriving aliens and therefore not subject to expedited removal. These aliens will be processed as if apprehended or encountered within the United States. Depending on their status, they may or may not be placed in removal proceedings. These aliens may be processed either by port of entry personnel, or turned over to Border Patrol or ICE for processing in accordance with existing local practice.

For persons traveling from the United States and seeking refugee status in Canada, Citizenship and Immigration Canada (CIC) will make the determination of whether the

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exceptions to the Agreement apply directly at the port of entry at the time of the refugee claimant's application for admission to Canada. Those who qualify for an exception to the Agreement will be permitted to file their refugee application in Canada. Those who do not qualify for an exception will be returned to the United States the same day in most cases. CIC officials will fax an IMM 5569 to the designated U.S. official at the receiving U.S. port of entry and will normally contact the U.S. port of entry by telephone to confirm that the alien is returning. CIC will provide the alien with a copy of the IMM 5569, the negative eligibility decision, and a copy of the removal order. CIC will seize all fraudulent documents and fax copies to U.S. officials. They will return legitimate documents to the alien. Most ineligible applicants will be returned unescorted from Canada in their own vehicles, although uncooperative or dangerous persons may be escorted. Ineligible claimants will usually be returned to the United States through the same port of entry.

Port Directors should coordinate with their local Canadian counterparts to determine the most effective and efficient means of notification or return in accordance with each country's procedures.

Aliens being returned from Canada will be processed according to their status in the United States.

(1) Aliens who are in status upon being returned from Canada after applying for asylum there.

Aliens who are in status upon their return from Canada may be released and given a Form I-589, Application for Asylum and for Withholding of Removal, if they wish to file their claim with an Asylum Office in the United States. Asylum claims made at an Asylum Office are "affirmative" applications filed voluntarily by aliens.

(2) Aliens who entered the United States illegally or are out of status upon return from Canada after applying for asylum there.

Aliens who have not been admitted or paroled into the United States are amenable to removal proceedings before an immigration judge based on inadmissibility under section 212(a) of the Act. Aliens who were admitted to the United States but who are out of status are subject to removal proceedings before an immigration judge based on deportability under section 237(a) of the Act. Upon their return from Canada, these aliens may be placed in removal proceedings pursuant to section 240 of the Act and may be detained in accordance with current ICE detention priorities if they are subject to mandatory detention, are of national security interest or their release would represent a danger to the public, or meet other established detention criteria.

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a. Removal hearings under section 240 of the Act

(i) General. Upon an alien's return from Canada, a determination must be made as to what section of the Act that alien will be charged with. Regardless of whether the alien is being charged under section 212(a) or section 237(a) of the Act, the officer will institute removal proceedings under section 240 of the Act by issuance of a Form I-862, Notice to Appear. However, since these are not arriving aliens, other aspects of processing may differ from those used for arriving aliens. If the alien indicates a fear of persecution or return, advise the alien that he or she may present his or her asylum claim during removal proceedings before the immigration judge. If the alien does not understand the English language, an interpreter must be used to ensure that the alien is appropriately advised of the process and rights.

(ii) Search for existing records in CIS and other appropriate automated data systems. If an A file exists, create a temporary work folder. If a file does not exist, follow local procedures for creating an A file. Track the work folder in the National File Tracking System (NFTS).

(iii) Process the alien in IDENT/ENFORCE, using the NTA module. DO NOT use the Inspections/NSEERS module for these cases, as they are not arriving aliens/applicants for admission. The modules designed for non-POE cases automatically record the disposition according to the module selected, and include the appropriate forms, which may not be included in the Inspections/NSEERS module. Select Detained (WA/NTA) with I-217 or Released OR (NTA) with I-217, as appropriate. Complete the biographical information on the initial screens.

(iv) Complete IDENT processing. Notate "Safe Third Country Returnee" in the comments field, followed by any other appropriate notations. This will assist in tracking and verifying that the alien was returned by Canada pursuant to the Agreement.

(v) Complete Form I-213, Record of Deportable/Inadmissible Alien.

(vi) Take a sworn statement, giving the administrative warning of rights. Although ENFORCE contains Form I-215B, Record of Sworn Statement in Affidavit Form, it is preferable to take a sworn statement in question and answer format to fully establish inadmissibility or deportability. Use Form I-263A as the jurat.

(vii) Complete a Form I-265, Notice to Appear, Bond, and Custody

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Processing Sheet, to provide a record that uniform criteria were applied in making the custody determination. Current detention priorities must also be considered in making custody decisions.

(viii) Complete Form I-826, Notice of Rights and Request for Disposition. Every alien apprehended within the United States and charged with inadmissibility or deportability must be given a Form I-826. Provide the alien with a copy of the form.

(ix) When a minor (a person under the age of 18) is returned from Canada, he or she must be given a Form I-770, Notice of Rights and Disposition. If the minor is less than 14 years of age or unable to understand the notice, the notice shall be read and explained to the minor in a language he or she understands. Minors should be treated in accordance with the *Flores v. Reno* Settlement Agreement. The terms of that agreement were incorporated in an INS memorandum dated July 19, 1997, entitled Settlement of Jenny Lisette Flores, et al., v. Janet Reno.

(x) Prepare an original and two copies of Form I-826, Notice to Appear. An NTA for a non-arriving alien may be issued only by those officers specified in 8 CFR 239.1(a). This includes Directors of Field Operations, Port Directors, and Deputy Port Directors. The Commissioner has also delegated this authority to Assistant Port Directors. The Form I-826 shall be prepared in the name of and signed by the authorizing official. If the alien is being held in DHS custody, indicate that fact and the location of the facility where the alien is detained in the address block. If the alien is not being held in DHS custody, enter the complete address and phone number where the alien can be reached and provide the alien with Form EOIR-33, Change of Address Form, to report any change of address. If the alien's mailing address is different from the physical address, include both. Check the appropriate block to indicate whether the alien is present without inspection, overstay or status violator. If the alien had been granted voluntary departure previously and failed to depart within the time specified, the NTA should contain a factual allegation stating when the voluntary departure was granted and for what period of time, and that the alien did not depart within that time frame.

Check any other appropriate boxes on the form immediately following the "provisions of law" section. The NTA must ordinarily include the time and place of the hearing. Obtain a date and time for the hearing, following established local procedures. In situations where a hearing date and time cannot be obtained, indicate "to be set" in the appropriate data field. No hearing date may be scheduled earlier than 10 days from the date of service of the NTA (to allow sufficient time to obtain counsel and prepare for the

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hearing), but the form includes a waiver that the alien may execute in order to obtain an earlier hearing date. Fill in the appropriate address and room number for the Immigration Court where the alien is to appear. On the reverse of the Form I-862 is critical information concerning representation, conduct of removal proceedings and the consequences of failure to appear at the scheduled hearing. These should be specifically explained to the alien in a language the alien understands.

The NTA must be served on the alien within 24 hours of issuance where DHS proposes to set bond or detain the alien. Have the alien sign the original, place the original and a copy in the A file, and serve the alien a copy. If the file contains a Form G-28, Notice of Entry of Appearance as Attorney or Representative, the alien's counsel must also be sent a copy of the Form I-862. The officer serving the NTA must execute the Certificate of Service block.

(xi) Provide the alien with a current list of organizations and programs prescribed in 8 CFR 292 that provides free legal services.

(xii) If the alien is to be detained, prepare a Form I-200, Warrant for Arrest of Alien, for the authorizing official to sign. A Warrant for Arrest of Alien may be issued only by those officers listed in 8 CFR 287.5(e)(2) (limited to Port Directors and Area Port Directors) and may be served only by those officers listed in 8 CFR 287.5(e)(3) (includes CBP Officers). A Warrant for Arrest of Alien shall be prepared in the name of and signed by the authorizing official. Follow the local procedures for authorization and arranging of detention.

(xiii) Consult 8 CFR 236.1(e) to ensure that the appropriate consular official is immediately notified of the alien's detention, even if the alien requests that this not be done. Notify the alien that he or she may communicate with a consular official.

(xiv) If qualified, the alien may be released on his or her own recognizance from custody or under bond, as a matter of discretion, pending a removal hearing. Such discretion should be applied only if the alien does not pose a danger to the public and is likely to comply with the terms of the exercise of discretion, or in accordance with detention priorities. Prepare a Form I-286, Notice of Custody Determination, with such conditions as the Director or the Director's designated representative may establish. If releasing the alien on his or her own recognizance, complete Form I-220A. If a bond is required, the amount can be no less than \$1500.00. Consult local ICE DRO for bond procedures. Provide alien with a copy of Form I-830,

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Notice to EOIR: Alien Address.

- (xv) Photograph and fingerprint the alien on FD-249 fingerprint cards (two sets) either manually or through IAFIS, if available. Note the FINS number under Miscellaneous Numbers on back of FD-249. Code the fingerprint cards with the proper United States Code citation. A third copy may be kept at the port.
- (xvi) Complete Form R-84.
- (xvii) Complete Form I-217, Information for Travel Document or Passport and place in the A file.
- (xviii) Coordinate with ICE/DRO, ICE Counsel, and Records for disposition of the A file.

b. Voluntary departure

DHS may permit an alien to voluntarily depart the United States at the alien's own expense in lieu of being subject to section 240 proceedings or before initiation of such proceedings, if the alien is not deportable under section 237(a)(2)(A)(iii) or section 237(a)(4)(B) of the Act. If the alien is granted voluntary departure with safeguards, he or she must depart immediately and under the direct observation of DHS and is not permitted to be out of DHS custody. Since an alien being returned from Canada pursuant to the Agreement may not be granted voluntary departure to Canada and has indicated an intention to seek asylum, voluntary departure will not normally be considered in these situations, except in extraordinary circumstances.

In accordance with 8 CFR 240.25, only district director (CBP Directors of Field Operations) are authorized to grant voluntary departure as a matter of discretion. The processing officer must weigh favorable and unfavorable factors before deciding to offer the option of voluntary departure in each case. Among the factors to be considered include previous immigration violations, age, infirmity, and indications for stricter enforcement policies at a particular location or during a particular time period. The processing officer must be satisfied that the alien has the means to immediately depart the United States at his or her own expense. See Chapter 13 of the Detention and Deportation Officer's Manual for information on voluntary departure.

- (i) Once having decided to permit voluntary departure, the processing officer must make sure the alien understands his or her rights contained in the Form I-826. Have the alien initial the block indicating his or her wish to depart the

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United States voluntarily. The officer serving the Form I-826 must execute the Certificate of Service block. Give a copy of the form to the alien.

(ii) If the alien elects to waive his or her right to a hearing before an immigration judge, complete the Form I-213 in ENFORCE, using the Full VR module.

(iii) If applicable, cancel the alien's nonimmigrant visa pursuant to 22 CFR 41.122(h)(5) which provides that the nonimmigrant visa should be canceled if an alien is in violation of his or her status.

c. Aliens not entitled to a removal hearing upon being returned from Canada.

Certain aliens are not entitled to formal removal proceedings under section 240 of the Act. The procedures for processing these aliens are described below.

(i) Previously Admitted Crewmember/Violator Returned From Canada.

Crewmembers are not entitled to a hearing before an immigration judge, except for the purpose of resolving an asylum claim. In the case where a crewmember does not wish to apply for asylum in the United States and his vessel or aircraft remains in the United States, he or she may be issued a Form I-99, Notice of Revocation, and returned to the vessel or aircraft for removal. If the vessel or aircraft has departed the United States, the crewmember may be ordered removed by issuing a Form I-259, Notice to Detain, Remove or Present Alien, to the transportation line or agency representing the transportation line on which the alien served. Procedures for removal of crewmembers are described in Chapter 23.10.

If removal occurs within 5 years of the crewmember's landing in the United States, the carrier is liable for the costs of removal. When carrier liability exists, complete and serve a Notice to Transportation Line Regarding Alien Removal Expenses, Form I-288. Expenses billable to a carrier may be tracked and recorded on a Record of Expenses Billable to Transportation Company, Form I-380. Coordinate removal and service upon carrier with ICE/DRO.

If such crewmember wishes to apply for asylum, use the Form I-863, check Box #3 and the appropriate box indicating the status of the crewmember before serving, and forward the form to the appropriate Immigration Court. Crewmembers may be detained if they present a danger to the public or a risk of absconding. In the absence of these adverse factors, they may be released on bond as a matter of discretion. Crewmembers who were present

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in the United States before April 1, 1997, are an exception and must be placed into removal proceedings under section 240 of the Act.

(ii) Visa Waiver Program (VWP) Violators Returned From Canada.

Aliens who were admitted under the VWP pursuant to section 217 of the Act and who violated their status or stayed beyond the 90-day admission period permitted by statute are not eligible for a hearing, except in cases involving an asylum claim. In the case where there is no asylum claim or the asylum claim is denied, such alien may be ordered removed by means of a letter from the Port Director. This letter should advise the alien of the determination that he or she violated the conditions of admission under the VWP and that he or she is being removed from the United States without a hearing before an immigration judge. Sample language to be used may be found in Appendix 14-2 of the Detention and Deportation Officer's Field Manual.

Coordinate with local ICE/DRO concerning detention or release of the VWP violator and the service of the Form I-288, Notice to Transportation Line Regarding Alien Removal Expenses, and the Form I-259 on the carrier that brought the alien into the United States, if the alien originally arrived by air. See IFM Chapter 15.7 (g)(6), VWP Removal Procedures, for detailed instructions on processing procedures.

In the case where an alien wishes to apply for asylum, complete Forms I-863, check Box #3 and the appropriate category within that paragraph, and refer the alien to the Immigration Court for the asylum hearing in accordance with IFM Chapter 15.7(g)(4), VWP Asylum Requests and Procedures.

In situations where a removal order under section 217 has been issued and there is limited detention availability, Form I-220B, Order of Supervision may be issued by ICE/DRO to allow the alien to voluntarily report to a DRO office for verification of departure.

d. Aliens previously ordered removed, who reentered the United States and are not admitted to Canada after applying for asylum there.

Section 241(a)(5) of the Act provides that the Attorney General [now the Secretary of Homeland Security] shall reinstate, without referral to an Immigration Court, a prior order against an alien who illegally reentered the United States after having been deported, excluded or removed, regardless of the date that the previous order was entered. An alien who voluntarily departed the United States while under a final order of exclusion, deportation or removal,

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and then illegally reentered the United States is also subject to this provision.

Reinstatement is not applicable to an alien who was granted voluntary departure by an immigration judge and left the United States in compliance with the terms of that grant. These aliens are subject to the removal provisions under section 240 of the Act. If, however, the alien stayed beyond the period authorized for voluntary departure, or left of his or her own volition while a final order was outstanding (i.e., the alien "self-deported"), the alien is subject to reinstatement.

Before processing the alien for reinstatement, you must verify the facts relevant to reinstatement of a previous order. Regulations at 8 CFR 241.8 require that the officer must establish: whether the alien was subject to a prior order; the identity of the alien, that is, whether the alien is in fact an alien who was previously removed; and whether the alien unlawfully reentered the United States. You must obtain evidence of the prior removal order, which may be faxed from the National Records Center or the office currently holding the file. In cases of disputed identity, verify identity through fingerprint comparison. Consider all relevant evidence, including alien's statements, other evidence in alien's possession, and database checks to determine whether last entry was lawful. In any case in which you are not able to satisfactorily establish the facts, the previous order cannot be reinstated, and the alien must be processed for removal through other applicable procedures, such as removal proceedings under section 240 of the Act.

On November 18, 2004, the 9th Circuit Court of Appeals ruled in *Morales-Izquierdo v. Ashcroft* that the reinstatement provisions in 8 CFR 241.8 violate the statutory requirement that removal determinations may be made only by immigration judges. Therefore, in processing aliens returned pursuant to the Agreement at Canadian land border ports of entry, the reinstatement provisions may not be applied in the states of Washington, Idaho, Montana, and Alaska.

In preparing cases for aliens who are subject to reinstatement, officers should use the following procedure. See Chapter 14.8 of the Detention and Deportation Officers Field Manual for additional information.

- (i) Create a work folder and obtain database printouts containing the previous order. Track the work folder in NFTS.
- (ii) Complete the Form I-213 through the Reinstatement with I-217 module in ENFORCE. If the alien admits to being previously ordered removed or granted voluntary departure, the Form I-213 must so indicate. If a fingerprint hit verifies such previous adverse action, include that information on the Form I-213. If the alien disputes the fact that he or she was previously removed,

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the alien's fingerprints must be compared with those in the A file documenting the previous removal to affirm positively the alien's identity. The fingerprint comparison must be completed by a locally available expert or by the Forensic Document Laboratory via electronic means.

(iii) Take a complete sworn statement from the alien using Form I-877, concerning all pertinent facts. Use Form I-263A, Record of Sworn Statement, as a jurat to close the statement. The record of sworn statement must document admissions, if any, relevant to determining whether the alien is subject to reinstatement, and whether the alien expressed a fear of persecution or torture if returned on the reinstated order. The sworn statement must include the following question and the alien's response thereto: "Do you have any fear of persecution or torture should you be removed from the United States?" If the alien expresses a fear of persecution or torture, once detained, ICE Office of Detention and Removal Operations will refer him or her to an asylum officer who will determine whether he or she has a reasonable fear of persecution or torture. Provide a copy of the statement to the alien and retain copies for the file.

(iv) Complete the Form I-871, Notice of Intent/Decision to Reinstate Prior Order. Sign the top portion of the form, provide a copy to the alien, and retain the original for the file. You must read, or have read, the notice to the alien in a language the alien understands. The alien signs the second box of the file copy and indicates whether he or she intends to rebut the officer's determination. In the event that the alien declines to sign the form, note the block that a copy of the form was provided and the alien declined to acknowledge receipt or provide any response.

(v) Execute Form I-205, Warrant of Removal/Deportation.

(vi) All reinstatement cases must be detained. Follow the local procedures for authorization and arranging of detention of the alien so that ICE/DRO may complete the reinstatement of a final order.

e. Aliens who have been ordered removed from Canada, are transiting the United States pursuant to that removal, and claim asylum.

CBP may parole an alien deportee from Canada through the United States, in accordance with section 212(d)(5)(A) of the Act. These aliens will be escorted by Canadian officials. Pursuant to the Agreement, if the alien deportee claims asylum while transiting the United States, he or she shall be returned to Canada for consideration of the claim.

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In practice, most of these cases would have been paroled by CBP through a preclearance airport in Canada. As these flights normally arrive at domestic gates of an airport in the interior of the United States, CBP will not have direct contact with the alien. However, the alien may make his asylum claim to the escorting Canadian officers, airline employees, or other officials and may be brought to the CBP offices in the airport. In these cases, parole status will be terminated and the alien deportee will be placed in expedited removal proceedings and referred to an asylum officer for a credible fear interview, where the alien will first receive a threshold screening determination. The alien should be given the Information About Threshold Screening Interview along with the Form M-444. After processing, DHS will return the alien to Canada. This process should be coordinated with ICE DRO as it will require detention.

(e) Dispute Resolution Under the Safe Third Country Agreement

The Agreement provides that procedures must include mechanisms for resolving differences in interpretation and implementation of the terms of the Agreement. There may be situations where the alien, upon return to the United States, claims that there is new material evidence that was not reasonably available to Canadian officials, or the alien alleges that Canadian officials did not consider all evidence, or the alien's true identity is discovered upon return to the United States. While CBP Officers should not attempt to act as advocates for the alien, they may request a reconsideration of the decision if warranted.

- (1) The CBP Port Director may contact the CIC manager in writing, providing the name and FOSS ID number of the alien and a summary of the new material evidence to be considered along with any supporting documentation.
- (2) A CIC officer will review the case and determine if the evidence was considered at the time of the interview. If the evidence was already considered, the information will be provided to the CBP Port Director with confirmation that the case will not be redetermined. If the CIC officer requires clarification from the claimant, contact will be by telephone. If it is determined that the applicant is eligible to make a refugee claim in Canada, the CIC manager will request the return of the applicant.
- (3) Any further disputes that cannot be resolved at the local level should be referred through the DFO to CBP HQ Immigration Policy and Programs (IPP). IPP will forward the information to the USCIS Asylum Division Director for resolution.
- (4) If Canadian officers have similar concerns about an alien returned to Canada under the Agreement, they must contact the Deputy Director of Asylum at USCIS Headquarters.

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17.12 Bonds.

Whenever an alien for whom a bond has been posted is admitted, endorse the reverse of the arrival portion of the I-94 with the "A" number, FCO code and the word "Bond". When a bond has been pre-posted as a condition of visa issuance, the nonimmigrant visa will be so noted by the consular officer.

17.13 Visa Waiver Program Cases. (Revised IN01-04)

See discussion in Chapter 15.7 concerning VWP refusals and limitations on removal hearings. A VWP applicant who claims asylum may be accorded a limited removal hearing, but such a hearing is limited solely to the issue of asylum or withholding of removal, in accordance with 8 CFR 208.2(b). In such a situation, process the applicant using Form I-863, Notice of Referral to Immigration Judge.

17.14 Lookout Intercepts.

See Chapter 31.6.

17.15 Expedited Removal.

(a) Inadmissibility. Section 302 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) amended section 235(b) of the Immigration and Nationality Act (Act) to authorize the Attorney General (now the Secretary of the Department of Homeland Security (DHS)) to remove without a hearing before an immigration judge aliens arriving in the United States who are inadmissible under section 212(a)(6)(C) or 212(a)(7) of the Act. Under these expedited removal provisions, aliens who indicate an intention to apply for asylum or who assert a fear of persecution or torture are referred to an asylum officer for a credible fear interview. Those who are found to have a credible fear by the asylum officer are referred to an immigration judge for a full removal hearing on the merits of their claim or claims.

The expedited removal provisions became effective April 1, 1997. Under section 235(b)(1) of the Act, expedited removal proceedings may be applied to two categories of aliens.

First, section 235(b)(1)(A)(i) of the Act permits expedited removal proceedings for aliens who are arriving in the United States. 8 CFR 1.1(q) defines the term "arriving alien." Refer to section (a)(1) of this chapter for the meaning of "arriving alien." Pursuant to section 235(b)(1)(F) of the Act, Cuban nationals who arrive at U.S. ports-of-entry

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(POEs) by aircraft are exempt from expedited removal proceedings.

Second, section 235(b)(1)(A)(iii) of the Act provides the Attorney General (now the Secretary of DHS) the discretion to designate certain other aliens to whom the expedited removal proceedings may be applied, even though they are not arriving in the United States. This provision permits application of the expedited removal proceedings to any or all aliens who have not been admitted or paroled into the United States and who have not been physically present in the United States continuously for the two-year period prior to a determination of inadmissibility by an immigration officer. The Attorney General delegated this authority to designate classes of aliens to the Commissioner of the Immigration and Naturalization Service, and this has since been delegated to the Commissioner of CBP and the Under Secretary of Immigration and Customs Enforcement (ICE). Pursuant to 8 CFR 235.3(b)(1)(ii), the designation may become effective upon publication of a notice in the Federal Register.

On November 13, 2002, the INS published in the Federal Register a notice designating an additional class of aliens who may be placed in expedited removal proceedings - aliens who arrive in the United States by sea, who are not admitted or paroled, and who have not been physically present in the United States continuously for the two-year period immediately preceding the determination of inadmissibility. Aliens falling within this newly designated class will be detained at the discretion of the government during the course of immigration proceedings. This newly designated class does not include Cuban nationals, crewmen, or stowaways.

(1) Arriving Aliens. For an alien to be subject to the expedited removal provisions at a POE, the alien must first meet the definition of "arriving alien." The term "arriving alien" as defined in 8 CFR 1.1(q) means an applicant for admission coming or attempting to come into the United States at a POE, or an alien seeking transit through the United States at a POE, or an alien interdicted in international or U.S. waters and brought into the United States by any means, whether or not to a designated POE, and regardless of the means of transportation. An arriving alien remains such even if paroled pursuant to section 212(d)(5) of the Act, except that an alien who was paroled before April 1, 1999, or an alien granted parole which the alien applied for and obtained in the United States prior to the alien's departure from and return to the United States shall not be considered an arriving alien for purposes of section 235(b)(1)(A)(i) the Act.

Aliens who entered the United States without inspection; aliens apprehended in the United States without legal status; and aliens who have departed the United States, are refused admission into another country and are thereafter returned back to the United States do not fall within the definition of arriving aliens. Alien stowaways on arriving vessels, lawful permanent resident aliens of the United States, or applicants under the Visa Waiver Program may be considered arriving aliens for other

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purposes under the Act, but are not subject to the expedited removal provisions.

It is the responsibility of the officer to determine whether the alien is an arriving alien subject to being placed in expedited removal proceedings. Also see Chapter 17.11 for processing alien applicants for admission who claim asylum at ports-of-entry.

(2) Applicability. In general, arriving aliens who are inadmissible under section 212(a)(6)(C) and/or (7) are subject to expedited removal under section 235(b)(1) of the Act. Officers should only charge those grounds of inadmissibility that can be fully supported by the evidence and that will withstand any further scrutiny. Officers may, but need not, charge more than one ground of inadmissibility. If 212(a)(6)(C) and/or 212(a)(7) are the only charges lodged, the alien must be processed under expedited removal and may not be referred for an immigration hearing under section 240. If additional charges are lodged, the alien may be referred for a section 240 hearing, but this should only occur in extraordinary circumstances. Generally speaking, if an alien is inadmissible under 212(a)(6)(C) and/or (7), additional charges should not be brought and the alien should be placed in expedited removal. There will be very few instances where it will be advantageous to the government to lodge additional charges and institute section 240 removal proceedings if a solid expedited removal proceeding can be concluded. Even in criminal cases, an expedited removal proceeding will normally be the preferred option.



DHS retains the discretion to permit withdrawal of application for admission in lieu of issuing an expedited removal order (see Chapter 17.2). Provisions for withdrawal are contained in both statute and regulation, with specific guidance in the IFM, and should be followed by all officers with authority to permit withdrawals. As an example, in cases where a lack of proper documents is the result of inadvertent error, misinformation, or where no fraud was intended (e.g. an expired nonimmigrant visa), officers may consider, on a case-by-case basis and at the discretion of the government, any appropriate waivers, withdrawal of application for admission, or deferred inspection to resolve the ground of inadmissibility rather than issue an expedited removal order.

The authority to formally order an alien removed from the United States without a hearing or review, carries with it the responsibility to accurately and properly apply the grounds of inadmissibility.

(3) Grounds of Inadmissibility. All officers should be aware of precedent decisions

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and policies relating to the relevant grounds of inadmissibility. Section 212(a)(6)(C) is an especially difficult charge to sustain unless the case involves obviously fraudulent or counterfeit documents. Misrepresentation is even more difficult to determine. Also keep in mind that an alien who is determined to be inadmissible for fraud or misrepresentation is barred forever from the United States, with few waivers available. Any one or several of the following points should be considered in determining if an alien has committed fraud or misrepresentation.

- To support a charge of having procured a document by fraud or misrepresentation, the procuring must have been done from a government official, not from a counterfeiter, and any misrepresentation must have been practiced on a U.S. Government official.
- The procurement by fraud must relate to a person who has done so to obtain his or her own admission, not someone else's.
- The fraud or misrepresentation must be material, i.e., the alien is inadmissible on the true facts, or the misrepresentation tends to shut off a relevant line of inquiry that might have resulted in a determination of inadmissibility.
- In general, an alien should not be charged with misrepresentation if he or she makes a timely retraction of the misrepresentation, in most cases at the first opportunity.
- Silence or failure to volunteer information does not in itself constitute a misrepresentation.
- Aliens who are determined to be mentally incompetent and small children judged to be incapable of independently forming an intent to defraud should not be ordered removed using section 212(a)(6)(C)(i) as the inadmissibility charge. The preferred charge in such cases would be section 212(a)(7)(A).
- Section 344 of IIRIRA did not create any waiver for immigrants found inadmissible under section 212(a)(6)(C)(ii) relating to false claims to U.S. citizenship. Therefore, immigrants found inadmissible under section 212(a)(6)(C)(ii) are permanently barred from the United States.

(4) Supervisory approval of removal orders. All expedited removal orders require supervisory approval before service upon the alien. By regulation, this approval authority is not to be delegated below the level of a second-line supervisor. Each field office may determine at what level (second-line supervisor or above) this review authority should be delegated.

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The expedited removal provisions are not applicable in pre-clearance or pre-inspection operations. If DHS wishes to proceed with expedited removal of an alien inspected during an en route inspection of a vessel, action on the case will be deferred until the vessel has arrived in the United States. The alien may then be processed as an expedited removal case.

Port directors are responsible for ensuring that all officers conducting expedited removal proceedings, and supervisors approving expedited removal orders, are properly trained in the expedited removal provisions.

See Appendix 17-3 for a flow chart mapping the entire expedited removal process.

(Paragraph (a) amended 8/21/97; IN97-05)

(5) Aliens seeking asylum at land border ports of entry. Section 235(b) of the INA does not provide for an affirmative asylum application process at a port of entry. Therefore, an officer should consider an alien who arrives at a land border port-of-entry and seeks asylum to be an applicant for admission by operation of law. The alien will most likely be inadmissible under section 212(a)(7)(A)(i) of the INA as an intending immigrant without proper documentation or under section 212(a)(6)(C) of the INA as an immigration violator with fraudulent documents. As a result, he or she will be subject to expedited removal proceedings.

Except as noted below, the alien, if otherwise subject, should be placed in expedited removal proceedings, referred for a credible fear interview, and detained pending a final determination of a credible fear of persecution or torture. See INA § 235(b)(1)(B)(iii)(IV); 8 CFR § 235.3(b)(4)(ii). Once it has been determined that an alien has a credible fear of persecution or torture, DHS may continue to detain the alien or parole the alien from custody, as appropriate.

(Paragraph (a)(5) added 11-1-05; CBP 12-06)

(6) Cuban asylum seekers at land border ports-of-entry. Natives or citizens of Cuba arriving at land border ports of entry, whose immediate removal from the United States is highly unlikely, should be placed directly into section 240 proceedings in lieu of expedited removal, without lodging additional charges. These aliens may be paroled directly from the port of entry while awaiting removal proceedings if identity is firmly established, all available background checks are conducted, and the alien does not pose any terrorist or criminal threat. Pursuant to section 235(b)(2)(C) of the INA, they may also be returned to contiguous territory pending removal proceedings under section 240 of the INA. This option should only be considered if the alien is not eligible for the exercise of parole discretion, the alien has valid status in Canada or Mexico, Canadian or Mexican border officials are willing to accept the alien back, and the claim of fear of persecution is

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unrelated to Canada or Mexico.

An officer should not parole a native or citizen of Cuba from a land border port of entry for the sole purpose of allowing the alien to apply for adjustment under the Cuban Adjustment Act of 1966, Pub. L. 89-732, 80 Stat. 1161 (1966), without initiating section 240 proceedings. The Cuban Adjustment Act (CAA) provides that any native or citizen of Cuba who has been admitted or paroled into the United States, *and who is otherwise admissible as an immigrant*, may adjust status to that of a lawful permanent resident after being physically present in the United States for at least one year. It does not, however, require an officer to parole a native or citizen of Cuba at a port of entry without regard to public safety. Therefore, an officer should grant parole to a native or citizen of Cuba only if the alien does not pose a criminal or terrorist threat to the United States.

(Paragraph (a)(6) added 11-1-05; CBP 12-06)

(b) Preparing a case. The expedited removal proceedings give officers a great deal of authority over removal of aliens and will remain subject to serious scrutiny by the public, advocate groups, and Congress. All officers should be especially careful to exercise objectivity and professionalism when processing aliens under this provision. Because of the sensitivity of the program and the potential consequences of a summary removal, you must take special care to ensure that the basic rights of all aliens are preserved, and that aliens who fear removal from the United States are given every opportunity to express any concerns at any point during the process. This includes conducting interviews in an area that affords sufficient privacy, whenever feasible. Since a removal order under this process is subject to very limited review, you must be absolutely certain that all required procedures have been adhered to and that the alien has understood the proceedings against him or her.

The steps to be taken in the expedited removal proceedings differ somewhat from those in which an alien is referred for a removal hearing before an immigration judge. It is important that a complete, accurate record of removal be created, and that any expedited removal be justifiable and non-arbitrary. The following steps must be taken in each case in which an order of expedited removal is contemplated or entered against an alien:

(1) Use of Form I-867A&B. Clearly explain to the alien, in a language he or she understands, the serious nature and impact of the expedited removal process, as noted on the Form I-867A&B. Officers must use an interpreter, when needed, to assist in the expedited removal process. Refer to Chapter 17.18 for Guidance on the Use of Interpreters and Interpreter Services.

Read the statement of rights and consequences contained on the first page of Form I-867A, Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act, to the alien. Explain that you will be taking a statement from him or her, and

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that any information given or discovered will be used in making a decision on the case and may result in his or her prompt removal. Advise the alien that if he or she is found to be inadmissible and a decision is made to order the alien removed, he or she will be immediately removed from the United States. Explain that there is no appeal to this decision and explain that this will be his or her only opportunity to provide any information or state any fear of return or removal that he or she may have.

In every expedited removal case, you must use the Form I-867A&B to take a complete sworn statement from the alien concerning all pertinent facts. If the case did not initially appear to involve inadmissibility and removal under the expedited removal proceedings, and the sworn statement was begun using other forms, you must immediately advise the alien of the rights and warnings on Form I-867A once you determine that the expedited removal proceedings will apply. The officer shall note either on the Forms I-867A&B or in a memorandum, explaining why those other forms are included.

The sworn statement will be done in question and answer format. Form I-831, Continuation Sheet, or a blank page may be used for the body of the statement. The sworn statement must cover several general areas of inquiry:

- Identity - include true name, aliases, date and place of birth and other biographical data.
- Alienage - determine citizenship, nationality, and residence. Cover any possible claim to U.S. citizenship through parents.
- Inadmissibility - questions should cover the alien's reason for coming to the United States, information about the specific facts of the case and the specific suspected grounds of inadmissibility.
- Fear of persecution or torture - if the alien indicates in any fashion or at any time during the inspections process, that he or she has a fear of persecution, or that he or she has suffered or may suffer torture, you are required to refer the alien to an asylum officer for a credible fear determination. One of the significant differences between expedited removal proceedings and regular removal proceedings is that the inspecting officer has a responsibility to ensure that anyone who indicates a fear of persecution or intent to apply for asylum in the United States is referred to an asylum officer for a credible fear determination. Inspectors should consider verbal as well as non-verbal cues given by the alien. The obligatory questions on the Form I-867B are designed to help in determining whether the alien has such fear. Ask the questions as they appear on the Form I-867B at the end of the sworn statement. If the alien indicates an intention to

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apply for asylum or a fear of harm or concern about returning home, or makes any such statements or comments at any time during the inspections process, the inspector may ask a few additional follow-up questions to ascertain the general nature of the fear or concern. Any comments of concern made by the applicant must be recorded in the sworn statement, including any indications made by the alien prior to the secondary interview.

Do **not** ask detailed questions on the nature of the alien's fear of persecution or torture: leave that for the asylum officer. In determining whether to refer the alien, inspectors should not make eligibility determinations or weigh the strength of the claims, nor should they make credibility determinations concerning the alien's statements. The inspector should err on the side of caution, apply the criteria generously, and refer to the asylum officer any questionable cases, including cases that might raise a question about whether the alien faces persecution or torture. Do not make any evaluation as to the merits of such fear; that is the responsibility of the asylum officer. Officers processing aliens for expedited removal may contact the Asylum office point(s) of contact when necessary to obtain guidance on whether to refer questionable cases involving an expression of fear or a potential asylum claim. See paragraph (d) of this chapter for more detailed information regarding credible fear referrals.

- Impact of decision - once you have gathered all the facts, you will decide, in consultation with a supervisor, the best course of action. Depending on the circumstances, you may admit the alien, allow the alien to apply for any applicable waivers, defer the inspection or otherwise parole the alien, permit the alien to withdraw his or her application for admission, issue an expedited removal order, or refer the alien for a credible fear determination. Whatever decision is made, clearly advise the alien of the impact and consequences of the determination and record this in the sworn statement.

You must use the Form I-867B as the final page of the sworn statement and jurat. Be sure to obtain responses from the alien regarding the mandatory closing questions contained on the form. If the alien in any way indicates a fear of removal or return, follow the procedures in paragraph (d) of this section. Collect any additional evidence relevant to the case that is discovered during the inspections process.

After the sworn statement is completed, have the alien read the statement, or have it read to him or her in a language the alien understands. Use an interpreter if necessary. Make any necessary corrections or additions. Have the alien initial each page and each correction. Provide a copy of the completed statement, upon signature, to the alien. Retain a copy for the A file and a copy for the port file, if one is created

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If at any time you feel that an amendment to the initial sworn statement is needed, you may complete a second sworn statement during the inspections process. An incident may also take place after you have completed the initial sworn statement, but before the alien is removed from the United States, where a second sworn statement may be helpful. Ask the alien enough questions under oath to address all concerns that may have arisen during the process.

The statement must be signed by the alien and by the officer taking the statement, as well as by a witness. An alien cannot avoid expedited removal by refusing to sign the statement or answer the questions. If the alien will not sign, write "Subject refused to sign" on the signature line. If the alien will not answer any questions, take a skeleton sworn statement, listing all pertinent questions, and writing after each "Subject refused to answer". An expedited removal order may still be issued, provided the removal is otherwise substantiated (e.g., if the alien presented a fraudulent document), and is not dependent solely on the alien's statements.

(2) Form I-860, Notice and Order of Expedited Removal. Prepare three copies of Form I-860. Check the appropriate ground(s) of inadmissibility under which the alien is being charged (e.g. 212(a)(6)(C)(i)), and insert a narrative description of each charge and the violation committed. Read and explain the charges to the alien in the alien's native language or in a language the alien can understand. An interpreter may be required to ensure that the alien understands the allegations and the removal order. Interpreters may not be used if they are employees of the government of the alien's home country, such as an employee of a government-owned airline, except for the most routine questioning. Never use an employee of a foreign government if there is any possibility of sensitive areas (e.g., persecution or torture) being discussed. The alien should be given an opportunity to respond to the charges, and any response must be recorded in either the sworn statement or an addendum to the statement. Expedited removal forms exist in other languages. If a form in the alien's native language or in a language the alien understands is used, place only the English version in the file and give the translated version to the alien.

After all statements are taken and other paperwork is complete, present it through your chain of command to the appropriate supervisor (not to be delegated below the second-line supervisor) or a person officially acting in that capacity for review and approval. If the appropriate supervisor is not present at the port, the supervisory review and approval may be obtained telephonically, by fax, or by other means. The approving authority must be properly advised of all facts in the case in order to make an informed decision. Print the name and title of the supervisor approving the order, and check the box on the form indicating that concurrence was obtained telephonically or by other means. The Form I-860 must be signed legibly by the

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statements.

(2) **Form I-860, Notice and Order of Expedited Removal.** Prepare three copies of Form I-860. Check the appropriate ground(s) of inadmissibility under which the alien is being charged (e.g. **212(a)(6)(C)(i)**), and insert a narrative description of each charge and the violation committed. Read and explain the charges to the alien in the alien's native language or in a language the alien can understand. An interpreter may be required to ensure that the alien understands the allegations and the removal order. Interpreters may not be used if they are employees of the government of the alien's home country, such as an employee of a government-owned airline, except for the most routine questioning. Never use an employee of a foreign government if there is any possibility of sensitive areas (e.g., persecution or torture) being discussed. The alien should be given an opportunity to respond to the charges, and any response must be recorded in either the sworn statement or an addendum to the statement. Expedited removal forms exist in other languages. If a form in the alien's native language or in a language the alien understands is used, place only the English version in the file and give the translated version to the alien.

After all statements are taken and other paperwork is complete, present it through your chain of command to the appropriate supervisor (not to be delegated below the second-line supervisor) or a person officially acting in that capacity for review and approval. If the appropriate supervisor is not present at the port, the supervisory review and approval may be obtained telephonically, by fax, or by other means. The approving authority must be properly advised of all facts in the case in order to make an informed decision. Print the name and title of the supervisor approving the order, and check the box on the form indicating that concurrence was obtained telephonically or by other means. The Form **I-860** must be signed legibly by the preparing officer.

(3) **Photographing and fingerprinting.** Enroll the alien in [REDACTED] Take the alien's photograph and fingerprint the alien on FD-249 fingerprint cards (three sets—see **chapter 18.9(c)** for distribution), or electronically, if [REDACTED] are available at the port. Be sure to complete the entire form and properly code the fingerprint cards with the proper U.S. Code citation, since the FBI will not clear cards without such codes. Following are examples of codes that may be used:

- 18 U.S.C. 1544 Photo substitutions
- 18 U.S.C. 1546 Counterfeit immigrant visa
- 8 U.S.C. 1306 Counterfeit immigration documents, such as alien registration
- 18 U.S.C. 911 False claims to U.S. citizenship (imposters, photo substitution of U.S. passport)
- 18 U.S.C. 1001 Other (fraudulent documents, false statements, imposter, etc.)

(4) **Forensic Document Lab (FDL) analysis.** Obtain forensic analysis, if appropriate. In cases involving fraudulent documents, if the sworn statement includes an admission of the fraud, no forensic analysis may be required. For the expedited removal proceedings, actual forensic examination of the document by the FDL may not be feasible. This does not mean that it is permissible to "rush to judgement", or that it is permissible to expeditiously remove an alien based on incomplete evidence. If forensic analysis is required to establish that the alien is inadmissible, such analysis must be obtained before the Form **I-860** is executed. If necessary, the alien should be detained until the analysis is performed, and then the Form I-860 can be executed. (On the other hand, if the alien's inadmissibility under section **212(a)(7)** has been established, there is little or no reason to delay the expedited removal process in order to also establish the **212(a)(6)(C)** charge.) Offices with electronic devices for transmitting quality images should use those technologies whenever possible or necessary. [See **Chapter 32** for details on using FDL services and for contributing documents or intelligence information concerning the fraud.]

(5) **Tracking of ER cases.** Unless an A number already exists for an alien placed into expedited removal, an A number must be

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assigned to every expedited removal case at the POE in order to ensure proper tracking of the case from the onset.

Codes have been created for entry of expedited removal cases into the Central Index System (CIS). Those codes are:

- ERF Expedited Removal case has been initiated under section **235(b)(1)** of the INA and a final decision is pending a credible Fear determination by an asylum officer or immigration judge.
- ERP Expedited Removal case has been initiated under section **235(b)(1)** INA and a final decision is Pending for reasons other than referral for credible fear interview before an asylum officer.
- ERR Expedited Removal case has been initiated and alien has been Removed from the United States under that program.

Entry of cases into CIS should be accomplished as quickly as possible in accordance with local policy. To ensure prompt data entry, A files for expedited removal cases should be separated from other files and flagged as expedited removal cases.

Codes have also being created to designate expedited removal cases in the National Automated Immigration Lookout System (NAIIS) and the Interagency Border Inspection System (IBIS).

Search for existing records in CIS and other appropriate automated systems. If an A file exists, create a temporary file and request the permanent file. After the file is received, update it with all relevant documents completed or collected during the expedited removal process, and forward it to the proper files control office. If no previous file exists, create a new A file relating to the alien.

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6) Consular notification of alien detention. Consult **8 CFR 236.1(e)** to ensure that, if required, the appropriate consular official is immediately notified of the alien's detention, even if the alien **requests** that this **not** be done. Notify the alien that he or she may communicate with a consular official. These steps normally will only be necessary when removal of the alien cannot be accomplished immediately and the alien must be placed in detention for longer than 24 hours. When you contact a consular official, never mention any asylum claim which may have been filed, or give any indication that the alien has expressed a fear of persecution or torture.

(7) Criminal prosecution. Aliens arriving at the POEs who are subject to the expedited removal provisions may also be subject to criminal prosecution. If criminal prosecution of the alien is contemplated in addition to expedited removal, the criminal action must be completed before the alien is ordered removed. [See **Chapter 18** for procedures for criminal prosecution]. Officers must give the alien his/her Miranda warning and once the warning of rights has been given to the alien, questioning of the alien can only occur with the alien's consent. If the alien refuses to provide a sworn statement, or if the U.S. Attorney's Office prohibits the officer from taking any sworn statements or completing removal processing prior to the completion of the criminal proceedings, the administrative process must be completed after the alien's criminal proceeding is concluded.

If the alien permits questioning and the U.S. Attorney's Office does not prohibit questioning and processing of the alien, complete the sworn statement and the Form I-860. Do not serve the Form **I-860** on the alien, but place it in the A file pending the criminal processing. If the alien is to be turned over to another law enforcement agency, serve a Form **I-247**, Immigration Detainer - Notice of Action, on the other agency. Once the alien is returned to DHS custody, the Form I-860 may be served and the alien removed under the expedited removal order.

(8) Service of the Form I-860. Serve the original Form I-860 on the alien, unless the alien is to be deferred to an onward office, in which case the service is accomplished by the onward office. If the alien is being prosecuted criminally, the Form I-860 will be served after the criminal conviction. Place a copy of the Form I-860 in the A file. The third copy may be retained at the port.

(9) Form I-296, Notice to Alien Ordered Removed/Departure Verification. Check the appropriate box to indicate the period during which the alien must obtain permission to reenter: 5 years for the first removal; 20 years in the case of a second or subsequent removal; at any time if the alien has been **convicted** of an aggravated felony (even though the alien is not being charged as an aggravated felon in this proceeding). Do not check the 10-year box; that is for aliens removed under other provisions of the Act. At the time of actual removal, a photograph and a pressed print of the alien's right index finger should be placed on a copy of the Form I-296, the alien should sign the form, and the particulars of the departure should be entered on the form for retention in the file. Serve the alien with a copy of the Form I-296 before removal. The original form should remain in the A file.

(10) Form I-275, Consular Notification. Cancel the alien's visa or border crossing card, if appropriate. Complete and distribute the Form **I-275** as described in **Chapter 17.2**. Check all the boxes that apply, with a brief description of the denial and removal of the alien. Note the passport with the file number and action taken, for example: "Ordered Removed 6/1/04 NYC/Section 212(a)(6)(C) (i)". Forward a copy of the Form I-860 with the Form I-275 to the Department of State.

(11) Form I-94, Arrival/Departure Document. Prepare a new Form I-94. If the alien applied for admission at a land border, annotate the Form I-94 to read: "Form I-860 Removal Order issued pursuant to section **235(b)(1)** of the Act. (Date), (Place), (Officer)". If the alien applied for admission at an airport or seaport, use the parole stamp and endorse the I-94 to read: "For removal from the United States by (carrier name). Form I-860 Removal Order issued pursuant to section **235(b)(1)** of the Act. (Date), (Place), (Officer)".

(12) Detention. Detain the alien as appropriate. Follow local procedures to obtain detention authorization and arrange for detention. Aliens placed into expedited removal proceedings must be detained until removed from the United States. Parole may be permitted only if there is a medical emergency or if it is necessary for legitimate law enforcement purposes, such as for criminal prosecution or to testify in court. Refer to **Chapter 17.8** for the CBP policy on the detention of aliens at POEs. Aliens subject to expedited removal who claim a fear of persecution or torture must be detained pending a credible fear determination. Once an alien has established a credible fear of persecution or is otherwise referred (as provided by regulation) for a full removal proceeding under section **240**,

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release of the alien may be considered under normal parole criteria. Aliens who make false claims to U.S. citizenship, or unverified claims to lawful permanent resident, asylee, or refugee status, must be detained pending review of the removal order by the immigration judge. Aliens arriving at a land border port-of-entry who do not claim lawful status in the United States or a fear of persecution should normally be processed immediately and either returned to Canada or Mexico or detained until removed.

(13) Credible fear interview referral. See paragraph (d) of this chapter for detailed information on credible fear referrals. Credible fear interviews will normally take place at DHS or contract detention facilities. Each POE and detention facility will be provided with a point or points of contact at the Asylum office having responsibility for that geographical area. It is the responsibility of the referring (Inspections) officer to provide the alien being referred for a credible fear interview with both a Form **M-444**, Information about Credible Fear Interview, and a list of free legal services, as provided in **8 CFR part 292**. It is generally the responsibility of the detention and removal personnel to notify the appropriate Asylum office point of contact when an alien subject to the expedited removal process is being detained in DHS custody pending this interview. That officer should also provide any additional information or concerns of the alien, such as whether the alien requires an interpreter or other special requests and considerations. However, in locations where the credible fear interview requires travel by the asylum officer, the referring officer should notify the Asylum office when referring the alien in order to provide as much advance notice as possible. When aliens are detained in non-DHS facilities or at remote locations, the referring officer must notify the appropriate Asylum office. If the alien is subsequently transferred to another detention site, the detention or deportation officer must ensure that the appropriate Asylum office has been notified.

Normally the credible fear interview will not take place sooner than 48 hours after the alien arrives at the detention facility. If the alien requests that the interview be conducted sooner, the referring officer, or any other officer to whom the alien makes the request, should immediately convey that information to the appropriate Asylum office.

(14) Removal from the United States. Most aliens removed under the expedited removal provisions will be promptly removed; however, some aliens, such as those who claim asylum or LPR status, may be detained pending a decision on their claim. At the land border, ensure the alien's departure to the contiguous foreign territory. At air and seaports, serve the carrier of arrival with the Form I-259, Notice to Detain, Remove, or Present Aliens, and check the appropriate boxes to order the carrier to remove the alien when the removal process is finished. If the case cannot be timely completed, advise the carrier of potential liability.

(15) Database entries. The expedited removal process continues to be the subject of extensive inquiry and requires appropriate tracking of specific case data. Expedited removal cases will normally be processed through [REDACTED]. In addition, every case in which an expedited removal order is issued must be entered into the Deportable Alien Control System (DACS) until that system is replaced with the [REDACTED]. Entry of data for those aliens detained by DHS will be handled by the Detention and Removal personnel responsible for the detention facility. Entry of data for aliens who do not require detention and are removed directly from the POEs is the responsibility of CBP. Cases initiated at the POEs and referred for removal proceedings under section 240 will continue to be entered into DACS by Detention and Removal. Complete appropriate closeouts in [REDACTED].

(16) Form G-22.1, Inspections Summary Report. Consult G-23 Report of Field Operations Procedures for reporting guidelines.

(c) Withdrawal of application for admission in lieu of an expedited removal order.

DHS has the discretion to allow an inadmissible alien to voluntarily withdraw his or her application for admission and to depart the United States in accordance with section **235(a)(4)** of the INA. This discretion applies to aliens subject to expedited removal, and should be applied carefully and consistently, since an officer's decision to allow withdrawal or issue a removal order is final. Officers should keep in mind that an order of expedited removal carries with it all the penalties of an order of removal issued by an immigration judge (including a bar to reentry of at least 5 years following removal pursuant to section **212(a)(9)(A)(i)**).

Follow the guidelines contained in **Chapter 17.2** to determine whether an alien's withdrawal of an application for admission or asylum claim best serves the interest of justice. An officer's decision to permit withdrawal of an application for admission must be properly documented by means of a Form **I-275**, Withdrawal of Application for Admission/Consular Notification, to include the facts surrounding the voluntary withdrawal and the withdrawal of the asylum claim. In addition, an officer should prepare a new sworn statement, or an

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addendum to the original sworn statement on Form I-867A&B, covering the facts pertaining to the alien's withdrawal of the asylum claim.

An alien may not be pressured into withdrawing his or her application for admission or asylum claim under any circumstances. An officer must provide adequate interpretation to ensure that the alien understands the expedited removal process and the effects of withdrawing an application for admission or an asylum claim. Furthermore, an asylum officer must be consulted before an alien who has expressed a fear of return to his or her home country may be permitted to withdraw an asylum claim.

If an officer permits an alien to withdraw his or her application for admission and elects to return the alien to Canada or Mexico, the Form I-275 should indicate the alien's status in Canada or Mexico and the basis for determination of that status. This determination may be based on contacts with Canadian or Mexican authorities, stamps in the alien's passport, or other available documentation. The narrative on Form I-275 should also indicate that the alien has not expressed concern about returning to Canada or Mexico.

If the alien expresses any concern or reluctance about returning to Canada or Mexico and wishes to pursue the asylum claim in the United States, the officer should advise the alien that he or she will be placed in the expedited removal process, unless subject to section 240 proceedings by statute, regulation, or policy, and will be detained pending the credible fear determination. The alien should not be given the Form I-589, Application for Asylum and for Withholding of Removal, nor should an affirmative asylum interview be scheduled at the port of entry.

(Paragraph (c) revised 11-1-05; CBP 12-06)

(d) Fear of persecution or request for asylum. Aliens who indicate an intention to apply for asylum or a fear of persecution or torture may not be ordered removed until an asylum officer has interviewed the alien to determine whether the alien has a credible fear of persecution or torture and warrants a full asylum hearing before an immigration judge.

When questioning or taking a sworn statement from any alien subject to the expedited removal provisions, you need not directly solicit an asylum claim. However, to ensure that an alien who may have a genuine fear of return to his or her country is not summarily ordered removed without the opportunity to express his or her concerns, you should determine, in each case, whether the alien has any concern about being returned to his or her country. Further, you should explore any statement or indications, verbal or non-verbal, that the alien actually may have a fear of persecution or torture or return to his or her country. You must fully advise the alien of the process, as indicated on the Form **I-867A**, and of the opportunity to express any fears.

Keep in mind that the alien need not use the specific terms "asylum" or "persecution" to qualify for referral to an asylum officer, nor does the fear of return have to relate specifically to one of the five grounds contained within the definition of refugee. The United States is bound by both the Protocol on Refugees and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and, except under extraordinary circumstances, may not return an alien to a country where he or she may face torture or persecution.

The alien may convey a fear of violence or harm, a need for protection, an indication of harm to, or disappearance of, relatives or associates, or dangerous conditions in his or her country. Even disputes of a personal nature sometimes may relate to asylum, such as domestic violence, sexual or child abuse, child custody problems, coercive marriage or family planning practices, or forced female genital mutilation. All officers should recognize that sometimes unusual cases have been found eligible for asylum that may not have initially appeared to relate to the five grounds contained in the definition of refugee, such as AIDS victims who face government persecution, land or money disputes with wealthy persons or persons in power, whistle blowers, witnesses to crimes and even organized crime connections. Harm sufficient for a credible fear referral can include

[REDACTED]

Do not make judgement decisions concerning any fear of persecution, torture, or return. Any alien who by any means indicates a fear of persecution or return **may not** be removed from the United States unless the alien has been interviewed and a credible fear determination been made by an asylum officer. An alien who does not indicate a fear of return but responds to one of the protection-

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related questions by stating that he or she has applied for refugee or asylum status in the United States or elsewhere in the past, or mentions a relative, friend or associate who has done so (even if such claims are still pending or were denied), should be asked further questions to determine whether or not the alien is expressing a fear of return or an intention to apply for asylum indirectly. If, on more detailed questioning, the alien states that he or she has no fear of return and no interest in applying for asylum, the case need not be referred for a credible fear interview.

If the alien answers affirmatively to one the protection-related questions or requests asylum, and later changes the answer or asks to be sent home, the officer should consult with the local Asylum office or refer the case. If an attorney, friend, or relative notifies any officer that an individual in the expedited removal process is planning to apply for asylum or has a fear of return, that officer should notify the port of entry. The officer responsible for the case should either consult with an asylum supervisor or refer the alien for a credible fear interview, even if the alien does not express a fear directly. In the expedited removal process, an attorney, friend, or relative who acts as a consultant to the alien need not file a Form G-28.

Any alien who exhibits any [REDACTED] that alert the office to possible fear of harm should be referred. If an officer notices signs of [REDACTED] the officer should consult an asylum supervisor, or the applicant should be referred. [REDACTED] should be noted in parentheses or brackets in the sworn statement or memo to file.

[REDACTED] It is important to be aware of these possible reactions. Do not dismiss them automatically as signs of uncooperative behavior.

Considerations that should NOT affect the officer's decision to refer an alien for a credible fear interview include:

- [REDACTED]. The asylum officer will review the sworn statement and documents and ask the alien about any inconsistencies and discrepancies. Only an asylum officer can make a credibility determination for purposes of deciding whether the alien has a credible fear of persecution.
- [REDACTED]
- [REDACTED] Aliens should be referred, for example, if they claim [REDACTED], or if for example, that they claim [REDACTED]
- Country of origin: No country should be considered safe – or dangerous- for all residents. However, knowledge of conditions in the alien's home country may help alert an officer to non-verbal cues or confused or vague expressions of fear.

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- Whether harm is on account of the alien's race, religion, political opinion, nationality or social group: Officers should not make a determination on whether the harm feared is on account of the alien's race, religion, nationality, membership in a particular social group or political opinion. Asylum law, and particularly the definition of a "social group" is evolving – cases involving domestic violence, spousal abuse, sexual abuse of children, female genital mutilation, coercive family planning practices, organized crime, whistleblowers on government corruption, homosexuality, and AIDS, and other unresolved legal areas should be referred. An alien may also be offered protection from return under Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, when it is more likely than not that the alien would be tortured, even if the motivation for the torture is not on account of the applicant's race, religion, nationality, social group or political opinion.
- Mandatory Bars: The presence of a mandatory bar to asylum should not prevent referral. Referrals should occur even in cases where, for example, the alien appears to be firmly resettled in a third country, transited through a third country, or when there is information that appears to indicate that the alien is a criminal or a danger to national security.
- Stated Preference to Apply for Asylum Elsewhere: If an alien expresses a fear of return, but states that he or she does not want to apply for asylum in the United States because he or she plans to apply for asylum elsewhere, the alien should be referred. Some applicants may not be aware that certain countries will not accept an asylum application from them if they have transited through the United States.

The International Religious Freedom Act of 1998 (IRFA) was passed by Congress out of a growing concern about violations of religious freedom in countries around the world. IRFA requires training for certain government employees on the nature of religious persecution abroad. Violations of religious freedom can include prohibitions on, restrictions of, or punishment for:

- Assembling for peaceful religious activities
- Speaking freely about religious beliefs
- Changing religious beliefs or affiliation
- Possessing and distributing religious literature
- Raising children in the religious practices and teachings of one's choice.

Any of the following acts are violations of religious freedom if committed on account of an individual's religious belief or practice:

- Detention
- Interrogation
- Imposition of onerous financial penalties
- Forced labor
- Forced mass resettlement
- Imprisonment
- Forced religious conversion
- Beating, torture, mutilation, rape, murder, enslavement, and execution

IRFA defines "particularly severe violations of religious freedom" as systematic, ongoing, egregious violations of religious freedom, including violations such as:

- Torture or cruel, inhuman, or degrading treatment or punishment;
- Prolonged detention without charges;
- Causing the disappearance of persons by the abduction or clandestine detention of those persons; or
- Other flagrant denial of the right to a person's life, liberty, or security.

Applicants who are questioned by officers in expedited removal proceedings may not understand that religious persecution is an issue they should reveal in their interview. Sometimes an applicant will not indicate any past incidents of religious persecution, but you might become aware of it incidentally. Perhaps you learn that the applicant is a Jehovah's Witness and realize he or she is from a country in which Jehovah's Witnesses are persecuted.

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You might also come across customs and behavior that are new to you, for example, the wearing of scarves for religious reasons. In talking with that person, you might learn that there is a fear of return, but the person did not realize that religion was a protected ground for asylum at the time of inspection. Therefore, it is important to adhere to the procedural safeguards built into the expedited removal process.

IRFA requires that the State Department annually publish a report on the condition of religious freedom in the world. Specifically, the report describes the status of religious freedom in every foreign country. It also cites any violations of religious freedom or trends toward improvement or deterioration in the respect and protection of religious freedom. There is an Executive Summary at the beginning of the report, which highlights the report's findings. Each Asylum Office has bound copies of the report for reference. The report is also posted every year on the State Department's web site.

IRFA does not change the legal standard for determining refugee or asylum eligibility. It also does not give preference to religious persecution. It does require refugee and asylum officers to receive specialized training concerning religious persecution. When religious issues are involved, adjudicators must become informed about conditions in the applicant's home country by referring to the annual report on religious freedom published by the Department of State. However, a claim cannot be denied solely because an officer cannot find information in the report. As with every case, officers should consult a variety of current and reliable sources for an accurate representation of country conditions. In certain unconventional cases, determining whether an applicant's unique set of beliefs is a religion may require careful consideration and research, and when appropriate, consultation with proper DHS personnel.

While IRFA mandates that certain new processes be implemented, it does not change the basic job requirements.

- IRFA does not authorize individuals housed in DHS facilities to do anything they wish under the guise of religious practice.
- IRFA does not require officers to determine what a religion is or what constitutes religious persecution.
- And while IRFA emphasizes issues of religious persecution, it does not imply that other types of persecution are any less important.

All officers must disregard their own religious convictions and beliefs evaluating an asylum or refugee claim. For example, you may be a Muslim officer interviewing a non-Muslim asylum applicant who claims to be persecuted by Muslims on account of his religion. Upon hearing such claims, you may be surprised, offended, disbelieving, or have other adverse personal reactions because of your own religious convictions and opinions. While it may be difficult, you must evaluate such claims objectively and without personal bias.

If the alien indicates an intention to apply for asylum or asserts a fear of persecution or torture, and is being referred for a credible fear interview with an asylum officer:

- (1) Create an A file, if one does not already exist.
- (2) Fully process the alien as an expedited removal case. Establishing inadmissibility cannot be left to the asylum officer. Record a description of the particulars of the interview and the alien's initial claim to asylum or fear of return by means of a sworn statement using Form **I-867A&B**. Follow the instructions in paragraph (b)(1) above to ensure that the alien understands the proceedings. Although you should not pursue the asylum claim in detail, enough information should be obtained to inform the asylum officer of the alien's initial claim to asylum or fear of persecution or return. If the alien answers the closing questions on Form I-867B in the affirmative, several other questions may be necessary to determine the general nature of the fear or concern.
- (3) Complete the Determination of Inadmissibility portion of the Form **I-860**, including sufficient information to support the charges of inadmissibility should the asylum officer find that alien does not have a credible fear of persecution. Sign **only** the Determination portion of the form. The removal part of the order will be signed by the asylum officer only after it is determined that the alien does not have a credible fear of persecution. Refer also to **Chapter 43.3** for documenting any potential fines issues.
- (4) Advise the alien of the purpose of the referral and that the alien may consult with a person or persons of his or her choosing, at no expense to the government and without delaying the process, prior to the interview. The Form **M-444**, Information about Credible Fear Interview, must be given to the alien and explained in a language the alien understands. The alien should sign two

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copies, acknowledging receipt of the information. One copy should be placed in the A file, and the other retained by the alien. Give the alien a current list of organizations and programs prescribed in **8 CFR 292** which provides free legal services.

(5) Arrange for detention of the alien according to local procedures. Although it is normally the responsibility of the detention and removal personnel officer to notify the Asylum office, in some circumstances, you must advise the appropriate Asylum office that an alien being detained requires a credible fear interview. The Asylum office should also be advised whether the alien requires an interpreter and of any other special considerations. It may be helpful for the officer to provide the asylum officer with information on the alien's gender, the language(s) the alien speaks, whether the alien is traveling with a spouse or children, and any special medical needs or unusual behavior. Forward the A file to the location where the credible fear interview will take place. Prepare Form **I-259** and serve it on the affected carrier. Complete Form I-94 for NIIIS entry notated "Detained at _____ pending credible fear interview pursuant to section **235(b)(1)(B)** of the Act. (Date), (Place), (Officer)".

An asylum officer will conduct an interview to determine if the alien has a credible fear of persecution, either at the detention facility or at a location arranged through the Asylum office having jurisdiction over the place of apprehension, depending on location. If the alien is determined to have a credible fear of persecution or torture, the asylum officer will refer the alien before an immigration judge for full consideration of the asylum and withholding of removal claim in proceedings under section **240** of the Act. If the alien is found not to have a credible fear of persecution or torture, following review by a supervisory asylum officer, the asylum officer will order the alien removed pursuant to section **235(b)(1)**, unless the alien requests that the determination of no credible fear be reviewed by an immigration judge. If the alien makes such a request, the asylum officer will use Form **I-863**, Notice of Referral to Immigration Judge, checking box #1, to refer the alien to the immigration judge for review of the credible fear determination. If the immigration judge determines that the alien does not have a credible fear of persecution, DHS will present the alien for removal to the carrier on which he or she arrived. There may be some situations where the actual carrier of arrival and port of embarkation cannot be ascertained. Such cases may require additional processing, including detention, in order to arrange for travel documents and transportation at government expense (User Fee).

If an alien claims a fear or concern about possible harm, and later asks to be sent home, the officer should review the sworn statement carefully with the alien to determine if there was a misunderstanding. If there was no misunderstanding, the officer should prepare a second Form **I-867A&B** and note that the alien has changed his or her mind. The officer must consult with an asylum supervisor before executing the decision. If the asylum supervisor concurs that it is appropriate to remove the applicant without a credible fear interview, the name of the supervisor, and the date and time of concurrence should be noted in the A file. Both the original and final Form I-867A&B must remain in the file.

If the alien maintains throughout the sworn statement that he or she has no fear of return and later claims a fear or a desire to apply for asylum, the applicant should be referred for a credible fear interview. The officer should reinterview the alien and complete an addendum to the statement, re-asking the fear questions. The officer should void the original Form **I-860** and complete a new Determination of Inadmissibility. The Form **I-296** should be voided if the verification of removal section has already been completed, and the officer should complete a memo to file, explaining the circumstances of the case.

(e) Claim to lawful permanent resident, asylee, or refugee status, or U.S. citizenship.

(1) An expedited removal case involving an alien who claims to be a U.S. citizen, to have been lawfully admitted for permanent residence, to have been admitted as a refugee under section **207**, or to have been granted asylum under section **208**, should be handled very cautiously to ensure that the rights of the individual are fully protected. The expedited removal authority provided by IIRIRA is a powerful tool and there are grave consequences involved in incorrectly processing a bona fide citizen, LPR, refugee or asylee for removal. You should be extremely aware of those consequences when you are using this tool. Although the statute and regulations provide certain procedural protections to minimize the risk of such consequences, you should never process a case for expedited removal which you would not feel satisfied processing for a hearing before an immigration judge.

If the alien falsely (or apparently falsely) claims to be a U.S. citizen, LPR, refugee, or asylee, and is not in possession of documents

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to prove the claim, make every effort to verify the alien's claim prior to proceeding with the case. This can be accomplished through a thorough check of the data systems, manual request to the Records Division, careful questioning of the alien, or prudent examination of documents presented. Use whatever means at your disposal to verify or refute a claim to U.S. citizenship, including verification of birth records with state authorities, etc.

(2) Verifiable claim. When inspecting an alien whose claim to LPR status has been verified, determine whether the alien is considered to be making an application for admission within the meaning of section **101(a)(13)(C)**. [See discussion in **Chapter 13.4**.] Although the LPR may not be considered to be seeking admission, he or she is nonetheless required to present proper documents to establish his or her status as an LPR. If the claim is verified and the alien appears to be admissible except for lack of the required documents, consider a waiver under section **211(b)** for an LPR. When inspecting an alien who had previously been admitted as a refugee or granted asylum status and who had departed the United States without having applied for a refugee travel document, consider accepting an application for a refugee travel document in accordance with **8 CFR 223.2(b)(2)(ii)** for a refugee or asylee. Refer to **Chapters 13.2** and **17.5** for a discussion of this and other options for admitting returning residents.

If the claim is verified, but a waiver is not available or is not clearly warranted, such as when fraud was committed in obtaining status or upon entry, or in cases where the alien appears to have abandoned his or her residence, you may initiate removal proceedings under section **240** of the Act. Procedures for preparing for removal hearings and processing inadmissible LPRs are discussed in **Chapters 17.6** and **17.10**. Although the charging document, Form **I-862**, Notice to Appear, is the same for both inadmissible and deportable aliens, immigration officers performing inspections at a POE are authorized to issue a Notice to Appear only to arriving aliens, as defined in **8 CFR 1.1(q)**. If an LPR is not considered to be seeking admission, he or she is not an arriving alien. If a Notice to Appear is to be issued charging the returning resident as a deportable alien, the Notice to Appear must be issued by one of the authorizing officers listed in **8 CFR 239.1**, including port directors.

(3) Unverifiable Claim. If no record of the alien's lawful admission for permanent residence, grant of refugee status, admission as an asylee, or citizenship can be found after a reasonably diligent search, advise the alien that you are placing him or her under oath, or take a declaration as permitted in 28 U.S.C. 1746, and warn the alien of the penalties for perjury. Section 1746 of the Title 28 U.S. Code reads as follows:

Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him as true under penalty of perjury, and dated, in substantially the following form:

- If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)".
- If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)".

The penalties for perjury contained in 18 U.S.C. 1621 (perjury generally) provide for fine and imprisonment of not more than 5 years, or both. The penalties for perjury contained in 18 U.S.C. 1546 (fraud and misuse of visas, permits, and other documents) provide for fine and imprisonment of not more than 10 years, or both.

If the alien declares under oath, pursuant to the advice above, that he or she is a citizen, LPR, refugee, or asylee, order the alien removed under section **235(b)(1)(A)** and refer to the immigration judge for review of the order. Complete Form **I-860** after completing all procedures in this chapter. Serve the Form **I-860** on the alien. Serve Form **I-259** on the affected carrier, if

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appropriate. Use Form **I-863**, checking Box #4, to refer the removal order to the immigration judge for review. The alien should be detained pending review of the order by the immigration judge. In the event an alien who has made a verbal claim to citizenship or to LPR, refugee, or asylee status declines to make a sworn statement, conclude the expedited removal process in the same manner as any other nonimmigrant in the same situation.

If the immigration judge determines that the individual is not a citizen or is an alien who has never been admitted as an LPR, refugee, or asylee, the expedited removal order will be affirmed and the alien removed. There is no appeal from the decision of the immigration judge. If the judge determines that the individual is a citizen, the process is terminated and the citizen is released. If the judge determines that the alien was once admitted as an LPR, refugee, or asylee, and that status has not been terminated, the judge will vacate the expedited removal order and the government may initiate removal proceedings under section **240**.

(f) Special Treatment of Unaccompanied minors. When a minor (a person under the age of eighteen) who is unaccompanied and appears to be inadmissible under section **212(a)(6)(C)** or **(7)** of the Act, officers should first try to resolve the case under existing guidelines. Existing guidelines permit granting a waiver, deferring the inspection, or employing other discretionary means, if applicable, including withdrawal of an application for admission.

(1) Withdrawal of application for admission by minors. Whenever appropriate, officers should permit unaccompanied minors to withdraw their application for admission rather than placing them in formal removal proceedings. In deciding whether to permit an unaccompanied minor to withdraw his or her application for admission, every precaution should be taken to ensure the minor's safety and well-being. Factors to be considered include the seriousness of the offense in seeking admission, previous findings of inadmissibility against the minor, and any intent by the minor to knowingly violate the law.

Before permitting a minor to withdraw his or her application for admission, the officer must be satisfied either that the minor is capable of understanding the withdrawal process, or that a responsible adult (relative, guardian, or in cases where a relative or guardian is not available, a consular officer) is aware of the actions taken and the minor's impending return. Officers must attempt to contact a relative or guardian either in the United States or in another country regarding the minor's inadmissibility whenever possible. A minor brought to the United States by a smuggler is to be considered an unaccompanied minor, unless the smuggler is an adult relative (parent, brother, sister, aunt, uncle, or grandparent) or legal guardian. If the smuggler is not a relative or guardian, he or she should not be consulted concerning the disposition of the minor's case.

The true nationality of the minor must be ascertained before permitting the minor to withdraw. Another factor to consider is whether the port of embarkation to which the minor will be returned is the country of citizenship of the minor. A minor may not be returned to or be required to transit through a country which may not be willing or obligated to accept him or her. If the minor is being returned to a third country through a transit point, officers must ensure that an immediate and continuous transit will be permitted.

When deciding whether to permit the minor to withdraw his or her application for admission, officers must also make every effort to determine whether the minor has a fear of persecution or return to his or her country. If the minor indicates a fear of persecution or intention to apply for asylum, or if there is any doubt, especially in the case of countries with known human rights abuses or where turmoil exists, the minor should be placed in removal proceedings under section **240** of the Act. If there is no possibility of a fear of persecution or return and the INS permits the minor to withdraw his or her application for admission, the consular or diplomatic officials of the country to which the minor is being returned must be notified. Safe passage can then be arranged, and after all notifications to family members and government officials have been made, the minor may be permitted to withdraw.

(2) Minors referred for section 240 proceedings. Except as noted below, if a decision is made to pursue formal removal charges against the unaccompanied minor, the minor will normally be placed in removal proceedings under section **240** of the Act rather than expedited removal. The unaccompanied minor will be charged under both section **212(a)(7)(A)(i)(I)** of the Act as an alien not in possession of proper entry documents and section **212(a)(4)** of the Act as an alien likely to become a public charge. This additional charge renders the minor subject to removal proceedings under section **240** of the Act. Other charges may also be lodged, as appropriate. As a general rule, minors should not be charged with section **212(a)(6)(C)** of the Act, unless circumstances indicate that the alien clearly understood that he or she was committing fraud or that the minor is knowingly involved in criminal activity

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relating to fraud.

Minors who are placed in section **240** proceedings and who are not in expedited removal may either be released in accordance with the parole provisions, or placed in a DHS-approved juvenile facility, shelter, or foster care in accordance with existing juvenile detention policies and the Flores v. Reno settlement. At all stages of the inspections and removal process, officers should take every precaution to ensure that the minor's rights are protected and that he or she is treated with respect and concern. [See **Appendix 17-4**, policy memorandum discussing the Flores settlement.]

(3) Expedited removal of minors. Under limited circumstances, an unaccompanied minor may be placed in expedited removal proceedings. The minor may be removed under the expedited removal provisions only if the minor:

- has, in the presence of a DHS officer, engaged in criminal activity that would qualify as an aggravated felony if committed by an adult; or
- has been convicted or adjudicated delinquent of an aggravated felony within the United States or another country, and the inspecting officer has confirmation of that order; or
- has previously been formally removed, excluded, or deported from the United States.

If an unaccompanied minor is placed in expedited removal proceedings, the removal order must be reviewed and approved by the director of field operations, or person officially acting in that capacity, before the minor is removed from the United States. This is in addition to the normal supervisory approval required of all expedited removal cases.

(4) Treatment of Minors during Processing. Officers should treat all minors with dignity and sensitivity to their age and vulnerability. Processing of minors should be accomplished as quickly as possible. Like all persons being detained at POEs, officers must provide the minors access to toilets, sinks, drinking water, food, and medical assistance if needed. Minors may not be placed in short-term hold rooms, nor may they be restrained, unless they have shown or threatened violent behavior, they have a history of criminal activity, or there is a likelihood the juvenile may attempt to escape. Unaccompanied minors should not be held with unrelated adults. Any detention following processing at the POE must be in accordance with the Flores v. Reno settlement.

(Paragraph (f) added 8/21/97; IN97-05)

(g) Minors accompanied by relatives or guardians. If formal proceedings are initiated against an accompanying adult relative or legal guardian, the minor should be placed in the same type of proceeding (i.e. expedited removal or **240** proceedings) as the adult. However, withdrawal of application for admission by the minor should be considered whenever appropriate, even though the relative or guardian may remain subject to formal removal proceedings.

(h) United Nations High Commissioner for Refugees monitoring guidelines. The United States has signed various international agreements accepting an obligation to protect refugees and asylum-seekers from return to persecution or torture, and to follow certain international standards in processing those needing protection. The organization that monitors compliance with these agreements and provides guidance on their implementation is the United Nations High Commissioner for Refugees (UNHCR). As such, the United States has a responsibility to cooperate with UNHCR's requests for access to processes involving those needing protection. Therefore, DHS believes it is appropriate for the UNHCR to observe, to the extent within the resources available to the UNHCR, the expedited removal process to make a fair and impartial assessment of the process.

For these reasons, full cooperation with visiting UNHCR delegations is essential. Below are general guidelines and procedures to follow regarding a visit from the UNHCR. While the guidelines concentrate on the limits of the UNHCR's access and potential problem areas, in our experience the UNHCR has approached site visits professionally and responsibly, providing us with positive comments and useful feedback, and problems are unlikely to arise during its site visits.

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(1) UNHCR requests. The UNHCR has agreed to make all requests to observe the expedited removal process at POEs or the credible fear interview at detention facilities in writing to the Office of Field Operations. If any field office receives a request for access to the expedited removal process from a representative of the UNHCR, the field office should advise the representative to make the request to the Office of Field Operations.

Written requests from UNHCR to conduct a site visit must be received a minimum of two weeks in advance. CBP will consider written requests submitted less than two weeks in advance for only exceptional circumstances. The request will include the purpose and site (s) of the visit, the duration of the visit, the complete list of names of the UNHCR staff on the delegation, the title and official responsibilities of everyone on the delegation, the information about the person leading the delegation, and any special needs or requests. The Office of Field Operations will evaluate the request in consultation with the field and make a decision as quickly as possible.

Should there be a need to clarify or confirm the identities of visiting team members, local CBP staff will call the Office of Field Operations.

(2) Scope of UNHCR's access to secondary inspection processing. The UNHCR has agreed to maintain the confidentiality of any information to which it has access such as training materials and procedures manuals. Therefore, it can be given full access to tour the primary and secondary inspection areas, holding cells, food storage facilities, and other areas related to processing of expedited removal cases. While at the port, UNHCR representatives should be accompanied by a CBP officer, unless CBP has arranged for the representatives to talk confidentially with an alien. For safety reasons, the representatives will not be allowed to participate or be used as witnesses in baggage and personal effects search or body-pat-down search. Viewing of the baggage search may be allowed if there is no safety concern or threat to the representatives. The representatives should not be given access to computer databases or programs containing sensitive law enforcement information, but may be given a demonstration of certain programs in relation to the expedited removal process. The representatives may ask questions about the process, so long as their movements and the timing of their questions do not impede the processing of cases.

The port will designate a supervisor on the shift to whom the UNHCR team may direct questions about the processing. As time permits, the supervisor may arrange for the representatives to talk directly with line officers. During a secondary inspection, when possible, the representatives should be allowed to view the secondary inspection from an area (seated or standing) that would enable them to hear and see all participants.

The port will designate one or more secondary and primary officers on the shift to whom the UNHCR representatives may direct questions. Designation of these officers should be initially on a voluntary basis.

(3) Interactions between UNHCR and aliens in secondary inspection. If UNHCR representatives ask to sit in on interviews of either specific aliens or a random sample of aliens in secondary, the CBP officer should explain to the alien that the UNHCR representatives do not work for the U.S. Government, but work for the United Nations, and have asked to observe some interviews to understand the U.S. process. No more than two representatives may be present during the interview, and business cards will be provided to the alien after the interview is completed. The officer should explain that it is the alien's decision whether the UNHCR representatives are allowed to observe the interview or not, and that CBP will ask the same questions and follow the same procedures either way. If the alien does not want the UNHCR representatives to sit in on the interview, his or her wish should be respected. If the applicant requests to talk briefly and confidentially with the UNHCR representatives, he or she may do so after the officer finishes the secondary interview and process.

If the alien indicates that he or she does not want the presence of the representatives, and the representatives appear to be questioning that decision, a supervisor should be notified immediately and should support the alien's decision to be interviewed without UNHCR observers with no further discussion. The CBP supervisor will provide an explanation to the UNHCR delegation lead official that the interview will not continue with their participation. Additionally, the supervisor reserves the right to terminate the entire site visit, any part of an interview, or a particular portion of the site visit. A reason must be provided to the lead UNHCR official at the time of the termination. Prior to a decision to terminate the entire site visit, the supervisor must immediately advise the

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Headquarters Field Operations point-of-contact through appropriate channels. The alien's agreement or refusal to have a UNHCR presence at the interview should not be factored into the officer's decision to refer a case for a credible fear interview.

If an alien agrees to be interviewed with the UNHCR representatives present, the UNHCR representatives may observe the interview, and will be given a few minutes at the end of the interview to communicate directly with the applicant. In general, the UNHCR representatives should not ask questions or make comments during the interview. The CBP officer may, however, at his or her discretion, allow the representatives to make a comment or ask a question if the officer believes that it is facilitating the progress of the interview. Any interruptions of the interview will be recorded in the sworn statement.

CBP is not responsible for interpreting the interview verbatim or locating an interpreter to provide a verbatim interpretation in such circumstances. If the CBP officer and the alien are communicating in a language other than English without the assistance of an interpreter, and the representatives do not understand the language, the officer should explain what is being stated or asked.

When the interview is concluded, the UNHCR representatives should be invited to communicate briefly with the applicant. Any questions or statements asked by the representatives or the applicant, and any responses, will be recorded in the sworn statement.

If the UNHCR team or the alien requests a brief private discussion, the request should be accommodated within the constraints of the facility. Normally the issues aliens bring up with the UNHCR are the same like those they bring up during secondary inspections, e.g.: when can they call a relative, how long does the process take, and so forth. This request should be noted on the sworn statement. Generally, the meeting should take place out of hearing, but not out of sight, of CBP staff. If the UNHCR team requires translation and is not able to locate its own telephonic interpreter quickly, an interpreter should be provided when feasible. The local Asylum office will have been notified that the UNHCR is conducting a site visit and can cover the cost of interpretation using a commercial interpreter service if necessary. However, if an interpreter cannot be located quickly and there are time constraints (such as finishing in time to put an applicant on a scheduled plane), the officer should consult with his or her supervisor to decide whether there are compelling reasons for delaying the process to provide the representatives time to obtain an interpreter.

If the UNHCR team reports back to the CBP officer, after a private conference, that the alien alleged abusive treatment, either by CBP, an airline employee, or a smuggler, a supervisor should be notified immediately and the alien should be asked further questions in the representatives' presence. If the UNHCR team indicates that the alien has expressed a fear during the private conference which was not expressed during the interview with the CBP officer, the officer should ask the alien, in the representatives' presence, whether the alien is afraid of or concerned about return and would like to discuss his or her situation privately with an asylum officer. The alien's answer to the above questions should be recorded in the sworn statement or in a memo to file.

If the alien appears unwilling to discuss the alleged claim of fear with the CBP officer, states that the UNHCR representatives misunderstood, or does not want to be detained for a credible fear interview, the officer should call the local Asylum office for guidance on whether to refer the alien for a credible fear interview.

(4) Follow-up. If serious problems or misunderstandings arise during the UNHCR site visit, a CBP supervisor should immediately contact the Headquarters Field Operations representative who set up the meeting. After the UNHCR visit is completed, the field office will provide the Office of Field Operations feedback on how the visit went and alert it to any issues which the UNHCR representative (s) might raise.

(Added IN 00-22.)

(h) Non-governmental organizations secondary inspection access guidelines.

Since the implementation of expedited removal, many non-governmental organizations (NGOs) have requested access to observe and monitor this process at POEs. It is the DHS policy to promote a fair and open process by granting such requests for access to the extent that the visits do not compromise fundamental law enforcement interests and confidentiality as well as privacy rights. The aim of this policy is to achieve a reasonable balance between providing access to government information and protecting fundamental law

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enforcement obligations and the individual interests of arriving aliens. The following guidelines provide the procedures and practices to be followed by field offices and POEs receiving requests for visits or tours of CBP inspection facilities and operations by NGOs. An NGO may be generally defined as a group of individuals outside of the public and for-profit sectors, usually established to serve the interests of their communities, of a particular target group, or the common good. This definition should be interpreted broadly, and may include local and international organizations, business and professional associations, chambers of commerce, and policy development and research institutes. It is not intended to include the media or persons or organizations whose intent is to provide legal representation to individuals during secondary inspection processing at the time of their visit.

(1) Requests for visits.

- Any request to visit an inspection facility or observe secondary immigration inspection processing must be made in writing to the director of field operations having jurisdiction over the POE to be visited. The request must be made sufficiently in advance of the proposed visit, normally at least two weeks, to allow coordination with all affected parties, including facility operators and other agencies as appropriate. Special tours by visiting dignitaries or other special interest groups may be arranged at the discretion of the director of field operations, or at the request of headquarters offices.
- The request will include the proposed purpose and site(s) of the visit, the duration of the visit, the full names of the organization and the proposed visitors, whether they will have any special needs or requests, and point of contact. The field office receiving the request, in consultation with the site to be visited, will make a prompt decision and notify the interested party either in writing or telephonically of that decision. Whenever possible, visitors should be provided with a copy of these guidelines prior to their arrival at the POE.
- The size of the group and the number and duration of visits permitted are to be determined by the director of field operations, based on operational and resource considerations. If the director of field operations, port director, or other official determines that the visit will have an adverse effect on port operations, staffing resources, or the confidentiality or integrity of the inspection process, the request may be denied, the visit postponed, or the terms of the visit limited in a way appropriate to the potential adverse effects. If the director of field operations feels that an excessive number of requests would have an adverse impact on operations, he or she may ask the NGOs to consolidate their requests for visits. The director of field operations may also deny, limit, or terminate a visit based on particular law enforcement or security concerns, but should not deny such requests as a routine matter.
- If the director of field operations denies the request, the requesting party will be notified, in writing, of the specific reasons for the denial.
- The field office will retain a record of all POE visit requests. The record will include, at a minimum, the number of requests made, the disposition of each request, the name of the organization and the number of participants in each visit, and the date on which each visit occurred. Field offices may include comments on significant incidents, impact on operations, or other relevant information.

(2) Scope of access.

- Visitors will be escorted through the facility at all times. They may be present only in parts of the inspection area that are authorized by the official escorting them. For safety concerns, they will not be allowed to participate in baggage searches or be used as witnesses in baggage or body searches. They may be permitted to view a baggage search, with the consent of the alien, unless the officer determines there may be a safety concern or threat.
- Visitors may be permitted to observe the overall immigration inspections process, both primary and secondary, in such a way that it does not interfere with port operations. The port director may designate a supervisor or officer to whom the visitor may direct questions about the processing. As time and circumstances permit, the port official may arrange for visitors to talk directly

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to officers.

- Visitors may observe individual immigration secondary inspections of applicants for admission only with the consent of the applicant and the port officials. The port official will explain to the alien who the visitor is and what he or she wishes to observe. The alien's consent must be entirely voluntary, and should be noted in the sworn statement, if taken, or otherwise in the file. Visitors may not interfere with or interrupt the inspection or question applicants for admission. They may ask the inspector questions about the case being processed only when the alien is not present. Inspectors must not divulge any information about any secondary case that may compromise law enforcement confidentiality or the privacy of any alien. Visitors may not speak confidentially to an alien during the inspection process or while the alien is in CBP custody at the POE.
- CBP is not responsible for interpreting the interview verbatim for visitors or locating an interpreter to provide a verbatim interpretation in cases where the CBP officer and the alien are communicating without the assistance of an interpreter in a language other than English.
- Visitors may not have access to computer databases or programs containing sensitive law enforcement nature of the information, but may be given a demonstration of programs that are not law enforcement sensitive. They may not observe video display monitor outputs of systems data on screen or in print relating to specific applicants for admission.
- Visitors may not film, photograph, videotape, or audiotape POE operations, inspectors, or applicants for admission.
- CBP reserves the right to terminate the entire site visit, a particular portion of the site visit, or access to any part of an interview, if it determines that the visit has become disruptive to port operations or may in any way compromise the integrity of the inspection process. For safety reasons, port officials may remove visitors from the inspection area or terminate the visit if any visitor or applicant for admission becomes unruly or violent, or if any other safety hazard becomes apparent.
- Any violations of this policy by visitors to POEs will be documented in writing, and any significant incidents or interruptions will be reported to Headquarters Office of Field Operations through the chain of command.

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17.16 Members and Representatives of Terrorist Organizations. (Added IN98-04)

(a) General. Section 212(a)(3)(B) of the INA, as amended by the Anti-Terrorism and Effective Death Penalty Act of 1996, Pub. L. 104-132 and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104-208, added new grounds of inadmissibility applicable to members and representatives of terrorist organizations. Section 219 of the Act provides authority for the Secretary of State to compile and publish an official list of organizations whose members and representatives are subject to this ground of inadmissibility. The official list was published in the Federal Register on October 8, 1997. [See Appendix 17-5 of this manual.]

These new procedures are extremely important enforcement tools designed to keep such aliens out of the U.S. and prevent domestic terrorism. Some members and representatives of designated terrorist organizations may possess a visa issued prior to publication of the list of terrorist organizations. Such aliens are nonetheless inadmissible if they fall within the descriptions discussed above.

(b) Definitions.

(1) Representatives. Under Section 212(a)(3)(B)(i)(IV) of the Act, an alien who is a "representative" of a designated terrorist organization is inadmissible. Section 212(a)(3)(B)(iv) of the Act states that the term "representative" includes: an officer, official or spokesman of an organization, and any person who directs, counsels, commands or induces an organization or its members to engage in terrorist activity.

If an alien falls within this definition, he or she is inadmissible. Evidence of past representative status is a highly probative, although not dispositive, factor which should be considered when determining if current representative status exists.

(2) Members. Under Section 212(a)(3)(B)(i)(V) of the Act, an alien who is a member of a designated terrorist organization is inadmissible if the alien "knows or should have known" the organization is a terrorist organization. The statute does not define "member." However, membership does not require actual participation in terrorist activities. Some organizations require that an individual take an oath or perform an act that is a prerequisite of membership, but some do not. The Service must determine whether an alien is member of a designated organization on a case-by-case basis. Factor relevant to determining membership include but are not limited to the following:

- Past membership without evidence that the alien terminated membership
- Acknowledgment of membership by the organization, by other members, or by the alien
- Actively working to further the organization's aims and methods
- Occupying a position of trust in the organization, either past or present

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- Receiving financial support from the organization, such as a scholarship, salary or pensions
- Contributing money or other items of value to the organization
- Frequent association with other members
- Participation in the organization's activities, even if lawful
- Voluntarily displaying symbols of the group
- Receiving honors and awards given by the group
- Determination of membership by a competent court

These factors must be considered in their entirety, and some may not be sufficient in isolation to support a finding of membership. For example, while contributing money to an organization in itself does not necessarily indicate membership, it may indicate membership in certain situations, depending on the nature of the organization.

To make a finding of inadmissibility, the Service must determine that an alien is not only a "member" of a designated organization, but additionally, that the alien "knows or should have known" that the organization is a terrorist organization. This "mens rea" or "state of mind" determination should also be made on a case-by-case basis. Factors relevant to this determination are: the specific organization involved; classified or unclassified information regarding the alien's participation in the organization, including the alien's statement; and any other relevant information.

(c) Procedures. In order to implement these provisions, the following procedures must be strictly followed:

(1) The list of terrorist organizations will be distributed to all ports-of-entry and included in the Inspector's Field Manual. Port directors will ensure that all inspectors and other officers are familiar with and have ready access to the list at both primary and secondary inspection booths.

(2) Immigration inspectors who have reason to believe an applicant for admission may be a member or representative of an organization on the list must refer the applicant for secondary inspection. Inspectors may develop a suspicion concerning such membership as a result of questioning during primary inspection or as a result of lookout information or other intelligence. In any case where the secondary officer establishes inadmissibility under this provision, he or she must take a sworn statement addressing the factors described in paragraph (b).

(3) If the inspecting officer concludes that the alien is inadmissible, the officer must inform the alien that he or

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she is inadmissible to the United States and complete processing for a removal hearing, withdrawal, or temporary removal, as appropriate and in accordance with outstanding instructions. [See Chapters 17.2, 16.6 and 17.7 of this manual.] The type of removal proceeding will depend on the alien's status and whether the evidence is classified or unclassified.

(4) Forward copies of all sworn statements and other relevant documentation to Headquarters, Office of Field Operations, attention: Counterterrorism Coordinator.

(5) The Counterterrorism Coordinator will take appropriate action, which may include consultation with other agencies, such as the Federal Bureau of Investigation and the Department of State.

17.17 Technical Notes. (Redesignated as 17.17, previously 17.16; IN98-04)

(a) [Reserved] (Removed by CBP 3-04)

(b) Inadmissibility after Alien Leaves Primary but Remains in Inspectional Area. There are occasions when an alien, after completing primary inspection, is intercepted by another CBP officer and is found to be inadmissible. Such alien may be held for removal proceedings if he or she has not left the confines of the federal inspection area, regardless of the fact that the passport may have been stamped "Admitted" and an I-94 issued. Case law has made it clear that an alien does not effect an "entry" into the United States for immigration purposes unless all of the following elements are present: (1) the alien is physically present in the territory of the United States; (2) the alien has been inspected and admitted for immigration purposes or the alien has actually and intentionally evaded inspection; and (3) the alien is free from official restraint. *Correa v. Thornburgh*, 901 F.2d 1166 (2d Cir. 1990); *In re Dubbiosi*, 191 F. Supp. 65 (E.D. Va. 1961); *Matter of Pierre*, 14 I & N Dec. 467 (BIA 1973) [See also **General Counsel Opinion 91-37**]. Although the definition of "entry" is no longer defined in the INA, and has been replaced by the definition of "admission" and "admitted" in section 101(a)(13), the general provisions still apply in this context. (Revised by CBP 3-04)

17.18 Use of Interpreters and Interpreter Services.

(a) General. In the inspections process, an interpreter may be required to ensure that an alien being interviewed understands the process. The alien needs to be given an opportunity to respond to questions during a sworn statement and to be able to understand and respond to any charges and allegations brought against him or her. It is the responsibility of the officer to read and explain to the alien, in the alien's native language or in a language the alien understands, any determination regarding admissibility and/or removal from the United States. In an interview requiring an interpreter, the role of the interpreter is crucial and any misinterpretation can lead to an incorrect determination of an alien's admissibility.

During the expedited removal process, an interpreter may be required to ensure that the alien understands the allegations and the removal order. As part of the process, the applicant for admission is questioned and a sworn statement taken to establish inadmissibility and to ascertain that the alien has no fears or concerns about being returned to his or her home country or country of last residence. The officer needs to be aware of whether the alien requires an interpreter to convey any concerns or fears he or she may have. Any alien who indicates an intention to apply for asylum or a fear of persecution or torture may not be removed until an asylum officer interviews the alien to determine whether he or she has a credible fear of persecution or torture and warrants a full asylum hearing before an immigration judge.

The International Religious Freedom Act of 1998 (IRFA), PL 105-292, 112 Stat. 2787, section 603, seeks to safeguard aliens against the inadvertent use of interpreters who may have hostile biases. In particular, when interviewing possible asylum applicants, inspectors are

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prohibited from using airline personnel or other interpreters provided by the airline if the airline is owned by a government that is "known to be involved in practices which would meet the definition of persecution under international refugee law." Since an inspector may not actually know which foreign carriers are privately owned and which are state owned, inspectors should use other officers or commercial interpreters whenever possible.

(b) Interpretations and Translations. Ports of entry (POEs) should accommodate, whenever possible, special requests from an alien, such as a request for a male or female interpreter or request for an interpreter with a specific dialect or from a specific part of the country. Officers are to monitor the quality of interpretation the alien and the translation. If a problem with the interpretation/translation persists, a new interpreter shall be obtained.

Officers are also responsible for informing the interpreter of their role in the process. Below are some guidelines to be aware of when using interpreters.

(1) Interpreters and Translators. If the alien being inspected cannot speak English well enough to fully understand the questions and answer them without difficulty, the alien must be provided with an interpreter. While some aliens can speak and understand English well enough to be interviewed without an interpreter, many aliens may feel more comfortable with an interpreter during the interview.

It is important to know who is qualified to serve as an interpreter and who is not. Officers may use another officer who is fluent in the alien's language, a commercial interpreter services company, a family member, another passenger, an employee or representative from an airline that is not foreign-owned, or on a limited basis, the legacy Immigration and Naturalization Service (INS) New York Interpreters Unit. In sensitive cases, particularly those involving expedited removal, officers should use professionally trained and certified interpreters, rather than family members, other passengers, or airline employees.

(2) Beginning the Interview. Before an interview with an alien, the officer shall emphasize to the interpreter (whether it be another officer, contract interpreter, family member, airline employee, or other individual) the importance of interpreting verbatim, without adding or omitting any information. If a translation of a form(s) in the alien's language is needed, the officer will provide the interpreter with a copy of the form(s), either by physically handing the form to the interpreter, or by faxing a copy of the form(s) to the interpreter before the interview takes place, if the interpretation is being conducted telephonically.

Officers should stress to interpreters the confidentiality of all information discussed, and that the interpreter must remain neutral and objective throughout the interview. The interpreter should also be told that the interviewer or alien may ask for clarification whenever necessary.

(3) Interpreter's Certification. Currently there is no standardized interpreter's certification form. Therefore, a statement must be added at the bottom of the sworn statement. With an expedited removal case, an interpreter's certification may be added at the bottom of the Form I-867B (i.e., "I _____ certify that I have literally and fully translated the questions asked by the officer into the _____ language and that I truthfully, literally and fully translated the answers to such questions into English.").

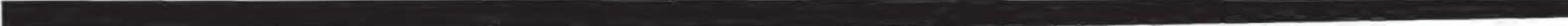
(4) Role of the Interpreter. The role of the interpreter is an important one. Interpreters allow the two parties to communicate with each other. Any misinterpretation may result in the applicant for admission being admitted, detained or removed in error. The fundamental role of the interpreter is to faithfully translate everything that is said, and nothing else. The interpreter guidelines specified below do not constitute an exhaustive list but are considered basic interpreter requirements.

- The interpreter must be fluent in both English and a language the alien fully understands

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- The interpreter is to remain neutral and impartial.
- The interpreter must not engage in conversation with the alien during the interview.

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Inspector's Field Manual

interview.

- The interpreter must interpret verbatim using the officer and alien's choice of words, rather than the interpreter's choice of words.
- The interpreter should advise the officer if certain terminology cannot be interpreted verbatim and that an interpretation that will accurately convey the meaning of what is being said will be used instead.
- The interpreter should not try to resolve ambiguities or to paraphrase or summarize the exchange with the alien.
- The interpreter should use the same grammatical voice as the speaker (e.g., "I came to visit my family" rather than "He says he came to visit his family").
- The interpreter is not to adopt the role of inspector or take on a primary questioning role, or to indicate in any way his or her opinion of what the alien is saying.

(5) Competency of the Interpreter. Competency of the interpreter is not always easy to determine. There are a number of signs that indicate that there may be miscommunication or that the interpreter is having difficulty interpreting. The alien may indicate non-verbally that he or she is confused or does not understand. It is important that the officer look for signs of miscommunication between the alien and the interpreter. Below are some indications that misinterpretation exists:

- Response to the officer's question does not answer the question or only partially answers the question.
- Officer recognizes words not being interpreted.
- Interpreter uses many more words to interpret the question than the question appears to have.
- Lengthy response from the alien is interpreted from the interpreter as a very brief response.
- There is back-and-forth dialogue between the interpreter and the alien.
- The alien indicates non-verbally that he or she is confused, concerned, or does not understand.

If the officer notices any indication that the alien and/or interpreter do not fully understand each other, or if the officer and interpreter do not fully understand each other, the officer must stop the interview and contact another interpreter as soon as possible. The officer will note on the sworn statement or in a memo to the file that a second interpreter was obtained and include the reason. The officer, in consultation with the supervisor, has the discretion to obtain another interpreter for the interview. A statement/question should be added to the sworn statement to verify that the alien fully understands and feels comfortable with the interpreter (i.e., "Do you understand and are you satisfied with the translation provided to you?")

(6) Factors Affecting the Accuracy of the Interpretation.

I-LINK

Inspector's Field Manual

- The interpreter may not be sufficiently competent in English or the other language.
- The interpreter may have biases.
- The interpreter may have difficulties interpreting from one language to another.
- The alien and interpreter may be communicating through a second language.
- The alien and interpreter may speak different versions of a language.
- Either the interpreter or the alien may exhibit unprofessional behavior.
- The alien may not know how to best communicate through an interpreter.
- There may be cultural differences between interpreter and alien.
- The disposition of the interpreter may not foster good communication.

(7) Ways to Facilitate the Interpretation Through an Interpreter.

- Address the alien directly, not the interpreter.
- Avoid conversations with the interpreter in front of the alien that are not interpreted to the alien.
- Be conscious of your speech patterns.
- Choose your words carefully and avoid idioms.
- Be conscious of the use of certain pronouns and avoid them if possible (i.e.; he, she, they). It is better to use words that denote relationship or refer specifically to an individual (by using name, position, etc.) rather than certain pronouns.
- Speak clearly, and when necessary, speak slowly.
- Ask straightforward questions and avoid making statements disguised as questions.
- Keep questions clear and simple, asking specific questions one at a time.
- Break down what is to be said into reasonable amounts of information.
- Ask the alien to break his or her statements into short segments so the interpreter can interpret accurately.
- Repeat the question/statement slowly or rephrase it if the interpreter does not appear to understand.
- Check with the interpreter to be sure that he or she understands what is being said, particularly at the beginning of the interview.
- Speak with both the interpreter and alien as soon as it appears that there is a problem in interpretation.
- Remind the interpreter of his or her role when necessary during the interview.

(8) Ending the interview. Before ending the interview with the alien and the interpreter, the officer shall stress to the alien the need for any information relevant to the case and address the alien's questions and concerns. With an expedited removal case, the mandatory closing questions on the Form I-867B must be asked. An interpreter's certification statement should be added at the bottom of the Form I- 867B (see subsection "(c)" above, "Interpreter's Certification"). The sworn statement must be read back to the alien, and a copy of the statement given to the alien after the alien and the officer(s) sign it. If the alien is being referred for a credible fear interview, the officer

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must provide the alien with the Form M-444, Information About Credible Fear Interview. This information should be provided while the interpreter is available, in order to ensure that the alien understands the information and to address any questions the alien may have. The 3/22/99 revision of Form M-444 has been translated into Mandarin, Arabic, Haitian Creole, French, and Albanian. If available, the officer should provide the alien with a Form M-444 in the language the alien understands. The officer must make sure that all needed interpretations and translations are completed before dismissing the interpreter/translator.

(c) Interpretation/Translation Services. When the officer cannot find an interpreter / translator at the POE, he or she should use an interpreter service. Each field office should have arrangements with one or more commercial interpreter services for telephonic interpretations 24 hours a day, 7 days a week. These services either have a contract with the agency or accept payment with a government credit card. Certified interpreters may also be available on a limited basis through the legacy INS's New York Interpreters Unit.

Following is a list of available commercial interpreter services. Others companies may also be available.

AT&T Language Line Services	(800) 419-9206	
CyraCom International	(800) 713-4950	(520) 745-9447
Language Learning Enterprises	(800) 234-0780	
Language Line Services	(800) 874-9426	(800) 523-1786
Language Services Associates	(800) 305- 9673	
TransPerfect Translations:	(212) 689-5555	

Chapter 18: Criminal Prosecution (Added INS - TM2)

- 18.1 General
- 18.2 Criminal Offenses Under the INA
- 18.3 Types of Arrest
- 18.4 Arrest Authority
- 18.5 Arrests Based on IBIS or National Crime Information Center (NCIC) Information
- 18.6 Warrantless Searches and Seizures
- 18.7 Degrees of Suspicion
- 18.8 Criminal Action Procedures

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EXHIBIT K

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7
8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10

11 Ali Khoshbakhti Vayeghan,

12 Petitioner,

13 v.

14 Kelly, et al.,

15 Respondents.
16
17
18

} Case No. CV 17-0702
}
}
}
}
}
}

19 On January 28, 2017, Petitioner Vayeghan filed a Petition for Writ of Habeas
20 Corpus and Complaint for Declaratory and Injunctive Relief, an Order to Show Cause re
21 Preliminary Injunction, and an *Ex Parte* Application for Temporary Restraining Order
22 (“TRO”) staying his removal from the United States, and ordering his release from the
23 custody of the Department of Homeland Security. [Doc. ##1, 2.] Before the Court could
24 rule on the TRO, he was placed on a flight to Dubai to be removed to Iran. On January
25 29, 2017, he filed an Amended *Ex Parte* Application for Temporary Restraining Order
26 (“Amended TRO”), which is currently before the Court. [Doc. # 4.]
27
28

1 Federal Rule of Civil Procedure 65 governs the issuance of TROs and preliminary
2 injunctions, and courts apply the same standard to both. *See Credit Bureau Connection,*
3 *Inc. v. Pardini*, ___ F. Supp. 2d ___, 2010 WL 2737128, at *5 (E.D. Cal. July 12, 2010)
4 (citing *Ne. Ohio Coal. for the Homeless & Serv. Employees Int’l Union, Local 1199 v.*
5 *Blackwell*, 467 F.3d 999, 1009 (6th Cir. 2006)). The purpose of such injunctive relief is
6 to preserve the rights and relative positions of the parties, *i.e.*, the *status quo*, until a final
7 judgment issues. *See U.S. Philips Corp. v. KBC Bank N.V.*, 590 F.3d 1091, 1094 (9th
8 Cir. 2010) (citing *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395, 101 S.Ct. 1830, 68
9 L.Ed.2d 175 (1981)).

10
11 Having reviewed and considered Petitioner’s written submissions, the Court finds
12 that:

- 13 1. Petitioner has demonstrated a strong likelihood of success in establishing that
14 removal violates the Establishment Clause, the Immigration and Nationality Act,
15 and his rights to Equal Protection guaranteed by the United States Constitution.
16 *See* 8 U.S.C. §§ 1151, 1152(a)(1)(A) (“[N]o person shall receive any preference or
17 priority or be discriminated against in the issuance of an immigrant visa because of
18 the person’s race, sex, nationality, place of birth, or place of residence.”); *Johnson*
19 *v. California*, 543 U.S. 499, 506–508 (2005); *Board of Educ. Of Kiryas Joel Vill.*
20 *Sch. Dist. V. Grumet*, 512 U.S. 687, 696, 702–703 (1994); *Vill. of Arlington*
21 *Heights v. Metro. Housing Dev. Corp.*, 429 U.S. 252, 266–67 (1977).
22
23
- 24 2. There is a strong likelihood that Petitioner is likely to suffer irreparable harm in the
25 absence of interim injunctive relief.
26
27
28

1 3. The balance of equities weighs sharply in favor of Petitioner and granting interim
2 injunctive relief.

3
4 4. The Court must consider the public interest in upholding constitutional rights.
5 *Preminger v. Pincipi*, 422 F.3d 815, 826 (9th Cir. 2005). Given the constitutional
6 rights at issue in this case, interim injunctive relief is in the public interest.
7

8 In light of the foregoing, **IT IS HEREBY ORDERED THAT:**
9

10 1. Respondents are enjoined and restrained from barring Petitioner's return to the
11 United States.
12

13 2. Respondents shall transport Petitioner back to the United States and admit him
14 under the terms of his previously approved visa.
15

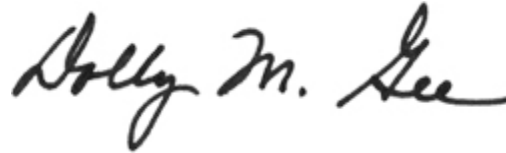
16 3. Respondents shall communicate the terms of this Court's order immediately to
17 officers in Dubai, and to authorities in the airport in Dubai holding Petitioner on
18 Respondents' orders.
19

20 4. Respondents shall file their opposition to Petitioners' *Ex Parte* Application by
21 February 3, 2017. Petitioner shall file her reply by February 7, 2017.
22

23 5. Respondents shall appear before the assigned judge on February 10, 2017 at 9:30
24 a.m. to show cause why the preliminary injunctive relief sought in the *Ex Parte*
25
26
27
28

6. Application for Temporary Restraining Order and Order to Show Cause re
Preliminary Injunction should not be granted.

IT IS SO ORDERED.



DATED: January 29, 2017

DOLLY M. GEE
UNITED STATES DISTRICT JUDGE

DATED: January 29, 2017

DOLLY M. GEE
UNITED STATES DISTRICT JUDGE

1 Carmen Iguina (CA SBN #277369)
2 Jennifer Pasquarella (CA SBN #263241)
3 Ahilan Arulanantham (CA SBN# 237841)
4 Peter Bibring (CA SBN #223981)
5 ACLU of Southern California
6 1313 West 8th Street
7 Los Angeles, CA 90017
8 Telephone: (213) 977-9500
9 Facsimile: (213) 977-5297
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11 Stacy Tolchin (CA SBN #217431)
12 Megan Brewer (CA SBN#268248)
13 Law Offices of Stacy Tolchin
14 634 S. Spring St., Suite 500A
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20 UNITED STATES DISTRICT COURT FOR THE
21 CENTRAL DISTRICT OF CALIFORNIA
22

23 Khanon Mahindokht Azad, et al.

24 *Petitioners,*

25 v.

26 Donald Trump, et al.

27 *Respondents.*
28

Case No. 2:17-cv-00706

**DECLARATION OF SARA
YARJANI**

Declaration of Sara Yarjani

I, Sara Yarjani, hereby declare as follows:

1. My name is Sara Yarjani. I was born on July 17, 1981. If called as a witness, I would and could competently testify to the facts stated herein, all of which are within my own personal knowledge:

2. I am a citizen of the Islamic Republic of Iran. I was born in Australia.

3. I have been a permanent resident of Austria for more than ten years.

4. Since September 2015, I have been a student at the California Institute of Human Science, pursuing a Master of Arts degree in holistic health. I only have eight months left in my two-year program and have a grade point average of 3.89.

5. I entered the United States to pursue my master's degree on September 20, 2015 on a multi-entry student visa (an F1 visa, K3813594) that expires on September 13, 2017 (in the summer of 2016, I visited family in Canada and re-entered on my student visa on September 16, 2016, just before the fall quarter began). Attached as Exhibit A is a true and correct copy of my student visa.

6. From November 21, 2016 until Friday, January 27, 2017, I spent my winter holiday traveling. I visited family and friends in Canada, Germany, France, and Austria.

7. On Friday, January 27, 2017, after transiting through Norway from Austria, I boarded a Norwegian Airlines flight from Oslo to Los Angeles LAX airport.

8. I landed at LAX airport on Norwegian Airlines flight 7081 at 8:35 pm pacific time on Friday, January 27, 2017.

9. When I arrived at passport control, the Customs and Border Protection officer there told me I needed to go to "secondary inspection." I did not know what this was, as I had never had difficulty entering the United States before. Agents had always been friendly and I had just been waived through after a short interaction at passport control.

10. I was then escorted by a CBP officer to a back room and was told to wait

1 there, along with others. There, I was asked a few questions about my citizenship,
2 my visa, why I had left the United States, and why I was traveling to the United
3 States. The officer also asked whether I had traveled to Iran during this trip, which
4 I had not done, and I told him I had not.

5 11. I was then taken by a male officer through a door to another area and two
6 female officers took me to a corridor. I was told to remove my shawl, phone,
7 jewelry, and shoelaces and to place these items in my bag. They made me sign a
8 form documenting the cash I had with me, and told me to put the cash in my
9 pocket. I was then separated from my possessions. The officers then took me to a
10 small room and proceeded to carry out a full-body pat down in an aggressive
11 manner, as if I had done something wrong.

12 12. I was later taken to a small room with others who were waiting. The room
13 had a big glass mirror window so that the officers could see in and we could not
14 clearly see outside the room. At that point the few people in the room included
15 others who I later understood were from “the EO Countries” (as they called them)
16 and other people who were not.

17 13. After a lengthy wait, I was taken to a small room with an officer who told
18 me, “I am your case worker.” He read a long statement from a computer screen
19 that included a warning that if I do not provide accurate information, it will be held
20 against me. After swearing an oath, I was asked a series of detailed questions,
21 including about my graduate school, my parents, whether I had recently made trips
22 to Iran, and why I was born in Australia. As I was answering, the officer was
23 checking my answers against his computer screen. This was all done in an
24 intimidating manner – with questions asked quickly and forcefully. Like with the
25 aggressive pat down, it made me feel that I had done something wrong and I was
26 being investigated, when all I was trying to do was to return and continue my
27 graduate studies.

28 14. After the questions, the officer said that, I was not admissible to the United

1 States, but that his determination would be reviewed by his superior. And he asked
2 me if I understood and if I had any questions. I told him I had a question and
3 asked, “why am I not admissible to the United States when I have a valid student
4 visa?” He said, “as of now, the visa that you had is no longer valid” and therefore I
5 would be sent back.

6 15. The officer then said, “You now have two options. Either you comply, and
7 agree to leave voluntarily and sign a form, or you will be forcibly removed, in
8 which case you would face a reentry ban of one to five years or longer.” The
9 officer was forceful and made it seem that if I did not comply, I would be violating
10 the law. Thus, I felt I had no choice and I said that, if he was asking or telling me
11 to do it, I will comply. I did not want to do it.

12 16. All this time, I had not been allowed the ability to call anyone, as I was
13 separated from my phone and not allowed access to it. I was told that I would be
14 allowed to make a call only after my interview and after all my paperwork was
15 finished.

16 17. I was then sent back to the detention room, just before midnight on Friday,
17 January 27, 2017.

18 18. The officer then took me to the small room where they had carried out the
19 full-body pat down. There, the officer gave me a form “to be completed by alien
20 when application for admission withdrawn.” This document references: “I
21 understand that my admissibility is questioned for the above reasons, which I have
22 read or which have been read to me in the English language.” But no reasons were
23 listed, and the officers never explained the form to me. I was given a copy of the
24 form and the officer escorted me back to my bag to put the copy of the form away.
25 I know at least one other person did not receive a copy because I served as a
26 volunteer interpreter when he signed. Attached as Exhibit B is a true and correct
27 copy of the form I received. After I was deported and I got my documents back, I
28 saw that they put a stamp in my passport saying “Application for admission

1 withdrawn.” Attached as Exhibit C is a true and correct copy of the page in my
2 passport bearing the stamp.

3 19. I was then taken back to the detention room, and later to another room where
4 officers took my fingerprints and photograph.

5 20. While I was waiting in the corridor to have my finger prints to be taken, one
6 officer apologized and said that these were orders they had from the chief and they
7 were just following them. He also said, “don’t worry – the visas will have to be
8 reissued.”

9 21. At or around 12:25 am pacific time on January 28, 2017, I was allowed to
10 make a call, and I called my sister.

11 22. At some point in the middle of the night, the officers took us to a larger
12 room. There were nine of us, seven from “EO Countries” (I know this because at
13 one point I heard an officer tell another officer that there were seven of us from
14 “EO Countries”). There were cots and blankets that two people who were ill used
15 to sleep. For some time, I was also able to use a cot as well. With the other
16 detainees, I was in the larger detention room until early in the morning, when the
17 officers took the nine of us to the small room, and then, later, back again to the big
18 room.

19 23. Early in the morning, there was a shift change and at some point in the
20 morning, they brought in apple sauce and juice because three of us told the officers
21 that we were very hungry and asked for food.

22 24. At some point, the officers were saying that there was a flight with many
23 people from “EO Countries” on board. I heard the officers say “we can’t mix them
24 with the ones here” and then another officer said, referring to us, “I will take them
25 back to the small room.” After the officers walked the other group in and sat them
26 down on the other side of the room from us, then another officer walked us out.

27 25. When we were being held in the small room, which did not have a
28 bathroom, if we had to go to the bathroom we had to knock on the door and then

1 were escorted to the restroom in the very first room I had been taken to, where
2 there were restrooms. Given the way the officer was right behind you when
3 walking, it was impossible to pause or talk to anyone else.

4 26. Being in the detention rooms, but especially the small room, made me very
5 anxious and I had a number of anxiety attacks. It was very scary to now know what
6 was happening and to feel like I was being punished for trying to study.

7 27. Sometime in the middle of the night, I overheard one of the officers asking a
8 colleague what he was supposed to do with me, a student with a 3.8 GPA, with
9 eight months left to graduate. All of this made me very anxious.

10 28. At some point, I asked officers if I could make another call. An officer took
11 me into the small interview room at about 5:50 am and let me use my phone in the
12 corridor for about 20 minutes. Around noon, I had asked to make another call. The
13 officer I asked was harsh and said no, that I was not allowed to access my phone
14 because I was in detention and I would have access to my phone only when on the
15 plane.

16 29. At that point, all we knew is that we were going to be put on flights back and
17 we were waiting. I kept asking officers when my flight would be and they told us
18 that different airlines would come at different times. At around 1:00 or 2:00 pm on
19 Saturday, February 28, 2017, the officers told me that Norwegian Airlines does not
20 fly until late that evening or at night.

21 30. By the afternoon, I had been there for so long that the person who had been
22 my "case worker" had gone home and was back again for his next shift. At some
23 point, I asked him if I could make another call and I told him that my family would
24 be worried because they did not know what was happening to me. The officer took
25 me into the area containing our bags and let me use my phone for a few minutes at
26 about 4:30 pm.

27 31. During that time, I was able to read messages I had received from friends
28 and family. They told me that my family members were talking to lawyers and

1 members of the U.S. Congress on my behalf. A friend I was able to talk to on the
2 phone told me that because people were working on my case I should ask if my
3 removal was final. He told me that a lawyer said that if I had a valid visa, I should
4 be able to stay and I should ask if my case was final or if there were any changes
5 with my case. I was afraid, because I had already been forced to sign the form, but
6 I asked the officer about the finality of my case. The officer said everything with
7 my case was final.

8 32. At some point in the afternoon, Norwegian Airlines staff came to get my
9 luggage and told me that my flight was scheduled to depart at 7:30 pm pacific time
10 on Saturday, January 28, 2017.

11 33. At around 6:45 or 7:00 pm pacific time on Saturday, January 28, 2017,
12 officers told me to get my carry-on bags. Two armed CBP officers, one in the front
13 and one behind, took me through storage rooms and back areas in the airport. The
14 officers also had my passport in an envelope of documents. I wasn't allowed to
15 hold my own documents. They took me to the gate. At one point earlier, I had
16 overhead a supervisor telling officers to avoid lawyers and the press as they were
17 bringing other people to their flights.

18 34. Although I asked repeatedly, the officers did not allow me to use my phone
19 while I was still in the detention area during my last hours in detention. Thus, as
20 soon as I started walking with the officers, I asked if I could use the phone. I was
21 not allowed to do so. When we arrived at the gate they gave my documents to the
22 flight attendant to check me into the flight and then took me to a back area next to
23 the boarding tunnel. They told me that I would be the last one to board the flight. I
24 wanted to talk to the flight attendants because I had been having anxiety attacks
25 and I wanted to ask where my seat would be – after 18 hours of travel, and nearly
26 23 hours in detention, the thought of another 18 hours of travel made me very
27 anxious. But the officers said that I could not talk to airline staff and just told me in
28 a louder voice that I must follow the officers.

1 35. In the area outside the boarding gate, I was finally allowed to use my phone.
2 I made a call to my sister and got messages that a federal judge in New York had
3 ordered a nationwide stay of all removals. Before I was able to say anything, the
4 officers told me I had to hang up the phone and get on the plane. At that time, I
5 told the officer next to me, "I was just told that a federal judge has ruled and that
6 there is a stay on the executive order and it was against the law to put me on the
7 plane." The officer said in response, "Oh – Wowza." That was the officer's only
8 response.

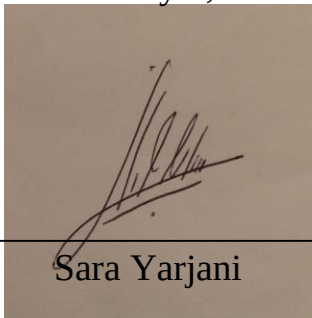
9 36. Having two armed officers telling me to do something, I felt very threatened.
10 They marched me to the plane and gave my documents to the head flight attendant
11 and then waited at the door of the plane until the flight attendants sat me in my
12 seat. I just sat there crying while the flight attendants comforted me.

13 37. My flight, Norwegian Airlines flight 7092, departed the United States at
14 7:36 pm pacific time on Saturday, January 28, 2017. A true and correct copy of my
15 boarding passes is attached as Exhibit D.

16 38. Not long after taking off, I started having a panic attack because I was afraid
17 I had lost my documents. I asked the flight attendants and the head flight attendant
18 told me that they had my documents but the officers had instructed them not to
19 give them to me until we left U.S. air space.

20 39. I was ultimately detained for nearly twenty-three hours.

21 I declare under penalty of perjury under the laws of the United States of America
22 that the foregoing is true and correct. Executed on February 2, 2017 in Vienna
23 Austria.

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28

Sara Yarjani

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

HAMEED KHALID DARWEESH and
HAIDER SAMEER ABDULKHALEQ
ALSHAWI,

on behalf of themselves and others similarly
situated,

Petitioners,

v.

DONALD TRUMP, President of the United
States; U.S. DEPARTMENT OF
HOMELAND SECURITY ("DHS"); U.S.
CUSTOMS AND BORDER PROTECTION
("CBP"); JOHN KELLY, Secretary of
DHS; KEVIN K. MCALEENAN, Acting
Commissioner of CBP; and JAMES T.
MADDEN, New York Field Director, CBP.

No. 1:17-cv-00480

Respondents.

DECLARATION OF RAMEZ SNOBER

I, Ramez Snober, declare, pursuant to 28 U.S.C. § 1746 and subject to penalty of perjury, that that following is true and correct:

1. My name is Ramez Snober, and I am a citizen of the Syrian Arab Republic. I was born in Damascus, Syria on August 22, 1980. I presently live with my family in Riyadh, Kingdom of Saudi Arabia. I have lived in Saudi Arabia for twelve years. I work as a Windows-applications-development team leader at Saudi Telecom Company, and my legal sponsor, which foreigners working in Saudi Arabia are required to have, is Ejada Systems Co. Ltd. I have been employed by Ejada for four years. In Saudi Arabia I have a "resident identity" card, which expires on May 16, 2021.
2. My wife, Daniah Al Ghorani, is also a Syrian citizen. She was born in Damascus, Syria on September 21, 1987. She has been living in Saudi Arabia for twenty-nine years.
3. My wife and I have two daughters: H.S., who is six years old, and Z.S., who is three years old. Both H.S. and Z.S. are also Syrian citizens. Even though they were born in Riyadh, Saudi Arabia, they do not have Saudi citizenship. Neither of my daughters has ever traveled to Syria.

4. My wife and I have not returned to Syria for approximately six years, since the civil war began. We did not think it was safe to travel there.
5. On or around December 25, 2016, I applied for B-1/B-2 non-immigrant visas for myself and my three family members so we could travel to the United States for vacation. The process of obtaining a U.S. visa is very rigorous for Syrian people living in Saudi Arabia. A Syrian citizen applying for a U.S. visa must demonstrate to the Consular Officer that he has strong ties to Saudi Arabia. I was required to provide a bank statement showing a high account balance, and an introduction letter from my employer showing I earned a high salary. In the end, after meeting those requirements, we received the visas by mail on or about January 11, 2017.
6. I have traveled to the United States before. In 1986, when I was around six years old, I lived with my father, my mother, and my brother in Los Angeles, California. My father was a visiting mathematics professor at the University of California, Los Angeles. We lived in Los Angeles for eleven months, and I studied with my brother at an elementary school in Los Angeles.
7. After receiving our U.S. visas in January 2017, my family and I prepared for our vacation to Orlando, Florida to visit Disney World. My two daughters love the movie *Frozen*, and we were going to Disney World so they could meet their favorite cast of characters: Anna, Elsa, and Olaf. We also planned to visit other attractions for the children, including WonderWorks and SeaWorld. We were also planning to visit the outlets for shopping.
8. On January 28, 2017, at 6:25 AM (AST), my family and I departed from Riyadh on Saudi Arabian Airlines flight number SV37. We landed at Dulles International Airport on or around 12:20 PM (EST). We had a 5 hour 11 minute layover in Dulles until our flight left to Miami, Florida, on American Airlines flight number AA1976.
9. After we got off the plane, my family and I went to U.S. Customs and Border Protection ("CBP"). We waited in line for approximately 30 minutes. At passport control, the agent did not stamp our passports with a U.S. stamp. Instead, he marked our customs declaration form with the letter "R". We took our luggage and headed to the exit door. At the exit door, the security guard checked the declaration form and directed us to go to the right to enter a hall.
10. In the hall, a CBP officer asked me a lot of questions regarding the purpose of our visit. He asked us why we were traveling to the United States, and how long our stay would be. He also asked us about our residency in Saudi Arabia, and how long we had lived there. I explained that I had lived in Saudi Arabia for twelve years, my wife had lived in Saudi Arabia for twenty-nine years, and my two daughters were born there. I also explained that

my children had never been to Syria and that neither my wife nor I had been to Syria for six years.

11. The CBP officers then inspected our luggage. They asked how much money we were carrying, which was \$8,000. We were with the CBP officers for about an hour.
12. Afterwards, the CBP officers directed us to enter an office, where they informed us they had received an Executive Order banning travelers from seven countries, including Syria. I asked to see a copy of the Executive Order. The CBP officer pulled out his mobile phone and navigated to an online news site, which I believe was CNN. He then pulled up an article explaining the Executive Order and showed it to me.
13. I asked to see an actual copy of the order. The CBP officer left, and returned a little while later with a printed piece of paper that did not have an official header or footer. The paper had two paragraphs printed on it: the first paragraph discussed B-1 visas, and listed the seven countries that were covered; the second paragraph discussed B-2 visas, and listed only six countries—Syria was not one of them. I pointed out that Syria was not on the second list, and the CBP officers laughed and told me it was a “typo.”
14. I asked the CBP officer why they did not inform the airlines of this Executive Order before we boarded. The CBP officer replied that they had received the order Friday evening (January 27, 2017) while our airplane was in the air.
15. The CBP officer then gave us two options. The first option was to sign papers saying we wanted to withdraw our application for admission to enter the United States. We were told that CBP would cancel our visas, and we would be returned to Saudi Arabia. If we refused to sign the papers, the CBP officer said we would be “detained.” When I asked what he meant by “detained,” the CBP officer told me it meant we would be put in jail, and would be there for a longer time. The officer also told us we would then be deported later and also be prevented from entering the United States again for five years. I felt scared because of the second option. I asked him if I could contact a lawyer, and he told me I could not because I was not an American citizen.
16. My wife and I thought about the threat of the second option, and we chose to sign the papers given to us. We did not think we had a choice. This occurred around 3:00 or 3:30 PM.
17. After we signed the papers, the CBP officers seized our mobile phones. We were prevented from contacting anybody directly, from watching what was happening around us, and from reading the news. I asked to contact my father-in-law to let him know we were returning to Saudi Arabia, but the CBP officers told me I was not allowed to contact anyone. However, one of the CBP officers offered to call him for us. The officer went

into another room to make the call, and returned several minutes later to inform us he had done so.

18. My wife and two daughters were very upset because of the decision to ban us from entering the United States, and because the CBP officers were detaining us.
19. After waiting in the hall, around 4:00 PM, they took us to a big room where they were detaining families. In that room we saw families sleeping on the floor. I asked to use the restroom, which was behind a locked door connected to the main room. The CBP officer opened the bathroom door for me and locked the door after me. My daughter H.S. cried.
20. After about twenty minutes of waiting in the detention room, five or so CBP guards entered the room with a tall man. They stood in a circle around him, and began putting handcuffs on him. While they were putting on the handcuffs, two officers had their hands on their guns. My wife and my daughters noticed the guns and became very scared. My wife began hugging our children. I asked a CBP officer why they were doing that to the man. He answered, "Don't worry about it, your situation is totally different from his."
21. At approximately 5:00 PM, several CBP officers escorted us via shuttle to our gate. Two officers were in front of us and two officers were behind us on the shuttle as we traveled through the airport. The CBP guards waited with us at the gate for about 35 minutes. We were very upset and depressed.
22. We were then put on Saudi Airlines flight number SV38, which departed Dulles International Airport at 6:00 PM for Riyadh Airport (RUH) in Saudi Arabia.
23. When we returned to Saudi Arabia, we contacted my father-in-law. He said he had spoken with the CBP officer, who told him that our family would be returned to Saudi Arabia because we had incomplete documents. I knew this was not true.
24. Since we have returned, my two daughters have been very agitated. They are nervous and upset. My daughters keep saying to me: "You promised to take us to see the Frozen characters, when we will go?"
25. Exhibit A is a true and accurate copy of the Withdrawal of Application for Admission/Consular Notification form, signed by CBP Officer John Desanta, which states that pursuant to the Executive Order, my visa application was withdrawn and my visa was canceled.
26. Exhibit B is a true and accurate copy of H.S.'s visa, which states her visa was "Revoked under section 221(f) of the INA. Cancelled without prejudice."

Executed this 5th day of February, 2017, at Riyadh, Saudi Arabia.



Ramez Snober

EXHIBIT A

Subject ID : [REDACTED]

Event No: WAS1701000303

U.S. Department of Homeland Security

Withdrawal of Application for Admission/Consular Notification

Basis for Action (check all that apply)

SIGMA Event: 9797205

File No. A [REDACTED]

Date: 01/28/2017

- ☒ Application for Admission Withdrawn
☒ Visa/BCC Canceled
☐ VWPP Refusal
☐ Ordered removed (inadmissible) by Immigration Judge -Section 235(b)(2)(order attached)
☐ Ordered removed (inadmissible) by DHS - Section 235(b)(1)(order attached)
☐ Waiver revoked (212)(d)(3) (order attached)
☐ Departure required (8 CFR 240.25) (Form I-213 attached)

 Notice to: American Consul RIYADH, SAUDI ARABIA
 (Location)

 From: CHANTILLY, VA US 20166
 (Location)

Name (FAMILY, Given, Middle) SNOBER, Ramez		
Citizenship SYRIA	Country of birth DAMASCUS, SYRIA	Date of birth 08/22/1980
Complete foreign address (Mailing Address) [REDACTED] RIYADH SAUDI ARABIA [REDACTED]		
Complete U.S. address [REDACTED]		
Airline/Vessel of arrival Saudi Arabian Airlines Corp., Flt#: 37	Port of arrival WASHINGTON, DC	Date of arrival 01/28/2017 0957
Visa number, type L [REDACTED] B2	Date, place of visa issuance 01/09/2017, RIYADH, SAUDI ARABIA	Social Security Number None
Reasons (Include all pertinent facts concerning denial of application for admission, including use of altered, counterfeit or fraudulent documents): Executive Order		

Continue on reverse or attach separate sheet as needed.

JOHN DESANTA

CBP Officer

Name and Title of Officer (Print)

Signature of Officer

Form I-275 (Rev. 08/01/07)

EXHIBIT B

[illegible]

SYR

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SUHA AMIN ABDULLAH ABUSHAMMA,

Petitioner,

-against-

DONALD TRUMP, President of the United States; U.S. DEPARTMENT OF HOMELAND SECURITY (“DHS”); U.S. CUSTOMS AND BORDER PROTECTION (“CBP”); JOHN KELLY, Secretary of DHS; KEVIN K. MCALEENAN, Acting Commissioner of CBP; and JAMES T. MADDEN, New York Field Director, CBP,

Respondents.

No. 1:17-cv-00488-CBA

DECLARATION OF SUHA AMIN ABDULLAH ABUSHAMMA

I, Suha Amin Abdullah Abushamma, declare, pursuant to 28 U.S.C. § 1746 and subject to penalty of perjury, that the following is true and correct:

1. My name is Suha Amin Abdullah Abushamma, and I am a citizen of Sudan. I was born in Saudi Arabia, where my family now resides. Since July of last year, I have been employed by the Cleveland Clinic as a doctor of internal medicine. I am currently in a three-year internal medicine residency program at the Cleveland Clinic. I am a holder of a valid H-1B visa that I received on April 28, 2016 for the purpose of treating patients as a doctor of internal medicine at the Cleveland Clinic. I live in Cleveland, Ohio, where the Cleveland Clinic is located.
2. On the morning of January 28, 2017, I applied for admission to the United States at the John F. Kennedy Airport (“JFK”), in Queens, New York, following a short trip abroad to visit my family in Saudi Arabia. I applied for admission at JFK as a nonimmigrant on the basis of my

valid H-1B visa, with which I am permitted to travel abroad. As explained in more detail below, I was denied entry and instead was sent back to Saudi Arabia.

3. I have been working as a doctor at the Cleveland Clinic for the last six months. I see about ten patients each day and serve as the primary care physician for a number of patients, who depend on me to prescribe and refill their medications, check their labs, and speak with them about their medical conditions and discuss next steps. I also conduct medical research on inflammatory bowel disease, and perform other duties as part of my residency program.
4. I have lived in Cleveland, Ohio since last summer. My fiancé is a legal permanent resident working as a doctor of internal medicine at Detroit Medical Center in Michigan. We are planning to be married in the United States this summer.
5. On January 23, 2017, I flew from Cleveland, Ohio to Jeddah, Saudi Arabia for a short visit with my family. The United States is my home. My apartment with all my things except what I packed for my vacation, my car, my job, and my fiancé all are in the United States. I packed only a few sets of clothes because I did not expect to be away long from my home in Cleveland.
6. On January 28, 2017, I took a flight from Jeddah, Saudi Arabia with a final destination of Cleveland, Ohio, where I live.
7. Upon my arrival at JFK at approximately 11 a.m., I was detained by U.S. Customs and Border Protection (“CBP”) agents at JFK. I was not permitted to board my connecting flight to Cleveland. CBP agents confiscated my passport and threatened to take away my phone. I was not told why my passport was being held and I received no information about how long I would be detained.

8. I was detained for at least six hours before I was told by a female CBP agent that I was being refused entry. She spoke to me briefly and told me that I was being detained because of the executive order that the President had signed and because I was a visa holder from Sudan. She gave me no further information about why I was not allowed to return home to Cleveland. I asked to speak to my immigration attorney, David Leopold. She told me no and she then left and never returned.
9. As set forth below, I was never permitted to speak on the phone with my lawyers while in CBP custody despite my initial and subsequent requests to do so. I was able to exchange a few text messages with Mr. Leopold, but when I asked to call him, my requests were refused until after, as set forth below, I agreed to sign certain forms.
10. During these texts, Mr. Leopold advised me that lawyers were working on a petition on my behalf to file with the Court so that I could return home to my job at the Cleveland Clinic.
11. After the female CBP agent who denied my initial request to speak with my lawyer left me, I again waited without being told anything. Ultimately, a new CBP agent came to speak with me. His identification tag read "T. Lam" and he told me I would not be permitted to enter the United States. I again asked to speak to my immigration attorney by phone but Agent Lam refused.
12. During this time, Agent Lam's supervisor was nearby. My attorney, Mr. Leopold, told me by text message that he would speak to CBP agents directly to explain the situation. I asked Agent Lam and his supervisor to speak with Mr. Leopold so that Mr. Leopold could confirm that there were attorneys working on my behalf but both Agent Lam and his supervisor refused to speak with him.

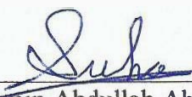
13. Agent Lam told me that the only way I was going to leave detention was if I signed a form to return to Saudi Arabia—the country I had flown in from. He showed me a document and told me that I should sign it. I was not allowed to call my lawyer or ask questions about what was in the document. It was also not feasible to discuss the form in detail with Mr. Leopold through text messages. I was being rushed to sign.
14. I was told by Agent Lam that if I did not sign, I would be forcibly removed and then banned from re-entry for five years. This terrified me because I want to finish my residency at the Cleveland Clinic, and because I was afraid of being removed by force.
15. I again told Agent Lam and his supervisor that there were attorneys who were working on my behalf. I repeatedly begged Agent Lam and his supervisor to give me more time. Agent Lam's supervisor then told me that an order that would allow me to stay in the United States would need to come from the Supreme Court, and that this would not happen. They told me that my lawyers could not do anything to help me in my situation and so I should just sign the form. I now know that what they told me was not true.
16. Agent Lam told me that there was a flight back to Saudi Arabia that was leaving at 8:30 p.m. He said that if I did not sign the form right away, it would mean that I had chosen to be forcibly removed from the United States, and that I would be forced onto the plane anyway, but would then be banned from the United States for five years.
17. I was so scared. Without being allowed to speak to my attorney on the phone despite my repeated requests, and because of all the negative consequences that Agent Lam had told me would occur if I did not sign the form, and feeling like I had no choice, I signed the form.
18. Had I known that what the CBP agents told me was not true, or had I been given more time to consider my options, or been allowed to call my lawyer who could better explain what

was happening (which could not be adequately conveyed by text message), I would not have signed the form I was made to sign.

19. At that point, Agent Lam stamped my visa with the words “Cancelled – NYC.” Instead of giving me back my passport or a copy of the form that I was made to sign, Agent Lam gave these documents and my boarding pass to a flight attendant on the flight back to Saudi Arabia. I was told I would not be allowed to have any of my documents back until I had landed in Saudi Arabia.
20. I was detained for a total of nearly ten hours at the airport. During this ordeal, I was not given anything to eat and CBP agents refused to allow me to have my passport or to make any phone calls. Only once I signed the form was I offered food. After I signed the form, I asked to call my attorney but I was told by Agent Lam that it would be pointless to use my one phone call to call my lawyer since he would be unable to help me. I was told I should call a family member or friend and tell them I was going back to Saudi Arabia.
21. After my phone call, I was finger printed and then made to sign another form by CBP. The second form was not explained to me and I still do not know what it was that I signed. I was never given a copy of that second form.
22. I was then escorted onto the airplane by two CBP agents. One stood in front of me and the other stood behind. It felt like they were trying to make sure I didn’t escape as though I was criminal in custody.
23. The plane pulled away from the gate at JFK at approximately 8:30 p.m. We remained on the ground at JFK for around another 25 minutes. We finally took off shortly before 9 p.m. We landed in Saudi Arabia at approximately 4 p.m. local time (8 a.m. EST), January 29, 2017.

24. Later, after I was finally given back my passport and that first form that CBP gave to the flight attendant, I saw that the form, labeled "Notice To Detain, Remove, or Present Alien", states that the reason for my removal is that I was an "Inadmissible Alien". But when I arrived in the United States at JFK I held a valid H-1B visa.
25. The notice also states that I was born in Sudan, which is incorrect. I was born in Saudi Arabia, which is what I told Agent Lam when he asked me where I was born, but when he filled out the notice he put Sudan.
26. I am currently in Saudi Arabia anxiously awaiting an opportunity to return to the United States as soon as possible to resume my life, including to continue my residency and treating my patients at the Cleveland Clinic.
27. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my information and belief.

Executed this 31st day of January, 2017, at Yanbu, Saudi Arabia.



Suha Amin Abdullah Abushamma

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

HAMEED KHALID DARWEESH and
HAIDER SAMEER ABDULKHALEQ
ALSHAWI,

Case No. 1:17-cv-00480

on behalf of themselves and others similarly
situated,

Date: January 30, 2017

Petitioners,

v.

DONALD TRUMP, President of the United
States; U.S. DEPARTMENT OF
HOMELAND SECURITY (“DHS”); U.S.
CUSTOMS AND BORDER PROTECTION
(“CBP”); JOHN KELLY, Secretary of
DHS; KEVIN K. MCALEENAN, Acting
Commissioner of CBP; and JAMES T.
MADDEN, New York Field Director, CBP.

Respondents.

DECLARATION OF HIND MOHAMED HASSAN AHMED ELBASHIR

I, Hind Mohamed Hassan Ahmed Elbashir, declare, pursuant to 28 U.S.C. § 1746 and subject to penalty of perjury, that the following is true and correct:

INTRODUCTION

1. My name is Hind Mohamed Hassan Ahmed Elbashir. I am a citizen of Sudan. I am a holder of a valid B2 visa, which I was issued on January 11, 2017. I am attaching a photo of my visa to this Declaration as Exhibit A.
2. On the morning of January 28, 2017, I applied for admission to the United States at the Orlando International Airport (“MCO”) in Orlando, Florida. I applied for admission at MCO as a nonimmigrant on the basis of my valid B2 visa, with which I am permitted to travel abroad. As explained in more detail below, I was denied entry and instead was sent back to Sudan.
3. I was born on May 20, 1985 in the United Arab Emirates (UAE). In 2002, I moved from the UAE to Sudan. I currently work for the Sudatel Telecommunications Group in Sudan, which

involves frequent travel to Mauritania. I live in Khartoum, the capital of Sudan, with my parents, my brother, and my sister.

4. Two years ago, my sister moved to U.S. She now lives with her husband and three children in West Palm Beach, Florida. One of her children has severe autism. Her third child was born on February 1, 2017.
5. The purpose of my visit to the U.S. was to stay with my sister for a month to help care for her children, particularly her special needs child. I also wanted to be with my sister in the hospital when she gave birth to her newborn. I planned to take shifts with my sister's husband to ensure that there was always someone with my sister in the hospital.
6. My sister and her husband have no support system in the U.S. My sister's husband cannot take paternity leave, and he works long hours and travels frequently. My sister needed support, and I was so excited to care for her and her children.
7. My sister's son with autism requires intensive care. He used to go to a school for students with special needs, but my sister was unhappy with the schooling he received there and decided to homeschool him. My plan was to assume responsibility for his care when I arrived in the U.S. while my sister attended to the newborn baby.
8. I had never been to the U.S. before this. I planned for a long time in advance to be able to come to the U.S. and to ensure I would come in time for the birth of my sister's baby. I made arrangements with the U.S. Embassy in Khartoum to obtain a B2 visa. I had to cancel a work trip to Mauritania so that I could stay in Khartoum for the month of January to go to the only available embassy appointment. I could have made more money if I had not cancelled the trip to Mauritania, but I was happy to make these sacrifices to see my sister and be part of this milestone in her life. I wanted to be there for her and support her.

9. At 8 PM on Friday, January 27, 2017, I embarked on a flight from Sudan with a final destination of Orlando, Florida and a layover in UAE. The flight number was EK 734. I am attaching a photo of my flight itinerary to this Declaration as Exhibit B.

ARRIVAL AT ORLANDO AIRPORT (MCO)

10. I arrived at MCO on the morning of Saturday, January 28, 2017.
11. Upon my arrival at MCO, I had my first passport check with everyone else from the flight. Then, the U.S. Customs and Border Protection (“CBP”) took me and a group of other passengers from my flight to a waiting room to conduct a secondary check. The other passengers in the group included two Iranian companions, a Syrian family of four, a Sudanese family of three, and a Sudanese man going to the U.S. for a conference.
12. We were all taken to a waiting room, and the officers took away our passports. The officers also told us that we were not allowed to use our cellphones. I only had my carry-on bag with me, and not the rest of my luggage. I saw passengers from many different nationalities go in and out of the waiting room, but the other passengers from the group and I stayed in the room for six hours. During this time, nobody explained to us what was going on. Since I kept seeing people enter and leave the room, I was hopeful that if we waited patiently, we would eventually get permission to leave. The officers did not give us any information about how long we would be waiting or why we were not being processed as quickly as people from other nationalities.
13. While waiting, I had an extremely painful headache. I asked the officers for any kind of medicine to reduce the pain of my headache three times, but the officers refused to provide me with any medication.
14. In the group of passengers detained from my flight, we all spoke English except for an Iranian girl. Her companion was able to translate for her. There were no official translators in sight.
15. I did not know what was happening throughout those six hours. Since we were not allowed to use our cellphones, I could not call my family to tell them where I was.

16. Finally, after six hours of waiting, I was informed that my visa would be revoked and that I would not be allowed in the U.S. that day. I asked the officers if this was their final decision, regardless of my individual circumstances, and they said yes. They explained that I had two options: I could either leave voluntarily and depart on the next flight, or the officers would force me to leave. I asked what the implications of each option were, and the officer said that if I were forced to leave, I would be banned from the U.S. for five years. However, if I left voluntarily on the next flight, there would be no further consequences and I would be able to apply again and be granted access to enter the U.S.
17. I was not able to talk to a lawyer. I asked if I could talk to someone that could explain the law or tell me my rights. They told me they could not provide that kind of information.
18. When the officers told me my options, I was totally shocked and in disbelief. I asked if the officers had a written policy outlining these options and their legal implications, and the officers told me they would provide me with the written policy later. I never received anything in writing explaining the situation. They also told me that the immigration office would explain to me why my visa was being revoked, but nobody ever came to talk to me to explain why my visa was revoked. I asked if I could contact my family and tell them where I was, and they said no. They told me that if I provided the officer with a phone number, the officer would call the number to explain where I was. I gave them the number for my sister's husband, who was supposed to pick me up from the airport. Finally, I asked the officers for some time to absorb the shocking news.
19. After a couple of minutes, they came back and asked me what my decision was. I told them that between those two options, I would take the next flight out because they had told me I would be able to enter later, whereas if I chose the second option of leaving by force I would not be able to enter the U.S. for five years.
20. After I spoke to the officers, they wrote something on my visa, but I was unable to read what they were writing. They also took my fingerprints and asked me to sign a document with my

photograph and fingerprints. I asked them for a copy of the document I signed. The officers told me I would receive a copy when I received my passport back, but I never received a copy of the document.

21. I could not believe that the officers would not give me an individualized determination because of the special circumstances that my family was facing. I wanted someone to look at my case and hear from me. But the officers told me there was nothing that could be done.
22. I had all of my papers in order and a valid visa that I had worked so hard to get. I had changed my work plans and put my life on hold to come to the U.S. to support my sister. I felt overwhelmed and had no clue what I should do.
23. After speaking to the officers, I waited in the same room for another 4 hours before boarding the next flight. I spoke to the other passengers who were detained from my flight; they were also shocked and in disbelief that we were all being denied entry into the U.S.
24. In total, I was in that waiting room for around 10 hours, along with the other passengers from my flight. I was aware that 10 hours had passed because I had a watch and there was a clock in the room.

RETURN FLIGHT TO SUDAN

25. The other passengers who were detained from my flight and I were all given boarding passes on the same return flight. This was a Lufthansa flight that stopped in Frankfurt, Germany; Dubai, UAE; and Khartoum, Sudan. My flight number was LH 465. I am attaching a picture of my ticket as Exhibit C.
26. Officers walked us from the waiting room to the gate for our return flight.
27. As we were on our way to board the flight, the officers returned my cellphone. They instructed me to keep my phone turned off until I boarded the plane. I still did not have my passport.
28. After I boarded the flight, I waited on the plane for about an hour before it took off. We boarded the plane at around 8 PM, and the plane took off at 9:10 PM. I later confirmed that the flight

departed at 9:10 PM by checking an online flight tracker website. A true and correct screenshot of the website is attached as Exhibit D.

29. Although I had my phone on the flight, I did not have service to be able to contact anyone.

30. When the plane landed in Frankfurt, the Syrian family from my group told me that they learned that if we all had just waited in the airport and held on to our visas, we would have eventually been allowed to enter the U.S. I felt so bad when I learned that I could have been able to enter the U.S. to see my sister. The Syrian mother in the family was crying on and off from the time we were in the Orlando airport until we arrived in the UAE. As far as I know, her and her family later left to go to Saudi Arabia.

31. When we arrived in the UAE, an officer finally returned my passport. I saw for the first time that the officer in the U.S. had written on my passport: "REVOKED PER DOS."

32. Finally, I flew from the UAE to Khartoum, Sudan.

FAMILY REACTIONS TO MY REMOVAL AND AFTERMATH

33. For the entire day of January 28th, my sister and her husband had no idea where I was or what happened to me. Her husband had planned to pick me up at the airport and drive me to his house, but I was not able to communicate with him to let him know that I had arrived. Her husband could only guess about my whereabouts by watching the news.

34. My sister later told me she had felt extremely worried and stressed, and experienced a rapid heart rate and a severe headache.

35. I later learned that an officer at the airport called my brother-in-law at the number I gave the officers. After my flight had already departed, the officer told my brother-in-law that I was on my way to Sudan and that the officers could not let me in because of the Executive Order. They apologized to my brother-in-law, and said something about how their hands were tied.

36. I was not able to use my cellphone, due to a lack of Internet service, until I was in Frankfurt. As soon as I had Internet access on my phone, I wrote a message through the WhatsApp messaging

service to my family to explain what had happened. The message was sent to my parents, my siblings in Sudan, and my sister in the U.S. I was not able to make phone calls on my cellphone until I arrived in Sudan.

37. I later learned that, until my parents heard from me, they were extremely worried and did not sleep for two days. They are elderly (my father is 70 years old and my mother is 60 years old), and they have diabetes and high blood pressure. I believe the stress of the situation adversely affected their health.
38. When I arrived in Sudan, the first person I spoke to on the phone was my sister. I was crying, but I tried to hold myself together because I wanted to be strong for her.
39. My sister was devastated when she found out that I would not be able to enter the United States. Her water broke earlier than expected; she gave birth on February 1, 2017.
40. It was so painful to hear that my sister had given birth just days after I would have arrived in the U.S. It is difficult to think of my sister going through all of this alone, without me being able to be with her in person. I also feel worried about my sister and her family because they have no friends or family in the U.S. to help them.
41. My sister is now taking her son back to the school for special needs students, which she is unhappy about. However, my sister is not able to take care of her autistic son because she has to care for her newborn baby. My sister's husband has stopped going into work. He is trying to work from home, but his business does not have paternity leave.
42. Since arriving in Sudan, I have felt extremely depressed. From the time the officers told me that I had to return to Sudan or face a five-year ban, I felt disrespected and discriminated against. I am still shocked about what happened. I have not left my bed since I arrived home and I have been unable to leave the house. I do not want to return to work because I still have hope that I can be granted permission to go to the U.S. and be with my sister.

Pursuant to 28 U.S.C. § 1746, I hereby verify that the information contained herein is true and correct to the best of my information and belief. Executed this 3rd day of February 2017, at Khartoum, Sudan.

Hind M.

Hind Mohamed Hassan Ahmed Elbashir

EXHIBIT A

VISA

UNITED STATES
OF AMERICA



Issuing Post Name

KHARTOUM

Surname

ELBASHIR

Given Name

HIND MOHAMED HASSAN AHMED

Passport Number

P01555003

Entries

1

Annotation

Control Number

20163471160006

Visa Type /Class

R B1/B2

Birth Date

20MAY1985

Nationality

SUDA

Issue Date

11JAN2017

Expiration Date

09APR2017

1001

L7808576

**

VNUSAELBASHIR<<HIND<MOHAMED<HASSAN<AHMED<<<<

P015550034SDN8505202F1704095B3KHT01YGF722216

EXHIBIT B

Itinerary for Record Locator **R1EZRU**

Emirates Record Locator **PXN4KN**

Reservation

Airline	Flight #	Departing		Arriving		Class	Cabin	Meals
		Airport	Date & Time	Airport	Date & Time			
Emirates	734	Khartoum, SD	FRI 27JAN 19:45	Dubai International, AE Terminal:3	SAT 28JAN 00:55	U	Y	M
	MS HIND MOHAMED ELBASHIR (ADT)		FF# Not Set		No Seat Assigned			
Emirates	219	Dubai International, AE Terminal:3	SAT 28JAN 02:50	Orlando International Apt, US	SAT 28JAN 10:10	U	Y	M
	MS HIND MOHAMED ELBASHIR (ADT)		FF# Not Set		No Seat Assigned			
Emirates	220	Orlando International Apt, US	WED 01MAR 13:30	Dubai International, AE Terminal:3	THU 02MAR 12:20	U	Y	M
	MS HIND MOHAMED ELBASHIR (ADT)		FF# Not Set		No Seat Assigned			
Emirates	733	Dubai International, AE Terminal:3	THU 02MAR 14:45	Khartoum, SD	THU 02MAR 18:05	U	Y	M
	MS HIND MOHAMED ELBASHIR (ADT)		FF# Not Set		No Seat Assigned			

Invoice Information

MS HIND MOHAMED ELBASHIR (ADT)	Document Number	Issuance Date	Base	Taxes	Total	Currency
Electronic Ticket	1762136595397	11JAN17				
Endorsements: NON-END/FLEX						
Fare Calculation:ADT KRT EK X/DXB EK ORL M/IT ULEESSD2/GSA2 EK X/DXB EK KRT M/IT ULEESSD2/GSA2 END ROE1.00 XF MCO4.5						
Form of Payment: CASH				IT 138.76	IT	USD

Grand Total for all travelers	Amount	Currency
	0.00	USD

For information about and automatic calculation of baggage allowances and fees for this itinerary, in accordance with applicable carrier rules, please visit www.iflybags.com

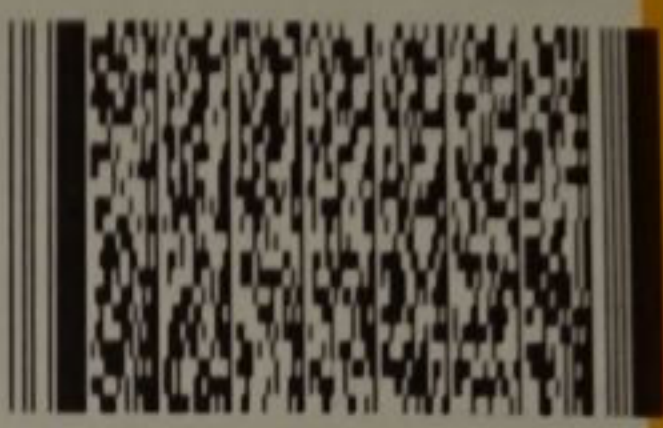


EXHIBIT C



A STAR ALLIANCE MEMBER

176230136179301 ECONOMY CLASS 327
etix etkt etix etkt
Bordkarte/Boarding Pass



LUFTHANSA

NAME

ELBASHIR/HINDMOHAMED

MCO LH 0465 Y 28JAN

FRA

Carrier Flight No. Class

045H

LH 0465/327

MAX 1 HANDGEPAECK/HANDLUGGAGE

ETKT No.

744C05FC

Wir bitten Sie, zur Boardingzeit am Gate zu sein, andernfalls kann Ihr Sitz anderweitig vergeben werden.
Please be at the gate at boarding time otherwise your seat may be given away.

Name of passenger

API

ELBASHIR/HINDMOHAMED

ETKT 176230136179301

MCO

FRA

LUFTHANSA

Carrier Flight No./Class Date

LH 0465 Y 28JAN

Gate

Boarding time

Seat

084 1950 045H
086

Kurzfristig Änderung des Flugstiegs möglich.
Gate changes possible at short notice.

Pcs Ck. Wt. Unck. Wt. Pcs. Ck. Wt. Unck. Wt.

EXHIBIT D

Flight history for Lufthansa flight LH465

Walgreens is a preferred network pharmacy with many plans.*




*Based on December 2016 CMS enrollment data.


[Learn more](#)

DATE	FROM	TO	AIRCRAFT	FLIGHT TIME	STD	ATD	STA	STATUS	KML	CSV	Play
09 Feb	Orlando (MCO)	Frankfurt (FRA)	744	-	8:20 PM	-	10:55 AM	Scheduled			
08 Feb	Orlando (MCO)	Frankfurt (FRA)	744	-	8:20 PM	-	10:55 AM	Scheduled			
07 Feb	Orlando (MCO)	Frankfurt (FRA)	744	-	8:20 PM	-	10:55 AM	Scheduled			
06 Feb	Orlando (MCO)	Frankfurt (FRA)	744	-	8:20 PM	-	10:55 AM	Scheduled			
05 Feb	Orlando (MCO)	Frankfurt (FRA)	744	-	8:20 PM	-	10:55 AM	Scheduled			
04 Feb	Orlando (MCO)	Frankfurt (FRA)	744	-	8:20 PM	-	10:55 AM	Scheduled			
03 Feb	Orlando (MCO)	Frankfurt (FRA)	B744 (D-ABVZ)	-	8:20 PM	-	10:55 AM	Scheduled			
02 Feb	Orlando (MCO)	Frankfurt (FRA)	B744 (D-ABVY)	7:56	8:20 PM	8:29 PM	10:55 AM	Landed 10:25 AM			
01 Feb	Orlando (MCO)	Frankfurt (FRA)	B744 (D-ABVT)	8:05	8:20 PM	8:29 PM	10:55 AM	Landed 10:34 AM			
30 Jan	Orlando (MCO)	Frankfurt (FRA)	B744 (D-ABVO)	7:43	8:20 PM	8:25 PM	10:55 AM	Landed 10:09 AM			
29 Jan	Orlando (MCO)	Frankfurt (FRA)	B744 (D-ABVM)	7:39	8:20 PM	8:30 PM	10:55 AM	Landed 10:09 AM			
28 Jan	Orlando (MCO)	Frankfurt (FRA)	B744 (D-ABWV)	7:43	8:20 PM	9:10 PM	10:55 AM	Landed 10:53 AM			
27 Jan	Orlando (MCO)	Frankfurt (FRA)	B744 (D-ABVY)	7:57	8:20 PM	8:21 PM	10:55 AM	Landed 10:19 AM			

More than 7 days of LH465 history is available with an upgrade to a Silver (60 days), Gold (180 days), or Business (365 days) subscription

[Unlock now - FREE trial](#)

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

Rashid Ahmed Gibril Ali,

on behalf of themselves and others similarly
situated,

Petitioners,

v.

Case No. 1:17-cv-00480

DONALD TRUMP, President of the United States; U.S. DEPARTMENT OF HOMELAND SECURITY (“DHS”); U.S. CUSTOMS AND BORDER PROTECTION (“CBP”); JOHN KELLY, Secretary of DHS; KEVIN K. MCALEENAN, Acting Commissioner of CBP; and JAMES T. MADDEN, New York Field Director, CBP.

Respondents.

I, Rashid Ahmed Gibril Ali, declare, pursuant to 28 U.S.C. § 1746 and subject to penalty of perjury, that that following is true and correct:

1. My name is Rashid Ahmed Gibril Ali, and I am a citizen of Sudan. I am working in Saudi Arabia for a medical simulation company named I-Man Healthcare. I applied for admission to the United States at the Orlando International Airport, in Orlando, Florida on January 28, 2017. I applied for admission as a nonimmigrant on the basis of my B-1/B-2 visa, which I received on January 4, 2017.
2. On January 28, 2017, I embarked on a flight from Dubai, United Arab Emirates with a final destination of Orlando, Florida. For the first leg of my flight, I had embarked on a flight from Riyadh, Saudi Arabia to Dubai, United Arab Emirates on January 27, 2017. I arrived at Orlando International Airport at around 10:00AM the morning of January 28, 2017.

3. I traveled to the United States to attend a medical education conference in Orlando for four days. The conference, entitled “Patients: The Heart of Simulation,” was held by the Society for Simulation in Healthcare (SSH) at the Hyatt Regency Orlando Hotel, at 9801 International Drive, Orlando, Florida. I am a member of SSH, an organization for medical simulation. As a member of this organization, I came there to attend the conference, attend some workshops, and meet other companies as a representative of my company. The pre-conference workshops would start on January 28, 2017, the conference itself would start on the January 30, 2017, and the conference would end on February 2, 2017. I had a flight back on February 5, 2017.
4. Upon my arrival at the Orlando International Airport, I went through passport control, and the United States officers took me to another room and told me to wait there. They took other passengers who were with me as well. I remember there was a family from Sudan, with a wife, husband, and a child; a Syrian family, including a wife, husband, and two daughters; and two individuals from Iran, a daughter and father. The officers did not tell us anything about how long we would be detained or why we were being detained. We were not allowed to use our cell phones.
5. After about five or more hours, United States officers then came and told us that our visas had been revoked. They were uniformed and may have been with U.S. Customs and Border Protection (CBP), but I could not tell the difference between CBP and other United States government officers. They gave us two choices: we

could either volunteer to leave or refuse. If we refused, we would be deported from the United States.

6. I asked the officers why my visa was revoked and they did not answer. They were very clear that they were only giving us only two choices, and so I did not even think that I could see a lawyer. In both choices offered, the result was going back, so I accepted the fact that I could not enter the United States. They made me sign a piece of paper that acknowledged that my visa was cancelled.
7. After I signed the papers, the officers asked us many personal questions, including where we are working, our home address, and information about our family. They had us sign that the information we gave was correct, and they then took our fingerprints. We then waited for another few hours.
8. In total we were detained for about ten or so hours at the airport.
9. CPB then put us on the flight to Frankfurt. They initially told me that I would not have to pay for the flight, but it turns out that they were using my return plane ticket for which I had already paid. CBP and the airlines refused to give me back my passport. They only returned my passport after the plane leaving the United States touched down. I received my passport in Dubai Airport.
10. We boarded the flight to Frankfurt airplane at about 8:00PM on January 28. My boarding pass says that boarding started at 7:50PM. My flight was LH0465 on Lufthansa Airlines to Frankfurt, Germany. The flight did not take off for a while, as it was a little bit delayed. I do not remember the exact time that the flight left, but it was after 8:30pm.

11. From Frankfurt, Germany I went to Dubai, and then I returned to Riyadh.

Executed this sixth day of February, 2017, at Riyadh, Saudi Arabia.

A handwritten signature in blue ink, consisting of a large, stylized 'R' followed by 'ahmed' and a small flourish.

Rashid Ahmed Gibril Ali

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

HAMEED KHALID DARWEESH and
HAIDER SAMEER ABDULKHALEQ
ALSHAWI,

on behalf of themselves and others similarly
situated,

Petitioners,

Case No. 1:17-cv-00480

v.

DONALD TRUMP, President of the United
States; U.S. DEPARTMENT OF
HOMELAND SECURITY (“DHS”); U.S.
CUSTOMS AND BORDER PROTECTION
(“CBP”); JOHN KELLY, Secretary of
DHS; KEVIN K. MCALEENAN, Acting
Commissioner of CBP; and JAMES T.
MADDEN, New York Field Director, CBP.

Respondents.

I, Yahya Aburomman, declare, under penalty of perjury pursuant to 28 U.S.C § 1746, that the following is true and correct:

1. My name is Yahya Aburomman, and I am a twenty-three-year-old citizen of Jordan. My father is originally from Jordan and my mother is originally from Syria. I was born in Syria while visiting my mother’s family there, but I have lived my entire life in Jordan. I am ineligible, under Syrian law, to become a Syrian citizen or receive a Syrian passport.
2. I came to the United States in order to visit family that live there. My brother Abed Aburomman is a U.S. citizen and studies chemical engineering at the Illinois Institute of Technology. Two of my uncles also live in Illinois and my aunt lives in Maryland. They are all U.S. citizens. My brother Omar also lives in the United States as well, but I do not know exactly where.

3. At the end of January 2017, I graduated from the University of Jordan where I majored in English and Spanish. I will begin a master's degree in English and Spanish at the University of Jordan in May.
4. At on or about 12:40 p.m. central time on Sunday, January 29, 2017, I applied for admission to the United States at the O'Hare International Airport in Chicago, Illinois. I applied on the basis of a B-1/B-2 visa. I was then denied entry, held and questioned, locked up in a cell, and returned to Jordan.
5. After waiting in line, I reached the desk where a Customs and Border Protection ("CBP") officer inspected my passport. He noticed that my Jordanian passport stated that I was born in Syria. He asked about that, and I told him I was born in Syria while my parents were visiting there but I am Jordanian. He knocked on the glass next to him and said to another officer, "This man was born in Syria. We might have trouble with this." The other officer replied that he saw nothing wrong with that and that I should be treated as a Jordanian. However, I was escorted over to an additional officer to show him my passport. The officer asked me to sit and wait while he stepped away. When the officer returned, he said, "Being born in Syria will affect your entry to the United States." I told the officer I was only born in Syria and I am a native Jordanian.
6. The officer was not convinced and asked to search my belongings. He took my phone and asked me for my password. I gave it to him. He walked away. I assume he went through all my e-mails, messages, Facebook conversations, SMS texts, and private images on my cell phone because he referenced some things later that he would not know if he had not done this.
7. Then I was taken to another area in the airport where I was questioned for about 15 minutes. CBP officers asked about my family members in the United States. I told them I have two brothers here, Abed Al Elah and Omar.

8. An officer said, "Abed came to the United States, overstayed illegally, then got married and became a U.S. citizen, right?" Then he added, "And Omar is also an illegal in the United States?" I was scared. I said yes.
9. He kept asking about my brother Omar. He wanted to know where he lived. I told him I did not know where he was. The officer replied, "Do you think that I believe you? I don't." I insisted I was telling the truth.
10. The officer said Abed and Omar's experiences "will affect your entry to the United States because your brothers overstayed illegally and you might do the same." I asked why I had to be responsible for someone else's decisions, and Officer Davis said, "because they are family."
11. I was then escorted to a waiting room full of people, where I was questioned by CBP Officer Davis and his colleagues for six hours and subjected to a secondary inspection. CBP officers searched my belongings, including the contents of my suitcases, multiple times.
12. Officer Davis asked me my reasons for visiting the United States, and I said that I had just graduated from the University of Jordan and my father, a graduate of the University of Illinois, Chicago, encouraged me to spend a few weeks with my relatives in the United States.
13. Officer Davis asked me why I had corresponded with aviation academies around the world. I explained to him that I was interested in scholarship programs for international students.
14. Officer Davis told me he did not believe I was not planning to stay here permanently. He asked me the same questions about my brothers, and I answered them the same way.
15. Officer Davis also said the fact that I was born in Syria would affect my entry to the United States.
16. I was asked to carry my suitcases to another room so CBP officers could search them again. After the search, they asked me how much money I had. I told them \$8,000. Officer Davis said that was too much for a vacation. I reiterated that this was only a visit and I just wanted to get

presents for my relatives in the United States and in Jordan. I also told him my brother Abed told me to bring extra money to help him arrange his wedding. Officer Davis asked me when the wedding would be. I told him maybe next month.

17. Officer Davis then stepped out to ask my brother Abed about his marriage arrangements. Abed was waiting for me at arrivals. When he came back, he accused me of not telling him the truth because Abed said the wedding is going to be in August, even though Abed confirmed my story about bringing extra money for the arrangements. I told him I was honest about my understanding of the wedding date. It is up to the groom to decide when he wants to get married, and he is entitled to change his mind.
18. After this, I waited again for a while. Then Officer Davis returned and told me he intended to ask me a number of questions, and my answers should only be either "Yes" or "No." He said my answers to these questions would be put into a sworn statement. The questions were about my full name, my place of birth, the reasons I was born in Syria, my nationality, the place of issuance for my passport, my reason for coming to America, the amount of money in my possession, the names of my uncles in the United States, and their jobs in America. Then I was told by Officer Davis to sign five documents. I do not know what all of these documents are, but one of the documents was a sworn statement. He also informed me that he would call the Jordanian Embassy to inform them of my status, telling me that he was about to cancel my visa and put me on a plane to go back to Jordan.
19. I asked him to allow me to call the Jordanian Consulate because I did not know what I was being asked to sign. He insisted that I have to sign the papers first; then I could call. Another officer sarcastically replied, "Yeah go ahead and call them, as if they're going to answer." Then he said, "Or you may send them a Snapchat." Then he and Officer Davis started to laugh. Then

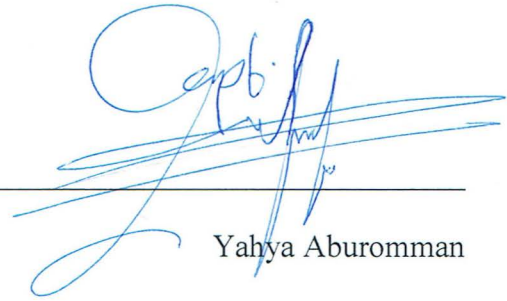
Officer Davis said that if I did not sign the sworn statement and other documents, that I would be banned “from entering the United States for the rest of [my] life.”

20. I signed the documents because I feared that if I did not, I would never be able to visit my family in the United States again and would miss the chance to come back for my brother’s wedding. While I was signing, Officer Davis started dialing the Consulate. When the call went through, the Consulate said there was nothing they could do for me.
21. After this, Officer Davis told me I would receive a copy of the documents I signed, but I never did. Officer Davis told me he would give me a waiver so I could apply for another visa at the American embassy in Jordan, but he did not give me that form either. After I signed the papers, CBP officers took my fingerprints and photographed me.
22. After officers inspected my suitcases for a fourth or fifth time, I was then placed in a locked cell somewhere else in the airport where I remained for almost 20 hours.
23. At some point, I asked CBP officers if I could speak to my brother Abed and they said no. I also asked the officers if I could perform my daily prayer in a clean place since the cell was not a proper place for prayer, and they refused. Later on, I asked the night shift officer, who did not know anything about my case, if I could call my uncle to inform him of the details of my flight back to Jordan. He let me call.
24. The following afternoon, at approximately 3:30 p.m. on Monday, January 30, 2017, I was placed on Lufthansa flight L431 to Frankfurt that departed after 5:00 p.m. The general boarding time was supposed to be around 4:45 p.m., but I was put on the plane early.
25. After I arrived in Frankfurt, my brother called me to tell me that an immigration attorney had tried to help me while I was in O’Hare, but CBP would not let her contact me. He told me that on Monday afternoon, an attorney sent by my family members repeatedly tried to gain access to speak to me or to obtain information about my case. After denying her requests to see me or to

receive information regarding me, a CBP officer asked her to write my name on a piece of paper and he would check on me. Several minutes later, the officer returned and told her that I had "already left" and would not provide further information. This occurred approximately between 3:40 p.m. and 3:50 p.m. Approximately at this time, I was taken out of my cell and placed on an airplane. I realized that the officer who placed me on the airplane had the same name as the officer who told my attorney that I had "already left."

26. I was not given copies of any of the documents I signed.
27. I was never permitted to speak to an attorney nor my brother Abed who was awaiting me.
28. I was held in a locked cell for 20 hours merely because I was born in Syria.
29. The treatment I received at the hands of the immigration officers at the airport is entirely un-American and contrary to all the impressions that my father instilled in me that America was a land of justice, kindness, equality, and respect.

Executed this 3rd day of February, 2017, in Amman, Jordan.



Yahya Aburomman

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

HAMEED KHALID DARWEESH and
HAIDER SAMEER ABDULKHALEQ
ALSHAWI,

on behalf of themselves and others similarly
situated,

Petitioners,

Case No. 1:17-cv-00480

v.

DONALD TRUMP, President of the United
States; U.S. DEPARTMENT OF
HOMELAND SECURITY (“DHS”); U.S.
CUSTOMS AND BORDER PROTECTION
(“CBP”); JOHN KELLY, Secretary of
DHS; KEVIN K. MCALEENAN, Acting
Commissioner of CBP; and JAMES T.
MADDEN, New York Field Director, CBP.

Respondents.

DECLARATION OF NABILA ALHAFFAR

I, Nabila Alhaffar, declare, pursuant to 28 U.S.C. § 1746 and subject to penalty of perjury, that the following is true and correct:

1. My name is Nabila Alhaffar, and I am a citizen of Syria. I applied for admission to the United States at the Dulles International Airport, in Dulles, Virginia, on January 28, 2017. I applied for admission as a J-2 nonimmigrant on the basis of my J-2 visa which I received on 12/08/2015.
2. On January 27, 2017, I embarked on a flight from Doha, Qatar with a final destination of Dulles, Virginia. I traveled to the United States because I held a valid J-2 nonimmigrant visa as the derivative spouse of my husband, who is a physician in J-1 visa status. I live in Virginia with my husband.

3. Upon my arrival at Dulles, I was detained by U.S. Customs and Border Protection (“CBP”). They told me that I was being detained because my visa was “blocked” and because I am a Syrian national.
4. The CBP officers told me that I would not be permitted to enter the United States and confiscated my cell phone, visa, copy of my marriage contract, DS2019 forms, and copy of my husband’s DS2019 form which I carry with me when traveling as supporting proof for my J-2 visa.
5. One particular CBP officer told me I was going to be deported back to my home country. I explained to him that I live in the United States with my husband who was waiting for me. I asked him why my visa was being denied.
6. The officer replied: “You are not American to say that this is your home, and you cannot say ‘my visa’ because this visa belongs to the United States, not to you! You must go back to your country.”
7. I was told to sit down, have my fingerprints taken, and sign some papers.
8. The CBP officer told me that the only way I can get a new visa again without waiting for 5 years to apply again was if I signed a form to return to the country I flew from. I was shown a document I couldn’t understand because I do not read English well enough to appreciate and comprehend the legal impact of the document. I was told to sign it even without being allowed to talk to a lawyer or ask questions about what was in the document. No translator was granted to me, even though I requested one.
9. I stated I did not want to sign any papers and requested to speak with my husband, a lawyer, and a translator, before doing any such thing, and was denied all requests.
10. At that point, someone else who I assume was also a CBP officer came into the room I was in. The officer told me that I can re-apply for a new visa when I return to my country, but if I do

not sign the papers, I will be prohibited from entering the country for five years. I was told I had no viable option but to give in and sign, which is what I did.

11. The next time I saw my passport was at Dubai airport and the visa with was stamped with the word "canceled."
12. I landed at Dulles at 8:01 a.m. on January 28, 2017 and was detained until I was deported at 9:55 a.m. on a flight back to Doha, Qatar.
13. At Dubai airport I was also told that I had to pay for the plane flight home otherwise I won't be given my passport. However, upon arrival to Qatar no one asked for payment.
14. I was extremely scared and emotionally devastated. I live in the United States and didn't know when I was going to see my family again, when I was going to be able to leave detention, and if I was sent back to Qatar, when I could come back to the United States to join my husband.
15. I am currently in Qatar, my visa having been cancelled, separated from my husband who is working in the United States as a physician, not knowing when I can see my husband again.

Pursuant to 28 U.S.C. § 1746, I hereby verify that I can write, read and understand English sufficient to set forth the information contained herein, and I further verify the above information is true and correct to the best of my information and belief. Executed this 4th day of February, 2017, at Doha, Qatar.

Dated: February 4, 2017



Nabila Alhaffar

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

HAMEED KHALID DARWEESH and
HAIDER SAMEER ABDULKHALEQ
ALSHAWI,

on behalf of themselves and others similarly
situated,

Petitioners,

v.

DONALD TRUMP, President of the United
States; U.S. DEPARTMENT OF
HOMELAND SECURITY ("DHS"); U.S.
CUSTOMS AND BORDER PROTECTION
("CBP"); JOHN KELLY, Secretary of
DHS; KEVIN K. MCALEENAN, Acting
Commissioner of CBP; and JAMES T.
MADDEN, New York Field Director, CBP.

No. 1:17-cv-00480

Respondents.

DECLARATION OF MANAR

I, Manar, declare, pursuant to 28 U.S.C. § 1746 and subject to penalty of perjury, that the following is true and correct:

1. My name is Manar. I was born on November 3, 1994. I am a citizen of Yemen and was born in Saudi Arabia. I am not a citizen of any other country. I live in Jeddah, Saudi Arabia, and all my family lives in Saudi Arabia. I am twenty-two years old.
2. I am providing this declaration with only my first name to honor my family's wish not to have my full name or my photograph revealed publicly. My family fears reprisals if it becomes publicly known that I am involved in this case.
3. I am currently a student in Saudi Arabia, studying the law.
4. I was born and live in Jeddah, Saudi Arabia. I am a legal resident of Saudi Arabia.
5. On Saturday, January 28, 2017, at approximately 3:35 AM (GST), my Etihad Airlines flight (No. EY103) departed from Abu Dhabi International Airport to John F. Kennedy

International Airport ("JFK Airport") in New York City. I received preclearance in Abu Dhabi to make it easier to pass through customs when I arrived at JFK Airport.

6. I was traveling to the United States because I was chosen as a delegate to the 2017 Winter Youth Assembly at the United Nations, which was scheduled for February 1-3, 2017. I was only traveling to the United States for a few days.
7. I traveled with my Yemeni passport and my one-year B-1/B-2 visitor visa. My visa was issued on August 2, 2016, and is valid for multiple entries until July 20, 2017. A true and correct copy of my visa is attached to this declaration as Exhibit A.
8. My flight arrived at JFK Airport at approximately 9:00 AM (EST) on January 28, 2017. After I landed, three law enforcement officers told the other passengers and me to hold up our passports. I showed the law enforcement officers my passport. They then told me to move aside. After that, I stood and waited for the whole line of de-boarding passengers to be processed in this way. Aside from me, an older woman from Sudan, an elderly man from Iran, and a young man from Iran were all detained from my flight.
9. The officers then told me and the three other detained travelers that we had to follow them. The officers had my passport and held it the entire time I was detained. I did not get my passport back until I landed in Saudi Arabia after being deported. I went with the officers to a room full of other officers and at least ten other travelers. Even though the Sudanese woman from my flight had a green card, she was detained with us as well. They detained her for almost four hours and then let her out of the airport.
10. The officers left one of the Iranian men and me in the room for about five hours. In the room, the officers would not give us any information about what was happening to us, and did not provide us with any food. Before we entered the room, the officers took my carry-on bag, which had all my important belongings in it. We were not allowed to use our mobile phones or move anywhere. I had to ask the officers for permission to use a bathroom. I wanted to pray but I was scared to do so. I felt like I was being treated like a criminal.
11. I tried to explain to the officers that I had come to the United States as a youth delegate to the United Nations, that I would only be here for a few days, that I had paid for everything I needed for this trip, and that I was not a refugee. They refused to help me in any way. This was my first time ever traveling alone, and I experienced this all alone. I could not do anything and I was crying. I felt very scared about what was going to happen to me.

12. I asked many times for a lawyer. I explained I was a law student and I knew I had the right to speak with a lawyer, but the officers said, "No, you're not a citizen, you don't have the right to do so."
13. I also asked many times if I could call my father to explain my situation. I was only allowed to call my father and my friend. I had to call my friend because she was waiting for me to arrive so she could pick me up. We were not allowed to use our phones, so I had to give the officers the numbers and they called from their office telephone. Before being deported, I asked to call my father again to tell him I was being deported and that the officers were taking me now. The officers refused, saying that I already had two phone calls, but they eventually allowed me to call because I insisted and because I was crying.
14. After at least three hours of being held in this room without food or anywhere to rest, one of the officers took pictures of me and made me sign something on an electronic device. I did not understand what I was signing. I asked for an explanation, but they said I had no choice but to sign on the device, and they refused to explain anything. They then took my fingerprints and photographed me. I was crying as they took my photograph and asked why they were treating me like a criminal. I asked why they were taking pictures of me and they said it was "normal procedure" that they had to follow. They told me if I provided my fingerprints and photograph, I would not have problems applying for a new visa because the government could use my fingerprints and photograph to confirm I had no criminal history.
15. I felt very uncomfortable with the officers taking my picture and I was confused about what was happening, but they told me I had to do everything they said if I wanted to be able to apply for another visa after 90 days. I tried to talk to the officer who had my passport and asked him to make an exception for me because I had paid for everything on my trip and I could not come back to the United States. He asked me why I could not go back, and I explained that it was hard for me to come to the United States. The officer laughed. He said that after 90 days, if the rules had changed, I could come back. The officer treated my situation as if it were not a big deal. The officers treated me terribly. It was very hurtful to me. Eventually, they told me I was being sent back to Saudi Arabia.
16. The elderly man from Iran and I were then deported. I still was not given my passport or any information about what was happening, where I was going, or what flight I was on. The flight left from JFK Airport at approximately 2 or 2:30 PM (EST) on January 28, 2017. Because I had already been on a 14-hour flight and then detained for several hours without any food or anywhere to rest, my back was really hurting. The whole travel experience was almost two days long.

17. Before I was deported, the officials took my passport, and did not return it to me until I landed in Saudi Arabia. When they gave it back to me, there was a stamp on my visa saying it was canceled and that the visa application was withdrawn.

18. I remain in Saudi Arabia now. I traveled to the United States for a purpose—to attend the U.N. Assembly as a youth delegate—and if I had known about the ban on travelers from Yemen, I would not have come. I only learned about the Executive Order banning Yemeni travelers after I returned to Saudi Arabia and spoke with lawyers in the United States who told me the electronic document I was forced to sign was a withdrawal of my application for admission to the United States. I am still very upset about what happened to me.

Executed this 6th day of February, 2017, at Jeddah, Saudi Arabia.


A handwritten signature in blue ink, appearing to be 'Manar', is written over a horizontal line. Below the line, the name 'Manar' is printed in a black serif font.

EXHIBIT A

UNITED STATES OF AMERICA

Control Number

Surname

Given Name

MANAR

Passport Number

Sex

F

Birth Date

03NOV1994

Visa Type /Class

R B1/B2

Nationality

YEM

Entries

M

Annotation

Issue Date

02AUG2016

Expiration Date

30 JUL 2017

1003

K884.003

VNUSA

<<MANAR

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