

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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HAMEED KHALID DARWEESH and
HAIDER SAMEER ABDULKHALEQ
ALSHAWI, on behalf of themselves and
others similarly situated,

Petitioners,

-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.

NOT FOR PUBLICATION

ORDER

17-cv-480(CBA)

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AMON, United States District Judge:

On January 28, 2017, Petitioners filed the above-captioned complaint with this Court in which they propose to represent a class "consisting of all individuals with refugee applications approved by U.S. Citizenship and Immigration Services as part of the U.S. Refugee Admissions Program, holders of valid immigrant and non-immigrant visas, and other individuals from Iraq, Syria, Iran, Sudan, Libya, Somalia, and Yemen legally authorized to enter the United States, but who have been or will be denied entry to the United States on the basis of the January 27, 2017 Executive Order." (See D.E. # 1.) Petitioners sought various forms of relief, including a writ of habeas corpus ordering their release and the release of other detained members of the proposed class; an injunction barring Respondents from detaining anyone solely on the basis of the Executive Order; and a judgment declaring that the detention of Petitioners and/or members of the proposed class is illegal. Petitioners further filed an Emergency Motion for a Stay of Removal.

After hearing the parties, the Honorable Ann Donnelly granted a temporary restraining order enjoining Respondents “from, in any manner or by any means, removing individuals with refugee applications approved by U.S. Citizenship and Immigration Services as part of the U.S. Refugee Admissions Program, holders of valid immigrant and non-immigrant visas, and other individuals from Iraq, Syria, Iran, Sudan, Libya, Somalia, and Yemen legally authorized to enter the United States.” (D.E. # 8.) Judge Donnelly also set a briefing schedule for the parties, with Respondents to respond to Petitioners’ motion by February 10, 2017, Petitioners’ opposition due by February 13, 2017, and Respondents’ reply, if any, due by February 21, 2017. Finally, in response to Petitioners’ request for information concerning other potential class members being held and denied entry incident to the Executive Order, Judge Donnelly instructed Respondents to provide Petitioners with “a list of people that are detained” pursuant to the Executive Order. No date was set for a preliminary injunction hearing. Petitioners also filed a motion for class certification.

Because this Court had concerns that it was not clear what issues were to be briefed in the schedule set by Judge Donnelly and whether continuation of the relief provided for by Judge Donnelly had become moot, the Court held a status conference on February 2, 2017. At the conference, as reflected in the minute entry filed that same day, the parties agreed to confer amongst themselves and to provide the Court with information regarding what issues were outstanding and their mutually agreed-upon briefing schedule. The parties have not to date provided the Court with this information.

Also at the status conference, Petitioners raised the issue of obtaining from Respondents the list of members of the proposed class who had been detained pursuant to the Executive Order that had been ordered produced by Judge Donnelly. Petitioners indicated that they would attempt

to resolve this issue with Respondents. The Court advised that if they could not resolve the issue, Petitioners could make an application to the Court.

On February 7, 2017, Petitioners filed a motion seeking (1) a list of “all individuals ever detained” or “processed” pursuant to the Executive Order, and (2) a list, beginning from the time of Petitioners’ filing of their motion for class certification, of everyone removed pursuant to the Executive Order (and additional information surrounding their removal). The motion also seeks injunctive relief broader than ordered by Judge Donnelly, in that it requests that the Court order the “[r]eturn to the United States [of] all individuals who were removed at any time after the filing of [Petitioners’ motion for class certification] because of the Executive Order.”

It is hereby:

ORDERED that by February 13, 2017 at noon, the parties, as they had committed to do, file a letter informing the Court of the issues to be briefed and the agreed-upon briefing schedule; and it is further

ORDERED that by February 10, 2017 at 5:00 p.m., Respondents submit a memorandum in response to Petitioners’ motion requesting (1) a list of all people who were detained or subject to additional processing pursuant to the Executive Order and, (2) a list of all people 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 it is further

ORDERED that by February 16, 2017, Respondents submit a memorandum in response to Petitioners’ application for an order returning all individuals removed pursuant to the Executive Order after Petitioners filed their motion for class certification. Petitioners’ reply, if any, is due

by February 20, 2017. A hearing on this application will be held on February 24, 2017 at 10:00 a.m. in Courtroom 10D South before Judge Carol Bagley Amon.

SO ORDERED.

Dated: February 8, 2017
Brooklyn, New York

A handwritten signature in dark ink, appearing to read "Carol Bagley Amon", written over a horizontal line.

Carol Bagley Amon
United States District Judge