

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA**

LINDA SARSOOR;

RASHIDA TLAIB;

ZAHRA BILLOO;

NIHAD AWAD;

COREY SAYLOR;

DAWUD WALID;

BASIM ELKARRA;

HUSSAM AYLOUSH;

HASSAN SHIBLY;

ALIA SALEM;

ADAM SOLTANI;

IMRAN SIDDIQI;

JULIA SHEARSON;

NAMIRA ISLAM;

KAREN DABDOUB;

JIM SUES;

HANIF MOHEBI;

JAYLANI HUSSEIN;

JOHN ROBBINS;

JOHN DOE NO. 1;

JOHN DOE NO. 2;

JOHN DOE NO. 3;

JOHN DOE NO. 4;

JOHN DOE NO. 5;

JOHN DOE NO. 6;

JOHN DOE NO. 7;

JOHN DOE NO. 8;

JOHN DOE NO. 9;

JOHN DOE NO. 10;

JOHN DOE NO. 11;

JANE DOE NO. 1; and,

JANE DOE NO. 2;

Plaintiffs,

v.

DONALD J. TRUMP, President of the United
States of America; in his official capacity

JOHN F. KELLY, Secretary of the Department
of Homeland Security; in his official capacity;

Case No. 17-cv-00120

Hon. Anthony J. Trenga

**AMENDED COMPLAINT FOR
INJUNCTIVE AND DECLARATORY
RELIEF AND JURY DEMAND**

U.S. DEPARTMENT OF STATE; and,)
)
DIRECTOR OF NATIONAL INTELLIGENCE;)
)
Defendants.)

AMENDED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

Plaintiffs, for themselves and on behalf of all others similarly situated, by and through their attorneys, Council on American-Islamic Relations (“CAIR”), The Law Office of Gadeir Abbas, and Akeel and Valentine, PLC, state as follows:

Introduction

1. The vulgar animosity that accounts for the existence of both Executive Order 13769 entitled “Protecting the Nation from Terrorist Attacks by Foreign Nationals” (hereinafter the “First Muslim Ban”), issued on January 27, 2017, and Executive Order 13780 entitled “Protecting the Nation from Foreign Terrorist Entry into the United States,” issued on March 6, 2017 (hereinafter “the Revised Order”) is plain to see, and the absence of the words Islam or Muslim did nothing to obscure it.

2. In fact, the First Muslim Ban gained national and international media attention and nationwide protests, and was dubbed uniformly as the “Muslim Ban” because its apparent and true purpose and underlying motive—which was to ban Muslims from certain Predominantly Muslim Countries (Iraq, Iran, Libya, Somalia, Sudan, Syria and Yemen) (hereinafter the “Predominantly Muslim Countries”)—has been broadcast to the general public by the Trump Administration.

3. Less known was the second and equally central purpose of the First Muslim Ban – to initiate the mass expulsion of immigrant and nonimmigrant Muslims lawfully residing in the United States by denying them the ability to renew their lawful status or

receive immigration benefits afforded to them under the Immigration and Nationality Act of 1965 (“INA”) – based solely on their religious beliefs and national origin.

4. Many Muslims lawfully in the United States that were targeted by the First Muslim Ban, including some of the John Doe and John Doe Plaintiffs, would have been forced – as a result of the First Muslim Ban – to return to their home countries, where they would likely face persecution, torture and even execution, simply because they are Muslim.

5. The malice that gave rise to the First Muslim Ban first emerged on December 7, 2015, when Defendant Trump issued a campaign promise to implement, if elected, “Donald J. Trump is calling for a total and complete shutdown of Muslims entering the United States until our country’s representatives can figure out what is going on.” That promise remains on his campaign website.¹

6. Defendant Trump went on to explain that, “Without looking at the various polling data, it is obvious to anybody the hatred is beyond comprehension. Where this hatred comes from and why we will have to determine. Until we are able to determine and understand this problem and the dangerous threat it poses, our country cannot be the victims of horrendous attacks by people that believe only in Jihad, and have no sense of reason or respect for human life. If I win the election for President, we are going to Make America Great Again.”

7. The First Muslim Ban was the fulfillment of Defendant Trump’s longstanding promise and boasted intent to enact a federal policy that overtly discriminates against

¹ Donald J. Trump Statement on Preventing Muslim Immigration, December 7, 2015, available at: <https://www.donaldjtrump.com/press-releases/donald-j.-trump-statement-on-preventing-muslim-immigration>

Muslims and officially broadcasts a message that the federal government disfavors the religion of Islam, preferring all other religions instead.

8. The First Muslim Ban was both broader in some ways and narrower in others than the policy Defendant Trump proposed on December 7, 2015. The First Muslim Ban was broader insofar as it denied immigration benefits to those who, like some of the immigrant and nonimmigrant Plaintiffs, followed the rules and entered and are now lawfully present in the United States.

9. The First Muslim Ban was also narrower than originally proposed, because it applies only to a subset of Muslims rather than all Muslims. This, however, does not cure the policy of its constitutional infirmity. While the First Muslim Ban did not apply to all Muslims, the policy *only* applied to Muslims.

10. The text of the First Muslim Ban implemented an impermissible religious gerrymander that divided foreign nationals, even those lawfully present inside the United States, into favored and disfavored groups based on their faith.

11. Likewise, the First Muslim Ban also divided green card holders, lawfully present inside the United States, into favored and disfavored groups based on their faith.

12. As a result, the First Muslim Ban was a racially biased, religiously motivated and factually baseless impermissible executive overreach. Moreover, its motivation and application was irrational and unwarranted.

13. After the Ninth Circuit Court upheld a nationwide injunction against the First Muslim Ban, Defendants began to formulate a revised executive order.

14. On February 21, 2017, however, Presidential Senior Advisor Stephen Miller explained to Fox News that the revised order was “going to have the same basic policy

outcome for the country,” confirming that the objective to ban as much Muslim immigration as the administration believes the judiciary will allow remained unchanged.²

15. On March 6, 2017, Defendant Trump issued Revised Order 13780, entitled “Executive Order Protecting the Nation From Foreign Terrorist Entry Into The United States (hereinafter the “Revised Order”), that revokes the First Muslim Ban³ and creates a framework that although neutral on its face, maintains the same intent as the order It revised. Additionally, it’s system of case-by-case waivers allows the particular policy mechanisms in the First Muslim Ban to be implemented through the framework of the Revised Order.

16. Notably, the Revised Order spends a significant amount of space defending the First Muslim Ban, claiming that “Defendant Trump exercised [his] authority under Article II of the Constitution and under section 212(f) of the INA” by issuing it, and that it did not discriminate on the basis of religion:

Executive Order 13769 did not provide a basis for discriminating for or against members of any particular religion. While that order allowed for prioritization of refugee claims from members of persecuted religious minority groups, that priority applied to refugees from every nation, including those in which Islam is a minority religion, and it applied to minority sects within a religion. That order was not motivated by animus toward any religion, but was instead intended to protect the ability of religious minorities -- whoever they are and wherever they reside – to avail themselves of the USRAP in light of their particular challenges and circumstances. Revised Order at Section 1(b)(iv).

² Stephen Miller’s Fox News interview is coming back to haunt President Trump, The Washington Post, March 9, 2017, available at: https://www.washingtonpost.com/news/the-fix/wp/2017/03/09/stephen-millers-fox-news-interview-is-coming-back-to-haunt-president-trump/?utm_term=.d96e059c6a60

³ See Revised Order at Section 13.

17. In the end, the Revised Order maintains part of the immigration ban that the First Muslim Ban imposed: the part that prohibits nonimmigrant, nonresident Muslims from traveling to the United States.

18. The Revised Order also removes Iraq from the list of Predominantly Muslim Countries. Notably, a significant percentage of Iraqi refugees admitted to the United States are Christian.

19. Because the history and text of the First Muslim Ban reveal an illegal purpose and effect, because the effects of the Revised Order continue to impact foreign nationals whose visa applications were not approved pursuant to the First Muslim Ban, and because the illegal purpose and effect of the First Muslim Ban can still be accomplished through the Revised Order via the case-by-case discretionary and nonreviewable waivers, Plaintiffs' claims must be sustained.

Parties

20. Plaintiff Linda Sarsour is an American Muslim residing in Kings County, New York. Plaintiff Sarsour is a Palestinian activist and Executive Director of the Arab American Association of New York. In 2016, she served as spokesperson for Presidential Candidate Senator Bernie Sanders, and was one of three national co-chairs for the 2017 Women's March held the day after the inauguration of Donald Trump as President of the United States. Plaintiff Sarsour has appeared in "*The Hijabi Monologues*" and has her own show, *The Linda Sarsour Show*. Plaintiff Sarsour has suffered and will continue to suffer an ongoing concrete harm, in addition to psychological and spiritual consequences, since the initial announcement of the "Muslim Ban" as a result of the Defendants sending a message of (1) disfavor and condemnation of her religion of Islam, (2) marginalization and exclusion of

Muslims, including herself, based on the false messaging that Muslims are prone to commit terrorism, (3) the endorsement of all religions over her own, (4) Muslims are outsiders, dangerous, and not full members of the political community, and (5) all non-adherents of Islam are insiders and therefore favored. In fact, Plaintiff Sarsour has had to change her conduct adversely in that she has been required to assist and advocate on behalf of Muslims targeted by the Muslim Ban and defend her religion as a religion of peace on national media outlets and through grassroots efforts.

21. Plaintiff Rashida Tlaib is a Muslim American residing in Wayne County, Michigan. Plaintiff Tlaib is a former Democratic member of the Michigan House of Representatives and an attorney at the Sugar Law Center for Economic and Social Justice. Upon her swearing in on January 1, 2009, Plaintiff Tlaib became the first Muslim-American woman to serve in the Michigan Legislature, and only the second Muslim woman in history to be elected to any state legislature in America. Plaintiff Tlaib suffered and will continue to suffer an ongoing concrete harm, in addition to psychological and spiritual consequences, since the initial announcement of the “Muslim Ban” as a result of the Defendants sending a message of (1) disfavor and condemnation of her religion of Islam, (2) marginalization and exclusion of Muslims, including herself, based on the false messaging that Muslims are prone to commit terrorism, (3) the endorsement of all religions over her own, (4) Muslims are outsiders, dangerous, and not full members of the political community, and (5) all non-adherents of Islam are insiders and therefore favored. In fact, Plaintiff Tlaib has had to change her conduct adversely in that she has been required to assist and advocate on behalf of Muslims targeted by the Muslim Ban and defend her religion as a religion of peace on national media outlets and through grassroots efforts.

22. Plaintiff Zahra Billoo is a Muslim American residing in Santa Clara County, California. Plaintiff Billoo is a civil rights attorney and the Executive Director of the Council on American-Islamic Relations, San Francisco Bay Area (CAIR-SFBA), a chapter of the nation's largest Muslim civil rights and civil liberties advocacy organization, and a prominent civil rights activist. Plaintiff Billoo is frequently seen at mosques and universities facilitating trainings and workshops as a part of CAIR's grassroots efforts to empower the American Muslim community and build bridges with allies on civil rights issues. Plaintiff Billoo has suffered and will continue to suffer an ongoing concrete harm, in addition to psychological and spiritual consequences, since the initial announcement of the "Muslim Ban" as a result of the Defendants sending a message of (1) disfavor and condemnation of her religion of Islam, (2) marginalization and exclusion of Muslims, including herself, based on the false messaging that Muslims are prone to commit terrorism, (3) the endorsement of all religions over her own, (4) Muslims are outsiders, dangerous, and not full members of the political community, and (5) all non-adherents of Islam are insiders and therefore favored. In fact, Plaintiff Billoo has had to change her conduct adversely in that she has been required to assist and advocate on behalf of Muslims targeted by the Muslim Ban and defend her religion as a religion of peace on national media outlets and through grassroots efforts.

23. Plaintiff Nihad Awad is a Muslim American residing in Washington County, D.C. Plaintiff Awad is National Executive Director and co-founder of the Council on American-Islamic Relations (CAIR), the nation's largest Muslim civil rights and civil liberties advocacy organization, and a prominent civil rights activist. As a national leader in the civil rights movement, Plaintiff Awad has led multiple campaigns to defend the rights of Muslims and to help Americans of other faiths better understand Islam. His work includes interfacing

with the U.S. government, facilitating interfaith dialogue, speaking at conferences, conducting training and leadership seminars, and appearing in national and international media to discuss Islam and American Muslims. Plaintiff Awad has testified before both Houses of the U.S. Congress on matters involving Muslims in America. In 1997, he served on the White House Civil Rights Advisory Panel to the Commission on Safety and Security. In the 2000, 2004, 2008, and 2012 presidential elections, Plaintiff Awad was a key figure in creating the Muslim voting bloc. In 2006, he traveled to Iraq on a humanitarian mission to appeal for the release of American journalist Jill Carroll who was kidnapped and later released in Iraq. In September, 2011, Plaintiff Awad traveled to Iran as part of an interfaith delegation to meet with the President of Iran to appeal for the release of two American hikers held by Iran. In 2004, he was named one of National Journal's more than 100 Most Influential People in the United States whose ideas will help shape the debate over public policy issues for the next decade. In 2009, he was named by a Georgetown University publication as one of the 500 most influential Muslims in the world. And in 2010, Arabian Business ranked him as 39th in the "Arabian Business Power 100" list, its annual listing of the most influential Arabs. Plaintiff Awad has suffered and will continue to suffer an ongoing concrete harm, in addition to psychological and spiritual consequences, since the initial announcement of the "Muslim Ban" as a result of the Defendants sending a message of (1) disfavor and condemnation of his religion of Islam, (2) marginalization and exclusion of Muslims, including himself, based on the false messaging that Muslims are prone to commit terrorism, (3) the endorsement of all religions over his own, (4) Muslims are outsiders, dangerous, and not full members of the political community, and (5) all non-adherents of Islam are insiders and therefore favored. In fact, Plaintiff Awad has had to change his conduct adversely in that he has been required

to assist and advocate on behalf of Muslims targeted by the Muslim Ban and defend his religion as a religion of peace on national media outlets and through grassroots efforts.

24. Plaintiff Corey Saylor is a Muslim American residing in Fairfax County, Virginia. Plaintiff Saylor is Director of the Department to Monitor and Combat Islamophobia at the Council on American-Islamic Relations (CAIR), the nation's largest Muslim civil rights and civil liberties advocacy organization, and a prominent civil rights activist. Plaintiff Saylor is an expert on political communications, legislative advocacy, media relations and anti-Islam prejudice in the United States. He is a regular voice on U.S. and international news outlets. Plaintiff Saylor has also run successful advocacy campaigns against corporate giants such as Burger King and Bell Helicopter-Boeing when their actions or advertisements negatively impacted the American Muslim community. Plaintiff Saylor has suffered and will continue to suffer an ongoing concrete harm, in addition to psychological and spiritual consequences, since the initial announcement of the "Muslim Ban" as a result of the Defendants sending a message of (1) disfavor and condemnation of his religion of Islam, (2) marginalization and exclusion of Muslims, including himself, based on the false messaging that Muslims are prone to commit terrorism, (3) the endorsement of all religions over his own, (4) Muslims are outsiders, dangerous, and not full members of the political community, and (5) all non-adherents of Islam are insiders and therefore favored. In fact, Plaintiff Saylor has had to change his conduct adversely in that he has been required to assist and advocate on behalf of Muslims targeted by the Muslim Ban and defend his religion as a religion of peace on national media outlets and through grassroots efforts.

25. Plaintiff Dawud Walid is a Muslim American residing in Wayne County, Michigan. Plaintiff Walid is the Executive Director of the Council on American-Islamic

Relations, Michigan (CAIR-MI), a chapter of the nation's largest Muslim civil rights and civil liberties advocacy organization, and a prominent civil rights activist. Plaintiff Walid has been interviewed and quoted in approximately 150 media outlets and has lectured at over 50 institutions of higher learning about Islam, interfaith dialogue and social justice. Plaintiff Walid served in the United States Navy under honorable conditions earning two United States Navy & Marine Corp Achievement medals while deployed abroad. He has also received awards of recognition from the city councils of Detroit and Hamtramck and from the Mayor of Lansing as well as a number of other religious and community organizations. Plaintiff Walid has suffered and will continue to suffer an ongoing concrete harm, in addition to psychological and spiritual consequences, since the initial announcement of the "Muslim Ban" as a result of the Defendants sending a message of (1) disfavor and condemnation of his religion of Islam, (2) marginalization and exclusion of Muslims, including himself, based on the false messaging that Muslims are prone to commit terrorism, (3) the endorsement of all religions over his own, (4) Muslims are outsiders, dangerous, and not full members of the political community, and (5) all non-adherents of Islam are insiders and therefore favored. In fact, Plaintiff Walid has had to change his conduct adversely in that he has been required to assist and advocate on behalf of Muslims targeted by the Muslim Ban and defend his religion as a religion of peace on national media outlets and through grassroots efforts.

26. Plaintiff Basim Elkarra is a Muslim American residing in Sacramento County, California. Plaintiff Elkarra is the Executive Director of the Council on American-Islamic Relations, Sacramento Valley (CAIR-SAC), a chapter of the nation's largest Muslim civil rights and civil liberties advocacy organization, and a prominent civil rights activist. Plaintiff Elkarra is a former board member of the Sacramento chapter of the American Civil Liberties

Union, and serves on the Executive Board of the California Democratic Party. He also serves on the City of Sacramento Community Police Commission. In 2011, the United States Embassy in London sent Plaintiff Elkarra to England to meet young British Muslims as part of a strategy to promote civic engagement. Plaintiff Elkarra has suffered and will continue to suffer an ongoing concrete harm, in addition to psychological and spiritual consequences, since the initial announcement of the “Muslim Ban” as a result of the Defendants sending a message of (1) disfavor and condemnation of his religion of Islam, (2) marginalization and exclusion of Muslims, including himself, based on the false messaging that Muslims are prone to commit terrorism, (3) the endorsement of all religions over his own, (4) Muslims are outsiders, dangerous, and not full members of the political community, and (5) all non-adherents of Islam are insiders and therefore favored. In fact, Plaintiff Elkarra has had to change his conduct adversely in that he has been required to assist and advocate on behalf of Muslims targeted by the Muslim Ban and defend his religion as a religion of peace on national media outlets and through grassroots efforts. Moreover, Plaintiff Elkarra has in-laws in Syria that he is unable to bring to visit him in the United States pursuant to the Revised Order that he would otherwise seek to bring to visit him.

27. Plaintiff Hussam Ayloush is a Muslim American residing in Riverside County, California. Plaintiff Ayloush is the Executive Director of the Council on American-Islamic Relations, Los Angeles (CAIR-LA), a chapter of the nation’s largest Muslim civil rights and civil liberties advocacy organization, and a prominent civil rights activist and community organizer. Ayloush is a fourth-term elected Delegate to the California Democratic Party (CDP). He also serves on the board of the Muslim American Homeland Security Congress (MAHSC). Plaintiff Ayloush has suffered and will continue to suffer an ongoing concrete

harm, in addition to psychological and spiritual consequences, since the initial announcement of the “Muslim Ban” as a result of the Defendants sending a message of (1) disfavor and condemnation of his religion of Islam, (2) marginalization and exclusion of Muslims, including himself, based on the false messaging that Muslims are prone to commit terrorism, (3) the endorsement of all religions over his own, (4) Muslims are outsiders, dangerous, and not full members of the political community, and (5) all non-adherents of Islam are insiders and therefore favored. In fact, Plaintiff Ayloush has had to change his conduct adversely in that he has been required to assist and advocate on behalf of Muslims targeted by the Muslim Ban and defend his religion as a religion of peace on national media outlets and through grassroots efforts. Moreover, Plaintiff Ayloush has family in Syria that he is unable to bring to visit him in the United States pursuant to the Revised Order that he would otherwise seek to bring to visit him.

28. Plaintiff Hassan Shibly is a Muslim American residing in Hillsborough County, Florida. Plaintiff Shibly is the Chief Executive Director of the Council on American-Islamic Relations, Florida (CAIR-FL), a chapter of the nation’s largest Muslim civil rights and civil liberties advocacy organization, and a prominent civil rights activist. Plaintiff Shibly met with President Barack Obama and several high-ranking government officials regarding Islam and civil rights issues facing Muslims. He also often serves as a consultant on Islam for, among other private entities, law enforcement and other government agencies. Plaintiff Shibly has suffered and will continue to suffer an ongoing concrete harm, in addition to psychological and spiritual consequences, since the initial announcement of the “Muslim Ban” as a result of the Defendants sending a message of (1) disfavor and condemnation of his religion of Islam, (2) marginalization and exclusion of Muslims, including himself, based

on the false messaging that Muslims are prone to commit terrorism, (3) the endorsement of all religions over his own, (4) Muslims are outsiders, dangerous, and not full members of the political community, and (5) all non-adherents of Islam are insiders and therefore favored. In fact, Plaintiff Shibly has had to change his conduct adversely in that he has been required to assist and advocate on behalf of Muslims targeted by the Muslim Ban and defend his religion as a religion of peace on national media outlets and through grassroots efforts.

29. Plaintiff Alia Salem is a Muslim American residing in Dallas County, Texas. Plaintiff Salem is the Executive Director of the Council on American-Islamic Relations, Dallas/Fort Worth (CAIR-DFW), a chapter of the nation's largest Muslim civil rights and civil liberties advocacy organization, and a prominent civil rights activist working for social justice, understanding and empowerment in her community. Plaintiff Salem's work with CAIR-DFW has been featured on local, national and international media outlets. Plaintiff Salem has suffered and will continue to suffer an ongoing concrete harm, in addition to psychological and spiritual consequences, since the initial announcement of the "Muslim Ban" as a result of the Defendants sending a message of (1) disfavor and condemnation of her religion of Islam, (2) marginalization and exclusion of Muslims, including herself, based on the false messaging that Muslims are prone to commit terrorism, (3) the endorsement of all religions over her own, (4) Muslims are outsiders, dangerous, and not full members of the political community, and (5) all non-adherents of Islam are insiders and therefore favored. In fact, Plaintiff Salem has had to change her conduct adversely in that she has been required to assist and advocate on behalf of Muslims targeted by the Muslim Ban and defend her religion as a religion of peace on national media outlets and through grassroots efforts.

30. Plaintiff Adam Soltani is a Muslim American residing in Oklahoma County, Oklahoma. Plaintiff Soltani is the Executive Director of the Council on American-Islamic Relations, Oklahoma (CAIR-OK), a chapter of the nation's largest Muslim civil rights and civil liberties advocacy organization, and a prominent civil rights activist. Plaintiff Soltani currently serves as the chair of the Oklahoma Conference of Churches' Religions United Committee and planning committee member for OKC's Jewish-Muslim Film Institute. He is also a former member of the Oklahoma Democratic Party Religious Education Committee, former board member of the Interfaith Alliance of Oklahoma, and a former member of Islamic Society of Greater Oklahoma City Executive Committee. Plaintiff Soltani has suffered and will continue to suffer an ongoing concrete harm, in addition to psychological and spiritual consequences, since the initial announcement of the "Muslim Ban" as a result of the Defendants sending a message of (1) disfavor and condemnation of his religion of Islam, (2) marginalization and exclusion of Muslims, including himself, based on the false messaging that Muslims are prone to commit terrorism, (3) the endorsement of all religions over his own, (4) Muslims are outsiders, dangerous, and not full members of the political community, and (5) all non-adherents of Islam are insiders and therefore favored. In fact, Plaintiff Soltani has had to change his conduct adversely in that he has been required to assist and advocate on behalf of Muslims targeted by the Muslim Ban and defend his religion as a religion of peace on national media outlets and through grassroots efforts. Moreover, Plaintiff Soltani has family in Iran that he is unable to bring to visit him in the United States pursuant to the Revised Order that he would otherwise seek to bring to visit him.

31. Plaintiff Imran Siddiqi is a Muslim American residing in Maricopa County, Arizona. Plaintiff Siddiqi is the Executive Director of the Council on American-Islamic

Relations, Oklahoma (CAIR-AZ), a chapter of the nation's largest Muslim civil rights and civil liberties advocacy organization. Plaintiff Siddiqi is a writer and prominent civil rights activist. He has written extensively on the subject of Islamophobia, Middle East Affairs, and issues affecting American Muslims. Plaintiff Siddiqi has suffered and will continue to suffer an ongoing concrete harm, in addition to psychological and spiritual consequences, since the initial announcement of the "Muslim Ban" as a result of the Defendants sending a message of (1) disfavor and condemnation of his religion of Islam, (2) marginalization and exclusion of Muslims, including himself, based on the false messaging that Muslims are prone to commit terrorism, (3) the endorsement of all religions over his own, (4) Muslims are outsiders, dangerous, and not full members of the political community, and (5) all non-adherents of Islam are insiders and therefore favored. In fact, Plaintiff Siddiqi has had to change his conduct adversely in that he has been required to assist and advocate on behalf of Muslims targeted by the Muslim Ban and defend his religion as a religion of peace on national media outlets and through grassroots efforts.

32. Plaintiff Julia Shearson is a Muslim American residing in Cuyahoga County, Ohio. Plaintiff Shearson is the Executive Director of the Cleveland chapter of the Council on American-Islamic Relations, Ohio (CAIR-OH), a chapter of the nation's largest Muslim civil rights and civil liberties advocacy organization, and a prominent civil rights activist. She has delivered hundreds of lectures and trainings on Islam and Muslims, civil and human rights, diversity, Islamophobia, and immigration justice. She was recently honored together with 22 area women for her leadership, activism, and community service in an art exhibit entitled "Reflections: The Many Facets of Stephanie Tubbs Jones" installed at Cleveland Hopkins Airport in memory of the late Congresswoman Stephanie Tubbs Jones. Before joining CAIR-

OH, Shearson served in the field of education for over 10 years, teaching at Ohio University, Jewish Vocational Services in Boston and at the Summer School and Division of Continuing Education at Harvard University. Plaintiff Shearson has suffered and will continue to suffer an ongoing concrete harm, in addition to psychological and spiritual consequences, since the initial announcement of the “Muslim Ban” as a result of the Defendants sending a message of (1) disfavor and condemnation of her religion of Islam, (2) marginalization and exclusion of Muslims, including herself, based on the false messaging that Muslims are prone to commit terrorism, (3) the endorsement of all religions over her own, (4) Muslims are outsiders, dangerous, and not full members of the political community, and (5) all non-adherents of Islam are insiders and therefore favored. In fact, Plaintiff Shearson has had to change her conduct adversely in that she has been required to assist and advocate on behalf of Muslims targeted by the Muslim Ban and defend her religion as a religion of peace on national media outlets and through grassroots efforts.

33. Plaintiff Namira Islam is a Muslim American residing in Oakland County, Michigan. Plaintiff Islam is the Co-Founder and Executive Director of the Muslim Anti-Racism Collaborative (MuslimARC), a faith-based human rights education organization which focuses on racial justice. Plaintiff Islam has worked in the areas of prisoner rights, and on international law and war crimes at the United Nations in The Hague, Netherlands. Plaintiff Islam has suffered and will continue to suffer an ongoing concrete harm, in addition to psychological and spiritual consequences, since the initial announcement of the “Muslim Ban” as a result of the Defendants sending a message of (1) disfavor and condemnation of her religion of Islam, (2) marginalization and exclusion of Muslims, including herself, based on the false messaging that Muslims are prone to commit terrorism, (3) the endorsement of

all religions over her own, (4) Muslims are outsiders, dangerous, and not full members of the political community, and (5) all non-adherents of Islam are insiders and therefore favored. In fact, Plaintiff Islam has had to change her conduct adversely in that she has been required to assist and advocate on behalf of Muslims targeted by the Muslim Ban and defend her religion as a religion of peace on national media outlets and through grassroots efforts.

34. Plaintiff Karen Dabdoub is a Muslim American residing in Hamilton County, Ohio. Plaintiff Dabdoub is the Executive Director of the Cincinnati chapter of the Council on American-Islamic Relations, Ohio (CAIR-OH), a chapter of the nation's largest Muslim civil rights and civil liberties advocacy organization, and a prominent civil rights activist. Plaintiff Dabdoub has served the community since 2006 as a commissioner with the Cincinnati Human Relations Commission and was the president of CHRC from 2009 - 2011. She is a founding member of Muslim Mothers Against Violence, a local group founded in 2005 by Muslim women to take a stand against violence, abroad and at home. She has been a member of the Martin Luther King Coalition of Cincinnati since 2006. She is a former member of the FBI Multi-Cultural Advisory Council and the Kentucky Commission on Human Rights Community Advisory Committee. She was a member of Friends of Open House – Cincinnati Chapter, an international organization that worked to bring about peace and understanding between Palestinians and Israelis. Plaintiff Dabdoub appears in the documentary “A Visit to a Mosque in America,” an educational documentary, filmed locally, that has received national recognition and commendation. Plaintiff Dabdoub has suffered and will continue to suffer an ongoing concrete harm, in addition to psychological and spiritual consequences, since the initial announcement of the “Muslim Ban” as a result of the Defendants sending a message of (1) disfavor and condemnation of her religion of Islam, (2) marginalization and exclusion of

Muslims, including herself, based on the false messaging that Muslims are prone to commit terrorism, (3) the endorsement of all religions over her own, (4) Muslims are outsiders, dangerous, and not full members of the political community, and (5) all non-adherents of Islam are insiders and therefore favored. In fact, Plaintiff Dabdoub has had to change her conduct adversely in that she has been required to assist and advocate on behalf of Muslims targeted by the Muslim Ban and defend her religion as a religion of peace on national media outlets and through grassroots efforts.

35. Plaintiff Jim Sues is a Muslim American residing in Bucks County, Pennsylvania. Plaintiff Sues is the Executive Director of the New Jersey chapter of the Council on American-Islamic Relations, New Jersey (CAIR-NJ), a chapter of the nation's largest Muslim civil rights and civil liberties advocacy organization, and a prominent civil rights and interfaith relations activist. Plaintiff Sues is also a Marketing Professional in the field of Telecommunications. Besides launching start-ups and acting as a Telecommunications Consultant, he spent 20 years at IBM filling various Marketing roles such as Product Manager, Solutions Manager, and Strategy Team Lead. Plaintiff Sues is guest lecturer for Comparative Religion courses at Drew University and multiple community colleges. He also provides diversity training for corporations and local churches. Plaintiff Sues is a member of the south Orange – Maplewood Clergy Association and has served on the Board of Directors of various Muslim organizations including Majlis Ash-Shoora of New Jersey and the NIA Masjid in Newark, NJ. Plaintiff Sues has suffered and will continue to suffer an ongoing concrete harm, in addition to psychological and spiritual consequences, since the initial announcement of the "Muslim Ban" as a result of the Defendants sending a message of (1) disfavor and condemnation of his religion of Islam, (2) marginalization and exclusion of Muslims,

including himself, based on the false messaging that Muslims are prone to commit terrorism, (3) the endorsement of all religions over his own, (4) Muslims are outsiders, dangerous, and not full members of the political community, and (5) all non-adherents of Islam are insiders and therefore favored. In fact, Plaintiff Sues has had to change his conduct adversely in that he has been required to assist and advocate on behalf of Muslims targeted by the Muslim Ban and defend his religion as a religion of peace on national media outlets and through grassroots efforts.

36. Plaintiff Hanif Mohebi is a Muslim American residing in San Diego County, California. Plaintiff Mohebi is the Executive Director of the San Diego chapter of the Council on American-Islamic Relations, San Diego (CAIR-SD), a chapter of the nation's largest Muslim civil rights and civil liberties advocacy organization, and a prominent civil rights activist. He has appeared in both local and national media outlets and has worked to bridge the gap between minorities and the American public. He has emerged as a guest speaker at high schools, universities, companies and community events on variety of topics ranging from Concepts of World Citizenship to The Cycle of Love, to History of Anti-Civil Liberties Legislations. Plaintiff Mohebi has suffered and will continue to suffer an ongoing concrete harm, in addition to psychological and spiritual consequences, since the initial announcement of the "Muslim Ban" as a result of the Defendants sending a message of (1) disfavor and condemnation of his religion of Islam, (2) marginalization and exclusion of Muslims, including himself, based on the false messaging that Muslims are prone to commit terrorism, (3) the endorsement of all religions over his own, (4) Muslims are outsiders, dangerous, and not full members of the political community, and (5) all non-adherents of Islam are insiders and therefore favored. In fact, Plaintiff Mohebi has had to change his

conduct adversely in that he has been required to assist and advocate on behalf of Muslims targeted by the Muslim Ban and defend his religion as a religion of peace on national media outlets and through grassroots efforts.

37. Plaintiff Jaylani Hussein is a Muslim American residing in Ramsey County, Minnesota. Plaintiff Hussein is the Executive Director of the San Diego chapter of the Council on American-Islamic Relations, Minnesota (CAIR-MN), a chapter of the nation's largest Muslim civil rights and civil liberties advocacy organization, and a prominent civil rights activist. Plaintiff Hussein worked as the Community Liaison Officer at Metro State University and as a Planner for the Minnesota Department of Agriculture. In 2013, he created Zeila Consultants to develop and offer cross-cultural training workshops on East African cultures. He has presented on the Somali Culture to diverse public and private organizations across the US. He specializes in the areas of urban planning, community development, youth development (with over 8 years of experience in working in juvenile treatment centers for court adjudicated youth), legal and civil rights. Plaintiff Hussein has suffered and will continue to suffer an ongoing concrete harm, in addition to psychological and spiritual consequences, since the initial announcement of the "Muslim Ban" as a result of the Defendants sending a message of (1) disfavor and condemnation of his religion of Islam, (2) marginalization and exclusion of Muslims, including himself, based on the false messaging that Muslims are prone to commit terrorism, (3) the endorsement of all religions over his own, (4) Muslims are outsiders, dangerous, and not full members of the political community, and (5) all non-adherents of Islam are insiders and therefore favored. In fact, Plaintiff Hussein has had to change his conduct adversely in that he has been required to assist and

advocate on behalf of Muslims targeted by the Muslim Ban and defend his religion as a religion of peace on national media outlets and through grassroots efforts.

38. Plaintiff John Robbins is a Muslim American residing in Middlesex County, Massachusetts. Plaintiff Robbins is the Executive Director of the Massachusetts chapter of the Council on American-Islamic Relations, Massachusetts (CAIR-MA), a chapter of the nation's largest Muslim civil rights and civil liberties advocacy organization, and a prominent civil rights activist. Plaintiff Robbins is a dedicated and experienced community organizer, nonprofit leader, and public intellectual. He holds a Ph.D. in English, and completed a postdoctoral fellowship at Tufts University. A dedicated educator, he has taught algebra to high-risk youth at a public high school in Maryland, English to refugee and orphan children in Turkey, and literature at Cornell and Tufts Universities. His writings have appeared in numerous outlets including Fortune, Time, Muslim Matters, the Hill, the Jewish Journal, the Boston Globe, and the Boston Herald, and he is a regular contributor at the Huffington Post. Dr. Robbins sits on the board of directors of Cooperative Metropolitan Ministries, the greater Boston area's oldest interfaith social justice network. Plaintiff Robbins has suffered and will continue to suffer an ongoing concrete harm, in addition to psychological and spiritual consequences, since the initial announcement of the "Muslim Ban" as a result of the Defendants sending a message of (1) disfavor and condemnation of his religion of Islam, (2) marginalization and exclusion of Muslims, including himself, based on the false messaging that Muslims are prone to commit terrorism, (3) the endorsement of all religions over his own, (4) Muslims are outsiders, dangerous, and not full members of the political community, and (5) all non-adherents of Islam are insiders and therefore favored. In fact, Plaintiff Robbins has had to change his conduct adversely in that he has been required to assist and

advocate on behalf of Muslims targeted by the Muslim Ban and defend his religion as a religion of peace on national media outlets and through grassroots efforts. One of the Muslims that contacted Plaintiff Robbins for assistance is a student of Iranian national origin residing in Massachusetts. The student was issued a single-entry visa and has valid F-1 status expiring on the anticipated date of completion of his education. The student then traveled to Dubai in order to visit family, and applied to renew his visa just prior to the First Muslim Ban being issued. Upon information and belief, the student's visa renewal application was not approved pursuant to the First Muslim Ban. As of this date, the student's visa renewal application remains in administrative processing and has not yet been approved. The student contacted his university, and was told by the administration that he would need to complete a study abroad program offered at a university in New Zealand during this school semester in order to maintain his F-1 status. The student will be subjected to a discretionary and nonreviewable waiver process to renew his visa in order to continue his education, pursuant to Section 3(c)(i) of the Revised Order, based solely on his Iranian national origin. Upon information and belief, the student's visa renewal application will be denied based on his religious status as a Muslim and his Iranian national origin, and as a result, he will be terminated from continuing his education at the university and lose his F-1 status. Plaintiff Robbins intends to invite the student to speak to the local Massachusetts community about the effects of the Muslim Ban, however is unable bring him to the United States to speak due to the likelihood that the student will be unable to renew his student visa under the Revised Order based on his Muslim religious status and Iranian national origin.

39. Plaintiff John Doe No. 1 is a lawful permanent resident and a Muslim of Syrian national origin residing in Oakland County, Michigan. He is the Imam, or religious Muslim

leader, of a religious congregation. Plaintiff John Doe No. 1 has suffered and will continue to suffer an ongoing concrete harm, in addition to psychological and spiritual consequences, since the initial announcement of the “Muslim Ban” as a result of the Defendants sending a message of (1) disfavor and condemnation of his religion of Islam, (2) marginalization and exclusion of Muslims, including himself, based on the false messaging that Muslims are prone to commit terrorism, (3) the endorsement of all religions over his own, (4) Muslims are outsiders, dangerous, and not full members of the political community, and (5) all non-adherents of Islam are insiders and therefore favored. In fact, Plaintiff John Doe No. 1 has had to change his conduct adversely in that he has been required to defend his religion as a religion of peace.

40. Plaintiff John Doe No. 2 is a student and a Muslim of Somali national origin residing in the United States. He was issued a single-entry visa and has valid F-1 status expiring on the anticipated date of completion of his education. In the event that Plaintiff John Doe No. 2 travels outside the country, he will be subjected to a discretionary and nonreviewable waiver process to renew his student visa in order to continue his education, pursuant to Section 3(c)(i) of the Revised Order based solely on his Somali national origin. Upon information and belief, Plaintiff John Doe No. 2’s visa renewal application will be denied based solely on his religious status as a Muslim and his Somali national origin. This inability to travel imposes a particular hardship on Plaintiff John Doe No. 2 and other similarly situated student non-USCs originating from the Predominantly Muslim Countries because students frequently lose access to student housing during scheduled curriculum breaks, and if they are unable to travel home during those breaks, they risk forfeiting their F-1 status and jeopardizing their education. Yet even if housing accommodations during

breaks were provided, the Revised Order effectively deprives Plaintiff John Doe No. 2 from seeing his family for possibly the entire duration of his academic career. As a result, in the event Plaintiff John Doe No. 2's involvement in this lawsuit could reasonably be expected to negatively impact his immigration status either under existing immigration law, or under the vetting procedures contemplated by the Revised Order.

41. Plaintiff John Doe No. 3 is a student and a Muslim of Yemeni national origin residing in Wayne County, Michigan. He was issued a single-entry visa and has valid F-1 status expiring on the anticipated date of completion of his education. In the event that Plaintiff John Doe travels outside the country, he will be subjected to a discretionary and nonreviewable waiver process to renew his student visa in order to continue his education, pursuant to Section 3(c)(i) of the Revised Order based solely on his Yemeni national origin. Upon information and belief, Plaintiff John Doe No. 3's visa renewal application will be denied based solely on his religious status as a Muslim and his Somali national origin. This inability to travel imposes a particular hardship on Plaintiff John Doe No. 3 and other similarly situated student non-USCs originating from the Predominantly Muslim Countries because students frequently lose access to student housing during scheduled curriculum breaks, and if they are unable to travel home during those breaks, they risk forfeiting their F-1 status and jeopardizing their education. Yet even if housing accommodations during breaks were provided, the Revised Order effectively deprives Plaintiff John Doe No. 3 from seeing his family for possibly the entire duration of his academic career. As a result, in the event Plaintiff John Doe No. 3's involvement in this lawsuit could reasonably be expected to negatively impact his immigration status either under existing immigration law, or under the vetting procedures contemplated by the Revised Order.

42. Plaintiff John Doe No. 4 is an asylee and a Muslim of Syrian national origin, residing in Cook County, Illinois. Plaintiff John Doe No. 4 has suffered and will continue to suffer an ongoing concrete harm, in addition to psychological and spiritual consequences, since the initial announcement of the “Muslim Ban” as a result of the Defendants sending a message of (1) disfavor and condemnation of his religion of Islam, (2) marginalization and exclusion of Muslims, including himself, based on the false messaging that Muslims are prone to commit terrorism, (3) the endorsement of all religions over his own, (4) Muslims are outsiders, dangerous, and not full members of the political community, and (5) all non-adherents of Islam are insiders and therefore favored.

43. Plaintiff John Doe No. 5 is a lawful permanent resident and a Muslim of Sudanese national origin residing in Albany County, New York. Plaintiff John Doe No. 5 filed a marriage petition for his wife, which has already been pending for fourteen months. His wife has Sudanese citizenship through her parents although she has never lived in Sudan. Pursuant to the Revised Order, his wife will be subjected to a discretionary and nonreviewable waiver process to obtain a visa to enter the United States to be reunited with her husband pursuant to Section 3(c)(iv) based solely on her Sudanese national origin. Upon information and belief, Plaintiff John Doe No. 5’s visa application for his wife will be denied based solely on her religious status as a Muslim and her Sudanese national origin. Plaintiff John Doe No. 5 has suffered and will continue to suffer an ongoing concrete harm, in addition to psychological and spiritual consequences, since the initial announcement of the “Muslim Ban” as a result of the Defendants sending a message of (1) disfavor and condemnation of his religion of Islam, (2) marginalization and exclusion of Muslims, including himself, based on the false messaging that Muslims are prone to commit terrorism, (3) the endorsement of

all religions over his own, (4) Muslims are outsiders, dangerous, and not full members of the political community, and (5) all non-adherents of Islam are insiders and therefore favored. In fact, Plaintiff John Doe No. 5 has had to change his conduct adversely in that he has been required to defend his religion as a religion of peace.

44. Plaintiff John Doe No. 6 is a Muslim American of Sudanese national origin residing in Albany County, New York. Plaintiff John Doe No. 6 filed a marriage petition for his wife, who is currently pregnant with their baby. His application for his wife, however will be subjected to a discretionary and nonreviewable waiver process, pursuant to Section 3(c)(iv) of the Revised Order, based solely on her Sudanese national origin. Upon information and belief, Plaintiff John Doe No. 6's visa application for his wife will be denied based solely on her religious status as a Muslim and her Sudanese national origin. Plaintiff John Doe No. 6 has suffered and will continue to suffer an ongoing concrete harm, in addition to psychological and spiritual consequences, since the initial announcement of the "Muslim Ban" as a result of the Defendants sending a message of (1) disfavor and condemnation of his religion of Islam, (2) marginalization and exclusion of Muslims, including himself, based on the false messaging that Muslims are prone to commit terrorism, (3) the endorsement of all religions over his own, (4) Muslims are outsiders, dangerous, and not full members of the political community, and (5) all non-adherents of Islam are insiders and therefore favored. Plaintiff John Doe No. 6's involvement in this lawsuit could reasonably be expected to negatively impact his wife's immigration status either under existing immigration law, or under the vetting procedures contemplated by the Revised Order.

45. Plaintiff John Doe No. 7 is a lawful permanent resident and a Muslim of Syrian national origin residing in Broward County, Florida. Plaintiff John Doe No. 7 has suffered and

will continue to suffer an ongoing concrete harm, in addition to psychological and spiritual consequences, since the initial announcement of the “Muslim Ban” as a result of the Defendants sending a message of (1) disfavor and condemnation of his religion of Islam, (2) marginalization and exclusion of Muslims, including himself, based on the false messaging that Muslims are prone to commit terrorism, (3) the endorsement of all religions over his own, (4) Muslims are outsiders, dangerous, and not full members of the political community, and (5) all non-adherents of Islam are insiders and therefore favored. Plaintiff John Doe No. 7's involvement in this lawsuit could reasonably be expected to negatively impact his immigration status either under existing immigration law, or under the vetting procedures contemplated by the Revised Order.

46. Plaintiff John Doe No. 8 is a lawful permanent resident and a Muslim of Sudanese national origin residing in Phillips County, Missouri. Plaintiff John Doe No. 8 filed a marriage petition for his wife, which was approved. She applied for a visa to enter the United States to reunite with her husband, however her visa application remains pending. Pursuant to the Revised Order, his wife, a Sudanese national, will be subjected to a discretionary and nonreviewable waiver process to obtain the visa to enter the United States, pursuant to Section 3(c)(iv), based solely on her Sudanese national origin. Upon information and belief, Plaintiff John Doe No. 8's visa application for his wife will be denied based solely on her religious status as a Muslim and her Sudanese national origin. Plaintiff John Doe No. 8 has suffered and will continue to suffer an ongoing concrete harm, in addition to psychological and spiritual consequences, since the initial announcement of the “Muslim Ban” as a result of the Defendants sending a message of (1) disfavor and condemnation of his religion of Islam, (2) marginalization and exclusion of Muslims, including himself, based

on the false messaging that Muslims are prone to commit terrorism, (3) the endorsement of all religions over his own, (4) Muslims are outsiders, dangerous, and not full members of the political community, and (5) all non-adherents of Islam are insiders and therefore favored. Plaintiff John Doe No. 8's involvement in this lawsuit could reasonably be expected to negatively impact his or his wife's immigration status either under existing immigration law, or under the vetting procedures contemplated by the Revised Order.

47. Plaintiff John Doe No. 9 is a lawful permanent resident and a Muslim of Syrian national origin residing in the United States. Plaintiff John Doe No. 9 has suffered and will continue to suffer an ongoing concrete harm, in addition to psychological and spiritual consequences, since the initial announcement of the "Muslim Ban" as a result of the Defendants sending a message of (1) disfavor and condemnation of his religion of Islam, (2) marginalization and exclusion of Muslims, including himself, based on the false messaging that Muslims are prone to commit terrorism, (3) the endorsement of all religions over his own, (4) Muslims are outsiders, dangerous, and not full members of the political community, and (5) all non-adherents of Islam are insiders and therefore favored. Plaintiff John Doe No. 9's involvement in this lawsuit could reasonably be expected to negatively impact his immigration status either under existing immigration law, or under the vetting procedures contemplated by the Revised Order.

48. Plaintiff John Doe No. 10 is a Muslim American and a dual national, both a United States citizen and Syrian national residing in Suffolk County, Massachusetts. Plaintiff John Doe No. 10 has suffered and will continue to suffer an ongoing concrete harm, in addition to psychological and spiritual consequences, since the initial announcement of the "Muslim Ban" as a result of the Defendants sending a message of (1) disfavor and

condemnation of his religion of Islam, (2) marginalization and exclusion of Muslims, including himself, based on the false messaging that Muslims are prone to commit terrorism, (3) the endorsement of all religions over his own, (4) Muslims are outsiders, dangerous, and not full members of the political community, and (5) all non-adherents of Islam are insiders and therefore favored.

49. Plaintiff John Doe No. 11 is a lawful permanent resident and a Muslim of Iraqi national origin residing in the United States. Plaintiff John Doe No. 10 has suffered and will continue to suffer an ongoing concrete harm, in addition to psychological and spiritual consequences, since the initial announcement of the “Muslim Ban” as a result of the Defendants sending a message of (1) disfavor and condemnation of his religion of Islam, (2) marginalization and exclusion of Muslims, including himself, based on the false messaging that Muslims are prone to commit terrorism, (3) the endorsement of all religions over his own, (4) Muslims are outsiders, dangerous, and not full members of the political community, and (5) all non-adherents of Islam are insiders and therefore favored.

50. Plaintiff Jane Doe No. 1 is an asylee and a Muslim of Syrian national origin, residing in Wayne County, Michigan. Plaintiff Jane Doe No. 1 fled for fear of her life and safety from Syria, after being tortured by Syrian government forces. Plaintiff Jane Doe No. 1 has suffered and will continue to suffer an ongoing concrete harm, in addition to psychological and spiritual consequences, since the initial announcement of the “Muslim Ban” as a result of the Defendants sending a message of (1) disfavor and condemnation of her religion of Islam, (2) marginalization and exclusion of Muslims, including herself, based on the false messaging that Muslims are prone to commit terrorism, (3) the endorsement of all religions over her own, (4) Muslims are outsiders, dangerous, and not full members of the political

community, and (5) all non-adherents of Islam are insiders and therefore favored. In fact, Plaintiff Jane Doe No. 1 has had to change her conduct adversely in that she has been required to defend her religion as a religion of peace. Plaintiff Jane Doe No. 1's involvement in this lawsuit could reasonably be expected to negatively impact her immigration status either under existing immigration law, or under the vetting procedures contemplated by the Revised Order.

51. Plaintiff Jane Doe No. 2 is an asylee and a Muslim of Syrian national origin, residing in Cook County, Illinois. Plaintiff Jane Doe No. 2 fled for fear of her life and safety from Syria. Plaintiff Jane Doe No. 2 has suffered and will continue to suffer an ongoing concrete harm, in addition to psychological and spiritual consequences, since the initial announcement of the "Muslim Ban" as a result of the Defendants sending a message of (1) disfavor and condemnation of her religion of Islam, (2) marginalization and exclusion of Muslims, including herself, based on the false messaging that Muslims are prone to commit terrorism, (3) the endorsement of all religions over her own, (4) Muslims are outsiders, dangerous, and not full members of the political community, and (5) all non-adherents of Islam are insiders and therefore favored.

52. Defendant Donald J. Trump is the current President of the United States of America. Defendant Trump issued the First Muslim Ban, which is the subject of this action. Defendant Trump is being sued in his official capacity, only.

53. Defendant John F. Kelly is the current Secretary of the U.S. Department of Homeland Security. Defendant Kelly is responsible for implementing the First Muslim Ban, which is the subject of this action. Defendant Kelly is being sued in his official capacity, only.

54. Defendant James Comey is the current Director of the U.S. Federal Bureau of Investigation. Defendant Comey is responsible for implementing the First Muslim Ban, which is the subject of this action. Defendant Comey is being sued in his official capacity, only.

55. Defendant U.S. Department of State is responsible for issuing visas and implementing the First Muslim Ban. The Secretary of the U.S. Department of State position is currently vacant.

56. Defendant Director of National Intelligence is responsible for implementing the First Muslim Ban. The Director of National Intelligence position is currently vacant. Defendant Director of National Intelligence is being sued in his official capacity, only.

Jurisdiction and Venue

57. Under U.S. Const. Art. III §2, this Court has jurisdiction because the rights sought to be protected herein are secured by the United States Constitution. Jurisdiction is proper pursuant to 28 U.S.C. § 1331, 5 U.S.C. § 702, 5 U.S.C. § 706, the United States Constitution, and federal common law.

58. This action also seeks declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § § 2201-02, Rules 57 and 65 of the Federal Rules of Civil Procedure, and pursuant to the general, legal, and equitable powers of this Court.

59. A substantial part of the unlawful acts alleged herein were committed within the jurisdiction of the United States District Court for the Eastern District of Virginia.

60. Venue is proper under 42 U.S.C. § 1391(e) as to the Defendants because Defendants are officers or employees of the United States sued in their official capacity and

because this judicial district is where a substantial part of the events or omissions giving rise to the claims occurred.

Factual Background

Defendant Trump's Unconstitutional Executive Order Banning Muslims from Entering the United States

61. The Revised Order is the as-promised outcome of Defendant Trump's hateful, year-long campaign which was fueled, in significant part, by a desire to stigmatize Islam and Muslims.

62. Defendant Trump has often repeated his bigoted views on Islam and Muslims in a variety of contexts—in print, on television, and via official campaign statements. The First Muslim Ban is the legal manifestation of those bigoted views.

63. Defendant Trump's views on Islam are unequivocal. On or about March 10, 2016, in an interview aired on CNN, Defendant Trump declared that he thinks "Islam hates us."

64. His statements regarding Islam and Muslims give rise to the inference that the Revised Order is motivated by a bare desire to inflict harm on this faith and those that belong to it.

65. In addition to Defendant Trump's statements regarding Islam and Muslims, the history of the Revised Order reveals its unlawful, discriminatory purpose. On December 7, 2015, while campaigning, Defendant Trump called for "a total and complete shutdown of Muslims entering the United States until our country's representatives can figure out what is going on."

66. Defendant Trump's rationale for this proposal included sweeping condemnations of Islam, the second largest religion in the world with over 1.6 billion people. His condemnation incorrectly surmised that Islam's religious traditions, which he referred to as "Sharia", "authoriz[e] such atrocities as murder against non-believers who won't convert, beheadings and more unthinkable acts that pose great harm to Americans, especially women."

67. Subsequent to his nomination as the Republican candidate for the presidency, Defendant Trump began using facially neutral language to describe his anti-Muslim policy. This neutral language suggested that a Trump administration would stop immigration "from any nation that has been compromised by terrorism."

68. On or about July 24, 2016, however, Defendant Trump conceded that the neutral language was simply a veneer intended to subdue the public controversy generated by his discriminatory plan. To that end, in an interview on NBC, Defendant Trump explained the following: "People were so upset when I used the word Muslim. Oh, you can't use the word Muslim...And I'm OK with that, because I'm talking territory instead of Muslim."

69. In fact, on January 27, 2017, hours before signing the First Muslim Ban, Defendant Trump explained during an interview with the Christian Broadcasting Network that his order was "going to help [persecuted Christians]" as opposed to Muslims. His answer made clear that Defendant Trump's intention in crafting the Muslim Ban was to treat foreign nationals in the seven identified countries differently based on their faith.

70. The underlying unlawful discriminatory purpose of the First Muslim Ban is evidenced by the recent admissions by close associates of Defendant Trump, such as Rudolf Giuliani's recent admission that the President asked him to find legal ways to implement

what he called “a Muslim Ban.” On January 28, 2017, during a Fox News interview, Giuliani, who is a close advisor to the Defendant Trump, boasted that after then-candidate Donald Trump announced his Muslim Ban—which explicitly prohibited Muslims from obtaining entry into the United States—Giuliani was asked to “show [Donald Trump] the right way to do [the Muslim Ban] legally.” Giuliani then conceded that he formed a commission to find a way to accomplish the Muslim Ban’s scope without mentioning Islam or Muslims.

71. The language of the First Muslim Ban corroborates Defendant Trump’s admission that the facially neutral language is simply a pretext. That Order did not exclude persons based on where they are from but on what religion they belong to. Section 5 suspended all grounds for persecution and allowed only one: “religious-based persecution.” However, religious-based persecution could only be claimed by individuals who are not Muslim. Thus, the First Muslim Ban constituted a religious gerrymander—drawing distinctions that exclude the disfavored group—Muslims—while leaving others untouched.

72. Since the signing of the First Muslim Ban, several federal courts around the country issued stays.

73. On January 28, 2017, Judge Brinkema in the Eastern District of Virginia issued a Temporary Restraining Order that forbade Defendants “from removing petitioners—lawful permanent residents at Dulles International Airport—for a period of 7 days from the issuance of that Order. That Order is attached an exhibit.

74. On the same day, the United States District Court of the Western District of Washington granted an emergency stay of removal that prohibits Defendants “from removing John Doe I and Joe Doe II from the United States.” That Order is also attached as an exhibit.

75. Again on the same day, the United States District Court for the Eastern District of New York granted an emergency stay of removal, finding that the petitioners “have a strong likelihood of success in establishing that the removal of the petitioner and others similarly situated violates their rights to Due Process and Equal Protection.” That Order is also attached as an exhibit.

76. On January 29, 2017, the United States District Court for the District of Massachusetts granted a Temporary Restraining Order against parts of the First Muslim Ban, finding that the petitioners had established a “strong likelihood of success in establishing that the detention and/or removal of the petitioners and others similarly situated would violate their rights to Due Process and Equal Protection.” That Order is also attached as an exhibit.

77. That same day, the United States District Court for the Central District of California prohibited the defendants “from barring Petitioner’s return to the United States” because he had “demonstrated a strong likelihood of success in establishing that removal violates the Establishment Clause” as well as other constitutional and statutory provisions. That Order is also attached as an exhibit.

78. On February 2, 2017, the United States District Court for the Eastern District of Michigan (Southern Division) issued an order temporarily enjoining the United States from applying Sections 3(c) and 3(e) of the First Muslim Ban. That Order is also attached as an exhibit.

79. On February 9, 2017, the Ninth Circuit Court delivered a unanimous decision upholding a temporary restraining order issued by the United States District Court for the

Western District of Washington enjoining and restraining Sections 3(c) and 5(a)-(c) of the First Muslim Ban. That Order is also attached as an exhibit.

80. The unlawful effects and purpose of the First Muslim Ban persist through the issuance of the Revised Order, issued on March 6, 2017.

81. The Revised Order goes into effect on March 16, 2017. Revised Order at Section 14.

82. At the outset, all foreign nationals that had pending visa applications whose applications were not processed pursuant to the First Muslim Ban will continue to be denied entry because they are outside the United States and because they do not have a valid visa as of the effective date of the Revised Order, solely based on their religious status as Muslims and based on their national origin. Revised Order at Section 3(a).

83. The Revised Order creates a framework that although neutral on its face, allows case-by-case waivers such that the unlawful goals and intent of the First Muslim Ban could still be implemented on a discretionary and nonreviewable basis.

84. As such, pending visa applications whose applications were not processed pursuant to the First Muslim Ban and future visa applications filed by nationals originating from the Predominantly Muslim Countries will be subjected to a discretionary and nonreviewable waiver process, based solely on their national origin.

85. As such, the Revised Order creates a framework that although neutral on its face, allows case-by-case waivers such that the unlawful goals and intent of the First Muslim Ban could still be implemented on a discretionary and nonreviewable basis.

86. Plaintiffs have suffered and will continue to suffer an ongoing concrete harm and spiritual and psychological consequences since the initial announcement of the “Muslim

Ban” as a result of the Defendants having sent a message to the broader American public of (1) disfavor and condemnation of their religion of Islam, (2) marginalization and exclusion of Muslims, including Plaintiffs, based on the false messaging that Muslims are prone to commit terrorism, (3) the endorsement of all religions over their own, (4) Muslims are outsiders, dangerous, and not full members of the political community, and (5) all non-adherents of Islam are insiders and therefore favored. *McCreary Cnty. v. ACLU*, 545 U.S. 844, 860 (2005); *Moss v. Spartanburg County Sch. Dist. Seven*, 683 F.3d 599, 607 (4th Cir. S.C. 2012); *Catholic League for Religious & Civ. Rights v. City & County of San Francisco*, 567 F.3d 595 (9th Cir. 2009).

COUNT I
VIOLATION OF THE FIRST AMENDMENT
TO THE UNITED STATES CONSTITUTION
(Establishment Clause)

(On behalf of all Plaintiffs)

87. The foregoing allegations are realleged and incorporated herein.

88. The Revised Order creates a framework that although neutral on its face, maintains the intent of the First Muslim Ban and establishes a case-by-case waiver scheme that allows the unlawful goals and intent of the Muslim Ban – the denial of entry of Muslim into the United States – to still be implemented in full.

89. Defendants’ unique application of the Revised Order to Muslims, insofar as it allows for the (1) suspension of entry of Muslim immigrants and Muslim nonimmigrants originating from the Predominantly Muslim Countries from entering the United States, (2) prohibition of some Muslim immigrants and Muslim nonimmigrants (those who have lawful status but who must obtain or renew their visas) originating from the Predominantly Muslim

Countries and who reside lawfully in the United States from engaging in international travel and reentering the United States, and the (3) disparate treatment of immigrants and nonimmigrants originating from the Predominantly Muslim Countries insofar as those persons would have to make a heightened showing and obtain a waiver to secure a visa to the United States.

90. Together, these consequences result in Muslims and Islam being treated on less than equal terms with other religious and non-religious groups, thereby creating a denominational preference against Islam as a religion.

91. Defendants have deprived and continue to deprive Plaintiffs and similarly situated Muslims originating from the Predominantly Muslim Countries their right to be free from religious discrimination in violation of the Establishment Clause to the First Amendment to the United States Constitution by signing the Revised Order whose purpose and effect is to discriminate on the basis of religion.

92. Defendant Trump's Revised Order imposes upon Islam—the religion to which all Plaintiffs belong—the stigma of government disfavor. This condemnation, which has been broad cast to the general public via the First Muslim Ban, and which the Revised Order continues to broadcast, signals to Plaintiffs' fellow citizens that their faith is uniquely threatening and dangerous insofar as it is the only religion and religious community singled out for disfavored treatment.

93. Plaintiffs have suffered and will continue to suffer an ongoing concrete harm since the initial announcement of the "Muslim Ban" as a result of the Defendants having sent a message to the broader American public of (1) disfavor and condemnation of their religion of Islam, (2) marginalization and exclusion of Muslims, including Plaintiffs, based on the false

messaging that Muslims are prone to commit terrorism, (3) the endorsement of all religions over their own, (4) Muslims are outsiders, dangerous, and not full members of the political community, and (5) all non-adherents of Islam are insiders and therefore favored. *McCreary Cnty. v. ACLU*, 545 U.S. 844, 860 (2005); *Moss v. Spartanburg County Sch. Dist. Seven*, 683 F.3d 599, 607 (4th Cir. S.C. 2012); *Catholic League for Religious & Civ. Rights v. City & County of San Francisco*, 567 F.3d 595 (9th Cir. 2009).

94. Defendants' actions lack a compelling interest insofar as their true purpose is to ban Muslims originating from the Predominantly Muslim Countries from entering the United States based solely on their religious beliefs, to stigmatize Islam, and to broadcast an anti-Islam message.

95. The Revised Order is not narrowly tailored to the interest the government asserts, insofar as it applies a blanket suspension to certain immigrants even when the Defendants possess no information to indicate any of the immigrants pose any threat to the United States.

96. Defendants' unlawful actions caused Plaintiffs and similarly situated Muslims irreparable harm, and accordingly they are entitled to injunctive and declaratory relief, in addition to all such other relief this Court deems just and proper including costs and attorneys' fees in this action.

97. Plaintiffs are entitled to declaratory relief, and the issuance of a preliminary and permanent injunction in the form described in the Prayer for Relief below.

WHEREFORE, Plaintiffs request this Honorable Court grant declaratory and injunctive relief in the form described in the Prayer for Relief below, plus all such other relief this Court deems just and proper including costs and attorneys' fees incurred in this action.

COUNT II
VIOLATION OF THE FIFTH AMENDMENT
TO THE UNITED STATES CONSTITUTION
(Jurisdiction under 28 U.S.C. § 1331 and 5 U.S.C. § 702)
(Equal Protection)
(On behalf of the John Doe and Jane Doe Plaintiffs)

98. The foregoing allegations are realleged and incorporated herein.

99. The Revised Order creates a framework that although neutral on its face, maintains the intent of the First Muslim Ban and establishes a case-by-case waiver scheme that allows the unlawful goals and intent of the Muslim Ban – the denial of entry of Muslim into the United States – to still be implemented in full.

100. Defendants' unique application of the Revised Order to Muslims, insofar as it allows for the (1) suspension of entry of Muslim immigrants and Muslim nonimmigrants originating from the Predominantly Muslim Countries from entering the United States, (2) prohibition of some Muslim immigrants and Muslim nonimmigrants (those who have lawful status but who must obtain or renew their visas) originating from the Predominantly Muslim Countries and who reside lawfully in the United States from engaging in international travel and reentering the United States, and the (3) disparate treatment of immigrants and nonimmigrants originating from the Predominantly Muslim Countries insofar as those persons would have to make a heightened showing and obtain a waiver to secure a visa to the United States.

101. Defendants have deprived and continue to deprive Plaintiffs and similarly situated Muslims originating from the Predominantly Muslim Countries their right to be free from religious discrimination in violation of the Fifth Amendment to the United States

Constitution by signing the Revised Order whose purpose and effect is to discriminate on the basis of religion.

102. By creating a framework that allows for the implementation of a Muslim Ban – the denial of entry of Muslims into the United States – through a discretionary and nonreviewable waiver process, Defendants have treated them like second-class citizens.

103. Moreover, by preventing the student John Doe Plaintiffs and other similarly situated Muslims originating from the Predominantly Muslim Countries and lawfully residing in the United States who are pursuing their education, from engaging in international travel and returning home in the United States, in order to avoid risking forfeiting their F-1 status and jeopardizing their education, Defendants have treated them like second-class citizens.

104. Moreover, by subjecting Muslims originating from the Predominantly Muslim Countries to a discretionary and nonreviewable waiver process to obtain a visa, including family-based visas, solely based on their national origin, Defendants have treated them like second-class citizens.

105. Defendants' above-described actions are motivated by the religious status of the John and Jane Doe Plaintiffs and other similarly situated non-USC Muslims originating from the Predominantly Muslim Countries and on the basis of their constitutionally-protected free exercise of religion.

106. Defendants' actions lack a compelling interest insofar as their true purpose is to ban Muslims originating from the Predominantly Muslim Countries from entering the United States based solely on their religious beliefs.

107. Defendants' above-described actions have a discriminatory effect upon and disparately impact the John and Jane Doe Plaintiffs and other similarly situated non-USC Muslims originating from the Predominantly Muslim Countries, and not non-USCs of other faiths originating from the same Predominantly Muslim Countries.

108. The Revised Order is not narrowly tailored to the interest the government asserts, insofar as it applies a blanket suspension to certain immigrants even when the Defendants possess no information to indicate any of the immigrants pose any threat to the United States.

109. Defendants' actions also not narrowly tailored insofar as they are entirely and demonstrably ineffectual and obvious alternatives exist.

110. Defendants' above-described actions do not serve a compelling state interest or a legitimate or public purpose, nor are they the least restrictive means or narrowly tailored to achieve any such interest.

111. Plaintiffs have suffered and will continue to suffer an ongoing concrete harm and spiritual and psychological consequences since the initial announcement of the "Muslim Ban" as a result of the Defendants having sent a message to the broader American public of (1) disfavor and condemnation of their religion of Islam, (2) marginalization and exclusion of Muslims, including Plaintiffs, based on the false messaging that Muslims are prone to commit terrorism, (3) the endorsement of all religions over their own, (4) Muslims are outsiders, dangerous, and not full members of the political community, and (5) all non-adherents of Islam are insiders and therefore favored. *McCreary Cnty. v. ACLU*, 545 U.S. 844, 860 (2005); *Moss v. Spartanburg County Sch. Dist. Seven*, 683 F.3d 599, 607 (4th Cir. S.C.

2012); *Catholic League for Religious & Civ. Rights v. City & County of San Francisco*, 567 F.3d 595 (9th Cir. 2009).

112. Defendants' unlawful actions caused the John and Jane Doe Plaintiffs and other similarly situated non-USC Muslims originating from the Predominantly Muslim Countries harm, and accordingly they are entitled to injunctive and declaratory relief, in addition to all such other relief this Court deems just and proper including costs and attorneys' fees in this action.

113. The John and Jane Doe Plaintiffs are entitled to declaratory relief, and the issuance of a preliminary and permanent injunction in the form described in the Prayer for Relief below.

WHEREFORE, Plaintiffs request this Honorable Court grant declaratory and injunctive relief in the form described in the Prayer for Relief below, plus all such other relief this Court deems just and proper including costs and attorneys' fees incurred in this action.

COUNT III
UNLAWFUL AGENCY ACTION IN VIOLATION OF THE ADMINISTRATIVE PROCEDURE
ACT, 5 U.S.C. §§ 702, 706
(Jurisdiction under 28 U.S.C. § 1331 and 5 U.S.C. § 702)

(On behalf of all Plaintiffs)

114. The foregoing allegations are realleged and incorporated herein.

115. The actions of Defendants that are required or permitted by the Executive Order, as set forth above, were without observance of procedure required by law, in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(D).

116. The Revised Order creates a framework that although neutral on its face, maintains the intent of the First Muslim Ban and establishes a case-by-case waiver scheme that allows the unlawful goals and intent of the Muslim Ban – the denial of entry of Muslim into the United States – to still be implemented in full.

117. Defendants' unique application of the Revised Order to Muslims, insofar as it allows for the (1) suspension of entry of Muslim immigrants and Muslim nonimmigrants originating from the Predominantly Muslim Countries from entering the United States, (2) prohibition of some Muslim immigrants and Muslim nonimmigrants (those who have lawful status but who must obtain or renew their visas) originating from the Predominantly Muslim Countries and who reside lawfully in the United States from engaging in international travel and reentering the United States, and the (3) disparate treatment of immigrants and nonimmigrants originating from the Predominantly Muslim Countries insofar as those persons would have to make a heightened showing and obtain a waiver to secure a visa to the United States.

118. Defendants' actions as described above are arbitrary and capricious, shock the conscience, violate the decencies of civilized conduct, are so brutal and offensive that they do not comport with the traditional ideas of fair play and decency, lack even a rational relationship to any legitimate government interest, and have substantially burdened and unduly deprived Plaintiffs and similarly situated Muslims their constitutionally protected rights, including their right to be free from discrimination on the basis of religion, the right to be free from condemnation by the government on the basis of their religion, the right to be free from being singled out by the government for disfavored treatment on the basis of their religion, liberty interests in engaging in international travel and returning home in the

United States, their international human rights, their rights to freedom of association, their rights to freedom from false stigmatization and nonattainder, and should be set aside as unlawful pursuant to 5 U.S.C. § 706.

119. Defendants' above-described unlawful actions that mandate or permit the above-described treatment of the John and Jane Doe Plaintiffs and other similarly situated non-USC Muslims originating from the Predominantly Muslim Countries, constitute an adverse action against them motivated by their religious beliefs and practices and an action that targets religious conduct for distinctive treatment, and should be set aside as unlawful pursuant to 5 U.S.C. § 706.

120. By creating a framework that allows for the implementation of a Muslim Ban – the denial of entry of Muslims into the United States – through a discretionary and nonreviewable waiver process, Defendants have treated them like second-class citizens, and should be set aside as unlawful pursuant to 5 U.S.C. § 706.

121. By preventing the student John Doe Plaintiffs and other similarly situated non-USC Muslims originating from the Predominantly Muslim Countries lawfully residing in the United States from engaging in international travel and returning home in the United States without risking forfeiting their F-1 status and jeopardizing their education, Defendants have treated them like second-class citizens, and should be set aside as unlawful pursuant to 5 U.S.C. § 706.

122. Moreover, by subjecting Muslims originating from the Predominantly Muslim Countries to a discretionary and nonreviewable waiver process to obtain a visa, including family-based visas, solely based on their national origin, Defendants have treated them like second-class citizens, and should be set aside as unlawful pursuant to 5 U.S.C. § 706.

123. Defendants' above-described conduct was prompted or substantially caused by Plaintiffs' and such other similarly situated Muslims' religious identity, and should be set aside as unlawful pursuant to 5 U.S.C. § 706.

124. Defendants have deprived and continue to deprive Plaintiffs and similarly situated Muslims their right to be free from religious discrimination in violation of the Establishment Clause to the First Amendment to the United States Constitution by issuing the Revised Order whose purpose and effect is to discriminate on the basis of religion, and should be set aside as unlawful pursuant to 5 U.S.C. § 706.

125. Defendant Trump's First Muslim Ban imposes upon Islam—the religion to which all of the Plaintiffs belong—the stigma of government disfavor. This condemnation, which has been broadcast to the general public pursuant to the First Muslim Ban, signals to Plaintiffs' fellow citizens that their faith is uniquely threatening and dangerous insofar as it is the only religion singled out for disfavored treatment, and should be set aside as unlawful pursuant to 5 U.S.C. § 706.

126. Defendants' actions also not narrowly tailored insofar as they are entirely and demonstrably ineffectual and obvious alternatives exist, and should be set aside as unlawful pursuant to 5 U.S.C. § 706.

127. Defendants' actions lack a compelling interest insofar as their true purpose is to ban Muslims originating from these Predominantly Muslim Countries from entering the United States based solely on their religious beliefs, and should be set aside as unlawful pursuant to 5 U.S.C. § 706.

128. Imposition of such a burden is not in furtherance of a compelling government interest nor is it the least restrictive means of furthering any governmental interest, compelling or otherwise, and should be set aside as unlawful pursuant to 5 U.S.C. § 706.

129. Defendants' above-described actions have a discriminatory effect upon and disparately impact the John and Jane Doe Plaintiffs and similarly situated non-USC Muslims originating from the Predominantly Muslim Countries, and not non-USCs of other faiths, and should be set aside as unlawful pursuant to 5 U.S.C. § 706.

130. The actions of Defendants, as set forth above, are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; contrary to constitutional right, power, privilege, or immunity; in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; and without observance of procedure required by law, and should be set aside as unlawful pursuant to 5 U.S.C. § 706(A)-(D).

131. Defendants' Revised Order violates 8 U.S.C. § 1152(a)(1)(A), which states that "no person shall receive any preference or priority or be discriminated against in the issuance of an immigrant visa because of the person'...nationality."

132. Defendants' Revised Order violates Section 1182(a)(3)(B) of the INA which creates a statutory scheme that the Defendants must utilize to exclude persons from the United States based on terrorism-related concerns. This Section directs the Executive Branch to deny visas to persons who have "engaged in a terrorist activity," "incited terrorist activity," who are a "representative...of a terrorist organization" or a "group that endorses or espouses terrorist activity, who are members "of a terrorist organization," "endors[e] or espous[e] terrorist activity." This complex statutory scheme indicates that Congress anticipated that the Executive Branch would make immigration decisions that have national

security implications and that Congress had in mind exactly how it wanted the Executive Branch to exercise the authority delegated to it.

133. Defendants' Revised Order violates Section 1182(a)(3)(B)(i)(ii) of the INA, which only allows the Executive Branch to deny a visa to a person who "is engaged in or is likely to engage after entry in any terrorist activity" if there is at least "reasonable ground" for such a conclusion.

134. Plaintiffs have suffered and will continue to suffer an ongoing concrete harm and spiritual and psychological consequences since the initial announcement of the "Muslim Ban" as a result of the Defendants having sent a message to the broader American public of (1) disfavor and condemnation of their religion of Islam, (2) marginalization and exclusion of Muslims, including Plaintiffs, based on the false messaging that Muslims are prone to commit terrorism, (3) the endorsement of all religions over their own, (4) Muslims are outsiders, dangerous, and not full members of the political community, and (5) all non-adherents of Islam are insiders and therefore favored. *McCreary Cnty. v. ACLU*, 545 U.S. 844, 860 (2005); *Moss v. Spartanburg County Sch. Dist. Seven*, 683 F.3d 599, 607 (4th Cir. S.C. 2012); *Catholic League for Religious & Civ. Rights v. City & County of San Francisco*, 567 F.3d 595 (9th Cir. 2009).

135. Defendants' unlawful actions caused Plaintiffs and similarly situated Muslims harm, and accordingly they are entitled to injunctive and declaratory relief, in addition to all such other relief this Court deems just and proper including costs and attorneys' fees in this action.

136. Plaintiffs are entitled to declaratory relief, and the issuance of a preliminary and permanent injunction in the form described in the Prayer for Relief below.

WHEREFORE, Plaintiffs request this Honorable Court grant declaratory and injunctive relief in the form described in the Prayer for Relief below, plus all such other relief this Court deems just and proper including costs and attorneys' fees incurred in this action.

COUNT V
VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT

(On behalf of all Plaintiffs)

137. The foregoing allegations are realleged and incorporated herein.

138. Defendant Trump does not have the authority to give any person preference or priority or to discriminate in the issuance of an immigrant visa on the basis of a "person's race, sex, nationality, place of birth, or place of residence," and therefore the First Muslim Ban is an unconstitutional overreach in violation of Section 202(a)(1) of the INA.

139. The Executive Order on its face mandates discrimination against those who apply for immigrant visas on the basis of their nationality, place of birth, and/or place of residence in violation of Section 1152(a)(1)(A).

140. Defendant Trump does not have the authority to suspend the entry of all foreign nationals from the six countries on the basis of terrorism-related concern, because Congress has already created a statutory scheme for establishing an evidentiary threshold for making such determinations and otherwise directing the executive branch to exercise discretion in a particular manner in violation of Section 1182(a)(3)(B) of the INA.

141. The First Muslim Ban is a factually baseless, biased and bigoted effort to discriminate against a targeted group that even if one would to accept its purported basis, is not in any way related to the First Muslim Ban's purported goals.

142. Further, the First Muslim Ban is an irrational and arbitrary use of power, and as such is an unconstitutional executive overreach.

Prayer for Relief

WHEREFORE, Plaintiffs respectfully request:

1. A speedy hearing of this action under Rule 57 of the Federal Rules of Civil Procedure;
2. A declaratory judgment that Defendants' Revised Order violates the First and Fifth Amendments to the United States Constitution and the Administrative Procedure Act, and is unlawful and invalid;
3. A declaratory judgment that Defendants' Revised Order is an unconstitutional overreach in violation of Section 202(a)(1) of the INA;
4. An injunction that requires Defendants to remedy the constitutional violations identified above, including prohibiting Defendants from engaging in the following:
 - (1) implementing or enforcing any portion of the Revised Order;
 - (2) requiring visa applications filed by foreign nationals originating from the Predominantly Muslim Countries to be subjected to case-by-case waivers such that applicants are denied their visa applications on the basis of religion or national origin, pursuant to the unconstitutional terms specified in the Revised Order;
 - (3) prohibiting student visa holders originating from the Predominantly Muslim Countries and who lawfully reside in the United States from engaging in international travel and renewing their student visas to reenter the United States and continue their education, pursuant to the unconstitutional terms specified in the Revised Order;

(4) prohibiting foreign nationals originating from the Predominantly Muslim Countries and who lawfully reside in the United States from renewing their lawful immigrant or nonimmigrant status, pursuant to the unconstitutional terms specified in the Revised Order; and,

(5) otherwise embedding policies and processes within the immigration and visa process that discriminate against or disfavor Islam or Muslims;

5. A trial by jury;
6. An award of attorneys' fees, costs, and expenses of all litigation, pursuant to 28 U.S.C. § 2412; and,
7. Such other and further relief as the Court may deem just and proper.

JURY DEMAND

NOW COME Plaintiffs, by and through their undersigned counsel, and hereby demand trial by jury of the above-referenced causes of action.

Respectfully submitted,

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Dated: March 13, 2017

Executive Order—Protecting the Nation from Terrorist Attacks by Foreign Nationals

EXECUTIVE ORDER

PROTECTING THE NATION FROM TERRORIST ATTACKS BY FOREIGN
NATIONALS

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Immigration and Nationality Act (8 U.S.C. 1001 et seq.) (INA), and section 301 of title 3, United States Code, and to protect the American people from terrorist attacks by foreign nationals admitted to the United States, it is hereby ordered as follows:

Section 1. *Purpose.* The visa-issuance process plays a crucial role in detecting individuals with terrorist ties and stopping them from entering the United States. Perhaps in no instance was that more apparent than with the terrorist attacks of September 11, 2001, when State Department policy prevented consular officers from properly scrutinizing the visa applications of several of the 19 foreign nationals who went on to murder nearly 3,000 Americans. And while the visa-issuance process was reviewed and amended after the September 11 attacks to better detect would-be terrorists from receiving visas, these measures did not stop attacks by foreign nationals who were admitted to the United States.

Hundreds of foreign-born individuals have been convicted or implicated in terrorism-related crimes since September 11, 2001, including foreign nationals who entered the United States after claiming asylum; after receiving visitor, student, or employment visas; or through the U.S. refugee resettlement program. Deteriorating conditions in certain countries due to war, strife, disaster, and civil unrest increase the likelihood that terrorists will use any means possible to enter our country. The United States must be vigilant during the visa-issuance process to ensure that those approved for admission do not intend to harm Americans and that they have no ties to terrorism.

In order to protect Americans, we must ensure that those admitted to this country do not bear hostile attitudes toward our country and its founding principles. We cannot, and should not, admit into our country those who do not support the U.S. Constitution, or those who would place violent religious edicts over American law. In addition, the United States should not admit those who engage in acts of bigotry and hatred (including “honor” killings, other forms of violence against women, or the persecution of those who practice other religions) or those who would oppress members of one race, one gender, or sexual orientation.

Sec. 2. *Policy.* It is the policy of the United States to: (a) protect our citizens from foreign nationals who intend to commit terrorist attacks in the United States; and

(b) prevent the admission of foreign nationals who intend to exploit United States immigration laws for malevolent purposes.

Sec. 3. *Suspension of Issuance of Visas and Other Immigration Benefits to Nationals of Countries of Particular Concern.* (a) The Secretary of Homeland Security, in consultation with the Secretary of State and the Director of National Intelligence, shall immediately conduct a review to determine the information needed from any country for adjudication of any visa, admission, or other benefit under the INA (adjudications) adequate to determine that the individual seeking the benefit is who the individual claims to be and is not a security or public-safety threat.

(b) The Secretary of Homeland Security, in consultation with the Secretary of State and the Director of National Intelligence, shall submit to the President a report on the results of the review described in subsection (a), including the Secretary of Homeland Security's determination of the information needed for adjudications and a list of countries that do not provide adequate information, within 30 days of the date of this order (excluding those foreign nationals traveling on diplomatic visas, North Atlantic Treaty Organization visas, and C-2 visas for travel to the United Nations). The Secretary of Homeland Security shall provide a copy of the report to the Secretary of State and Director of National Intelligence.

(c) To temporarily reduce investigative burdens to relevant agencies during the review period described in subsection (a) of this section, to ensure the proper review and maximum utilization of available resources for the screening of foreign nationals, and to ensure that adequate standards are established to prevent the terrorist or criminal infiltration of foreign nationals, pursuant to section 212(f) of the INA I hereby find that the immigrant and nonimmigrant entry into the United States of aliens from countries designated pursuant to Division O, Title II, Section 203 of the 2016 consolidated Appropriations Act (H.R. 2029, P.L. 114-113), would be detrimental to the interests of the United States, and I hereby suspend entry into the United States, as immigrants and nonimmigrants, of such persons for 30 days from the date of this order.

(d) Immediately upon receipt of the report described in subsection (b) of this section regarding the information needed for adjudications, the Secretary of State shall request all foreign governments that do not supply such information to start providing such information regarding their nationals within 60 days of notification.

(e) After the 60-day period described in subsection (d) of this section expires, the Secretary of Homeland Security, in consultation with the Secretary of State, shall submit to the President a list of countries recommended for inclusion on a Presidential proclamation that would prohibit the entry of foreign nationals (excluding those foreign nationals traveling on diplomatic visas, North Atlantic Treaty Organization visas, and C-2 visas for travel to the United Nations) from countries that do not provide the information requested pursuant to subsection (d) of this order until compliance occurs.

(f) At any point after submitting the list described in subsection (e) of this section, the Secretary of State or the Secretary of Homeland Security may submit to the President the names of any additional countries recommended for similar treatment.

(g) Notwithstanding a suspension pursuant to subsection (c) of this section or pursuant to a Presidential proclamation described in subsection (e) of this section, the Secretaries of State and Homeland Security may, on a case-by-case basis, and when in the national interest, issue visas or other immigration benefits to nationals of countries for which visas and benefits are otherwise blocked.

(h) The Secretaries of State and Homeland Security shall submit to the President a joint report on the progress in implementing this order within 30 days of the date of this order, a second report within 60 days of the date of this order, a third report within 90 days of the date of this order, and a fourth report within 120 days of the date of this order.

Sec. 4. *Implementing Uniform Screening Standards for all Immigration Programs.* (a) The Secretary of State, the Secretary of Homeland Security, the Director of National Intelligence, and the Director of the Federal Bureau of Investigation shall implement a program during the adjudication process for immigration benefits to identify individuals seeking to enter the United States on a fraudulent basis, with the intent to cause harm, or who are at risk of causing harm subsequent to their admission. This program will include the development of uniform screening standards and procedures, such as in-person interviews; the creation of a database of identity documents proffered by applicants to ensure that duplicate documents are not used by multiple applicants; amended application forms that include questions aimed at identifying fraudulent answers and malicious intent; a mechanism to ensure that the applicant is who the applicant claims to be; a process to evaluate the applicant's likelihood of becoming a positive contributing member of society, and the applicant's ability to make contributions to the national interest; and, a mechanism to assess whether or not the applicant has the intent to commit criminal or terrorist acts after entering the United States.

(b) The Secretary of Homeland Security, in conjunction with the Secretary of State, Director of National Intelligence, and the Director of the Federal Bureau of Investigation, shall submit to the President an initial report on the progress of this directive within 60 days of the date of this order, a second report within 100 days of the date of this order, and a third report within 200 days of the date of this order.

Sec. 5. *Realignment of the U.S. Refugee Admissions Program for Fiscal Year 2017.* (a) The Secretary of State shall suspend the U.S. Refugee Admissions Program (USRAP) for 120 days. During the 120-day period, the Secretary of State, in conjunction with the Secretary of Homeland Security, shall review the USRAP application and adjudication process to determine what additional procedures can be taken to ensure that those approved for refugee admission do not pose a threat to the security and welfare of the United States, and shall implement such additional procedures. Refugee applicants who are already in the USRAP process may be admitted upon the initiation and completion of these revised procedures. Upon the date that is 120 days after this order, the Secretary of

State shall resume USRAP admissions only for nationals of countries for whom the Secretary of Homeland Security, the Secretary of State, and the Director of National Intelligence have jointly determined that sufficient safeguards are in place to ensure the security and welfare of the United States.

(b) Upon the resumption of USRAP admissions, the Secretary of State, in consultation with the Secretary of Homeland Security, is further directed to make changes, to the extent permitted by law, to prioritize refugee claims made by individuals on the basis of religious-based persecution, provided that the religion of the individual is a minority religion in the individual's country of nationality. Where necessary and appropriate, the Secretaries of State and Homeland Security shall recommend legislation to the President to assist with such prioritization.

(c) The Secretaries of State and Homeland Security, as appropriate, shall cease refugee processing of and the admittance of nationals of Syria as refugees until such time as I have determined that sufficient changes have been made to the USRAP to ensure its alignment with the national interest.

(d) Notwithstanding any previous Presidential determination regarding the number of refugee admissions for Fiscal Year 2017, the Secretaries of State and Homeland Security may only process and admit a total of 50,000 refugees during Fiscal Year 2017. During the 120-day suspension provided by section 5(a), the Secretary of State and the Secretary of Homeland Security shall initiate appropriate consultations in connection with this determination, including with respect to the allocation among refugees of special humanitarian concern to the United States.

(f) Notwithstanding the temporary suspension imposed pursuant to subsection (a) of this section, the Secretaries of State and Homeland Security may admit individuals to the United States as refugees on a case-by-case basis when in the national interest. Further, during the temporary suspension period described in subsection (a), the Secretaries of State and Homeland Security may continue to process as refugees those refugee claims made by individuals on the basis of religious-based persecution, provided that the religion of the individual is a minority religion in the individual's country of nationality.

(g) The Secretary of State shall submit to the President an initial report on the progress of the directive in subsection (b) of this section regarding prioritization of claims made by individuals on the basis of religious-based persecution within 100 days of the date of this order and shall submit a second report within 200 days of the date of this order.

Sec. 6. *Establishment of Safe Zones to Protect Vulnerable Syrian Populations.* Pursuant to the cessation of refugee processing for Syrian nationals, the Secretary of State, in conjunction with the Secretary of Defense, is directed within 90 days of the date of this order to produce a plan to provide safe areas in Syria and in the surrounding region in which Syrian nationals displaced from their homeland can await firm settlement, such as repatriation or potential third-country resettlement.

Sec. 7. *Rescission of Exercise of Authority Relating to the Terrorism Grounds of Inadmissibility.* The Secretaries of State and Homeland Security shall, in consultation with the Attorney General, consider rescinding the exercises of authority in section 212 of the INA relating to the terrorism grounds of inadmissibility, as well as any related implementing memoranda. .

Sec. 8. *Expedited Completion of the Biometric Entry-Exit Tracking System.* (a) The Secretary of Homeland Security shall expedite the completion and implementation of a biometric entry-exit tracking system for all travelers to the United States, as recommended by the National Commission on Terrorist Attacks Upon the United States.

(b) The Secretary of Homeland Security shall submit to the President periodic reports on the progress of the directive contained in subsection (a) of this section. The initial report shall be submitted within 100 days of the date of this order, a second report shall be submitted within 200 days of the date of this order, and a third report shall be submitted within 365 days of the date of this order. Further, the Secretary shall submit a report every 180 days thereafter until the system is fully deployed and operational.

Sec. 9. *Visa Interview Security.* (a) The Secretary of State shall immediately suspend the Visa Interview Waiver Program and ensure compliance with section 222 of the INA, which requires that all individuals seeking a nonimmigrant visa, undergo an in-person interview, subject to specific statutory exceptions.

(b) To the extent permitted by law and subject to the availability of appropriations, the Secretary of State shall immediately expand the Consular Fellows Program, including by substantially increasing the number of Fellows, lengthening or making permanent the period of service, and making language training at the Foreign Service Institute available to Fellows for assignment to posts outside of their area of core linguistic ability, to ensure that non-immigrant visa interview wait times are not unduly affected.

Sec. 10. *Visa Validity Reciprocity.* The Secretary of State shall review all nonimmigrant visa reciprocity agreements to ensure that they are, with respect to each visa classification, truly reciprocal insofar as practicable with respect to validity period and fees, as urged by sections 221(c) and 281 of the INA, and other treatment. If a country does not treat U.S. nationals seeking nonimmigrant visas in a reciprocal manner, the Secretary of State shall adjust the visa validity period, fee schedule, or other treatment to match the treatment of U.S. nationals by the foreign country, to the extent practicable.

Sec. 11. *Transparency and Data Collection.* To be more transparent with the American people, and in order to more effectively implement policies and practices that serve the national interest, the Secretary of Homeland Security shall, consistent with applicable law, collect and make publicly available within 180 days, and every 180 days thereafter:

(a) information regarding the number of foreign-born individuals in the United States who have been charged with terrorism-related offenses; convicted of terrorism-related offenses; or removed from the United States based on terrorism-related activity,

affiliation, or material support to a terrorism-related organization, or any other national security reasons;

(b) information regarding the number of foreign-born individuals in the United States who have been radicalized after entry into the United States and engaged in terrorism-related acts, or who have provided material support to terrorism-related organizations in countries that pose a threat to the United States; and

(c) information regarding the number and types of acts of gender-based violence against women or honor killings by foreign-born individuals in the United States.

Sec. 12. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department, agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

the WHITE HOUSE



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The White House

Office of the Press Secretary

For Immediate Release

March 06, 2017

Executive Order Protecting The Nation From Foreign Terrorist Entry Into The United States

EXECUTIVE ORDER

PROTECTING THE NATION FROM FOREIGN TERRORIST ENTRY INTO THE UNITED STATES

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Immigration and Nationality Act (INA), 8 U.S.C. 1101 et seq., and section 301 of title 3, United States Code, and to protect the Nation from terrorist activities by foreign nationals admitted to the United States, it is hereby ordered as follows:

Section 1. Policy and Purpose. (a) It is the policy of the United States to protect its citizens from terrorist attacks, including those committed by foreign nationals. The screening and vetting protocols and procedures associated with the visa-issuance process and the United States Refugee Admissions Program (USRAP) play a crucial role in detecting foreign nationals who may commit, aid, or support acts of terrorism and in preventing those individuals from entering the United States. It is therefore the policy of the United States to improve the screening and vetting protocols and procedures associated with the visa-issuance process and the USRAP.

(b) On January 27, 2017, to implement this policy, I issued Executive Order 13769 (Protecting the Nation from Foreign Terrorist Entry into the United States).

(i) Among other actions, Executive Order 13769 suspended for 90 days the entry of certain aliens from seven countries: Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen. These are countries that had already been identified as presenting heightened concerns about terrorism and travel to the United States. Specifically, the suspension applied to countries referred to in, or designated under, section 217(a)(12) of the INA, 8 U.S.C. 1187(a)(12), in which Congress restricted use of the Visa Waiver Program for nationals of, and aliens recently present in, (A) Iraq or Syria, (B) any country designated by the Secretary of State as a state sponsor of terrorism (currently Iran, Syria, and Sudan), and (C) any other country designated as a country of concern by the Secretary of Homeland Security, in consultation with the Secretary of State and the Director of National Intelligence. In 2016, the Secretary of Homeland Security designated Libya, Somalia, and Yemen as additional countries of concern for travel purposes, based on consideration of three statutory factors related to terrorism and national security: "(I) whether the presence of an alien in the country or area increases the likelihood that the alien is a credible threat to the national security of the United States; (II) whether a foreign terrorist organization has a significant presence in the country or area; and (III) whether the country or area is a safe haven for terrorists." 8 U.S.C. 1187(a)(12)(D)(ii). Additionally, Members of Congress have expressed concerns about screening and vetting procedures following recent terrorist attacks in this country and in Europe.

(ii) In ordering the temporary suspension of entry described in subsection (b)(i) of this section, I exercised my authority under Article II of the Constitution and under section 212(f) of the INA, which provides in relevant part: "Whenever the President finds that the entry of any aliens or of any class of aliens into the United States would

be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate." 8 U.S.C. 1182(f). Under these authorities, I determined that, for a brief period of 90 days, while existing screening and vetting procedures were under review, the entry into the United States of certain aliens from the seven identified countries -- each afflicted by terrorism in a manner that compromised the ability of the United States to rely on normal decision-making procedures about travel to the United States -- would be detrimental to the interests of the United States. Nonetheless, I permitted the Secretary of State and the Secretary of Homeland Security to grant case-by-case waivers when they determined that it was in the national interest to do so.

(iii) Executive Order 13769 also suspended the USRAP for 120 days. Terrorist groups have sought to infiltrate several nations through refugee programs. Accordingly, I temporarily suspended the USRAP pending a review of our procedures for screening and vetting refugees. Nonetheless, I permitted the Secretary of State and the Secretary of Homeland Security to jointly grant case-by-case waivers when they determined that it was in the national interest to do so.

(iv) Executive Order 13769 did not provide a basis for discriminating for or against members of any particular religion. While that order allowed for prioritization of refugee claims from members of persecuted religious minority groups, that priority applied to refugees from every nation, including those in which Islam is a minority religion, and it applied to minority sects within a religion. That order was not motivated by animus toward any religion, but was instead intended to protect the ability of religious minorities -- whoever they are and wherever they reside -- to avail themselves of the USRAP in light of their particular challenges and circumstances.

(c) The implementation of Executive Order 13769 has been delayed by litigation. Most significantly, enforcement of critical provisions of that order has been temporarily halted by court orders that apply nationwide and extend even to foreign nationals with no prior or substantial connection to the United States. On February 9, 2017, the United States Court of Appeals for the Ninth Circuit declined to stay or narrow one such order pending the outcome of further judicial proceedings, while noting that the "political branches are far better equipped to make appropriate distinctions" about who should be covered by a suspension of entry or of refugee admissions.

(d) Nationals from the countries previously identified under section 217(a)(12) of the INA warrant additional scrutiny in connection with our immigration policies because the conditions in these countries present heightened threats. Each of these countries is a state sponsor of terrorism, has been significantly compromised by terrorist organizations, or

contains active conflict zones. Any of these circumstances diminishes the foreign government's willingness or ability to share or validate important information about individuals seeking to travel to the United States. Moreover, the significant presence in each of these countries of terrorist organizations, their members, and others exposed to those organizations increases the chance that conditions will be exploited to enable terrorist operatives or sympathizers to travel to the United States. Finally, once foreign nationals from these countries are admitted to the United States, it is often difficult to remove them, because many of these countries typically delay issuing, or refuse to issue, travel documents.

(e) The following are brief descriptions, taken in part from the Department of State's Country Reports on Terrorism 2015 (June 2016), of some of the conditions in six of the previously designated countries that demonstrate why their nationals continue to present heightened risks to the security of the United States:

- (i) Iran. Iran has been designated as a state sponsor of terrorism since 1984 and continues to support various terrorist groups, including Hizballah, Hamas, and terrorist groups in Iraq. Iran has also been linked to support for al-Qa'ida and has permitted al-Qa'ida to transport funds and fighters through Iran to Syria and South Asia. Iran does not cooperate with the United States in counterterrorism efforts.
- (ii) Libya. Libya is an active combat zone, with hostilities between the internationally recognized government and its rivals. In many parts of the country, security and law enforcement functions are provided by armed militias rather than state institutions. Violent extremist groups, including the Islamic State of Iraq and Syria (ISIS), have exploited these conditions to expand their presence in the country. The Libyan government provides some cooperation with the United States' counterterrorism efforts, but it is unable to secure thousands of miles of its land and maritime borders, enabling the illicit flow of weapons, migrants, and foreign terrorist fighters. The United States Embassy in Libya suspended its operations in 2014.
- (iii) Somalia. Portions of Somalia have been terrorist safe havens. Al-Shabaab, an al-Qa'ida-affiliated terrorist group, has operated in the country for years and continues to plan and mount operations within Somalia and in neighboring countries. Somalia has porous borders, and most countries do not recognize Somali identity documents. The Somali government cooperates with the United States in some counterterrorism operations but does not have the capacity to sustain military pressure on or to investigate suspected terrorists.
- (iv) Sudan. Sudan has been designated as a state sponsor of terrorism since 1993 because of its support for international terrorist groups, including Hizballah and Hamas. Historically, Sudan provided safe havens for al-Qa'ida and other terrorist

groups to meet and train. Although Sudan's support to al-Qa'ida has ceased and it provides some cooperation with the United States' counterterrorism efforts, elements of core al-Qa'ida and ISIS-linked terrorist groups remain active in the country.

(v) Syria. Syria has been designated as a state sponsor of terrorism since 1979. The Syrian government is engaged in an ongoing military conflict against ISIS and others for control of portions of the country. At the same time, Syria continues to support other terrorist groups. It has allowed or encouraged extremists to pass through its territory to enter Iraq. ISIS continues to attract foreign fighters to Syria and to use its base in Syria to plot or encourage attacks around the globe, including in the United States. The United States Embassy in Syria suspended its operations in 2012. Syria does not cooperate with the United States' counterterrorism efforts.

(vi) Yemen. Yemen is the site of an ongoing conflict between the incumbent government and the Houthi-led opposition. Both ISIS and a second group, al-Qa'ida in the Arabian Peninsula (AQAP), have exploited this conflict to expand their presence in Yemen and to carry out hundreds of attacks. Weapons and other materials smuggled across Yemen's porous borders are used to finance AQAP and other terrorist activities. In 2015, the United States Embassy in Yemen suspended its operations, and embassy staff were relocated out of the country. Yemen has been supportive of, but has not been able to cooperate fully with, the United States in counterterrorism efforts.

(f) In light of the conditions in these six countries, until the assessment of current screening and vetting procedures required by section 2 of this order is completed, the risk of erroneously permitting entry of a national of one of these countries who intends to commit terrorist acts or otherwise harm the national security of the United States is unacceptably high. Accordingly, while that assessment is ongoing, I am imposing a temporary pause on the entry of nationals from Iran, Libya, Somalia, Sudan, Syria, and Yemen, subject to categorical exceptions and case-by-case waivers, as described in section 3 of this order.

(g) Iraq presents a special case. Portions of Iraq remain active combat zones. Since 2014, ISIS has had dominant influence over significant territory in northern and central Iraq. Although that influence has been significantly reduced due to the efforts and sacrifices of the Iraqi government and armed forces, working along with a United States-led coalition, the ongoing conflict has impacted the Iraqi government's capacity to secure its borders and to identify fraudulent travel documents. Nevertheless, the close cooperative relationship between the United States and the democratically elected Iraqi government, the strong United States diplomatic presence in Iraq, the significant presence of United States forces in Iraq, and Iraq's commitment to combat ISIS justify different treatment for Iraq. In particular, those Iraqi government forces that have fought to regain more than half of the territory previously dominated by ISIS have shown steadfast determination and earned enduring

respect as they battle an armed group that is the common enemy of Iraq and the United States. In addition, since Executive Order 13769 was issued, the Iraqi government has expressly undertaken steps to enhance travel documentation, information sharing, and the return of Iraqi nationals subject to final orders of removal. Decisions about issuance of visas or granting admission to Iraqi nationals should be subjected to additional scrutiny to determine if applicants have connections with ISIS or other terrorist organizations, or otherwise pose a risk to either national security or public safety.

(h) Recent history shows that some of those who have entered the United States through our immigration system have proved to be threats to our national security. Since 2001, hundreds of persons born abroad have been convicted of terrorism-related crimes in the United States. They have included not just persons who came here legally on visas but also individuals who first entered the country as refugees. For example, in January 2013, two Iraqi nationals admitted to the United States as refugees in 2009 were sentenced to 40 years and to life in prison, respectively, for multiple terrorism-related offenses. And in October 2014, a native of Somalia who had been brought to the United States as a child refugee and later became a naturalized United States citizen was sentenced to 30 years in prison for attempting to use a weapon of mass destruction as part of a plot to detonate a bomb at a crowded Christmas-tree-lighting ceremony in Portland, Oregon. The Attorney General has reported to me that more than 300 persons who entered the United States as refugees are currently the subjects of counterterrorism investigations by the Federal Bureau of Investigation.

(i) Given the foregoing, the entry into the United States of foreign nationals who may commit, aid, or support acts of terrorism remains a matter of grave concern. In light of the Ninth Circuit's observation that the political branches are better suited to determine the appropriate scope of any suspensions than are the courts, and in order to avoid spending additional time pursuing litigation, I am revoking Executive Order 13769 and replacing it with this order, which expressly excludes from the suspensions categories of aliens that have prompted judicial concerns and which clarifies or refines the approach to certain other issues or categories of affected aliens.

Sec. 2. Temporary Suspension of Entry for Nationals of Countries of Particular Concern During Review Period. (a) The Secretary of Homeland Security, in consultation with the Secretary of State and the Director of National Intelligence, shall conduct a worldwide review to identify whether, and if so what, additional information will be needed from each foreign country to adjudicate an application by a national of that country for a visa, admission, or other benefit under the INA (adjudications) in order to determine that the individual is not a security or public-safety threat. The Secretary of Homeland Security may conclude that certain information is needed from particular countries even if it is not needed from every country.

(b) The Secretary of Homeland Security, in consultation with the Secretary of State and the Director of National Intelligence, shall submit to the President a report on the results of the worldwide review described in subsection (a) of this section, including the Secretary of Homeland Security's determination of the information needed from each country for adjudications and a list of countries that do not provide adequate information, within 20 days of the effective date of this order. The Secretary of Homeland Security shall provide a copy of the report to the Secretary of State, the Attorney General, and the Director of National Intelligence.

(c) To temporarily reduce investigative burdens on relevant agencies during the review period described in subsection (a) of this section, to ensure the proper review and maximum utilization of available resources for the screening and vetting of foreign nationals, to ensure that adequate standards are established to prevent infiltration by foreign terrorists, and in light of the national security concerns referenced in section 1 of this order, I hereby proclaim, pursuant to sections 212(f) and 215(a) of the INA, 8 U.S.C. 1182(f) and 1185(a), that the unrestricted entry into the United States of nationals of Iran, Libya, Somalia, Sudan, Syria, and Yemen would be detrimental to the interests of the United States. I therefore direct that the entry into the United States of nationals of those six countries be suspended for 90 days from the effective date of this order, subject to the limitations, waivers, and exceptions set forth in sections 3 and 12 of this order.

(d) Upon submission of the report described in subsection (b) of this section regarding the information needed from each country for adjudications, the Secretary of State shall request that all foreign governments that do not supply such information regarding their nationals begin providing it within 50 days of notification.

(e) After the period described in subsection (d) of this section expires, the Secretary of Homeland Security, in consultation with the Secretary of State and the Attorney General, shall submit to the President a list of countries recommended for inclusion in a Presidential proclamation that would prohibit the entry of appropriate categories of foreign nationals of countries that have not provided the information requested until they do so or until the Secretary of Homeland Security certifies that the country has an adequate plan to do so, or has adequately shared information through other means. The Secretary of State, the Attorney General, or the Secretary of Homeland Security may also submit to the President the names of additional countries for which any of them recommends other lawful restrictions or limitations deemed necessary for the security or welfare of the United States.

(f) At any point after the submission of the list described in subsection (e) of this section, the Secretary of Homeland Security, in consultation with the Secretary of State and the Attorney General, may submit to the President the names of any additional countries recommended for similar treatment, as well as the names of any countries that they

recommend should be removed from the scope of a proclamation described in subsection (e) of this section.

(g) The Secretary of State and the Secretary of Homeland Security shall submit to the President a joint report on the progress in implementing this order within 60 days of the effective date of this order, a second report within 90 days of the effective date of this order, a third report within 120 days of the effective date of this order, and a fourth report within 150 days of the effective date of this order.

Sec. 3. Scope and Implementation of Suspension.

(a) Scope. Subject to the exceptions set forth in subsection (b) of this section and any waiver under subsection (c) of this section, the suspension of entry pursuant to section 2 of this order shall apply only to foreign nationals of the designated countries who:

- (i) are outside the United States on the effective date of this order;
- (ii) did not have a valid visa at 5:00 p.m., eastern standard time on January 27, 2017; and
- (iii) do not have a valid visa on the effective date of this order.

(b) Exceptions. The suspension of entry pursuant to section 2 of this order shall not apply to:

- (i) any lawful permanent resident of the United States;
- (ii) any foreign national who is admitted to or paroled into the United States on or after the effective date of this order;
- (iii) any foreign national who has a document other than a visa, valid on the effective date of this order or issued on any date thereafter, that permits him or her to travel to the United States and seek entry or admission, such as an advance parole document;
- (iv) any dual national of a country designated under section 2 of this order when the individual is traveling on a passport issued by a non-designated country;
- (v) any foreign national traveling on a diplomatic or diplomatic-type visa, North Atlantic Treaty Organization visa, C-2 visa for travel to the United Nations, or G-1, G-2, G-3, or G-4 visa; or
- (vi) any foreign national who has been granted asylum; any refugee who has already been admitted to the United States; or any individual who has been granted withholding of removal, advance parole, or protection under the Convention Against Torture.

(c) Waivers. Notwithstanding the suspension of entry pursuant to section 2 of this order, a consular officer, or, as appropriate, the Commissioner, U.S. Customs and Border Protection (CBP), or the Commissioner's delegate, may, in the consular officer's or the CBP official's discretion, decide on a case-by-case basis to authorize the issuance of a visa to, or to permit the entry of, a foreign national for whom entry is otherwise suspended if the foreign national has demonstrated to the officer's satisfaction that denying entry during the suspension period would cause undue hardship, and that his or her entry would not pose a threat to national security and would be in the national interest. Unless otherwise specified by the Secretary of Homeland Security, any waiver issued by a consular officer as part of the visa issuance process will be effective both for the issuance of a visa and any subsequent entry on that visa, but will leave all other requirements for admission or entry unchanged. Case-by-case waivers could be appropriate in circumstances such as the following:

- (i) the foreign national has previously been admitted to the United States for a continuous period of work, study, or other long-term activity, is outside the United States on the effective date of this order, seeks to reenter the United States to resume that activity, and the denial of reentry during the suspension period would impair that activity;
- (ii) the foreign national has previously established significant contacts with the United States but is outside the United States on the effective date of this order for work, study, or other lawful activity;
- (iii) the foreign national seeks to enter the United States for significant business or professional obligations and the denial of entry during the suspension period would impair those obligations;
- (iv) the foreign national seeks to enter the United States to visit or reside with a close family member (e.g., a spouse, child, or parent) who is a United States citizen, lawful permanent resident, or alien lawfully admitted on a valid nonimmigrant visa, and the denial of entry during the suspension period would cause undue hardship;
- (v) the foreign national is an infant, a young child or adoptee, an individual needing urgent medical care, or someone whose entry is otherwise justified by the special circumstances of the case;
- (vi) the foreign national has been employed by, or on behalf of, the United States Government (or is an eligible dependent of such an employee) and the employee can document that he or she has provided faithful and valuable service to the United States Government;
- (vii) the foreign national is traveling for purposes related to an international organization designated under the International Organizations Immunities Act (IOIA),

22 U.S.C. 288 et seq., traveling for purposes of conducting meetings or business with the United States Government, or traveling to conduct business on behalf of an international organization not designated under the IOIA;

(viii) the foreign national is a landed Canadian immigrant who applies for a visa at a location within Canada; or

(ix) the foreign national is traveling as a United States Government-sponsored exchange visitor.

Sec. 4. Additional Inquiries Related to Nationals of Iraq. An application by any Iraqi national for a visa, admission, or other immigration benefit should be subjected to thorough review, including, as appropriate, consultation with a designee of the Secretary of Defense and use of the additional information that has been obtained in the context of the close U.S.-Iraqi security partnership, since Executive Order 13769 was issued, concerning individuals suspected of ties to ISIS or other terrorist organizations and individuals coming from territories controlled or formerly controlled by ISIS. Such review shall include consideration of whether the applicant has connections with ISIS or other terrorist organizations or with territory that is or has been under the dominant influence of ISIS, as well as any other information bearing on whether the applicant may be a threat to commit acts of terrorism or otherwise threaten the national security or public safety of the United States.

Sec. 5. Implementing Uniform Screening and Vetting Standards for All Immigration Programs. (a) The Secretary of State, the Attorney General, the Secretary of Homeland Security, and the Director of National Intelligence shall implement a program, as part of the process for adjudications, to identify individuals who seek to enter the United States on a fraudulent basis, who support terrorism, violent extremism, acts of violence toward any group or class of people within the United States, or who present a risk of causing harm subsequent to their entry. This program shall include the development of a uniform baseline for screening and vetting standards and procedures, such as in-person interviews; a database of identity documents proffered by applicants to ensure that duplicate documents are not used by multiple applicants; amended application forms that include questions aimed at identifying fraudulent answers and malicious intent; a mechanism to ensure that applicants are who they claim to be; a mechanism to assess whether applicants may commit, aid, or support any kind of violent, criminal, or terrorist acts after entering the United States; and any other appropriate means for ensuring the proper collection of all information necessary for a rigorous evaluation of all grounds of inadmissibility or grounds for the denial of other immigration benefits.

(b) The Secretary of Homeland Security, in conjunction with the Secretary of State, the Attorney General, and the Director of National Intelligence, shall submit to the President an

initial report on the progress of the program described in subsection (a) of this section within 60 days of the effective date of this order, a second report within 100 days of the effective date of this order, and a third report within 200 days of the effective date of this order.

Sec. 6. Realignment of the U.S. Refugee Admissions Program for Fiscal Year 2017. (a) The Secretary of State shall suspend travel of refugees into the United States under the USRAP, and the Secretary of Homeland Security shall suspend decisions on applications for refugee status, for 120 days after the effective date of this order, subject to waivers pursuant to subsection (c) of this section. During the 120-day period, the Secretary of State, in conjunction with the Secretary of Homeland Security and in consultation with the Director of National Intelligence, shall review the USRAP application and adjudication processes to determine what additional procedures should be used to ensure that individuals seeking admission as refugees do not pose a threat to the security and welfare of the United States, and shall implement such additional procedures. The suspension described in this subsection shall not apply to refugee applicants who, before the effective date of this order, have been formally scheduled for transit by the Department of State. The Secretary of State shall resume travel of refugees into the United States under the USRAP 120 days after the effective date of this order, and the Secretary of Homeland Security shall resume making decisions on applications for refugee status only for stateless persons and nationals of countries for which the Secretary of State, the Secretary of Homeland Security, and the Director of National Intelligence have jointly determined that the additional procedures implemented pursuant to this subsection are adequate to ensure the security and welfare of the United States.

(b) Pursuant to section 212(f) of the INA, I hereby proclaim that the entry of more than 50,000 refugees in fiscal year 2017 would be detrimental to the interests of the United States, and thus suspend any entries in excess of that number until such time as I determine that additional entries would be in the national interest.

(c) Notwithstanding the temporary suspension imposed pursuant to subsection (a) of this section, the Secretary of State and the Secretary of Homeland Security may jointly determine to admit individuals to the United States as refugees on a case-by-case basis, in their discretion, but only so long as they determine that the entry of such individuals as refugees is in the national interest and does not pose a threat to the security or welfare of the United States, including in circumstances such as the following: the individual's entry would enable the United States to conform its conduct to a preexisting international agreement or arrangement, or the denial of entry would cause undue hardship.

(d) It is the policy of the executive branch that, to the extent permitted by law and as practicable, State and local jurisdictions be granted a role in the process of determining the

placement or settlement in their jurisdictions of aliens eligible to be admitted to the United States as refugees. To that end, the Secretary of State shall examine existing law to determine the extent to which, consistent with applicable law, State and local jurisdictions may have greater involvement in the process of determining the placement or resettlement of refugees in their jurisdictions, and shall devise a proposal to lawfully promote such involvement.

Sec. 7. Rescission of Exercise of Authority Relating to the Terrorism Grounds of Inadmissibility. The Secretary of State and the Secretary of Homeland Security shall, in consultation with the Attorney General, consider rescinding the exercises of authority permitted by section 212(d)(3)(B) of the INA, 8 U.S.C. 1182(d)(3)(B), relating to the terrorism grounds of inadmissibility, as well as any related implementing directives or guidance.

Sec. 8. Expedited Completion of the Biometric Entry-Exit Tracking System. (a) The Secretary of Homeland Security shall expedite the completion and implementation of a biometric entry exit tracking system for in-scope travelers to the United States, as recommended by the National Commission on Terrorist Attacks Upon the United States.

(b) The Secretary of Homeland Security shall submit to the President periodic reports on the progress of the directive set forth in subsection (a) of this section. The initial report shall be submitted within 100 days of the effective date of this order, a second report shall be submitted within 200 days of the effective date of this order, and a third report shall be submitted within 365 days of the effective date of this order. The Secretary of Homeland Security shall submit further reports every 180 days thereafter until the system is fully deployed and operational.

Sec. 9. Visa Interview Security. (a) The Secretary of State shall immediately suspend the Visa Interview Waiver Program and ensure compliance with section 222 of the INA, 8 U.S.C. 1202, which requires that all individuals seeking a nonimmigrant visa undergo an in-person interview, subject to specific statutory exceptions. This suspension shall not apply to any foreign national traveling on a diplomatic or diplomatic-type visa, North Atlantic Treaty Organization visa, C-2 visa for travel to the United Nations, or G-1, G-2, G-3, or G-4 visa; traveling for purposes related to an international organization designated under the IOIA; or traveling for purposes of conducting meetings or business with the United States Government.

(b) To the extent permitted by law and subject to the availability of appropriations, the Secretary of State shall immediately expand the Consular Fellows Program, including by substantially increasing the number of Fellows, lengthening or making permanent the period of service, and making language training at the Foreign Service Institute available to Fellows for assignment to posts outside of their area of core linguistic ability, to ensure that nonimmigrant visa-interview wait times are not unduly affected.

Sec. 10. Visa Validity Reciprocity. The Secretary of State shall review all nonimmigrant visa reciprocity agreements and arrangements to ensure that they are, with respect to each visa classification, truly reciprocal insofar as practicable with respect to validity period and fees, as required by sections 221(c) and 281 of the INA, 8 U.S.C. 1201(c) and 1351, and other treatment. If another country does not treat United States nationals seeking nonimmigrant visas in a truly reciprocal manner, the Secretary of State shall adjust the visa validity period, fee schedule, or other treatment to match the treatment of United States nationals by that foreign country, to the extent practicable.

Sec. 11. Transparency and Data Collection. (a) To be more transparent with the American people and to implement more effectively policies and practices that serve the national interest, the Secretary of Homeland Security, in consultation with the Attorney General, shall, consistent with applicable law and national security, collect and make publicly available the following information:

- (i) information regarding the number of foreign nationals in the United States who have been charged with terrorism-related offenses while in the United States; convicted of terrorism-related offenses while in the United States; or removed from the United States based on terrorism-related activity, affiliation with or provision of material support to a terrorism-related organization, or any other national-security-related reasons;
- (ii) information regarding the number of foreign nationals in the United States who have been radicalized after entry into the United States and who have engaged in terrorism-related acts, or who have provided material support to terrorism-related organizations in countries that pose a threat to the United States;
- (iii) information regarding the number and types of acts of gender-based violence against women, including so-called "honor killings," in the United States by foreign nationals; and
- (iv) any other information relevant to public safety and security as determined by the Secretary of Homeland Security or the Attorney General, including information on the immigration status of foreign nationals charged with major offenses.

(b) The Secretary of Homeland Security shall release the initial report under subsection (a) of this section within 180 days of the effective date of this order and shall include information for the period from September 11, 2001, until the date of the initial report. Subsequent reports shall be issued every 180 days thereafter and reflect the period since the previous report.

Sec. 12. Enforcement. (a) The Secretary of State and the Secretary of Homeland Security shall consult with appropriate domestic and international partners, including countries and

organizations, to ensure efficient, effective, and appropriate implementation of the actions directed in this order.

(b) In implementing this order, the Secretary of State and the Secretary of Homeland Security shall comply with all applicable laws and regulations, including, as appropriate, those providing an opportunity for individuals to claim a fear of persecution or torture, such as the credible fear determination for aliens covered by section 235(b)(1)(A) of the INA, 8 U.S.C. 1225(b)(1)(A).

(c) No immigrant or nonimmigrant visa issued before the effective date of this order shall be revoked pursuant to this order.

(d) Any individual whose visa was marked revoked or marked canceled as a result of Executive Order 13769 shall be entitled to a travel document confirming that the individual is permitted to travel to the United States and seek entry. Any prior cancellation or revocation of a visa that was solely pursuant to Executive Order 13769 shall not be the basis of inadmissibility for any future determination about entry or admissibility.

(e) This order shall not apply to an individual who has been granted asylum, to a refugee who has already been admitted to the United States, or to an individual granted withholding of removal or protection under the Convention Against Torture. Nothing in this order shall be construed to limit the ability of an individual to seek asylum, withholding of removal, or protection under the Convention Against Torture, consistent with the laws of the United States.

Sec. 13. Revocation. Executive Order 13769 of January 27, 2017, is revoked as of the effective date of this order.

Sec. 14. Effective Date. This order is effective at 12:01 a.m., eastern daylight time on March 16, 2017.

Sec. 15. Severability. (a) If any provision of this order, or the application of any provision to any person or circumstance, is held to be invalid, the remainder of this order and the application of its other provisions to any other persons or circumstances shall not be affected thereby.

(b) If any provision of this order, or the application of any provision to any person or circumstance, is held to be invalid because of the lack of certain procedural requirements, the relevant executive branch officials shall implement those procedural requirements.

Sec. 16. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

- (i) the authority granted by law to an executive department or agency, or the head thereof; or
- (ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP

THE WHITE HOUSE,
March 6, 2017.



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FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

STATE OF WASHINGTON; STATE OF
MINNESOTA,

Plaintiffs-Appellees,

v.

DONALD J. TRUMP, President of the
United States; U.S. DEPARTMENT OF
HOMELAND SECURITY; REX W.
TILLERSON, Secretary of State; JOHN
F. KELLY, Secretary of the
Department of Homeland Security;
UNITED STATES OF AMERICA,
Defendants-Appellants.

No. 17-35105

D.C. No.
2:17-cv-00141

ORDER

Motion for Stay of an Order of the
United States District Court for the
Western District of Washington
James L. Robart, District Judge, Presiding

Argued and Submitted February 7, 2017

Filed February 9, 2017

Before: William C. Canby, Richard R. Clifton, and
Michelle T. Friedland, Circuit Judges

Per Curiam Order

COUNSEL

August E. Flentje (argued), Special Counsel to the Assistant Attorney General; Douglas N. Letter, Sharon Swingle, H. Thomas Byron, Lowell V. Sturgill Jr., and Catherine Dorsey, Attorneys, Appellate Staff; Chad A. Readler, Acting Assistant Attorney General; Noel J. Francisco, Acting Solicitor General; Civil Division, United States Department of Justice, Washington, D.C., for Defendants-Appellants.

Noah G. Purcell (argued), Solicitor General; Marsha Chien and Patricio A. Marquez, Assistant Attorneys General; Colleen M. Melody, Civil Rights Unit Chief; Anne E. Egeler, Deputy Solicitor General; Robert W. Ferguson, Attorney General; Attorney General's Office, Seattle, Washington; for Plaintiff-Appellee State of Washington.

Jacob Campion, Assistant Attorney General; Alan I. Gilbert, Solicitor General; Lori Swanson, Attorney General; Office of the Attorney General, St. Paul, Minnesota; for Plaintiff-Appellee State of Minnesota.

ORDER**PER CURIAM:**

At issue in this emergency proceeding is Executive Order 13769, "Protecting the Nation From Foreign Terrorist Entry Into the United States," which, among other changes to immigration policies and procedures, bans for 90 days the entry into the United States of individuals from seven countries. Two States challenged the Executive Order as unconstitutional and violative of federal law, and a federal district court preliminarily ruled in their favor and

temporarily enjoined enforcement of the Executive Order. The Government now moves for an emergency stay of the district court's temporary restraining order while its appeal of that order proceeds.

To rule on the Government's motion, we must consider several factors, including whether the Government has shown that it is likely to succeed on the merits of its appeal, the degree of hardship caused by a stay or its denial, and the public interest in granting or denying a stay. We assess those factors in light of the limited evidence put forward by both parties at this very preliminary stage and are mindful that our analysis of the hardships and public interest in this case involves particularly sensitive and weighty concerns on both sides. Nevertheless, we hold that the Government has not shown a likelihood of success on the merits of its appeal, nor has it shown that failure to enter a stay would cause irreparable injury, and we therefore deny its emergency motion for a stay.

I. Background

On January 27, 2017, the President issued Executive Order 13769, "Protecting the Nation From Foreign Terrorist Entry Into the United States" (the "Executive Order"). 82 Fed. Reg. 8,977. Citing the terrorist attacks of September 11, 2001, and stating that "numerous foreign-born individuals have been convicted or implicated in terrorism-related crimes" since then, the Executive Order declares that "the United States must ensure that those admitted to this country do not bear hostile attitudes toward it and its founding principles." *Id.* It asserts, "Deteriorating conditions in certain countries due to war, strife, disaster, and civil unrest increase the likelihood that terrorists will use any means possible to enter the United States. The United

States must be vigilant during the visa-issuance process to ensure that those approved for admission do not intend to harm Americans and that they have no ties to terrorism.” *Id.*

The Executive Order makes several changes to the policies and procedures by which non-citizens may enter the United States. Three are at issue here. First, section 3(c) of the Executive Order suspends for 90 days the entry of aliens from seven countries: Iraq, Iran, Libya, Somalia, Sudan, Syria, and Yemen. 82 Fed. Reg. 8,977-78 (citing the Immigration and Nationality Act (INA) § 217(a)(12), codified at 8 U.S.C. § 1187(a)(12)). Second, section 5(a) of the Executive Order suspends for 120 days the United States Refugee Admissions Program. 82 Fed. Reg. 8,979. Upon resumption of the refugee program, section 5(b) of the Executive Order directs the Secretary of State to prioritize refugee claims based on religious persecution where a refugee’s religion is the minority religion in the country of his or her nationality. *Id.* Third, section 5(c) of the Executive Order suspends indefinitely the entry of all Syrian refugees. *Id.* Sections 3(g) and 5(e) of the Executive Order allow the Secretaries of State and Homeland Security to make case-by-case exceptions to these provisions “when in the national interest.” 82 Fed. Reg. 8,978-80. Section 5(e) states that situations that would be in the national interest include “when the person is a religious minority in his country of nationality facing religious persecution.” 82 Fed. Reg. 8,979. The Executive Order requires the Secretaries of State and Homeland Security and the Director of National Intelligence to evaluate the United States’ visa, admission, and refugee programs during the periods in which entry is suspended. 82 Fed. Reg. 8,977-80.

The impact of the Executive Order was immediate and widespread. It was reported that thousands of visas were

immediately canceled, hundreds of travelers with such visas were prevented from boarding airplanes bound for the United States or denied entry on arrival, and some travelers were detained. Three days later, on January 30, 2017, the State of Washington filed suit in the United States District Court for the Western District of Washington, challenging sections 3(c), 5(a)-(c), and 5(e) of the Executive Order, naming as defendants the President, the Secretary of the Department of Homeland Security, the Secretary of State, and the United States (collectively, “the Government”). Washington alleged that the Executive Order unconstitutionally and illegally stranded its residents abroad, split their families, restricted their travel, and damaged the State’s economy and public universities in violation of the First and Fifth Amendments, the INA, the Foreign Affairs Reform and Restructuring Act, the Religious Freedom Restoration Act, and the Administrative Procedure Act. Washington also alleged that the Executive Order was not truly meant to protect against terror attacks by foreign nationals but rather was intended to enact a “Muslim ban” as the President had stated during his presidential campaign that he would do.

Washington asked the district court to declare that the challenged sections of the Executive Order are illegal and unconstitutional and to enjoin their enforcement nationwide. On the same day, Washington filed an emergency motion for a temporary restraining order (TRO) seeking to enjoin the enforcement of sections 3(c), 5(a)-(c), and 5(e) of the Executive Order. Two days later, Washington’s Complaint was amended to add the State of Minnesota as a plaintiff and to add a claim under the Tenth Amendment. Washington and Minnesota (collectively, “the States”) jointly filed an amended motion for a TRO. The Government opposed the

motion the next day, and the district court held a hearing the day after that.

That evening, the court entered a written order granting the TRO. *Washington v. Trump*, No. C17-0141-JLR, 2017 WL 462040 (W.D. Wash. Feb. 3, 2017). The district court preliminarily concluded that significant and ongoing harm was being inflicted on substantial numbers of people, to the detriment of the States, by means of an Executive Order that the States were likely to be able to prove was unlawful. *Id.* at *2. The district court enjoined and restrained the nationwide enforcement of sections 3(c) and 5(a)-(c) in their entirety. *Id.* It enjoined section 5(e) to the extent that section “purports to prioritize refugee claims of certain religious minorities,” and prohibited the government from “proceeding with any action that prioritizes the refugee claims of certain religious minorities.” The court also directed the parties to propose a briefing schedule for the States’ request for a preliminary injunction and denied the Government’s motion to stay the TRO pending an emergency appeal. *Id.* at *3.

The Government filed a notice of appeal the next day and sought an emergency stay in this court, including an immediate stay while its emergency stay motion was under consideration. We denied the request for an immediate stay and set deadlines for the filing of responsive and reply briefs on the emergency stay motion over the next two days.¹ *Washington v. Trump*, No. 17-35105, 2017 WL 469608 (9th Cir. Feb. 4, 2017). The motion was submitted after oral argument was conducted by telephone.

¹ We have also received many amicus curiae briefs in support of both the Government and the States.

II. Appellate Jurisdiction

The States argue that we lack jurisdiction over the Government's stay motion because the Government's appeal is premature. A TRO is not ordinarily appealable. *See Bennett v. Medtronic, Inc.*, 285 F.3d 801, 804 (9th Cir. 2002). We may nonetheless review an order styled as a TRO if it "possesses the qualities of a preliminary injunction." *Serv. Emps. Int'l Union v. Nat'l Union of Healthcare Workers*, 598 F.3d 1061, 1067 (9th Cir. 2010). This rule has ordinarily required the would-be appellant to show that the TRO was strongly challenged in adversarial proceedings before the district court and that it has or will remain in force for longer than the fourteen-day period identified in Federal Rule of Civil Procedure 65(b). *See, e.g., id.*

We are satisfied that in the extraordinary circumstances of this case, the district court's order possesses the qualities of an appealable preliminary injunction. The parties vigorously contested the legal basis for the TRO in written briefs and oral arguments before the district court. The district court's order has no expiration date, and no hearing has been scheduled. Although the district court has recently scheduled briefing on the States' motion for a preliminary injunction, it is apparent from the district court's scheduling order that the TRO will remain in effect for longer than fourteen days. In light of the unusual circumstances of this case, in which the Government has argued that emergency relief is necessary to support its efforts to prevent terrorism, we believe that this period is long enough that the TRO

should be considered to have the qualities of a reviewable preliminary injunction.²

III. Standing

The Government argues that the district court lacked subject matter jurisdiction because the States have no standing to sue. We have an independent obligation to ascertain our jurisdiction, *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 514 (2006), and we consider the Government’s argument de novo, *see, e.g., Hajro v. U.S. Citizenship & Immigration Servs.*, 811 F.3d 1086, 1098 (9th Cir. 2016). We conclude that the States have made a sufficient showing to support standing, at least at this preliminary stage of the proceedings.

Article III, section 2 of the Constitution allows federal courts to consider only “Cases” and “Controversies.” *Massachusetts v. EPA*, 549 U.S. 497, 516 (2007). “Those two words confine ‘the business of federal courts to questions presented in an adversary context and in a form historically viewed as capable of resolution through the judicial process.’” *Id.* (quoting *Flast v. Cohen*, 392 U.S. 83, 95 (1968)). “Standing is an essential and unchanging part of the case-or-controversy requirement” and is therefore a prerequisite to our jurisdiction. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). The “gist of the question of standing” is whether the plaintiff has a sufficiently “personal stake in the outcome of the controversy” to ensure that the parties will be truly adverse and their legal

² Our conclusion here does not preclude consideration of appellate jurisdiction at the merits stage of this appeal. *See Nat’l Indus., Inc. v. Republic Nat’l Life Ins. Co.*, 677 F.2d 1258, 1262 (9th Cir. 1982).

presentations sharpened. *Massachusetts*, 549 U.S. at 517 (quoting *Baker v. Carr*, 369 U.S. 186, 204 (1962)).

To establish Article III standing, a plaintiff must demonstrate “that it has suffered a concrete and particularized injury that is either actual or imminent, that the injury is fairly traceable to the defendant, and that it is likely that a favorable decision will redress that injury.” *Id.* (citing *Lujan*, 504 U.S. at 560-61).

Because standing is “an indispensable part of the plaintiff’s case,” it “must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, *i.e.*, with the manner and degree of evidence required at the successive stages of the litigation.” *Lujan*, 504 U.S. at 561. At this very preliminary stage of the litigation, the States may rely on the allegations in their Complaint and whatever other evidence they submitted in support of their TRO motion to meet their burden. *See id.* With these allegations and evidence, the States must make a “clear showing of each element of standing.” *Townley v. Miller*, 722 F.3d 1128, 1133 (9th Cir. 2013).³

The States argue that the Executive Order causes a concrete and particularized injury to their public universities, which the parties do not dispute are branches of the States under state law. *See, e.g., Hontz v. State*, 714 P.2d 1176, 1180 (Wash. 1986) (en banc); *Univ. of Minn. v. Raygor*, 620 N.W.2d 680, 683 (Minn. 2001).

³ Our decision in *Townley* concerned a motion for a preliminary injunction, but the legal standards applicable to TROs and preliminary injunctions are “substantially identical.” *Stuhlberg Int’l Sales Co., Inc. v. John D. Brush & Co., Inc.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001).

Specifically, the States allege that the teaching and research missions of their universities are harmed by the Executive Order's effect on their faculty and students who are nationals of the seven affected countries. These students and faculty cannot travel for research, academic collaboration, or for personal reasons, and their families abroad cannot visit. Some have been stranded outside the country, unable to return to the universities at all. The schools cannot consider attractive student candidates and cannot hire faculty from the seven affected countries, which they have done in the past.

According to declarations filed by the States, for example, two visiting scholars who had planned to spend time at Washington State University were not permitted to enter the United States; one was informed he would be unable to obtain a visa. Similarly, the University of Washington was in the process of sponsoring three prospective employees from countries covered by the Executive Order for visas; it had made plans for their arrival beginning in February 2017, but they have been unable to enter the United States. The University of Washington also sponsored two medicine and science interns who have been prevented by the Executive Order from coming to the University of Washington. The University of Washington has already incurred the costs of visa applications for those interns and will lose its investment if they are not admitted. Both schools have a mission of "global engagement" and rely on such visiting students, scholars, and faculty to advance their educational goals. Students and faculty at Minnesota's public universities were similarly restricted from traveling for academic and personal reasons.

Under the "third party standing" doctrine, these injuries to the state universities give the States standing to assert the

rights of the students, scholars, and faculty affected by the Executive Order. *See Singleton v. Wulff*, 428 U.S. 106, 114-16 (1976) (explaining that third-party standing is allowed when the third party's interests are "inextricably bound up with the activity the litigant wishes to pursue"; when the litigant is "fully, or very nearly, as effective a proponent of the right" as the third party; or when the third party is less able to assert her own rights). Vendors, for example, "have been uniformly permitted to resist efforts at restricting their operations by acting as advocates of the rights of third parties who seek access to their market or function." *Craig v. Boren*, 429 U.S. 190, 195 (1976). Likewise, doctors have been permitted to assert the rights of their patients. *See, e.g., Griswold v. Connecticut*, 381 U.S. 479 (1965). And advocacy organizations such as the NAACP have been permitted to assert the constitutional rights of their members. *See, e.g., NAACP v. Alabama*, 357 U.S. 449 (1958).

Most relevant for our purposes, schools have been permitted to assert the rights of their students. *See, e.g., Runyon v. McCrary*, 427 U.S. 160, 175 & n.13 (1976) ("It is clear that the schools have standing to assert these arguments [asserting free-association rights, privacy rights, and 'a parent's right to direct the education of his children'] on behalf of their patrons."); *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 536 (1925) (allowing a school to assert the "right of parents to choose schools where their children will receive appropriate mental and religious training [and] the right of the child to influence the parents' choice of a school"); *Parks Sch. of Bus., Inc. v. Symington*, 51 F.3d 1480, 1487-88 (9th Cir. 1995) (citing *Pierce* and rejecting the argument that the plaintiff school had no standing to assert claims of discrimination against its minority students); *see also Ohio Ass'n of Indep. Sch. v. Goff*, 92 F.3d 419, 422 (6th Cir. 1996) (citing similar authorities). As in those cases, the interests

of the States' universities here are aligned with their students. The students' educational success is "inextricably bound up" in the universities' capacity to teach them. *Singleton*, 428 U.S. at 115. And the universities' reputations depend on the success of their professors' research. Thus, as the operators of state universities, the States may assert not only their own rights to the extent affected by the Executive Order but may also assert the rights of their students and faculty members.⁴

We therefore conclude that the States have alleged harms to their proprietary interests traceable to the Executive Order. The necessary connection can be drawn in at most two logical steps: (1) the Executive Order prevents nationals of seven countries from entering Washington and Minnesota; (2) as a result, some of these people will not enter state universities, some will not join those universities as faculty, some will be prevented from performing research, and some will not be permitted to return if they leave. And we have no difficulty concluding that the States' injuries would be redressed if they could obtain the relief they ask for: a declaration that the Executive Order violates the Constitution and an injunction barring its enforcement. The Government does not argue otherwise.

⁴ The Government argues that the States may not bring Establishment Clause claims because they lack Establishment Clause rights. Even if we assume that States lack such rights, an issue we need not decide, that is irrelevant in this case because the States are asserting the rights of their students and professors. Male doctors do not have personal rights in abortion and yet any physician may assert those rights on behalf of his female patients. *See Singleton*, 428 U.S. at 118.

We therefore hold that the States have standing.⁵

IV. Reviewability of the Executive Order

The Government contends that the district court lacked authority to enjoin enforcement of the Executive Order because the President has “unreviewable authority to suspend the admission of any class of aliens.” The Government does not merely argue that courts owe substantial deference to the immigration and national security policy determinations of the political branches—an uncontroversial principle that is well-grounded in our jurisprudence. *See, e.g., Cardenas v. United States*, 826 F.3d 1164, 1169 (9th Cir. 2016) (recognizing that “the power to expel or exclude aliens [is] a fundamental sovereign attribute exercised by the Government’s political departments largely immune from judicial control” (quoting *Fiallo v. Bell*, 430 U.S. 787, 792 (1977))); *see also Holder v. Humanitarian Law Project*, 561 U.S. 1, 33-34 (2010) (explaining that courts should defer to the political branches with respect to national security and foreign relations). Instead, the Government has taken the position that the President’s decisions about immigration policy, particularly when motivated by national security concerns, are *unreviewable*, even if those actions potentially contravene constitutional rights and protections. The Government indeed asserts that it violates separation of powers for the

⁵ The States have asserted other proprietary interests and also presented an alternative standing theory based on their ability to advance the interests of their citizens as *parens patriae*. Because we conclude that the States’ proprietary interests as operators of their public universities are sufficient to support standing, we need not reach those arguments.

judiciary to entertain a constitutional challenge to executive actions such as this one.

There is no precedent to support this claimed unreviewability, which runs contrary to the fundamental structure of our constitutional democracy. *See Boumediene v. Bush*, 553 U.S. 723, 765 (2008) (rejecting the idea that, even by congressional statute, Congress and the Executive could eliminate federal court habeas jurisdiction over enemy combatants, because the “political branches” lack “the power to switch the Constitution on or off at will”). Within our system, it is the role of the judiciary to interpret the law, a duty that will sometimes require the “[r]esolution of litigation challenging the constitutional authority of one of the three branches.” *Zivotofsky ex rel. Zivotofsky v. Clinton*, 566 U.S. 189, 196 (2012) (quoting *INS v. Chadha*, 462 U.S. 919, 943 (1983)). We are called upon to perform that duty in this case.

Although our jurisprudence has long counseled deference to the political branches on matters of immigration and national security, neither the Supreme Court nor our court has ever held that courts lack the authority to review executive action in those arenas for compliance with the Constitution. To the contrary, the Supreme Court has repeatedly and explicitly rejected the notion that the political branches have unreviewable authority over immigration or are not subject to the Constitution when policymaking in that context. *See Zadvydas v. Davis*, 533 U.S. 678, 695 (2001) (emphasizing that the power of the political branches over immigration “is subject to important constitutional limitations”); *Chadha*, 462 U.S. at 940-41 (rejecting the argument that Congress has “unreviewable authority over the regulation of aliens,” and affirming that courts can review “whether Congress has chosen a constitutionally

permissible means of implementing that power”).⁶ Our court has likewise made clear that “[a]lthough alienage classifications are closely connected to matters of foreign policy and national security,” courts “can and do review foreign policy arguments that are offered to justify legislative or executive action when constitutional rights are at stake.” *American-Arab Anti-Discrimination Comm. v. Reno*, 70 F.3d 1045, 1056 (9th Cir. 1995).

Kleindienst v. Mandel, 408 U.S. 753 (1972), does not compel a different conclusion. The Government cites *Mandel* for the proposition that “‘when the Executive exercises’ immigration authority ‘on the basis of a facially legitimate and bona fide reason, the courts will [not] look behind the exercise of that discretion.’” The Government omits portions of the quoted language to imply that this standard governs judicial review of *all* executive exercises of immigration authority. In fact, the *Mandel* standard applies to lawsuits challenging an executive branch official’s decision to issue or deny an individual visa based on the

⁶ See also, e.g., *Galvan v. Press*, 347 U.S. 522, 530 (1954) (reaffirming the broad power of Congress over immigration, but observing that “[i]n the enforcement of these policies, the Executive Branch of the Government must respect the procedural safeguards of due process”); *Yamataya v. Fisher*, 189 U.S. 86, 100-01 (1903) (reaffirming, in the context of adjudicating a constitutional challenge to an immigration policy, that “this court has never held, nor must we now be understood as holding, that administrative officers, when executing the provisions of a statute involving the liberty of persons, may disregard the fundamental principles that inhere in ‘due process of law’ as understood at the time of the adoption of the Constitution”); *Chae Chan Ping v. United States*, 130 U.S. 581, 604 (1889) (“The powers to declare war, make treaties . . . and admit subjects of other nations to citizenship, are all sovereign powers, restricted in their exercise only by the constitution itself and considerations of public policy and justice which control, more or less, the conduct of all civilized nations.”).

application of a congressionally enumerated standard to the particular facts presented by that visa application. The present case, by contrast, is not about the application of a specifically enumerated congressional policy to the particular facts presented in an individual visa application. Rather, the States are challenging the President's *promulgation* of sweeping immigration policy. Such exercises of policymaking authority at the highest levels of the political branches are plainly not subject to the *Mandel* standard; as cases like *Zadvydas* and *Chadha* make clear, courts can and do review constitutional challenges to the substance and implementation of immigration policy. See *Zadvydas*, 533 U.S. at 695; *Chadha*, 462 U.S. at 940-41.

This is no less true when the challenged immigration action implicates national security concerns. See *Ex parte Quirin*, 317 U.S. 1, 19 (1942) (stating that courts have a duty, “in time of war as well as in time of peace, to preserve unimpaired the constitutional safeguards of civil liberty”); *Ex parte Milligan*, 71 U.S. 2, 120-21 (1866) (“The Constitution of the United States is a law for rulers and people, equally in war and in peace . . . under all circumstances.”). We are mindful that deference to the political branches is particularly appropriate with respect to national security and foreign affairs, given the relative institutional capacity, informational access, and expertise of the courts. See *Humanitarian Law Project*, 561 U.S. at 33-34.

Nonetheless, “courts are not powerless to review the political branches’ actions” with respect to matters of national security. *Alperin v. Vatican Bank*, 410 F.3d 532, 559 n.17 (9th Cir. 2005). To the contrary, while counseling deference to the national security determinations of the political branches, the Supreme Court has made clear that

the Government’s “authority and expertise in [such] matters do not automatically trump the Court’s own obligation to secure the protection that the Constitution grants to individuals,” even in times of war. *Humanitarian Law Project*, 561 U.S. at 34 (quoting *id.* at 61 (Breyer, J., dissenting)); see also *United States v. Robel*, 389 U.S. 258, 264 (1967) (“[N]ational defense’ cannot be deemed an end in itself, justifying any exercise of legislative power designed to promote such a goal. . . . It would indeed be ironic if, in the name of national defense, we would sanction the subversion of one of those liberties . . . which makes the defense of the Nation worthwhile.”); *Zemel v. Rusk*, 381 U.S. 1, 17 (1965) (“[S]imply because a statute deals with foreign relations [does not mean that] it can grant the Executive totally unrestricted freedom of choice.”).

Indeed, federal courts routinely review the constitutionality of—and even invalidate—actions taken by the executive to promote national security, and have done so even in times of conflict. See, e.g., *Boumediene*, 553 U.S. 723 (striking down a federal statute purporting to deprive federal courts of jurisdiction over habeas petitions filed by non-citizens being held as “enemy combatants” after being captured in Afghanistan or elsewhere and accused of authorizing, planning, committing, or aiding the terrorist attacks perpetrated on September 11, 2001); *Aptheker v. Sec’y of State*, 378 U.S. 500 (1964) (holding unconstitutional a statute denying passports to American members of the Communist Party despite national security concerns); *Ex parte Endo*, 323 U.S. 283 (1944) (holding unconstitutional the detention of a law-abiding and loyal American of Japanese ancestry during World War II and affirming federal court jurisdiction over habeas petitions by such individuals). As a plurality of the Supreme Court cautioned in *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004), “Whatever power the United

States Constitution envisions for the Executive in its exchanges with other nations or with enemy organizations in times of conflict, it most assuredly envisions a role for all three branches when individual liberties are at stake.” *Id.* at 536 (plurality opinion).

In short, although courts owe considerable deference to the President’s policy determinations with respect to immigration and national security, it is beyond question that the federal judiciary retains the authority to adjudicate constitutional challenges to executive action.

V. Legal Standard

The Government moves to stay the district court’s order pending this appeal. “A stay is not a matter of right, even if irreparable injury might otherwise result.” *Nken v. Holder*, 556 U.S. 418, 433 (2009) (quoting *Virginian Ry. Co. v. United States*, 272 U.S. 658, 672 (1926)). “It is instead ‘an exercise of judicial discretion,’ and ‘the propriety of its issue is dependent upon the circumstances of the particular case.’” *Id.* (quoting *Virginian*, 272 U.S. at 672-73) (alterations omitted). “The party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion.” *Id.* at 433-34.

Our decision is guided by four questions: “(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.” *Lair v. Bullock*, 697 F.3d 1200, 1203 (9th Cir. 2012) (quoting *Nken*, 556 U.S. at 434). “The first two factors . . . are the most critical,” *Nken*, 556 U.S. at 434, and the last two steps are reached “[o]nce an applicant satisfies the first two

factors,” *id.* at 435. We conclude that the Government has failed to clear each of the first two critical steps. We also conclude that the final two factors do not militate in favor of a stay. We emphasize, however, that our analysis is a preliminary one. We are tasked here with deciding only whether the Government has made a strong showing of its likely success in this appeal and whether the district court’s TRO should be stayed in light of the relative hardships and the public interest.

The Government has not shown that it is likely to succeed on appeal on its arguments about, at least, the States’ Due Process Clause claim, and we also note the serious nature of the allegations the States have raised with respect to their religious discrimination claims. We express no view as to any of the States’ other claims.

VI. Likelihood of Success—Due Process

The Fifth Amendment of the Constitution prohibits the Government from depriving individuals of their “life, liberty, or property, without due process of law.” U.S. Const. amend. V. The Government may not deprive a person of one of these protected interests without providing “notice and an opportunity to respond,” or, in other words, the opportunity to present reasons not to proceed with the deprivation and have them considered. *United States v. Raya-Vaca*, 771 F.3d 1195, 1204 (9th Cir. 2014); *accord Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985); *ASSE Int’l, Inc. v. Kerry*, 803 F.3d 1059, 1073 (9th Cir. 2015).

The Government has not shown that the Executive Order provides what due process requires, such as notice and a hearing prior to restricting an individual’s ability to travel. Indeed, the Government does not contend that the Executive

Order provides for such process. Rather, in addition to the arguments addressed in other parts of this opinion, the Government argues that most or all of the individuals affected by the Executive Order have no rights under the Due Process Clause.

In the district court, the States argued that the Executive Order violates the procedural due process rights of various aliens in at least three independent ways. First, section 3(c) denies re-entry to certain lawful permanent residents and non-immigrant visaholders without constitutionally sufficient notice and an opportunity to respond. Second, section 3(c) prohibits certain lawful permanent residents and non-immigrant visaholders from exercising their separate and independent constitutionally protected liberty interests in travelling abroad and thereafter re-entering the United States. Third, section 5 contravenes the procedures provided by federal statute for refugees seeking asylum and related relief in the United States. The district court held generally in the TRO that the States were likely to prevail on the merits of their due process claims, without discussing or offering analysis as to any specific alleged violation.

At this stage of the proceedings, it is the Government's burden to make "a strong showing that [it] is likely to" prevail against the States' procedural due process claims. *Lair v. Bullock*, 697 F.3d 1200, 1203 (9th Cir. 2012) (quoting *Nken v. Holder*, 556 U.S. 418, 426 (2009)). We are not persuaded that the Government has carried its burden for a stay pending appeal.

The procedural protections provided by the Fifth Amendment's Due Process Clause are not limited to citizens. Rather, they "appl[y] to all 'persons' within the United States, including aliens," regardless of "whether their

presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). These rights also apply to certain aliens attempting to reenter the United States after travelling abroad. *Landon v. Plasencia*, 459 U.S. 21, 33-34 (1982). The Government has provided no affirmative argument showing that the States’ procedural due process claims fail as to these categories of aliens. For example, the Government has failed to establish that lawful permanent residents have no due process rights when seeking to re-enter the United States. *See id.* (“[T]he returning resident alien is entitled as a matter of due process to a hearing on the charges underlying any attempt to exclude him.” (quoting *Rosenberg v. Fleuti*, 374 U.S. 449, 460 (1963))). Nor has the Government established that the Executive Order provides lawful permanent residents with constitutionally sufficient process to challenge their denial of re-entry. *See id.* at 35 (“[T]he courts must evaluate the particular circumstances and determine what procedures would satisfy the minimum requirements of due process on the re-entry of a permanent resident alien.”).

The Government has argued that, even if lawful permanent residents have due process rights, the States’ challenge to section 3(c) based on its application to lawful permanent residents is moot because several days after the Executive Order was issued, White House counsel Donald F. McGahn II issued “[a]uthoritative [g]uidance” stating that sections 3(c) and 3(e) of the Executive Order do not apply to lawful permanent residents. At this point, however, we cannot rely upon the Government’s contention that the Executive Order no longer applies to lawful permanent residents. The Government has offered no authority establishing that the White House counsel is empowered to issue an amended order superseding the Executive Order

signed by the President and now challenged by the States, and that proposition seems unlikely.

Nor has the Government established that the White House counsel's interpretation of the Executive Order is binding on all executive branch officials responsible for enforcing the Executive Order. The White House counsel is not the President, and he is not known to be in the chain of command for any of the Executive Departments. Moreover, in light of the Government's shifting interpretations of the Executive Order, we cannot say that the current interpretation by White House counsel, even if authoritative and binding, will persist past the immediate stage of these proceedings. On this record, therefore, we cannot conclude that the Government has shown that it is "*absolutely clear* that the allegedly wrongful behavior could not reasonably be expected to recur." *Friends of the Earth, Inc., v. Laidlaw Env'tl. Servs., Inc.*, 528 U.S. 167, 189 (2000) (emphasis added).

Even if the claims based on the due process rights of lawful permanent residents were no longer part of this case, the States would continue to have potential claims regarding possible due process rights of other persons who are in the United States, even if unlawfully, *see Zadvydas*, 533 U.S. 693; non-immigrant visaholders who have been in the United States but temporarily departed or wish to temporarily depart, *see Landon*, 459 U.S. 33-34; refugees, *see* 8 U.S.C. § 1231 note 8; and applicants who have a relationship with a U.S. resident or an institution that might have rights of its own to assert, *see Kerry v. Din*, 135 S. Ct. 2128, 2139 (2015) (Kennedy, J., concurring in judgment); *id.* at 2142 (Breyer, J., dissenting); *Kleindienst v. Mandel*, 408 U.S. 753, 762-65 (1972). Accordingly, the Government has not demonstrated that the States lack viable claims based

on the due process rights of persons who will suffer injuries to protected interests due to the Executive Order. Indeed, the existence of such persons is obvious.

The Government argues that, even if the States have shown that they will likely succeed on some of their procedural due process claims, the district court nevertheless erred by issuing an “overbroad” TRO. Specifically, the Government argues that the TRO is overbroad in two independent respects: (1) the TRO extends beyond lawful permanent residents, and covers aliens who cannot assert cognizable liberty interests in connection with travelling into and out of the United States, and (2) the TRO applies nationwide, and enjoins application of the Executive Order outside Washington and Minnesota. We decline to modify the scope of the TRO in either respect.

First, we decline to limit the scope of the TRO to lawful permanent residents and the additional category more recently suggested by the Government, in its reply memorandum, “previously admitted aliens who are temporarily abroad now or who wish to travel and return to the United States in the future.” That limitation on its face omits aliens who are in the United States unlawfully, and those individuals have due process rights as well. *Zadvydas*, 533 U.S. at 693. That would also omit claims by citizens who have an interest in specific non-citizens’ ability to travel to the United States. See *Din*, 135 S. Ct. at 2139 (Kennedy, J., concurring in judgment); *id.* at 2142 (Breyer, J., dissenting) (six Justices declining to adopt a rule that would categorically bar U.S. citizens from asserting cognizable liberty interests in the receipt of visas by alien spouses). There might be persons covered by the TRO who do not have viable due process claims, but the Government’s proposed revision leaves out at least some who do.

Second, we decline to limit the geographic scope of the TRO. The Fifth Circuit has held that such a fragmented immigration policy would run afoul of the constitutional and statutory requirement for uniform immigration law and policy. *Texas v. United States*, 809 F.3d 134, 187-88 (5th Cir. 2015), *aff'd by an equally divided Court*, 136 S. Ct. 2271 (2016). At this stage of the litigation, we do not need to and do not reach such a legal conclusion for ourselves, but we cannot say that the Government has established that a contrary view is likely to prevail. Moreover, even if limiting the geographic scope of the injunction would be desirable, the Government has not proposed a workable alternative form of the TRO that accounts for the nation's multiple ports of entry and interconnected transit system and that would protect the proprietary interests of the States at issue here while nevertheless applying only within the States' borders.

More generally, even if the TRO might be overbroad in some respects, it is not our role to try, in effect, to rewrite the Executive Order. *See United States v. Nat'l Treasury Emps. Union*, 513 U.S. 454, 479 (1995) (declining to rewrite a statute to eliminate constitutional defects); *cf. Aptheker v. Sec'y of State*, 378 U.S. 500, 516 (1964) (invalidating a restriction on freedom of travel despite the existence of constitutional applications). The political branches are far better equipped to make appropriate distinctions. For now, it is enough for us to conclude that the Government has failed to establish that it will likely succeed on its due process argument in this appeal.

VII. Likelihood of Success—Religious Discrimination

The First Amendment prohibits any “law respecting an establishment of religion.” U.S. Const. amend. I. A law that has a religious, not secular, purpose violates that clause,

Lemon v. Kurtzman, 403 U.S. 602, 612-13 (1971), as does one that “officially prefer[s] [one religious denomination] over another,” *Larson v. Valente*, 456 U.S. 228, 244 (1982). The Supreme Court has explained that this is because endorsement of a religion “sends the ancillary message to . . . nonadherents ‘that they are outsiders, not full members of the political community.’” *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 310 (2000) (quoting *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984) (O’Connor, J., concurring)). The Equal Protection Clause likewise prohibits the Government from impermissibly discriminating among persons based on religion. *De La Cruz v. Tormey*, 582 F.2d 45, 50 (9th Cir. 1978).

The States argue that the Executive Order violates the Establishment and Equal Protection Clauses because it was intended to disfavor Muslims. In support of this argument, the States have offered evidence of numerous statements by the President about his intent to implement a “Muslim ban” as well as evidence they claim suggests that the Executive Order was intended to be that ban, including sections 5(b) and 5(e) of the Order. It is well established that evidence of purpose beyond the face of the challenged law may be considered in evaluating Establishment and Equal Protection Clause claims. See, e.g., *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 534 (1993) (“The Free Exercise Clause, like the Establishment Clause, extends beyond facial discrimination. . . . Official action that targets religious conduct for distinctive treatment cannot be shielded by mere compliance with the requirement of facial neutrality.”); *Larson*, 456 U.S. at 254-55 (holding that a facially neutral statute violated the Establishment Clause in light of legislative history demonstrating an intent to apply regulations only to minority religions); *Village of Arlington Heights v. Metro. Housing Dev. Corp.*, 429 U.S. 252, 266-

68 (1977) (explaining that circumstantial evidence of intent, including the historical background of the decision and statements by decisionmakers, may be considered in evaluating whether a governmental action was motivated by a discriminatory purpose).

The States' claims raise serious allegations and present significant constitutional questions. In light of the sensitive interests involved, the pace of the current emergency proceedings, and our conclusion that the Government has not met its burden of showing likelihood of success on appeal on its arguments with respect to the due process claim, we reserve consideration of these claims until the merits of this appeal have been fully briefed.

VIII. The Balance of Hardships and the Public Interest

The Government has not shown that a stay is necessary to avoid irreparable injury. *Nken*, 556 U.S. at 434. Although we agree that “the Government’s interest in combating terrorism is an urgent objective of the highest order,” *Holder v. Humanitarian Law Project*, 561 U.S. 1, 28 (2010), the Government has done little more than reiterate that fact. Despite the district court’s and our own repeated invitations to explain the urgent need for the Executive Order to be placed immediately into effect, the Government submitted no evidence to rebut the States’ argument that the district court’s order merely returned the nation temporarily to the position it has occupied for many previous years.

The Government has pointed to no evidence that any alien from any of the countries named in the Order has

perpetrated a terrorist attack in the United States.⁷ Rather than present evidence to explain the need for the Executive Order, the Government has taken the position that we must not review its decision at all.⁸ We disagree, as explained above.

To the extent that the Government claims that it has suffered an institutional injury by erosion of the separation of powers, that injury is not “irreparable.” It may yet pursue and vindicate its interests in the full course of this litigation. *See, e.g., Texas v. United States*, 787 F.3d 733, 767-68 (5th Cir. 2015) (“[I]t is the resolution of the case on the merits, not whether the injunction is stayed pending appeal, that will affect those principles.”).

⁷ Although the Government points to the fact that Congress and the Executive identified the seven countries named in the Executive Order as countries of concern in 2015 and 2016, the Government has not offered any evidence or even an explanation of how the national security concerns that justified those designations, which triggered visa requirements, can be extrapolated to justify an urgent need for the Executive Order to be immediately reinstated.

⁸ In addition, the Government asserts that, “[u]nlike the President, courts do not have access to classified information about the threat posed by terrorist organizations operating in particular nations, the efforts of those organizations to infiltrate the United States, or gaps in the vetting process.” But the Government may provide a court with classified information. Courts regularly receive classified information under seal and maintain its confidentiality. Regulations and rules have long been in place for that. 28 C.F.R. § 17.17(c) (describing Department of Justice procedures to protect classified materials in civil cases); 28 C.F.R. § 17.46(c) (“Members of Congress, Justices of the United States Supreme Court, and Judges of the United States Courts of Appeal and District Courts do not require a determination of their eligibility for access to classified information”); W.D. Wash. Civ. L.R. 5(g) (providing procedures governing filings under seal).

By contrast, the States have offered ample evidence that if the Executive Order were reinstated even temporarily, it would substantially injure the States and multiple “other parties interested in the proceeding.” *Nken*, 556 U.S. at 434 (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)). When the Executive Order was in effect, the States contend that the travel prohibitions harmed the States’ university employees and students, separated families, and stranded the States’ residents abroad. These are substantial injuries and even irreparable harms. *See Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (“It is well established that the deprivation of constitutional rights ‘unquestionably constitutes irreparable injury.’” (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976))).

The Government suggests that the Executive Order’s discretionary waiver provisions are a sufficient safety valve for those who would suffer unnecessarily, but it has offered no explanation for how these provisions would function in practice: how would the “national interest” be determined, who would make that determination, and when? Moreover, as we have explained above, the Government has not otherwise explained how the Executive Order could realistically be administered only in parts such that the injuries listed above would be avoided.

Finally, in evaluating the need for a stay, we must consider the public interest generally. *See Nken*, 556 U.S. at 434. Aspects of the public interest favor both sides, as evidenced by the massive attention this case has garnered at even the most preliminary stages. On the one hand, the public has a powerful interest in national security and in the ability of an elected president to enact policies. And on the other, the public also has an interest in free flow of travel, in avoiding separation of families, and in freedom from

discrimination. We need not characterize the public interest more definitely than this; when considered alongside the hardships discussed above, these competing public interests do not justify a stay.

IX. Conclusion

For the foregoing reasons, the emergency motion for a stay pending appeal is **DENIED**.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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

Petitioners, :

DECISION AND ORDER

- against - :

17 Civ. 480 (AMD)

:
:
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.

----- X
ANN DONNELLY, District Judge.

On January 28, 2017, the petitioners filed an Emergency Motion for Stay of Removal on behalf of themselves and others similarly situated.

IT APPEARING to the Court from the Emergency Motion for Stay of Removal, the other submissions, the arguments of counsel, and the hearing held on the 28th of January, 2017,

1. The petitioners have a strong likelihood of success in establishing that the removal of the petitioner and others similarly situated violates their rights to Due Process and Equal Protection guaranteed by the United States Constitution;

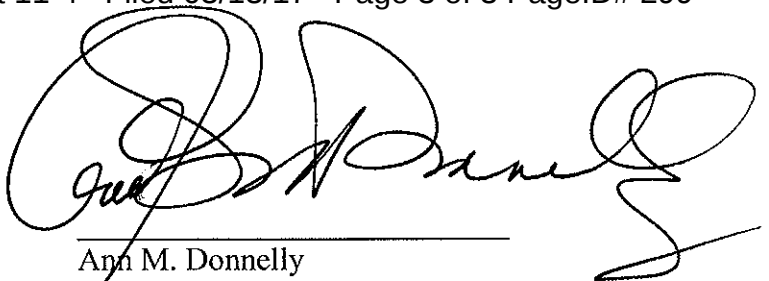
2. There is imminent danger that, absent the stay of removal, there will be substantial and irreparable injury to refugees, visa-holders, and other individuals from nations subject to the January 27, 2017 Executive Order;
3. The issuance of the stay of removal will not injure the other parties interested in the proceeding;
4. It is appropriate and just that, pending completion of a hearing before the Court on the merits of the Petition, that the Respondents be enjoined and restrained from the commission of further acts and misconduct in violation of the Constitution as described in the Emergency Motion for Stay of Removal.

WHEREFORE, IT IS HEREBY ORDERED that the respondents, their officers, agents, servants, employees, attorneys, and all members and persons acting in concert or participation with them, from the date of this Order, are

ENJOINED AND RESTRAINED 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.

IT IS FURTHER ORDERED that to assure compliance with the Court's order, the Court directs service of this Order upon the United States Marshal for the Eastern District of New York, and further directs the United States Marshals Service to take those actions deemed necessary to enforce the provisions and prohibitions set forth in this Order.

SO ORDERED.



Ann M. Donnelly
United States District Judge

Dated: Brooklyn, New York
January 28, 2017

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

Case No. 1:17-cv-116

Tareq Aqel Mohammed Aziz
and
Ammar Aqel Mohammed Aziz,
by their next friend,
Aqel Muhammad Aziz,
and
John Does 1-60,

Date: January 28, 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 WAYNE BIONDI,
Customs and Border Protection (CBP) Port Director
of the Area Port of Washington Dulles,

Respondents.

TEMPORARY RESTRAINING ORDER

Pursuant to Federal Rule of Civil Procedure 65, the Court orders that:

- a) respondents shall permit lawyers access to all legal permanent residents being detained at Dulles International Airport;
- b) respondents are forbidden from removing petitioners—lawful permanent residents at Dulles International Airport—for a period of 7 days from the issuance of this Order.

Dates: January 28, 2017



Leonie M. Brinkema
United States District Judge

1 Matt Adams
2 Glenda Aldana Madrid
3 NORTHWEST IMMIGRANT RIGHTS PROJECT
4 615 Second Ave., Ste. 400
5 Seattle, WA 98104
6 (206) 957-8611

7 **UNITED STATES DISTRICT COURT**
8 **WESTERN DISTRICT OF WASHINGTON**
9 **AT SEATTLE**

10 John DOE 1, John DOE 2)

11)
12)
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28)

v.

Case No.: C17-126

Donald TRUMP; President of the United States)
of America; John F. Kelly, Secretary of the)
Department of Homeland Security;)
DEPARTMENT OF HOMELAND SECURITY;)
KEVIN K. MCALEENAN, Acting)
Commissioner of Customs and Border)
Protection; CUSTOMS AND BORDER)
PROTECTION; and the UNITED STATES OF)
AMERICA,)

Agency No. A

**ORDER GRANTING EMERGENCY
MOTION FOR STAY OF REMOVAL**

Respondents.

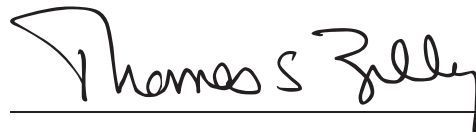
ORDER- 1 -
Petition for Writ of Habeas Corpus

Northwest Immigrant Rights Project
615 Second Ave., Ste. 400
Seattle, WA 98104
Tel: 206 957-8611

1
2 THIS MATTER HAVING COME TO THE COURT UPON PETITIONERS'
3 EMERGENCY ORDER FOR STAY OF REMOVAL, AND THE COURT HAVING
4 CONSIDERED THE EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS,
5 DOCKET NO. 1, AND THE MOTION FOR EMERGENCY STAY, DOCKET NO. 2,
6
7 HEREBY GRANTS THE FOLLOWING ORDER:

- 8
9 1. THE COURTS GRANTS A STAY OF REMOVAL.
10
11 2. DEFENDANTS ARE ENJOINED FROM REMOVING JOHN DOE I AND
12 JOHN DOE II FROM THE UNITED STATES PENDING FURTHER ORDER
13 OF THE COURT.
14
15 3. The Court SETS a hearing for 10:00 a.m. on Friday, February 3, 2017, to
16 determine whether to lift the stay.

17 DATED this 28th day of January, 2017.

18
19 

20 Thomas S. Zilly
21 United States District Judge
22

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.

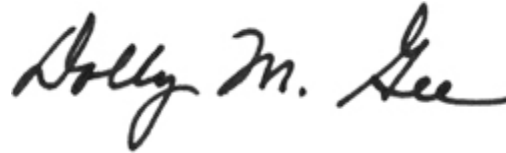
15
16 3. Respondents shall communicate the terms of this Court's order immediately to
17 officers in Dubai, and to authorities in the airport in Dubai holding Petitioner on
18 Respondents' orders.

19
20
21 4. Respondents shall file their opposition to Petitioners' *Ex Parte* Application by
22 February 3, 2017. Petitioner shall file her reply by February 7, 2017.

23
24 5. Respondents shall appear before the assigned judge on February 10, 2017 at 9:30
25 a.m. to show cause why the preliminary injunctive relief sought in the *Ex Parte*
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

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MAZDAK POURABDOLLAH
TOOTKABONI and
ARGHAVAN LOUHGHALAM,

Petitioners,

CIVIL ACTION NO. 17-cv-10154

v.

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

Respondents

TEMPORARY RESTRAINING ORDER

January 29, 2017

BURROUGHS, U.S.D.J.

On January 28, 2017 the Petitioners filed a Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief.

After consideration of the written submissions, arguments of counsel, and the hearing held on January 28-29, 2017, the Court hereby finds as follows:

1. The petitioners have met their burden of establishing a strong likelihood of success in establishing that the detention and/or removal of the petitioners and others similarly situated would violate their rights to Due Process and Equal Protection as guaranteed by the United States Constitution;

2. Absent a stay of removal, petitioners and others similarly situated, including lawful permanent residents, citizens, visa-holders, approved refugees, and other individuals from nations who are subject to the January 27, 2017 Executive Order, are likely to suffer irreparable harm.

3. The balance of harms favors the issuance of this temporary restraining order and its issuance is in the public interest.

NOW, THEREFORE, IT IS HEREBY ORDERED

I. that respondents, their officers, agents, servants, employees, attorneys, and all members and persons acting in concert or participation with them:

a) shall limit secondary screening to comply with the regulations and statutes in effect prior to the Executive Order, including 8 U.S.C. § 1101(a)(13)(C);

b) shall not, by any manner or means, detain or remove 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, lawful permanent residents, and other individuals from Iraq, Syria, Iran, Sudan, Libya, Somalia and Yemen who, absent the Executive Order, would be legally authorized to enter the United States;

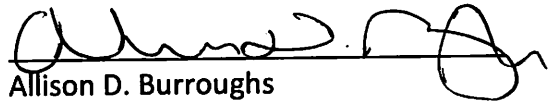
c) to assure compliance with this Order, the United States Marshal for the District of Massachusetts shall be served with this Order and is further directed to take those actions deemed necessary to enforce this Order; and

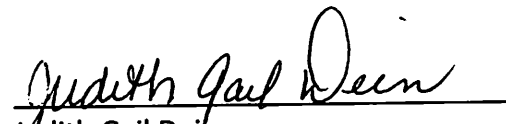
d) Customs and Border Protection shall notify airlines that have flights arriving at Logan Airport of this Order and the fact that individuals on these flights will not be detained or returned based solely on the basis of the Executive Order.

II. This Order shall remain in effect for a period of seven (7) days from the date of this Order.

The Court shall schedule a hearing prior to the expiration of this Order.

III. Petitioners shall file an Amended Complaint by January 30, 2017.


Allison D. Burroughs
United States District Judge


Judith Gail Dein
United States Magistrate Judge

January 29, 2017