

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

Tareq Aqel Mohammed Aziz
and
Ammar Aqel Mohammed Aziz,
by their next friend,
Aqel Muhammad Aziz,

Case No. 1:17cv116

and

JOHN DOES 1-60,

Petitioners,

Date: January 28, 2017

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.

**PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF**

INTRODUCTION

1. Petitioners Tareq Aqel Mohammed Aziz and Ammar Aqel Mohammed Aziz are two brothers of Yemeni nationality, who were granted Lawful Permanent Resident (“LPR”) status by virtue of their status as immediate relatives of their father, a US citizen. Petitioners landed at Washington-Dulles International Airport (“IAD”) on the morning of January 28, 2017, with plans to continue on to Michigan where their father was awaiting them. After conducting standard procedures of administrative processing and security checks, the federal government has deemed both Petitioners to be admissible to the United States as immigrants.

2. Despite these findings and Petitioner’s valid entry documents, U.S. Customs and Border Protection (“CBP”) blocked Petitioners from exiting IAD and detained Petitioners therein. No magistrate has determined that there is sufficient justification for the continued detention of either Petitioner. Instead, CBP is holding Petitioners at IAD – along with approximately 50-60 other LPRs, who are named herein as John Does 1-60 – solely pursuant to an executive order issued on January 27, 2017.

3. Because the executive order is unlawful as applied to Petitioners, their continued detention based solely on the executive order violates their Fifth Amendment procedural and substantive due process rights, violates the First Amendment Establishment Clause, is *ultra vires* to the immigration statutes, and violates the Administrative Procedure Act and Religious Freedom Restoration Act. Therefore, Petitioners respectfully apply to this Court for a writ of habeas corpus to remedy their unlawful detention by Respondents, and for declaratory and injunctive relief to prevent such harms from recurring.

4. Petitioners JOHN DOES 1-60 are approximately 50-60 lawful permanent residents of the United States, most of whom are returning from trips abroad, all of whom are nationals of one of the following seven countries: Lybia, Iraq, Iran, Yemen, Syria, Sudan, Somalia. All are presently being held against their will by CBP officers in the international arrivals area of Dulles Airport. All are being held in an area where other passengers disembarking from international flights can see and hear them; accordingly, there is no reason that their attorneys could not be permitted to meet with them.

5. There are currently at least twelve attorneys waiting outside the international arrivals area at Dulles Airport. They are not being allowed back to see John Does 1-60. Nor are they being allowed to see Petitioners, despite being retained by Petitioners' father to represent the Petitioners. The undersigned attorney Simon Sandoval-Moshenberg called a CBP supervisor, and accurately represented himself to be Petitioners' attorney, but was not given any information about Petitioners.

JURISDICTION AND VENUE

6. Jurisdiction is conferred on this court by 28 U.S.C. §§ 1331, 1361, 2241, 2243, and the Habeas Corpus Suspension Clause of the U.S. Constitution. This court has further remedial authority pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*

7. Venue properly lies within the Eastern District of Virginia, Alexandria Division because a substantial part of the events or omissions giving rise to this action occurred in the District. 28 U.S.C. § 1391(b).

8. No petition for habeas corpus has previously been filed in any court to review Petitioners' cases.

PARTIES

9. Petitioner Tareq Aqel Mohammed Aziz is a 21-year-old citizen and national of Yemen. He was granted lawful permanent resident (LPR) status by the US Embassy in Djibouti, by virtue of being an immediate relative of a US citizen.

10. Petitioner Ammar Aqel Mohammed Aziz, is a 19-year-old citizen and national of Yemen. He was granted lawful permanent resident (LPR) status by the US Embassy in Djibouti, by virtue of being an immediate relative of a US citizen.

11. Aqel Muhammad Aziz is a US citizen. He is a resident of Flint, Michigan.

12. Petitioners JOHN DOES 1-60 are approximately 60 lawful permanent residents of the United States, all nationals of Syria, Lybia, Iran, Iraq, Somalia, Yemen or Sudan, who landed at Dulles Airport in the last 24 hours and are not being allowed to pass through international arrivals. They are being held at international arrivals against their will.

13. The U.S. Department of Homeland Security ("DHS") is a cabinet department of the United States federal government with the primary mission of securing the United States.

14. U.S. Customs and Border Protection ("CBP") is an agency within DHS with the primary mission of detecting and preventing the unlawful entry of persons and goods into the United States.

15. Respondent John Kelly is the Secretary of DHS. Secretary Kelly has immediate custody of Petitioners and other members of the proposed class. He is sued in his official capacity.

16. Respondent Kevin K. McAleenan is the Acting Commissioner of CBP. Acting Commissioner McAleenan has immediate custody of Petitioners and other members of the proposed class. He is sued in his official capacity.

17. Respondent Wayne Biondi is the Customs and Border Protection (CBP) Port Director of the Area Port of Washington Dulles, which has immediate custody of Petitioners. He is sued in his official capacity.

18. Respondent Donald Trump is the President of the United States. He is sued in his official capacity.

STATEMENT OF FACTS

President Trump's January 27, 2017 Executive Order

19. On January 20, 2017, Donald Trump was inaugurated as the forty-fifth President of the United States.

20. One week later, on January 27, at about 4:30pm, President Trump signed an executive order entitled, "Protecting the Nation from Foreign Terrorist Entry into the United States," which is attached hereto as Exhibit A and is hereinafter referred to as the "EO."

21. Citing the threat of terrorism committed by foreign nationals, the EO directs a variety of changes to the manner and extent to which non-citizens may seek and obtain admission to the United States, particularly (although not exclusively) as refugees. Among other

things, the EO imposes a 120-day moratorium on the refugee resettlement program as a whole; proclaims that “that the entry of nationals of Syria as refugees is detrimental to the interests of the United States,” and therefore “suspend[s]” indefinitely their entry to the country; similarly proclaims that “the entry of more than 50,000 refugees in fiscal year 2017 would be detrimental to the interests” of the country.

22. Most relevant to the instant action is Section 3(c) of the EO, in which President Trump proclaims “that the immigrant and nonimmigrant entry into the United States of aliens from countries referred to in section 217(a)(12) of the INA, 8 U.S.C. 1187(a)(12), would be detrimental to the interests of the United States,” and that he is therefore “suspend[ing] entry into the United States, as immigrants and nonimmigrants, of such persons for 90 days from the date of this order,” with narrow exceptions not relevant here.

23. There are seven countries that fit the criteria in 8 U.S.C. § 1187(a)(12): Iraq, Iran, Libya, Somalia, Sudan, Syria, and Yemen. According to the terms of the EO, therefore, the “entry into the United States” of non-citizens from those countries is “suspended” from 90 days from the date of the EO.

Petitioners’ claim to lawful permanent resident status

24. The Aziz brothers were granted immigrant visas by the U.S. Embassy in Djibouti, by virtue of their status as immediate relatives of their father, who is a US citizen.

25. They departed Addis Ababa, Ethiopia on a flight to Washington Dulles International Airport (“IAD”) about two hours before President Trump signed the EO. The flight

made a stop in Dublin, Ireland, and then landed at IAD at around 8:00am on Saturday, January 28.

26. Upon information and belief, on arriving at IAD, the Aziz brothers were taken by unknown CBP agents at international arrivals, where they were held for the entire day and where they are still held.

27. In the afternoon of January 28, various attorneys retained by the Aziz brothers' father attempted to ascertain the whereabouts of Petitioners and to advocate for their release from CBP custody, but none of the attorneys were given any information or allowed to speak to Petitioners.

28. Petitioners are not being permitted to meet with their attorneys who are present at IAD and have made multiple attempts to meet with them.

29. Upon knowledge and belief, Petitioners remain in the custody of CBP, either at IAD or elsewhere in this District.

30. No grounds of inadmissibility under the Immigration and Nationality Act applies to either Petitioner, nor is there any reason under Title 8 of U.S. Code or Title 8 of the Code of Federal Regulations not to allow Petitioners to enter the United States as lawful permanent residents.

31. Congress has provided that lawful permanent residents in Petitioners' situation are entitled to enter the United States. Under 8 U.S.C. § 1101(a)(13)(C), a lawful permanent resident is regarded as seeking an admission into the United States for purposes of the immigration laws" only if he or she "has abandoned or relinquished that status," *id.* § 1101(a)(13)(C)(i), has been absent from the United States for more than 180 days continuously,

is in removal proceedings, has committed one of a class of enumerated offenses, or has attempted to enter without inspection.

32. None of the foregoing circumstances applies to Petitioners and therefore they are not deemed to be seeking admission and have a right to enter. *In re Collado-Munoz*, 21 I. & N. Dec. 1061, 1065-1066 (1998) (en banc) (requiring immigration judge to look to 8 U.S.C. § 1101(a)(13)(C) in determining whether lawful permanent resident was applicant for admission); *Vartelas v. Holder*, 566 U.S. 257, 132 S. Ct. 1479, 1484, 182 L. Ed. 2d 473 (2012) (citing *In re Collado-Munoz* and recognizing that the definition supersedes previous statute's definition of entry).

33. Respondents are also detaining Petitioners in violation of the Due Process Clause. In *Rosenberg v. Fleuti*, 374 U.S. 449, 462 (1963), the Supreme Court held that “an innocent, casual, and brief excursion by a resident alien outside this country's borders may not have been intended as a departure disruptive of his resident alien status and therefore may not subject him to the consequences of an entry into the country on his return.” (internal quotation marks and citations omitted); *see also Kwong Hai Chew v. Colding*, 344 U.S. 590, 601-02 (1953) (assimilating status, for constitutional purposes, of lawful permanent resident who had been abroad for five months to that of one continuously present). The Supreme Court reaffirmed this constitutional principle in *Landon v. Plasencia*, 459 U.S. 21, 31 (1982) (describing *Chew* as standing for the proposition that “a resident alien returning from a brief trip has a right to due process just as would a continuously present resident alien”).

34. As lawful permanent residents of the United States, Petitioners are attempting to return home.

35. John Does 1-60 are, on information and belief, approximately 50-60 lawful permanent residents of the United States situated similarly to the Aziz brothers. None is being allowed access to counsel, notwithstanding the fact that there are over a dozen barred attorneys on the scene and willing to represent them *pro bono*. All are being denied entry into the United States and all are being told that they will be put on an airplane imminently.

CAUSES OF ACTION

COUNT ONE

FIFTH AMENDMENT – PROCEDURAL DUE PROCESS DENIAL OF RIGHT TO ENTER UNITED STATES

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

37. Procedural due process requires that the government be constrained before it acts in a way that deprives individuals of liberty interests protected under the Due Process Clause of the Fifth Amendment. Additionally, due process requires that arriving immigrants be afforded those statutory rights granted by Congress and the principle that “[m]inimum due process rights attach to statutory rights.” *Dia v. Ashcroft*, 353 F.3d 228, 239 (3d Cir. 2003) (alteration in original) (quoting *Marincas v. Lewis*, 92 F.3d 195, 203 (3d Cir. 1996)).

38. The United States government is obligated by United States law to allow LPRs admission into the United States, unless those LPRs are for some reason inadmissible.

39. Petitioners and John Does 1-60 were unlawfully denied the right to enter the United States as LPRs, without due process, in violation of the due process rights guaranteed by the Fifth and Fourteenth Amendments.

40. In addition, they are being denied their right to counsel, by not being allowed to meet with attorneys who are present on the scene and willing to represent them *pro bono*.

COUNT TWO
FIRST AMENDMENT – ESTABLISHMENT CLAUSE

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

42. The EO exhibits hostility to a specific religious faith, Islam, and gives preference to other religious faiths, principally Christianity. The EO therefore violates the Establishment Clause of the First Amendment by not pursuing a course of neutrality with regard to different religious faiths.

COUNT THREE
THE IMMIGRATION AND NATIONALITY ACT

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

44. The Immigration and Nationality Act and implementing regulations entitle Petitioners to enter the United States as LPRs. Respondents' actions in seeking to return Petitioners to Yemen, taken pursuant to the EO, deprive Petitioners of their statutory and regulatory rights.

COUNT FOUR
FIFTH AMENDMENT – EQUAL PROTECTION

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

46. The EO discriminates against Petitioners on the basis of their country of origin and religion, without sufficient justification, and therefore violates the equal protection component of the Due Process Clause of the Fifth Amendment.

47. Additionally, the EO was substantially motivated by animus toward—and has a disparate effect on—Muslims, which also violates the equal protection component of the Due Process Clause of the Fifth Amendment. *Jana-Rock Const., Inc. v. N.Y. State Dep't of Econ. Dev.*, 438 F.3d 195, 204 (2d Cir. 2006); *Hunter v. Underwood*, 471 U.S. 222 (1985).

48. Respondents have demonstrated an intent to discriminate against Plaintiffs on the basis of religion through repeated public statements that make clear the EO was designed to prohibit the entry of Muslims to the United States. *See* Michael D. Shear & Helene Cooper, *Trump Bars Refugees and Citizens of 7 Muslim Countries*, N.Y. Times (Jan. 27, 2017), (“[President Trump] ordered that Christians and others from minority religions be granted priority over Muslims.”); Carol Morello, *Trump Signs Order Temporarily Halting Admission of Refugees, Promises Priority for Christians*, Wash. Post (Jan. 27, 2017).

49. Applying a general law in a fashion that discriminate on the basis of religion in this way violates Petitioner’s rights to equal protection the Fifth Amendment Due Process Clause. *Hayden v. County of Nassau*, 180 F.3d 42, 48 (2d Cir. 1999); *Yick Wo v. Hopkins*, 118 U.S. 356, 373-74 (1886). Petitioner satisfies the Supreme Court’s test to determine whether a facially neutral law – in the case, the EO and federal immigration law – has been applied in a discriminatory fashion. The Supreme Court requires an individual bringing suit to challenge the

application of a law bear the burden of demonstrating a “prima facie case of discriminatory purpose.” *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266-7 (1977). This test examines the impact of the official action, whether there has been a clear pattern unexplainable on other grounds besides discrimination, the historical background of the decision, the specific sequence of events leading up to the challenged decision, and departures from the normal procedural sequence. *Id.*

50. Here, President Donald Trump and senior staff have made clear that EO will be applied to primarily exclude individuals on the basis of their national origin and being Muslim. *See, e.g.*, sources cited, *supra* ¶ 48, *See, e.g.*, Donald J. Trump, *Donald J. Trump Statement On Preventing Muslim Immigration*, (Dec. 7, 2015), <https://www.donaldjtrump.com/press-releases/donald-j.-trump-statement-on-preventing-muslim-immigration> (“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.”); Abby Phillip and Abigail Hauslohner, *Trump on the Future of Proposed Muslim Ban, Registry: ‘You know my plans’*, *Wash. Post* (Dec. 22, 2016). Further, the President has promised that preferential treatment will be given to Christians, unequivocally demonstrating the special preferences and discriminatory impact that the EO has upon Petitioners. *See* sources cited, *supra* ¶ 48.

51. Thus, Respondents have applied the EO with forbidden animus and discriminatory intent in violation of the equal protection of the Fifth Amendment and violated Petitioners’ equal protection rights.

**COUNT FIVE
ADMINISTRATIVE PROCEDURE ACT**

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

53. Respondents detained and mistreated Petitioners solely pursuant to an executive order issued on January 27, 2017, which expressly discriminates against Petitioners on the basis of their country of origin and was substantially motivated by animus toward Muslims. *See supra* Count Four.

54. The EO exhibits hostility to a specific religious faith, Islam, and gives preference to other religious faiths, principally Christianity.

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

56. The INA and implementing regulations entitle Petitioners to enter the United States as LPRs.

57. Respondents' actions in detaining and mistreating Petitioners were arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, in violation of APA § 706(2)(A); contrary to constitutional right, power, privilege, or immunity, in violation of APA § 706(2)(B); in excess of statutory jurisdiction, authority, or limitations, or short of statutory right, in violation of APA § 706(2)(C); and without observance of procedure required by law, in violation of § 706(2)(D).

**COUNT SIX
RELIGIOUS FREEDOM RESTORATION ACT**

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

59. The EO will have the effect of imposing a special disability on the basis of religious views or religious status, by withdrawing an important immigration benefit principally from Muslims on account of their religion. In doing so, the EO places a substantial burden on Petitioners' exercise of religion in a way that is not the least restrictive means of furthering a compelling governmental interest.

PRAYER FOR RELIEF

WHEREFORE, Petitioners pray that this Court grant the following relief:

- (1) Issue a Writ of Habeas Corpus requiring Respondents to release Petitioners forthwith;
- (2) Issue an injunction ordering Respondents not to detain any Petitioners solely on the basis of the EO;
- (3) Enter a judgment declaring that Respondents' detention of Petitioners is and will be unauthorized by statute and contrary to law;
- (4) Award Petitioners reasonable costs and attorney's fees; and
- (5) Grant any other and further relief that this Court may deem fit and proper.

Respectfully submitted,

_____/s/_____/_____ Date: 1/28/2017

Simon Y. Sandoval-Moshenberg (VA 77110)

LEGAL AID JUSTICE CENTER

6066 Leesburg Pike #520

Falls Church, VA 22041

(703) 720-5605 / cell (434) 218-9376

simon@justice4all.org

Andrew J. Pincus (pro hac vice motion forthcoming)

Paul W. Hughes

MAYER BROWN LLP

1999 K Street, N.W.

Washington, D.C. 20006

(202) 263-2000

apincus@mayerbrown.com

phughes@mayerbrown.com

THE WHITE HOUSE
Office of the Press Secretary

For Immediate Release

January 27, 2017

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 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 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 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.

Numerous 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 receiving visitor, student, or employment visas, or who entered through the United States 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 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.

In order to protect Americans, the United States must ensure that those admitted to this country do not bear hostile attitudes toward it and its founding principles. The United States cannot, and should not, admit those who do not support the Constitution, or those who would place violent ideologies over American law. In addition, the United States should not admit those who engage in acts of bigotry or hatred (including "honor" killings, other forms of violence against women, or the persecution of those who practice religions different from their own) or those who would oppress Americans of any race, gender, or sexual orientation.

Sec. 2. Policy. It is the policy of the United States to protect its citizens from foreign nationals who intend to commit terrorist attacks in the United States; and to 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 to adjudicate any visa, admission, or other benefit under the INA (adjudications) in order 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) of this section, 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. The Secretary of Homeland Security shall provide a copy of the report to the Secretary of State 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 of foreign nationals, and to ensure that adequate standards are established to prevent infiltration by foreign terrorists or criminals, pursuant to section 212(f) of the INA, 8 U.S.C. 1182(f), I hereby proclaim that the immigrant and nonimmigrant entry into the United States of aliens from countries referred to in section 217(a)(12) of the INA, 8 U.S.C. 1187(a)(12), 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 90 days from the date of this order (excluding those foreign nationals traveling on diplomatic visas, North Atlantic Treaty Organization visas, C-2 visas for travel to the United Nations, and G-1, G-2, G-3, and G-4 visas).

(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, C-2 visas for travel to the United Nations, and G-1, G-2, G-3, and G-4 visas) from countries that do not provide the information requested pursuant to subsection (d) of this section 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, as part of 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 a uniform screening standard and procedure, 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 the applicant is who the applicant claims to be; a process to evaluate the applicant's likelihood of becoming a positively 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, the 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 and in consultation with the Director of National Intelligence, shall review the USRAP application and adjudication process to determine what additional procedures should 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 the date of this order, the Secretary of State shall resume USRAP admissions only for nationals of countries for which the Secretary of State, the Secretary of Homeland Security, and the Director of National Intelligence have jointly determined that such additional procedures are adequate 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 that would assist with such prioritization.

(c) Pursuant to section 212(f) of the INA, 8 U.S.C. 1182(f), I hereby proclaim that the entry of nationals of Syria as refugees is detrimental to the interests of the United States and thus suspend any such entry until such time as I have determined that sufficient changes have been made to the USRAP to ensure that admission of Syrian refugees is consistent with the national interest.

(d) Pursuant to section 212(f) of the INA, 8 U.S.C. 1182(f), 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 such entry until such time as I determine that additional admissions would be in the national interest.

(e) Notwithstanding the temporary suspension imposed pursuant to subsection (a) of this section, the Secretaries of State and 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 admission of such individuals as refugees is in the national interest -- including when the person is a religious minority in his country of nationality facing religious persecution, when admitting the person would enable the United

States to conform its conduct to a preexisting international agreement, or when the person is already in transit and denying admission would cause undue hardship -- and it would not pose a risk to the security or welfare of the United States.

(f) 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.

(g) 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 Homeland Security 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. 6. 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, 8 U.S.C. 1182, relating to the terrorism grounds of inadmissibility, as well as any related implementing memoranda.

Sec. 7. 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. 8. 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. 1222, 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. 9. 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 required by sections 221(c) and 281 of the INA, 8 U.S.C. 1201(c) and 1351, and other treatment. If a country does not treat United States 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 United States nationals by the foreign country, to the extent practicable.

Sec. 10. Transparency and Data Collection. (a) To be more transparent with the American people, and to more effectively implement 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 within 180 days, and every 180 days thereafter:

(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, or material support to a terrorism-related organization, or any other national security

reasons since the date of this order or the last reporting period, whichever is later;

(ii) information regarding the number of foreign nationals 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, since the date of this order or the last reporting period, whichever is later; and

(iii) information regarding the number and types of acts of gender-based violence against women, including honor killings, in the United States by foreign nationals, since the date of this order or the last reporting period, whichever is later; and

(iv) any other information relevant to public safety and security as determined by the Secretary of Homeland Security and the Attorney General, including information on the immigration status of foreign nationals charged with major offenses.

(b) The Secretary of State shall, within one year of the date of this order, provide a report on the estimated long-term costs of the USRAP at the Federal, State, and local levels.

Sec. 11. 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,
January 27, 2017.

#

1. My name is Shahin Fallah. I am a registered attorney in Virginia, and am barred in New York, bar #5374426. My office address is 8200 Greensboro Dr. Suite 900, McLean, Virginia.
2. I am an international and immigration attorney and am fluent in Farsi.
3. Because I am able to speak in Farsi, I was able to speak with two individuals who arrived at Dulles Airport from Iran this afternoon. Both individuals are legal permanent residents of the United States.
4. Both individuals recounted nearly identical experiences when attempting to enter the United States this afternoon. As an officer of the court, I swear that the following is accurate to the best of my knowledge. Neither individual was comfortable identifying themselves out of fear of retribution.
5. When these legal permanent residents passed through customs, they did not receive the customary stamp on their materials. Instead, after they collected their luggage, they were diverted to an open area and had their passport and green card confiscated.
6. They reported that approximately 50-60 other green card holders were similarly diverted and held in the same waiting area. They reported that the vast majority of these legal permanent residents appeared to be of middle eastern descent. They reported that the people in this holding area showed signs of distress, including open crying. They reported that they were not allowed to ask questions and were instructed that they were not allowed to speak on their telephones.
7. They reported that when interviewed, they were only asked general questions such as where they were from and where they were going.
8. One reported also being asked questions about how he had obtained the approximately \$5000 that he was lawfully bringing into the country.
9. After approximately two hours of waiting, these two individuals were released, however the rest are being held without legal counsel and without explanation as to what their legal recourse may be.

I swear the foregoing is true, as recounted to me on this 27th of January, 2017.