

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS**

MAZDAK POURABDOLLAH
TOOTKABONI and
ARGHAVAN LOUHGHALAM,

Petitioners,

Case No.17-10154

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 WILLIAM MOHALLEY, Boston Field Director, CBP,

Respondents.

MOTION BY PLAINTIFFS-INTERVENORS COMMONWEALTH OF MASSACHUSETTS AND UNIVERSITY OF MASSACHUSETTS TO INTERVENE

The Commonwealth of Massachusetts and the University of Massachusetts (collectively, the “Commonwealth”) respectfully move pursuant to Federal Rule of Civil Procedure 24 to intervene as plaintiffs in this action.

Intervention is warranted as of right because the motion is timely and the Commonwealth has strong interests in this litigation. The Executive Order at issue compels the Commonwealth to engage in unlawful, unconstitutional, and economically and socially destructive discrimination; it causes harm to the Commonwealth’s economy by hampering the movement of people and ideas into the state and by discouraging internationally-linked activity in Massachusetts; and it affects the ability of thousands of immigrants, refugees, and asylees to travel to and from Massachusetts. In addition, both the Commonwealth generally and the

University of Massachusetts have an interest in predictable and lawful immigration policies. The University of Massachusetts, in particular, employs faculty and enrolls students from the countries affected by the Executive Order. These interests will be impaired if the Commonwealth is not permitted to intervene. *See* Fed. R. Civ. P. 24(a)(2).

In the alternative, the Commonwealth should be granted leave to intervene because its claims challenging the constitutionality of the Executive Order share common questions of law and fact with the petitioners' complaint. *See* Fed. R. Civ. P. 24(b)(1)(B). A Proposed Complaint is attached. Pursuant to Local Rule 7.1(b)(1), the grounds for the Commonwealth's motion are set forth with specificity in the memorandum of law filed herewith.

LOCAL RULE 7.1(A)(2) CERTIFICATION

The undersigned counsel for the Commonwealth certify that they have conferred with counsel for petitioners and respondents by telephone on January 31, 2017, to resolve or narrow the issue addressed in this motion. Petitioners assent to the Commonwealth's motion.

WHEREFORE, the Commonwealth of Massachusetts and the University of Massachusetts respectfully request that the Court grant their motion to intervene in this matter.

Respectfully submitted,

COMMONWEALTH OF MASSACHUSETTS
UNIVERSITY OF MASSACHUSETTS

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Dated: January 31, 2017

CERTIFICATE OF SERVICE

I, Elizabeth N. Dewar, hereby certify that a true copy of the above document, filed through the CM/ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants on this date.

Dated: January 31, 2017

/s/ Elizabeth N. Dewar
Elizabeth N. Dewar

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS**

MAZDAK POURABDOLLAH TOOTKABONI and
ARGHAVAN LOUHGHALAM,

Plaintiff-Petitioners,

and

COMMONWEALTH OF MASSACHUSETTS, and
UNIVERSITY OF MASSACHUSETTS,

Case No.17-10154

Plaintiff-Intervenors,

v.

DONALD TRUMP, President of the United States;
U.S. DEPARTMENT OF HOMELAND SECURITY;
U.S. CUSTOMS AND BORDER PROTECTION;
JOHN KELLY, Secretary of U.S. Department of
Homeland Security; KEVIN K. MCALEENAN,
Acting Commissioner of U.S. Customs and Border
Protection; and WILLIAM MOHALLEY, Boston Field
Director, U.S. Customs and Border Protection,

Defendants.

[PROPOSED] COMPLAINT

Ours is a nation of immigrants. Our enduring strength derives in large part from the diversity of our people, our commitment to liberty, including religious liberty, and our abiding respect for our federal Constitution. That strength is being tested by recent federal action targeting friends, neighbors, relatives, and co-workers for no reason other than that they were born in countries associated with Islam.

On January 27, 2017, President Donald Trump issued an Executive Order that barred entry into the United States to individuals who are nationals from seven majority-Muslim

countries. The Executive Order, entitled “Protecting the Nation from Foreign Terrorist Entry into the United States,” represents a stark and troubling departure from this nation’s founding principles. The Executive Order will prevent or discourage travel and emigration to the Commonwealth from the affected countries and likely other countries as well. The Executive Order will thus hinder the free exchange of information, ideas, and talent between the affected countries and the Commonwealth, including at the Commonwealth’s many educational institutions; will harm the Commonwealth’s life sciences, technology, health care, and other industries, as well as innumerable small businesses throughout the Commonwealth; and will inflict economic harm on the Commonwealth itself. Moreover, and most fundamentally, the Executive Order effectively labels many Massachusetts residents as unworthy of certain rights and immigration benefits and as threats to our society simply on the basis of their religion or nation of origin, and thus unfairly and unreasonably casts a shadow of stigma and fear that will follow them to work, school, and elsewhere.

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331 and may enter declaratory relief under 28 U.S.C § 2201(a).

2. Venue properly lies within the District of Massachusetts because a substantial part of the events or omissions giving rise to this action occurred in the District. 28 U.S.C. §§ 1391(b)(2), (e)(1).

PARTIES

3. Petitioner Tootkaboni is an Iranian national and a lawful permanent resident of the United States. He is an Associate Professor at the University of Massachusetts at Dartmouth.

4. Petitioner Louhghalam is an Iranian national and a lawful permanent resident of the United States. She is an Associate Professor at the University of Massachusetts at Dartmouth.

5. Plaintiff-Intervenor Commonwealth of Massachusetts (the “Commonwealth”) represented by and through its Attorney General, is a sovereign state of the United States. The Commonwealth is home to more than one million immigrants, hosts tens of thousands of international students, and welcomes approximately two thousand refugees each year. The Commonwealth has a significant interest in treating its residents equally, as required by its constitution and laws, and in ensuring that its residents are not excluded from the benefits that flow from participation in the federal system, including the rights and privileges secured by the U.S. Constitution and federal law. The Commonwealth also has a sovereign interest in protecting the health, safety, and well-being of all its residents, including against the special harms caused by discrimination based on race, religion, and national origin.

6. Plaintiff-Intervenor University of Massachusetts (“UMass”) is a public university system with five campuses across the state, including a medical school and a law school, as well as UMassOnline, its nationally recognized online education consortium. UMass’s mission is to provide an affordable and accessible education of high quality and to conduct programs of research and public service that advance knowledge and improve the lives of the people of the Commonwealth, the nation, and the world.

7. Defendant Donald Trump is the President of the United States. He is sued in his official capacity.

8. Defendant 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. DHS implements and enforces the Immigration and Nationality Act (“INA”), 8 U.S.C. §§ 1101 *et seq.*

9. Defendant 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.

10. Defendant John Kelly is the Secretary of DHS. He is responsible for implementing and enforcing the INA and oversees CBP. He is sued in his official capacity.

11. Defendant Kevin K. McAleenan is the Acting Commissioner of CBP. He carries out CBP’s primary mission, including preventing unlawful entry of persons into the United States. He is sued in his official capacity.

12. Defendant William Mohalley is the Director of the Boston Field Office of CBP, which is responsible for taking custody of and interrogating any persons from Iraq, Iran, Libya, Somalia, Sudan, Syria, and Yemen arriving in the Commonwealth through Logan Airport. He is sued in his official capacity.

STATEMENT OF FACTS

The Executive Order

13. As a candidate and as President of the United States, Donald Trump has embraced and advanced extreme anti-Muslim views. By issuing the Executive Order, he is attempting to give those views the imprimatur and force of law.

14. On December 7, 2015, for example, candidate Trump issued a press release calling for “a total and complete shutdown of Muslims entering the United States.”

15. On June 13, 2016, candidate Trump reiterated his promise to ban all Muslims entering this country until “we as a nation are in a position to properly and perfectly screen those people coming into our country.”

16. On January 27, 2017, seven days after being sworn in as the 45th President of the United States, President Trump signed the Executive Order.

17. During the signing ceremony, President Trump stated that the purpose of the Executive Order was to “establish[] new vetting measures to keep radical Islamic terrorists out of the United States of America.” He continued, “We don’t want them here.”

18. Purportedly in response to the threat of terrorism committed by foreign nationals, the Executive Order directs a variety of changes to the manner and extent to which non-citizens may seek and obtain entry to the United States as well as renewal of their statuses and visas once present in the United States.

19. Among other things, the Executive Order imposes a 120-day moratorium on the United States refugee resettlement program as a whole; provides that refugee admissions, once resumed, should prioritize members of a “minority religion” in their countries of origin who are facing “religious-based persecution”; and proclaims that “the entry of nationals of Syria as refugees is detrimental to the interests of the United States,” thus singling out Syrian refugees for an indefinite “suspension” of their admission to the country.

20. Section 3(c) of the Executive Order asserts, without explanation, “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.” Accordingly, effective immediately, the Executive Order “suspend[ed] entry

into the United States, as immigrants and nonimmigrants, of such persons for 90 days,” with narrow exceptions not relevant here.

21. There are currently seven countries to which section 217(a)(12) of the INA refers: Iraq, Iran, Libya, Somalia, Sudan, Syria, and Yemen (the “affected countries”). Under the terms of the Executive Order, “entry into the United States” of non-citizens from those countries is “suspended” for at least 90 days from the date of the Executive Order.

22. Section 3(a) of the Executive Order also requires “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.” Such benefits include those otherwise available to individuals from the affected countries who are currently present in the United States, such as initial non-immigrant status and work authorization, as well as extensions thereof, and adjustments to permanent resident status.

23. The Commonwealth is informed and believes that U.S. Citizenship and Immigration Services has been instructed not to take any final action on any pending petition or application where the applicant is a citizen of an affected country.

24. Defendants have purported to clarify that lawful permanent resident status would be “a dispositive factor” in “case-by-case determinations” about the entry and admission of non-citizens. However, Defendants have neither rescinded nor amended the Executive Order, which applies by its terms to lawful permanent residents.

25. The sweeping Executive Order was motivated by animus against the Islamic faith and those who are Muslim. Its purported national security justification is a pretense. The Executive Order is not justified by any rational, legitimate, or bona fide governmental interest.

26. The Executive Order was designed to implement President's Trump campaign promise to prohibit the entry of Muslims to the United States. Former New York mayor Rudy Giuliani, who has been an advisor to President Trump both during the campaign and since, has revealed that he assembled a group to prepare the Executive Order after President Trump asked him to help him find a "legal[]" way to implement a "Muslim ban."

27. In favoring refugee admission of religious minorities, the Executive Order also implements President Trump's policy of favoring Christians over Muslims from Muslim-majority countries. In statements to the press in connection with his issuance of the Executive Order, President Trump stated his intent that the Executive Order help Christian refugees to enter the United States. During a January 27, 2017, interview with the Christian Broadcasting Network, President Trump further confirmed his intent to prioritize Christians in the Middle East for admission as refugees.

The Effects of the Executive Order

28. Plaintiff Commonwealth of Massachusetts is home to more than one million immigrants, comprising more than fifteen percent of the state's population. Among these, thousands were born in the affected countries. *See* U.S. Census Bureau, <http://www.census.gov/quickfacts/table/PST045216/25>.

29. In 2015 alone, the Commonwealth accepted hundreds of new refugees and asylees from the affected countries. *See* Massachusetts Department of Public Health, Refugee Arrivals

in Massachusetts by Country of Origin,

<http://www.mass.gov/eohhs/gov/departments/dph/programs/id/public-health-cdc-refugee-arrivals.html>. It is the policy of the Commonwealth “to promote the full participation of refugees and immigrants as self-sufficient individuals and families in the economic, social, and civic life of the commonwealth.” Mass. Gen. Laws ch. 6, § 205.

30. The Commonwealth is also home to hundreds, if not thousands, of small businesses, large corporations, non-profit organizations, public and private hospitals, and colleges and universities that will be affected by the Executive Order. These institutions employ and enroll individuals from the affected countries and rely on their expertise, skill, labor, and other contributions to our civic society and economy. These institutions also engage in a constant exchange of information, personnel, and ideas with international partners and collaborators. Such exchanges with institutions, organizations, businesses, and persons in affected countries will be hampered or precluded altogether by the Executive Order.

31. The Executive Order will thus affect these organizations’ operations and productivity, in turn adversely affecting the Commonwealth’s overall competitiveness, including vis-à-vis international competitors who will become more attractive locations for investment, conferences, meetings, and other engines of economic growth. In turn, these harms will reduce the Commonwealth’s tax and other revenues.

32. In higher education and the health care industry in particular, the Commonwealth depends upon the unique specialized knowledge and experience of foreign nationals, including from the affected countries, as doctors, scholars, teachers, and other contributors to these institutions.

33. The Commonwealth's students, faculty, researchers, clinical professionals, and other employees who are affected by the Executive Order cannot leave the United States without risking the inability to return to work or school. These individuals are thus unable to attend academic and professional conferences, seminars, and other gatherings outside of the United States. They are also forced to choose between risking the inability to return and forgoing travel to visit their families and friends; to care for sick relatives; to attend weddings, funerals, and other important family events; to pursue professional development and opportunities; and for other reasons.

Particular Effects on the University of Massachusetts—Employees

34. The Commonwealth supports an extensive system of twenty-nine public colleges and universities, including UMass.

35. Among its faculty, UMass employs individuals from the affected countries who hold non-immigrant visas or have lawful permanent residence in the United States. These include Petitioners Tootkaboni and Louhghalam, who are lawful permanent residents and associate professors at the University of Massachusetts at Dartmouth.

36. In addition to Petitioners Tootkaboni and Louhghalam, UMass employs approximately 160 faculty, researchers, and staff from the affected countries. These include employees who are lawful permanent residents like Petitioners Tootkaboni and Louhghalam, as well as employees who hold visas, including H-1B visas (for specialty, highly-skilled occupations) and J-1 visas (for exchange visitors in professor, researcher, and physician classifications).

37. Because the Executive Order appears to restrict immigration benefits available even to individuals from the affected countries already lawfully present in the United States, many of those UMass employees may soon be unable to extend their current work authorizations adjudicated in the United States by DHS through U.S. Citizenship and Immigration Services. In fact, of the approximately 160 UMass employees from the affected countries, approximately 120 have temporary statuses or visas that will have to be renewed or extended.

38. If those 120 employees cannot renew or extend their visas or statuses, UMass cannot lawfully employ them.

39. The resulting termination of employment, while undoubtedly most grievous for the employees, would also cause harm to UMass. It would force UMass to remove the employees from its payroll and force UMass to expend time and resources on replacing them. In the case of academic positions, replacing the employees would require following an extensive search process that could mean vacancies could remain open for months or entire semesters.

40. In order to manage its operations effectively, UMass requires certainty regarding which faculty members will be available to teach courses well in advance of the beginning of a semester. With the Executive Order in place, UMass will be unable to hire certain faculty, lecturers, or visiting scholars from the affected countries because they may be unable to fulfill their teaching obligations.

Particular Effects on the University of Massachusetts—Students

41. UMass has approximately 350 students who are nationals of the affected countries currently enrolled in its graduate and undergraduate programs, including lawful permanent

residents, refugees, and asylees, as well as students in the following non-immigrant visa classifications: F-1 visas (for international students); J-1 visas (for exchange visitors in student classifications); and TPS visas (temporary protected status for Syrians). Among these are students who have been unable to return to the United States since leaving the country for lawful reasons and are now uncertain of their ability ever to return.

42. UMass regularly receives applications from prospective students who are nationals of the affected countries. Indeed, UMass has already extended offers of admission for the 2017-2018 academic year to prospective undergraduate and graduate students who are nationals of these countries.

43. As a result of the Executive Order, UMass will be forced to decline future applicants from the affected countries, because UMass needs to be able to know in advance how many students will be enrolling in order to predict course enrollments, forecast tuition receipts, and allocate teaching staff and classrooms.

Particular Effects on the University of Massachusetts—Medical School

44. The Executive Order will also harm the University of Massachusetts Medical School, which is the Commonwealth's public academic health sciences center. The medical school employs at least 15 people who are nationals of the affected countries and who are in the United States on visas or as lawful permanent residents. These include physicians, research faculty, medical resident physicians in training, and post-doctoral researchers. Like all UMass employees, if these employees cannot renew or extend their visas or statuses, the medical school cannot lawfully employ them and may suffer decreased staffing as a result.

45. The medical school has also extended pending job offers to two Iranian nationals. Due to the Executive Order, their visa applications will be delayed and may not be processed at all.

46. The medical school is especially well-respected for educating primary care physicians, a particular need in the Commonwealth. Residency positions are often filled by physicians from other countries, including the affected countries. The medical school currently has six medical residents from the affected countries under employment contracts with the Commonwealth. If these residents are unable to renew or extend their visas or statuses, UMass will be unable to continue to employ them, and UMass will be left with unfilled positions in its years-long programs for training physicians, including primary care physicians. If the residents are unable to complete their medical residencies, they will not be able to become licensed physicians to serve the public.

Effects on the Commonwealth as a Whole

47. The Executive Order compels the Commonwealth to engage in unlawful, unconstitutional, and economically and socially destructive discrimination by requiring it to take national origin and religion into account in determining to whom to extend employment and educational opportunities. The Commonwealth and its agencies will effectively be commanded to engage in invidious discrimination, in violation of the Commonwealth's intrinsic sovereignty and longstanding constitutional commitment to due process and equal protection of the laws. The Commonwealth has a compelling interest in avoiding subjecting individuals to violations of their constitutional rights or otherwise unlawful discrimination, including in the

Commonwealth's employment practices and administration of its programs more generally. The Commonwealth also has an interest in avoiding liability for such constitutional violations and unlawful discrimination.

48. The Executive Order disrupts the operations of Commonwealth agencies and public institutions, including UMass, that educate, employ, and serve persons from the affected countries.

49. The Executive Order will inflict concrete financial injury on the Commonwealth as a whole. A leader in education, health care, life sciences, technology, and finance, Massachusetts depends on robust intellectual capital fostered through a strong educational system and lawful immigration policies. Immigrants are also leading entrepreneurs in businesses small and large across the Commonwealth.

50. By unlawfully, arbitrarily, and unconstitutionally singling out persons who are nationals of the affected countries and impeding or precluding them from traveling, immigrating, or returning to work or school in Massachusetts, regardless of the skills they have to bring or the ties they already have with our residents, the Executive Order will financially harm the Commonwealth, its economy, and its people.

51. More specifically, the Commonwealth until now has been an attractive destination for companies in the life sciences, technology, finance, health care, and other industries, as well as an attractive destination for students, scholars, tourists, and entrepreneurs. The Executive Order will adversely affect all of these activities, because it hampers the movement of people and ideas into Massachusetts. It restricts movement of persons from seven nations and precludes them from coming to Massachusetts, including for its world-leading technology and health care.

52. The Executive Order also discourages internationally-linked activity in Massachusetts more generally. Investors, scholars, tourists, and others all may be less likely to visit Massachusetts, plan a conference in Massachusetts, or invest in Massachusetts, because they will know that Muslims from the affected countries are excluded. Notably, the number of affected countries may be expanded in the future, creating further uncertainty and disruption.

53. The Executive Order will thus decrease the Commonwealth's current high international standing in all of these areas, reducing investment and industry here; decrease the number of major international conferences and meetings that are held in the Commonwealth as well as the associated spending by visitors; and reduce travel to the Commonwealth by students, scholars, and tourists, all of whom also spend money in the Commonwealth during their stays here. All of these effects will harm the Commonwealth's economy as a whole, including by decreasing tax and other revenues.

54. Finally, the Executive Order prevents the Commonwealth from promoting and enforcing a regime of non-discrimination under its state constitution and laws. For example, employers in Massachusetts, including the Commonwealth itself, are prohibited by state law from taking national origin and religion into account in determining to whom to extend employment and other opportunities. The Executive Order now mandates that discrimination, and thus conflicts with the Commonwealth's historic protection of civil rights and religious freedom.

CAUSES OF ACTION

**COUNT ONE
EQUAL PROTECTION**

55. The Commonwealth realleges and incorporates by reference each of the foregoing paragraphs of this Complaint.

56. The Due Process Clause of the Fifth Amendment prohibits the federal government from denying equal protection of the laws.

57. The Executive Order targets individuals for discriminatory treatment based on their country of origin and religion, without lawful justification.

58. The Executive Order was motivated by animus and a desire to harm a particular group, specifically, Muslims.

59. The discriminatory terms and application of the Executive Order are arbitrary and not justified by federal interests.

60. Through these actions, Defendants have violated the Fifth Amendment's guarantee of equal protection of the laws.

61. Defendants' violation causes ongoing harm to Commonwealth residents.

62. Defendants' violation of Commonwealth residents' due process rights causes harm to the Commonwealth itself.

**COUNT TWO
PROCEDURAL DUE PROCESS**

63. The Commonwealth realleges and incorporates by reference each of the foregoing paragraphs of this Complaint.

64. The Due Process Clause of the Fifth Amendment prohibits the federal government from depriving individuals of their liberty interests without due process of law.

65. Where Congress has granted statutory rights and authorized procedures applicable to non-citizens, due process rights attach to those statutory rights.

66. The Executive Order conflicts with the statutory rights and procedures directed by Congress. In issuing and implementing the Executive Order, Defendants have violated the procedural due process guarantees of the Fifth Amendment.

67. Defendants' violation is causing ongoing harm to Commonwealth residents.

68. Defendants' violation of Commonwealth residents' procedural due process rights is causing ongoing harm to the Commonwealth itself.

COUNT THREE ESTABLISHMENT CLAUSE

69. The Commonwealth realleges and incorporates by reference each of the foregoing paragraphs of this Complaint.

70. The Establishment Clause of the First Amendment prohibits the federal government from officially preferring one religion over another.

71. The Executive Order is intended to disfavor Islam and favor Christianity. In particular, Section 5(b) of the Order directs federal officials "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." In the affected countries, Christianity is a minority religion, and Islam is not a minority religion.

72. President Trump has made repeated public statements that the Executive Order was designed to prohibit the entry of Muslims to the United States. The President has also publicly promised that preferential treatment will be given to Christians under the Executive Order.

73. Through their actions described above, including in issuing and enforcing the Executive Order, Defendants have violated the Establishment Clause.

74. Defendants' violation causes ongoing harm to Commonwealth residents.

75. Defendants' violation causes ongoing harm to the Commonwealth itself.

COUNT FOUR
SUBSTANTIVE VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT

76. The Commonwealth realleges and incorporates by reference each of the paragraphs of this Complaint.

77. The Administrative Procedure Act requires this Court to hold unlawful agency actions that are unconstitutional, arbitrary and capricious, or otherwise contrary to law. 5 U.S.C. § 706(2).

78. In implementing the Executive Order, federal agencies have taken actions that are unconstitutional, as alleged herein.

79. In implementing the Executive Order, federal agencies have taken actions that are arbitrary and capricious, as alleged herein.

80. In implementing the Executive Order, federal agencies have taken actions that are otherwise contrary to laws passed by the U.S. Congress, including the INA.

81. The Executive Order is contrary to the INA's prohibition on discrimination in issuance of immigrant visas based on a person's race, nationality, place of birth, or place of residence. 8 U.S.C. § 1152(a)(1)(A).

82. The Executive Order, by its terms, also applies to lawful permanent residents, and purports to deny them entry. The Petitioners, both lawful permanent residents, were detained for hours at Logan Airport as a result of the Executive Order. The INA, however, provides that lawful permanent residents "shall not be regarded as seeking an admission into the United States for purposes of the immigration laws" unless certain exceptions apply. 8 U.S.C. § 1101(a)(13)(C).

83. Moreover, the INA and implementing regulations, including 8 U.S.C. § 1158 (asylum), and 8 U.S.C. § 1231(b)(3) (withholding of removal), and the United Nations Convention Against Torture ("CAT"), implemented in the Foreign Affairs Reform and Restructuring Act of 1998 ("FARRA"), Pub. L. No. 105-277, div. G, Title XXII, § 2242, 112 Stat. 2681, 2681-822 (1998) (codified at 8 U.S.C. § 1231 note), entitle certain individuals entering the country to apply for asylum, withholding of removal, and CAT relief. But the Executive Order does not permit individuals from the affected countries to apply for such relief.

84. Because the Executive Order and Defendants' actions in implementing and enforcing the Executive Order are unconstitutional, arbitrary, capricious, and otherwise not in accordance with law, the Executive Order and Defendants' actions violate the Administrative Procedure Act and must be held unlawful and set aside. 5 U.S.C. § 706(2).

85. Defendants' violations cause ongoing harm to Commonwealth residents.

86. Defendants' violations cause ongoing harm to the Commonwealth itself.

COUNT FIVE
PROCEDURAL VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT

87. The Commonwealth realleges and incorporates by reference each of the foregoing paragraphs of this Complaint.

88. The Administrative Procedure Act requires the Court to “hold unlawful and set aside” agency action found to be, among other things, “without observance of procedure required by law.” 5 U.S.C. § 706(2)(D).

89. The Administrative Procedure Act also requires that federal agencies conduct formal rulemaking before engaging in action that adversely affects substantive rights.

90. In implementing the Executive Order, federal agencies have changed the substantive criteria by which individuals from the affected countries may enter the United States. Federal agencies did not follow the procedures required by the Administrative Procedure Act before taking action adversely affecting these substantive rights.

91. Defendants’ violation causes ongoing harm to Commonwealth residents.

92. Defendants’ violation causes ongoing harm to the Commonwealth itself.

COUNT SIX
TENTH AMENDMENT

93. The Commonwealth realleges and incorporates by reference each of the foregoing paragraphs of this Complaint.

94. The Tenth Amendment to the United States Constitution expressly reserves to the states all powers except those limited powers granted to the federal government.

95. The Tenth Amendment ensures the division of powers between the states and federal government that is necessary for the dual sovereignty of the federal system.

96. The Tenth Amendment preserves for the states their sovereign authority, including their authority not to engage in unconstitutional discrimination even if dictated by federal statute, federal regulation, executive order, or other announcement of federal policy, and their authority to enforce their own state laws unless validly preempted by federal law.

97. As a result of the Executive Order, the Commonwealth, in determining to whom to extend employment and educational opportunities, must unlawfully discriminate against individuals from the affected countries, because those individuals will be subject to the Executive Order's unlawful and unconstitutional restrictions.

98. The Executive Order requires the Commonwealth and its agencies to take part in invidious discrimination. This compelled conduct is contrary to the Massachusetts Constitution, Amendment Article 106, which provides that “[e]quality under the law shall not be denied or abridged because of sex, race, color, creed or national origin.” This compelled conduct is also contrary to Massachusetts’ anti-discrimination laws, including Mass. Gen. Laws ch. 151B, § 4, and Mass. Gen. Laws ch. 93, § 102.

99. The Executive Order precludes the Commonwealth and its agencies from enforcing Massachusetts’ anti-discrimination laws against employers and others who act consistently with the unlawful Executive Order.

100. The Executive Order constitutes impermissible interference with the sovereignty of the Commonwealth of Massachusetts and exceeds any of the federal government’s enumerated powers.

**COUNT SEVEN
DECLARATORY JUDGMENT**

101. The Commonwealth realleges and incorporates by reference each of the foregoing paragraphs of this Complaint.

102. There is an actual controversy of sufficient immediacy and concreteness relating to the legal rights and duties of the Commonwealth and the proper legal relations between the Commonwealth and Defendants to warrant relief under 28 U.S.C. § 2201.

103. The harm to the Commonwealth as a direct result of the Executive Order is sufficiently real and imminent to warrant the issuance of a declaratory judgment clarifying the legal relations of the parties.

PRAYER FOR RELIEF

WHEREFORE, Proposed Plaintiff-Intervenors Commonwealth of Massachusetts and the University of Massachusetts pray that this Court grant the following relief:

- (1) Enter a judgment declaring that the Executive Order as a whole, and each of its specific provisions, violates federal law and is otherwise unconstitutional;
- (2) Enjoin Defendants from implementing or enforcing the Executive Order and from detaining any individual and/or barring or removing any individual from the United States pursuant to the Executive Order; and
- (3) Grant any other and further relief that this Court may deem fit and proper.

Respectfully submitted,

COMMONWEALTH OF MASSACHUSETTS
UNIVERSITY OF MASSACHUSETTS

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Dated: January 31, 2017