

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:17-cv-289-RBJ

ZAKARIA HAGIG,

on behalf of himself and others similarly situated,

*Plaintiff,*

v.

DONALD J. 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 MCALEENAN, Acting Commissioner of CBP; and  
LASHANDA JONES, Denver Director, CBP,

*Defendants.*

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**FIRST AMENDED CLASS ACTION COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

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Plaintiff Zakaria Hagig, through undersigned counsel, states the following First Amended Class Action Complaint for Declaratory and Injunctive Relief against Defendants:

**INTRODUCTION**

1. On January 27, 2017, Defendant Donald Trump signed an Executive Order entitled “Protecting the Nation from Foreign Terrorist Entry into the United States” (the “Executive Order”). A copy of the Executive Order is attached as Exhibit A.

2. Among other things, the Executive Order imposes a 120-day moratorium on the resettlement of refugees; 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; and drastically limits to 50,000 the number of refugees from all countries who may be admitted in fiscal year 2017 on the ground that admission of a greater number of refugees would be “detrimental to the interests of the United States.”

3. Also on January 27, 2017, the Deputy Assistant Secretary for Visa Services at the Bureau of Consular Affairs of the Department of State, relying on the authority of the Executive Order, summarily and provisionally revoked all valid nonimmigrant and immigrant visas of nationals of seven predominantly Muslim Countries (the “Designated Countries”), subject to exceptions not relevant here (the “Provisional Revocation Letter”). The Designated Countries are Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen. The Provisional Revocation letter threatens countless nationals of the Designated Countries who are currently in the United States or who reside in the United States but were traveling abroad when the letter was issued.

4. The Executive Order and Provisional Revocation Letter included international students who had entered the United States or were planning to enter the United States to pursue a course of educational study on student visas.

5. Among other constitutional and statutory violations, the Executive Order and the Provisional Revocation Letter violate the First Amendment because they are thinly-veiled attempts to discriminate against Muslims by barring them from entry to the United States.

6. The Immigration and Nationality Act (“INA”) ensures that the United States does not adopt certain discriminatory immigration policies. The INA prohibits preference or discrimination on the basis of “a person’s race, sex, nationality, place of birth or place of residence.” U.S.C. §1152(a)(1)(A). The Executive Order and the Provisional Revocation Letter

contradict this statute and instead would revoke visas and deny entry based on nothing but “nationality, place of birth or place of residence.”

7. Mr. Zakaria Hagig (“Mr. Hagig” or “Plaintiff”) and the other similarly situated Plaintiffs include nationals of the Designated Countries who currently are or recently have been, lawfully present in Colorado on student visas and who would be able to travel internationally, including to the United States, if it were not for the Executive Order. Mr. Hagig brings this action on behalf of himself and other persons similarly situated to challenge various provisions of the Executive Order and Provisional Revocation Letter that violate the First Amendment, the equal-protection and due process rights granted under the Fifth Amendment, the Immigration and Nationality Act, 8 U.S.C. § 1101 *et. seq.*, and the Administrative Procedure Act.

#### **JURISDICTION AND VENUE**

8. This Court has subject matter jurisdiction over this action under 5 U.S.C. § 706 and 28 U.S.C. §§1331, and has further remedial authority pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*

9. Venue properly lies within the District of Colorado under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to this action occurred in this District.

**PARTIES**

**A. Plaintiff Zakaria Hagig, Class Representative**

10. Plaintiff Zakaria Hagig is a 24-year-old student of Libyan national origin who is Muslim. Mr. Hagig resides in the United States and studies business at Colorado Community College in Denver, Colorado.

11. Mr. Hagig began his studies in 2010 at Tripoli University, but due to the conflict and violence in Libya, he was not able to complete his studies. Mr. Hagig applied for a student (F1) visa and left his immediate family behind in Libya in order to pursue his academic dreams at an accredited institution of higher education within the United States.

12. Mr. Hagig lawfully entered the United States on a student visa in October 2014, and he has remained here in the United States since that time. Mr. Hagig has been continuously enrolled as a full-time student. Mr. Hagig has a 3.6 GPA, and he has received both academic and leadership awards during his time in the United States. In November 2015, Mr. Hagig received an International Student Distinguished Leadership Award. In December 2015, he was inducted into the National Society of Leadership and Success. And in October 2016, Mr. Hagig was inducted into the Phi Theta Kappa Honor Society for his academic achievements.

13. Mr. Hagig has lawfully worked on-campus at a computer lab since June 2016. He helps students with IT assistance, supports faculty with IT needs, and monitors the computer lab. Mr. Hagig, as a student worker, pays taxes in the United States, including taxes which have been withheld from his paycheck. He is currently preparing to timely file his taxes owed for 2016.

14. Mr. Hagig expects to graduate from the Community College of Denver in May 2017, and has begun the application process and intends to transfer to a four-year institution of higher education and study finance after earning his associate degree in business.

15. Since the Executive Order and Provisional Revocation Letter, Mr. Hagig's ability to travel internationally has been eliminated. He has been unable to travel to see his family and fears that if he is not permitted to re-enter the United States because of the Executive Order and its implementation, he will be prevented from continuing his undergraduate studies. He is also fearful about the effects of the Provisional Revocation Letter on his immigration status.

16. Mr. Hagig currently plans to travel to Canada in March 2017 to visit his family. Mr. Hagig has a cousin, Nizaar Gherfal, who is a Canadian citizen living in Canada. Mr. Hagig's cousin extended to him a written invitation (pursuant to Canadian law) stating, in pertinent part: "This letter shall serve as an invitation and certification that Zakaria Hagig, my cousin, will be visiting me in Montreal, Canada, from March 17-26, 2017, over Zakaria's spring break from his studies. Zakaria is a full-time student (F-1 visa) at the Community College of Denver in Colorado, USA. Zakaria will be staying at my home for the duration of his stay. I am a Canadian citizen, and responsible for all of Zakaria's expenses during his visit to Canada." The letter of invitation, dated February 5, 2017, concluded with the following: "Please accept this letter as a formal invitation for Zakaria's upcoming visit to Canada, returning to the United States."

17. As a Muslim, Mr. Hagig travels to a mosque every Friday to worship and prays five times daily.

18. If Mr. Hagig were to leave the country, he would not be permitted to return to complete his studies. Mr. Hagig would be denied reentry on the basis of his national origin and

religion. Moreover, pursuant to the Executive Order, Mr. Hagig will not be allowed to pursue a path to citizenship in the United States based solely on his religious status as a Muslim and his Libyan national origin.

**B. Defendants**

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

20. Defendant U.S. Department of State is a cabinet department of the United States federal government that is responsible for issuing visas.

21. Defendant 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.

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

23. Defendant John Kelly is the Secretary of DHS. Secretary Kelly is responsible for DHS actions affecting Plaintiff and others similarly situated. He is sued in his official capacity.

24. Defendant Kevin McAleenan is the Acting Commissioner of CBP. Acting Commissioner McAleenan is responsible for CBP actions affecting Plaintiff and others similarly situated. He is sued in his official capacity.

25. Defendant LaShanda Jones is the Director of the Denver Office of CBP, which is responsible for CBP actions affecting Plaintiff and others similarly situated, including actions affecting those traveling into Denver International Airport. She is sued in her official capacity.

## STATEMENT OF FACTS

### **A. President Trump's January 27, 2017 Executive Order**

26. On January 20, 2017, Donald Trump was inaugurated as the forty-fifth President of the United States. During his campaign, he stated he would ban Muslims from entering the U.S.

27. On January 27, one week after his inauguration, President Trump signed the Executive Order. The Executive Order directs a series of changes to the manner in which non-citizens, including those already holding lawfully-issued visas, may seek and obtain entry to the United States.

28. In statements to the media, Mr. Trump made negative comments about Muslims and stated that his Executive Order would help Christian refugees enter the United States, in preference over Muslim refugees. Mr. Trump's staff have also articulated to the public that the Executive Order grew out of Mr. Trump's intention to ban Muslims from the United States.

29. Citing 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 – including green card holders, student visa holders, and refugees – may seek and obtain entry to the United States. The executive order singles out refugees and non-citizens from the Designated Countries for discrimination. All seven Designated Countries have a majority Muslim population.

30. Section 3(c) of the Executive Order 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), *i.e.*, Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen, “would be detrimental to the interests of the United States.” The Executive Order

“suspend[s] 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.

31. Sections 5(a)-(b) of the Executive Order suspend the U.S. Refugee Admissions Program in its entirety for 120 days and then, upon its resumption, direct the Secretary of State to prioritize refugees who claim religious-based persecution, “provided that the religion of the individual is a minority religion in the individual's country of nationality.”

32. While the Executive Order states that it suspends any entry into the United States of immigrants and nonimmigrants from the Designated Countries for 90 days, at the conclusion of the first 60 days, the Secretary of Homeland Security and Secretary of State will submit a list of countries for a permanent ban on entry.

33. The Executive Order prevents student visa-holders from traveling abroad for religious purposes, study, travel, or family unification. If a student from one of the Designated Countries studying in the United States were to leave the United States, that student would be barred from reentering the United States to continue his or her studies. If international students wish to continue their studies and retain their investment in their education, they cannot leave the United States. The Executive Order traps the international students from the Designated Countries in the United States for fear of losing their student visas and investment in their education.

34. While purporting to advance national security, the Executive Order is discriminatory and lacks a rational connection to national security, resulting in needless and irreparable harm to international students living and studying in this country.



35. Mr. Hagig and those similarly situated have suffered and will continue to suffer on ongoing concrete harm since the initial announcement of the Executive Order's condemnation of their religion and national origin and the endorsement of other religions, including Christians, over Muslims.

36. For the reasons set forth below, the Executive Order and Provisional Revocation Letter unlawfully deprive Plaintiff of his rights under the United States Constitution and the Immigration and Nationality Act.

### **CLASS ACTION ALLEGATIONS**

37. Mr. Hagig brings this action as a class action pursuant to Fed. R. Civ. P. 23(b)(1) and (b)(2), on his own behalf and on behalf of all other persons who are nationals of the Designated Countries who currently are, or recently have been, lawfully present in Colorado on student visas and who, but for the January 27, 2017, Executive Order, would be able to travel to the United States or leave and return to the United States.

38. The Plaintiff Class is so numerous that joinder is impracticable. According to the Annual Report of the Visa Office, in 2015, the last year for which data are available, the United States issued approximately 85,000 immigrant and non-immigrant visas to nationals from the seven Designated Countries.<sup>1</sup> Furthermore, according to the Association of Public and Land-Grant Universities, more than 17,000 students from the Designated Countries studied at United States universities during the 2015–2016 academic year.

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<sup>1</sup> For these recent statistics, visit: <https://travelstate.gov/content/dam/visas/Statistics/AnnualReports/FY2015AnnualReport/FY15AnnualReport-TableXVIII.pdf> (last accessed on February 1, 2017).

39. On information and belief, a large number of such persons reside, or have recently resided, in Colorado. As one example, the University of Colorado Denver has 58 international students from the Designated Countries, including 27 from Libya, 17 from Iran, and 11 from Iraq. Furthermore, on information and belief, the University of Colorado Boulder has approximately 75 international students from the Designated Countries, and Colorado State University has at least 100 international students from the Designated Countries.

40. The claims of the Plaintiff Class members share common issues of law, including but not limited to whether the Executive Order violates their associational, religious exercise, and due process rights under the First and Fifth Amendments, the Immigration and Nationality Act, and the Administrative Procedure Act.

41. The claims of the Plaintiff Class members share common issues of fact, including but not limited to whether the Executive Order is being or will be enforced so as to prevent them from entering the United States from abroad or from re-entering the United States should they choose to leave the United States briefly, even though they would otherwise be admitted.

42. The claims or defenses of the named Plaintiff are typical of the claims or defenses of members of the Plaintiff Class.

43. The named Plaintiff will fairly and adequately protect the interests of the Plaintiff class. The named Plaintiff has no interest that is now or may be potentially antagonistic to the interests of the Plaintiff class. The attorneys representing the named Plaintiff include experienced class action attorneys and are considered able practitioners in federal litigation. These attorneys should be appointed as class counsel.

44. Defendants have acted, have threatened to act, and will act on grounds generally applicable to the Plaintiff Class, thereby making final injunctive and declaratory relief appropriate to the class as a whole. The Plaintiff Class may therefore be properly certified under Fed. R. Civ. P. 23(b) (2).

45. Prosecution of separate actions by individual members of the Plaintiff Class would create the risk of inconsistent or varying adjudications and would establish incompatible standards of conduct for individual members of the Plaintiff Class. The Plaintiff Class may therefore be properly certified under Fed. R. Civ. P. 23(b)(1).

### **CLAIMS FOR RELIEF**

#### **COUNT ONE**

##### **FIRST AMENDMENT — ESTABLISHMENT CLAUSE**

46. Plaintiffs incorporate Paragraphs 1 through 45.

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

48. Sections 3 and 5 of the Executive Order, together with statements made by Defendants and agents of the Defendants concerning their intent and application, are intended to disfavor Islam and favor Christianity. The Executive Order constitutes an unlawful attempt to discriminate against Muslims and to establish a preference for one religion over another. References in the Executive Order and the Provisional Revocation Letter to the seven Designated Countries are transparently a pretext for the underlying aim of establishing this preference.

49. Mr. Hagig and the Plaintiff Class are Muslims and are directly harmed by the Executive Order and the Provisional Revocation Letter's intended and implied discrimination against Muslims in violation of the First Amendment.

50. The Plaintiff Class continues to be harmed by this preference in that Defendants seek to disadvantage them, as compared to other religions, in the consideration and continuation of their status as lawfully entering, or being present in the United States.

51. Defendants' violations cause ongoing harm to the Plaintiff Class.

## **COUNT TWO**

### **FIFTH AMENDMENT – EQUAL PROTECTION**

52. Plaintiffs incorporate Paragraphs 1 through 51.

53. Prior to the Executive Order and Provisional Revocation Letter, students from the Designated Countries were treated the same as other international students seeking entry or continued presence in the United States.

54. In adopting the Executive Order and issuing the Provisional Revocation Letter, Defendants intentionally and purposefully discriminated against the Plaintiff Class on the basis of their religion. Under the Executive Order and the Provisional Revocation Letter, Defendants have singled out students from the Designated Countries for disparate treatment based solely on their national origin and religion. Defendants singled out the Plaintiff Class for disparate treatment as compared to similarly situated individuals not from the Designated Countries.

55. The Executive Order and Provisional Revocation Letter were based upon considerations unrelated to the Plaintiff Class members' student visa applications. The Executive

Order and Provisional Revocation letter were based upon an intent to ban individuals from the Designated Countries on the basis of their national origin and religion.

56. The Due Process Clause of the Fifth Amendment prohibits the federal government from denying equal protection of the laws. Sections 3 and 5 of the Executive Order, together with statements made by Defendants concerning their intent and application, target individuals for discriminatory treatment based on their country of origin, and and/or religion, without sufficient justification.

57. Sections 3 and 5 of the Executive Order were substantially motivated by animus toward—and have a disparate effect on—Muslims, which also violates the equal protection component of the Due Process Clause of the Fifth Amendment. The discriminatory terms and application of the Executive Order are arbitrary and cannot be sufficiently justified by federal interests.

58. The Defendants denied the Plaintiffs equal protection of the law by both treating the Plaintiffs differently as compared to other similarly situated international students and by singling out the Plaintiffs for disparate treatment based on their national origin and religion.

59. Defendants' violations cause ongoing harm to the Plaintiff Class.

### **COUNT THREE**

#### **FIFTH AMENDMENT — PROCEDURAL DUE PROCESS**

60. Plaintiffs incorporate Paragraphs 1 through 59.

61. 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.

62. The United States government is obligated by international law and by U.S. law, including but not limited to the INA, 8 U.S.C. §1101(a)(13)(C), to fairly process for entry or re-entry into the United States those persons who are lawful permanent residents, who have established a significant connection with the United States and continuously resided in the United States, or who have complied with all of the legal and procedural requirements for lawful entry into the United States.

63. Defendants have not offered those subject to the Executive Order the ability to contest the decision to bar them from reentry after having traveled abroad. Instead, the Defendants acted in great haste in an attempt to temporarily and permanently bar entry for those students from the Designated Countries on the basis of their national origin and religion.

64. Defendants' actions, as described above, have denied the Plaintiff Class who are currently outside the United States the opportunity to re-enter the United States, and have denied Plaintiffs who currently lawfully reside in the United States the opportunity to travel outside the United States, for fear that they will be denied re-entry. Such actions, taken pursuant to the Executive Order, violate the procedural due process rights guaranteed by the Fifth Amendment.

65. Defendants' violations cause ongoing harm to the Plaintiff Class.

#### **COUNT FOUR**

##### **IMMIGRATION AND NATIONALITY ACT**

66. Plaintiffs incorporate Paragraphs 1 through 65.

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

68. Sections 3 and 5 of the Executive Order, together with statements made by Defendants and their agents concerning their intent and application, discriminate on the basis of race, nationality, place of birth, and/or place of residence in the issuance of visas, in violation of Section 1152(a)(1)(A) of the INA.

69. Defendants' violation of Section 1152(a)(1)(A) of the INA directly harmed the Plaintiffs because the Plaintiffs rely on their student visas to remain lawfully in the United States and to reenter the United States after traveling abroad.

70. The Executive Order and Provisional Revocation Letter's exclusion of students from the Designated Countries, including the Plaintiffs, violates Section 1152(a)(1)(A).

71. Defendants' violations cause ongoing harm to the Plaintiff Class.

## **COUNT FIVE**

### **ADMINISTRATIVE PROCEDURE ACT**

72. Plaintiffs incorporate Paragraphs 1 through 71.

73. The Administrative Procedure Act, 5 U. S. C. § 706 (2), places clear limits on the exercise of discretion to revoke a visa under 8 U.S.C. § 1201(i). Specifically, the Secretary of State must comply with statutory procedures for the revocation of a visa; the Secretary's action must not exceed his or her statutory authority; and the Secretary must respect the constitutional rights enjoyed by visa holders.

74. In implementing Sections 3 and 5 of the Executive Order, federal agencies have changed the substantive criteria by which individuals from affected countries may enter the United States. Federal agencies did not follow the procedures required by the APA before taking action impacting those substantive rights.

75. The Provisional Revocation Letter is facially improper because it was issued on a blanket basis, without considering information related to the eligibility of any individual alien. Under 22 C. F. R. § 41.122(b)(2) and 22 C. F. R. § 41.82(b), a visa can only be provisionally revoked on the basis of a particularized finding that a visa holder is ineligible.

76. The Provisional Revocation Letter is also facially defective for lack of proper notice. Under 22 C. F. R. § 41.122(c) and 22 C. F. R. § 41.82(c), notice of provisional revocation must be given to the visa holder where practicable, unless otherwise instructed by the Department of State. There is no evidence of an instruction not to give notice, or that notice was not practicable.

77. Defendants' actions as set forth above were arbitrary, capricious, discriminatory, 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, in violation of the Administrative Procedure Act, 5 U.S.C. §§ 706(2)(A)-(D).

78. Defendants' actions directly harmed Plaintiffs by virtue of their status as students from the Designated Countries.

79. Defendants' violations cause ongoing harm to the Plaintiff Class.

## **COUNT SIX**

### **DECLARATORY RELIEF**

80. Plaintiffs incorporate Paragraphs 1 through 79.

81. The above allegations and claims constitute an actual case and controversy between the Plaintiffs and the Defendants, and the Declaratory Judgment Act, 28 U.S.C. § 2201



*et seq.*, therefore authorizes the Court to enter declaratory relief against the Defendants on the above claims.

82. Plaintiffs are entitled to a Declaratory Judgment that Defendants, in adopting Section 3(c), 5 (a)–(c), and 5(e) of the Executive Order and in adopting the Provisional Revocation Letter, violated the Constitution and laws of the United States and violated the rights of the Plaintiffs as set forth above.

83. Plaintiffs are entitled to a speedy hearing under Federal Rule of Civil Procedure 57.

84. Defendants’ violations cause ongoing harm to the Plaintiff Class.

#### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs pray that this Court grant the following relief:

1. A determination that this action may properly be maintained as a class action pursuant to Fed. R. Civ. P. 23(b)(1) and (b)(2);
2. A declaration that Section 3(c), 5(a)-(c), and 5(e) of the Executive Order, together with the Provisional Revocation Letter, are unauthorized by and contrary to the Constitution and laws of the United States and in violation of the rights of Plaintiffs and Plaintiff Class members for the reasons set forth above;
3. A speedy hearing under Federal Rule of Civil Procedure 57 on the Plaintiffs’ declaratory relief claim;
4. A preliminary and permanent injunction barring any enforcement of Sections 3(c), 5(a)-(c) and 5(e) of the Executive Order and barring any enforcement of the Provisional

Revocation Letter against Plaintiffs and Plaintiff Class members in connection with their entry or re-entry into the United States;

6. Award Plaintiff and other members of the proposed class reasonable attorneys' fees and costs as allowed by applicable law; and

7. Such other and further relief that this Court may deem fit and proper.

Dated: February 10, 2017

By: /s/ Christopher H. Toll

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**ATTORNEYS FOR PLAINTIFFS**

## CERTIFICATE OF SERVICE

I hereby certify that on 2/10/2017, I electronically filed the foregoing document, First Amended Class Action Complaint For Declaratory and Injunctive Relief, with the clerk of the court for the United States District Court for the District of Colorado using the CM/ECF system, which will send notification of such filing to the following e-mail addresses:

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*s/Dorina O'Toole*

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