

The Honorable

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

Jane Doe and John Doe, individually, and on behalf of all others similarly situated; and the Episcopal Diocese of Olympia,

Plaintiffs,

v.

Donald Trump, President of The United States; U.S. Department of State; Rex Tillerson, Secretary of State; U.S. Department of Homeland Security; John Kelly, Secretary of Homeland Security; U.S. Customs and Border Protection; Kevin McAleenan, Acting Commissioner of U.S. Customs and Border Protection; and Michele James, Field Director of the Seattle Field Office of U.S. Customs and Border Protection,

Defendants.

No.

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

1 **I. INTRODUCTION**

2 1. One week after taking office as President of the United States, Defendant Donald
3 Trump carried out his call for “a total and complete shutdown of Muslims entering the United
4 States” that he had made throughout his campaign for the presidency. With the stroke of a pen,
5 he threw into chaotic uncertainty the lives of tens of thousands of individuals who were granted
6 valid student and work visas through an exhaustive and thorough screening by the United States
7 government.
8

9 2. Individual Plaintiffs, and the class they seek to represent, are people with non-
10 immigrant visas who were residents of the State of Washington when the Executive Order was
11 issued. They are now either trapped inside the United States—unable to return to visit their
12 families, or carry out work- or education-related travel—or stuck outside the United States,
13 unable to continue with their studies and jobs, and unable to return to their homes and
14 communities here.
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16 3. Plaintiff, the Episcopal Diocese of Olympia (the “Episcopal Diocese” or
17 “Diocese”)—a religious organization incorporated in the State of Washington to do charitable
18 works, including to support the resettlement of refugees in Washington—has had its refugee
19 resettlement activities completely upended as a result of the Executive Order. Nearly two dozen
20 refugee families whom the Episcopal Diocese was supporting in resettlement, including families
21 from Syria, Iraq, and Somalia, were already approved for travel to the United States when the
22 Executive Order issued and their trips were canceled, wasting precious resources and frustrating
23 the activities of the Diocese.
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25 4. On January 27, 2017, Defendant Trump issued Executive Order 13769
26 “Protecting the Nation From Foreign Terrorist Entry Into the United Sates” (the “Executive

1 Order”), completely prohibiting for at least 90 days the entry or re-entry of all persons who are
2 nationals of seven predominantly Muslim countries—Iran, Iraq, Libya, Somalia, Sudan, Syria
3 and Yemen (the “Designated Countries”)—regardless of whether such persons hold valid visas
4 and regardless of whether their visas are immigration or non-immigration related.

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6 5. As one of Defendant Trump’s senior advisors confirmed the next day, the
7 Executive Order is an attempt by Defendant Trump to institute his repeatedly and emphatically
8 promised “Muslim ban.”

9 6. Also on January 27, 2017, the Deputy Assistant Secretary for Visa Services at the
10 Bureau of Consular Affairs of the Department of State, relying on the authority of the Executive
11 Order, summarily and provisionally revoked all valid nonimmigrant and immigrant visas of
12 nationals of the seven Muslim-majority countries, subject to exceptions not relevant here. This
13 revocation (“the Provisional Revocation Letter”) threatens countless nationals of the Designated
14 Countries who are currently in the United States or who reside in the United States but were
15 traveling abroad when the letter was issued.
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17 7. Although other actions seeking class certification have been filed on behalf of
18 affected individuals in Washington State, this suit is different. The Individual Plaintiffs seek to
19 represent a class of similarly situated persons in Washington State who hold a non-immigrant
20 visa to work or study in the United States (the “Non-Immigrant Visa Class”). Although these
21 visas may have been provisionally reinstated in light of this Court’s temporary restraining order
22 issued on February 3, 2017 in *State of Washington, et al. v. Donald J. Trump, et al.*, No. 2:17-cv-
23 00141 (W.D. Wash.), Defendants in that action have already filed for expedited appeal of that
24 order.
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1 8. As long as the status of their visas is unclear, the Individual Plaintiffs and
2 members of the class cannot leave the country for fear they will not be permitted to return under
3 their current valid visa, or will not be able to apply for another visa to return to complete their
4 education, research, and other work-related functions. In addition, Plaintiff the Episcopal
5 Diocese brings its claims based on the Executive Order’s harm to its own mission activities, as
6 well as the Order’s harm to the refugees served by the Diocese, thereby shielding those
7 vulnerable refugee individuals from the retaliation they reasonably fear if they were to assert
8 their claims directly.

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10 9. Defendants’ Executive Order imposes immediate, undue hardship.

11 10. Defendants’ Executive Order is in addition illegal and unconstitutional. The fact
12 that it is facially neutral as to religion neither shields it from this Court’s scrutiny nor masks the
13 discriminatory animus that drives it. And the distinctions the Order does draw on its face are so
14 arbitrary and irrational as to fail even the most minimal level of judicial scrutiny.

15
16 11. Defendants’ Executive Order is precisely what Defendant Trump promised,
17 repeatedly and openly: a Muslim ban. It is moreover, on admission of Defendant Trump himself,
18 a ban that favors Christians over Muslims, in contravention of “[t]he clearest command of the
19 Establishment Clause . . . that one religious denomination cannot be officially preferred over
20 another.” *Larson v. Valente*, 456 U.S. 228, 244 (1982).

21
22 12. Both the Episcopal Diocese of Olympia and Individual Plaintiffs—on behalf of
23 themselves and a class of similarly situated people in Washington State—bring this suit to
24 challenge the provisions and implementation of the Executive Order that violate the First
25 Amendment, the Fifth Amendment, the Religious Freedom Restoration Act (“RFRA”), 42
26 U.S.C. § 2000bb *et seq.*, and the Administrative Procedure Act (“APA”), 5 U.S.C. § 701 *et seq.*

1 of Washington. Mr. Doe is simultaneously studying for a master's degree in applied
2 mathematics at the University of Washington. Mr. Doe has a provisional patent, "patent
3 pending," in the United States pertaining to battery function. He is also a graduate fellow with
4 the Clean Energy Institute in Seattle.

5
6 19. Mr. Doe holds a multiple entry F1 student visa. This is his second such visa that
7 allows him to pursue full-time educational study in the United States. Mr. Doe received both of
8 his F1 visas after an intensive vetting and screening process abroad that included an in-person
9 interview and proof of his admission status at the University of Washington as a full-time
10 doctoral student.

11
12 20. Mr. Doe first arrived in the United States in 2012. Before that he studied for a
13 master's degree in civil engineering in the Netherlands, and then worked for a year in the
14 Netherlands for an international offshore oil and gas company. Mr. Doe has also served as a
15 visiting researcher at ETH Zurich in Switzerland studying nonlinear solitary waves, and at the
16 University of South Carolina studying nonlinear wave propagation. Mr. Doe received his
17 undergraduate bachelors of science degree in civil engineering in Iran.

18
19 21. Mr. Doe's immediate and extended family, including maternal grandparents, all
20 live in Iran.

21
22 22. Mr. Doe is engaged in collaborative research with the Chinese Academy of
23 Science. He co-authors publications Chinese researchers, and is actively advising and directing
24 joint research with students in the United States and China on these projects. As part of this
25 collaboration, Mr. Doe conducted research in China for three months in 2016. Mr. Doe was
26 planning to return to China for further research and collaboration in April of 2017 but now, as a

1 result of the Executive Order, he is unable to travel outside the United States because he fears he
2 would not be able to return to his complete his doctorate.

3 23. As part of his doctorate studies, it is anticipated and expected that Mr. Doe will
4 participate in international conferences, because such endeavors are essential to his training and
5 his ability to be fully active in the scientific and research community. There are numerous
6 upcoming academic conferences that Mr. Doe was planning to attend, but that he will no longer
7 be able to attend as a result of the Executive Order. Mr. Doe believes that notwithstanding his
8 multiple entry F1 visa, the Executive Order can prevent him from re-entering the United States if
9 he leaves to attend any international conferences.
10

11 24. Because of the Executive Order, Mr. Doe will be unable to attend the
12 International Renewable Energy Storage Conference in Dusseldorf, Germany in March
13 2017. He will also have to miss the International Conference on Hybrid and Organic
14 Photovoltaics in Lausanne, Switzerland in May 2017. And if his visa situation remains
15 uncertain, he may be unable to attend the Third International Conference on Perovskite Solar
16 Cells and Optoelectronics in Oxford, England in September 2017.
17

18 25. Mr. Doe's research and career have suffered and will continue to suffer as long as
19 the Executive Order is in place.
20

21 26. Mr. Doe is pursuing his claims anonymously because he is afraid of retaliation
22 from the United States government or others for asserting his rights.

23 2. Plaintiff Jane Doe

24 27. Plaintiff Jane Doe is an Iranian national who resides in Seattle, Washington. Ms.
25 Doe holds a multiple entry F1 student visa and is lawfully in the United States, studying to
26 complete a master's degree at the University of Washington.

1 28. Ms. Doe received her F1 visa after an intensive vetting and screening process
2 abroad that included an in-person interview at the Vancouver consulate, and proof of her
3 admission status at the University of Washington as a full-time student. Ms. Doe first came to
4 the United States in September 2016 to pursue her graduate studies. Ms. Doe’s dream in
5 pursuing her graduate degree was to work in international public policy, including to perhaps
6 work one day for the United Nations.
7

8 29. As part of her academic and professional training, Ms. Doe was pursuing summer
9 internships outside of the United States when the Executive Order issued. However, because of
10 the Executive Order, Ms. Doe’s plans have changed dramatically. Ms. Doe may now not be able
11 to return to the United States to complete her studies if she leaves for a summer internship—or
12 even an interview for such an internship—notwithstanding the fact that holds a multiple entry
13 student visa. As a direct result of the Executive Order, Ms. Doe has canceled all of her
14 upcoming interviews for summer internships outside the United States for fear she would not be
15 able to return.
16

17 30. The Executive Order has arrested Ms. Doe’s international plans for the summer,
18 and has also disrupted her longer-term plans of international work. Without an international
19 summer internship, Ms. Doe’s dreams of a career in international work may be permanently on
20 hold. In addition, Ms. Doe fears that she will not be able to leave the United States to see her
21 family—all of whom live overseas, including her elderly grandparents—and that they will not be
22 able to come to the United States to visit her either for the duration of her studies.
23

24 31. Further, although Ms. Doe receives some funding from UW and works as a
25 teaching assistant, she still relies on financial support from her parents in Iran. Sanctions
26 imposed by the United States on Iran make money transfers from her parents to her extremely

1 difficult, if not impossible, without in person contact. The Executive Order has thus also harmed
2 and will continue to harm Ms. Doe’s ability to pursue her studies.

3 32. The Executive Order has disrupted Jane Doe’s work, study, and goals. It has
4 isolated her from her family, forcing her to cancel a visit she had planned with her brother (who
5 lives in Paris, France) to celebrate the Persian New Year, Nowruz, in March. She now feels that
6 the work and resources, including tuition, that she has put into her degree to date have been
7 wasted. Ms. Doe is strongly considering abandoning her graduate studies as a result of the
8 Executive Order.

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10 33. Ms. Doe is pursuing her claims anonymously because she is afraid of retaliation
11 from the United States government or others for asserting her rights.

12 **3. Plaintiff The Episcopal Diocese of Olympia**

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14 34. The Episcopal Diocese of Olympia, also known as the Episcopal Church in
15 Western Washington, is a diocese of the Episcopal Church in western Washington. It is
16 headquartered in Seattle’s Capitol Hill neighborhood.

17 35. The Episcopal Diocese is a local affiliate of the Episcopal Migration Ministries, a
18 voluntary agency that welcomes refugees through a Cooperative Agreement with the Department
19 of State. The Episcopal Diocese has operated a refugee resettlement program since 1978 and has
20 sponsored more than 15,000 refugees of all religions and nationalities to resettle in the Seattle
21 area. The Episcopal Diocese’s Refugee Resettlement Office (“RRO”) is located in South Seattle
22 and receives and assists refugees from all over the world, including from each of the 7 countries
23 targeted by the Executive Order, without regard to race, religion, or country of origin. The RRO
24 is one of eleven ministries offered and provided for by the Episcopal Diocese. The Episcopal
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1 Diocese’s refugee resettlement program stems from the moral obligation of the Episcopal faith to
2 welcome and assist strangers, especially those who are poor, sick, and most in need of help.

3 36. The RRO provides a multitude of services to refugees, including coordinating the
4 arrival of refugees to the United States, housing assistance, job training, providing for basic
5 household needs, advocacy, language tutoring, business training and microenterprise loans, and a
6 savings program to help refugees purchase homes, vehicles, education, or businesses. The RRO
7 has 9.5 full time employees, with 4 full-time equivalent staff working directly to support new
8 arrivals and their survival needs during their first 90 days in the United States. Approximately
9 two dozen volunteers assist the RRO in providing these services.
10

11 37. Before a refugee arrives in the United States, the RRO is notified by the
12 Department of State that a family has been approved for refugee status and that the RRO should
13 “assure” the case. The RRO is required to make contact with friends or relatives of the arriving
14 refugees living in the U.S. (known as the “U.S. ties”) who were listed on the refugee’s
15 application. The RRO expends significant time making phone calls, sending mail, and making
16 in-person visits to meet with the U.S. tie to evaluate his or her capacity to help the RRO during
17 the resettlement process. The evaluation process includes a home visit to view and evaluate the
18 living space. If there is no possibility that the arriving refugee can live with a U.S. tie, the RRO
19 further interviews the U.S. tie to determine if the relative or friend can assist with transportation,
20 job search, enrollment of kids in school, or any of the other daily tasks with which newly-
21 arriving refugees need assistance.
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24 38. If the U.S. tie cannot perform these tasks, the RRO invests its own resources to
25 perform this pre-arrival legwork for the incoming refugees. These tasks include, among other
26 things, searching for and obtaining safe housing, furnishing the residence, and stocking it with

1 food and household items prior to the arrival of the refugees. If the refugee family or U.S. tie
2 rejects the apartment or house, RRO staff begin a process of evaluating alternative locations. The
3 RRO undertakes housing inspections that consume significant RRO staff time to ensure that the
4 neighborhood is safe, that there is no bare wiring visible in the living space, no peeling or flaking
5 interior paint or plaster, no visible mold or unsanitary odors, that all windows and doors have
6 working locks, that heat, ventilation, lighting, and running water are adequate, that kitchen
7 appliances and bathroom fixtures are in good repair, and that there are easily accessible storage
8 or disposal facilities for garbage.

10 39. The RRO's pre-arrival services can also involve cultivation of community groups
11 or churches to help refugees during the first months of their adjustment to life in America. The
12 RRO staff spend time visiting churches and community groups to describe the refugee
13 resettlement process, ask for assistance with specific families that are still en route, and organize
14 committees to help refugee newcomers with specific tasks like searching for employment.

16 40. When the Executive Order was issued on January 27, 2017, the RRO was
17 expecting to receive over 20 refugee families, including families from Syria, Iraq, and Somalia,
18 into the community in the coming days, weeks, and months, and had been actively preparing for
19 their arrival and resettlement in the greater Seattle area by carrying out on their behalves the
20 activities described above. In fact, five of these families had already been booked on scheduled
21 flights to the U.S. when the Executive Order was issued. As a result of the RRO's efforts, these
22 refugee families already had domestic arrangements supporting their arrival in the United States
23 and were approved for travel. Yet, these families had their dreams dashed when they had to
24 abruptly cancel their travel plans as a result of the Executive Order.

1 41. Since the Executive Order, the RRO’s work has been completely disrupted. Not
2 only have families in transit or on the verge of transit been placed in additional crisis and stress,
3 but the chaos surrounding the implementation of the Executive Order has also required the RRO
4 to expend additional, unplanned-for resources. RRO staff are working around-the-clock to
5 address the immediate needs of these families in crisis and to respond to questions and concerns
6 from their families and loved ones already in the United States who had been planning for the
7 arrival of these already-approved refugees. In addition, many of the RRO’s resources devoted to
8 these 20 refugee families over the past months have now been wasted.

10 42. The Executive Order has caused significant additional harm to the most
11 vulnerable population that the RRO and Episcopal Diocese are focused on serving. These
12 refugees are fleeing persecution in their country of origin, and are now facing persecution in the
13 safe haven they had been promised in the United States. The mission and efficacy of the RRO,
14 and through it the Episcopal Diocese, has been thwarted by the Executive Order.

16 **B. Defendants**

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

19 44. Defendant U.S. Department of State (“DOS”) is a cabinet department of the
20 United States federal government that is responsible for issuing visas.

22 45. Defendant Rex W. Tillerson is the Secretary of State and has responsibility for
23 overseeing enforcement and implementation of the Executive Order by all DOS staff. He is sued
24 in his official capacity.

25 46. Defendant U.S. Department of Homeland Security (“DHS”) is a cabinet
26 department of the United States federal government with the primary mission of securing the

1 United States. Its sub-agencies include U.S. Citizenship and Immigration Services (“USCIS”),
2 Customs and Border Protection (“CBP”), and Immigration and Customs Enforcement (“ICE”).

3 47. Defendant John Kelly is the Secretary of DHS and has responsibility for
4 overseeing enforcement and implementation of the Executive Order by all DHS staff. He is sued
5 in his official capacity.

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

9 49. Defendant Kevin K. McAleenan is the Acting Commissioner of CBP has
10 responsibility for overseeing enforcement and implementation of the Executive Order by all CBP
11 staff. He is sued in his official capacity.

12 50. Defendant Michele James is the Field Director of the Seattle Field Office of CBP
13 and has responsibility for overseeing enforcement and implementation of the Executive Order by
14 all DHS staff in her area, which covers Washington State. She is sued in her official capacity.

17 IV. FACTUAL BACKGROUND

18 A. President Trump’s January 27, 2017 Executive Order

19 51. On January 27, 2017, Defendant Trump signed the Executive Order entitled,
20 “Protecting the Nation from Foreign Terrorist Entry into the United States.” A copy of this
21 Executive Order is attached to this Complaint as **Exhibit A**.

22 52. The Executive Order cites the threat of domestic terrorism committed by foreign
23 nationals and purports to direct a variety of changes to the manner and extent to which non-
24 citizens may seek and obtain admission to the United States.

1 53. Section 3(c) of the Order suspends immigrant and nonimmigrant entry into the
2 country for 90 days for all people from countries referred to in section 217(a)(12) of the INA, 8
3 U.S.C. § 1187(a)(12), with narrow exceptions not relevant here. The Executive Order applies
4 only to nationals of Syria, Sudan, Iraq, Iran, Libya, Somalia, and Yemen.¹

5 54. Section 5(a) suspends the U.S. Refugee Admissions Program for 120 days.

6 55. Section 5(b) states that “refugee claims made by individuals on the basis of
7 religious-based persecution, provided that the religion of the individual is a minority religion in
8 the individual’s country of nationality” will be prioritized.

9 56. Section 5(c) contains as its statement of government interest a proclamation “that
10 “the entry of nationals of Syria as refugees is detrimental to the interests of the United States,”
11 and suspends the entry of Syrian refugees into the country.

12 57. Section 5(e) provides for nearly unfettered individual discretion by the Secretaries
13 of State and Homeland Security to “jointly determine to admit individuals ... as refugees on a
14 case-by-case basis, “in their discretion, but only so long as they determine that the admission of
15 such individuals as refugees is in the national interest—including when the person is a religious
16 minority in his country of nationality facing religious persecution.”

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19 **1. The Arbitrariness of the Executive Order**

20 58. Section 1 of the Executive Order, entitled “Purpose,” states that at the time of the
21 September 11, 2001 (“9/11”) terrorist attacks, “State Department policy prevented consular
22 officers from properly scrutinizing the visa applications of several of the 19 foreign nationals”
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26 ¹*Fact Sheet: Protecting The Nation From Foreign Terrorist Entry To The United States*, Dep’t of Homeland Security (Jan. 29, 2017), available at <https://www.dhs.gov/news/2017/01/29/protecting-nation-foreign-terrorist-entry-united-states> (last accessed Feb. 6, 2017).

1 involved in those attacks. Further, DHS’s Fact Sheet on the Executive Order stated that “[t]he
2 Executive Order protects the United States from countries compromised by terrorism”²

3 59. Yet, the Executive Order does not impose any restrictions on nationals of Egypt,
4 Lebanon, Saudi Arabia, and the United Arab Emirates—the countries of which the 9/11 attackers
5 were citizens.

6
7 60. According to an article published on CNN, “[i]n financial disclosure forms during
8 the presidential campaign, [Defendant Trump] listed two companies with dealings in Egypt and
9 eight with business in Saudi Arabia. And in the UAE, the Trump Organization is partnering with
10 a local billionaire to develop two golf courses in Dubai.”³

11 61. According to a September 2016 report from the Cato Institute, “[i]ncluding those
12 murdered in the terrorist attacks of September 11, 2001 (9/11), the chance of an American
13 perishing in a terrorist attack on U.S. soil that was committed by a foreigner over the 41-year
14 period studied here is 1 in 3.6 million per year.”⁴ Similarly, *The Boston Globe* reported in 2016
15 that “a person living in the United States is more than over 100 times more likely to be killed by
16 falling objects than by a jihadi terrorist.”⁵

17
18 62. Ten former national security, foreign policy, and intelligence officials at the
19 highest levels of the United States government, including Madeleine K. Albright, Michael V.
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22 ² *Supra* n.1.

23 ³ Kyle Blaine & Julia Horowitz, *How the Trump administration chose the 7 countries in the immigration executive*
24 *order*, CNN (Jan. 30, 2017), available at <http://www.cnn.com/2017/01/29/politics/how-the-trump-administration-chose-the-7-countries/> (last accessed Feb. 6, 2017).

25 ⁴ Alex Nowrasteh, *Terrorism and Immigration: A Risk Analysis*, 798 CATO INSTITUTE POL’Y ANALYSIS 1 (Sept. 13,
2016), available at https://object.cato.org/sites/cato.org/files/pubs/pdf/pa798_1_1.pdf (last accessed Feb. 6, 2017).

26 ⁵ <https://www.bostonglobe.com/opinion/editorials/2016/02/19/fear-death-from-tree-limbs-not-terrorists/2ZrHzpP54GBHwbv2AVD6aM/story.html> (last accessed Feb. 5, 2017).

1 Hayden, John F. Kerry, Janet A. Napolitano, and Leon E. Panetta, recently filed a joint
2 declaration in *State of Washington, et al. v. Donald J. Trump et al.*, No. 17-35105 (9th Cir.) (Dkt.
3 28-2) (Feb. 6, 2017) (“Joint Declaration”), stating that they are “unaware of any specific threat
4 that would justify the travel ban established by the Executive Order” and that “[t]here is no
5 national security purpose for a total bar on entry for aliens from the seven named countries. *See*
6 **Exhibit B, ¶ 3.**

7
8 63. These respected civil servants, who have collectively “devoted decades to
9 combatting the various terrorist threats that the United States faces in a dynamic and dangerous
10 world” declared, in their professional opinions, that the Order “does not perform its declared
11 task” of “protecting the nation from foreign terrorist entry into the United States,” and instead
12 actually undermines the national security of the United States. *Id.* ¶¶ 2-3. Specifically, the Joint
13 Declaration states that the Executive Order: 1) will endanger U.S. troops in the field; 2) will
14 disrupt key counterterrorism, foreign policy, and national security partnerships that are critical to
15 addressing the threat posed by terrorist groups such as ISIL; 3) will endanger intelligence sources
16 in the field; 4) will likely feed the recruitment narrative of ISIL and other extremists that portray
17 the United States as at war with Islam; 5) will disrupt ongoing law enforcement efforts; 6) will
18 have a devastating humanitarian impact; and 7) will cause economic damage to American
19 citizens and residents. *Id.* ¶ 5.

20
21
22 64. The Joint Declaration also describes pre-existing national security-based
23 immigration restrictions as “consistently tailored to respond to: (1) specific, credible threats
24 based on individualized information, (2) the best available intelligence and (3) thorough
25 interagency legal and policy review.” *Id.* ¶ 6. The document further describes the rigorous
26 system of security vetting that the United States has had in place since the 9/11 attacks, and

1 which is applied to travelers not once, but multiple times. Refugees in particular are subjected to
2 vetting that takes on average more than a year. *Id.*

3 65. The Executive Order states that “the United States should not admit those who
4 engage in acts of bigotry or hatred (including . . . the persecution of those who practice religions
5 different from their own)” and yet it singles out practitioners of a single religion for exclusion.

6
7 Ex. A Sec. 1.

8 66. The Executive Order effectively traps members of the Non-Immigrant Visa Class
9 in the United States, interfering with their relationships with family members in their home
10 countries, and imposing burdens that do not serve any valid governmental interest. Faced with a
11 rapidly shifting and highly unpredictable legal landscape, the individual named plaintiffs and
12 class members have chosen and will continue to choose to stay inside the United States for fear
13 that any provisional reinstatement of their visas will no longer be in effect by the time they might
14 wish to return.
15

16 **2. Visa Revocations Pursuant to the Executive Order**

17 67. The same day the Executive Order issued, the Deputy Assistant Secretary for Visa
18 Services at the Bureau of Consular Affairs of the Department of State, relying on the Executive
19 Order, issued a letter purporting to provisionally revoke all valid nonimmigrant and immigrant
20 visas of nationals of the Designated Countries, subject to exceptions not relevant here.
21

22 68. The Provisional Revocation Letter was not publicized; to the contrary, it was
23 withheld from the public until it was filed four days later under a “Notice of Supplemental
24 Authority” in court cases challenging the Executive Order.
25
26

1 69. Neither notice nor opportunity to be heard was provided to the Episcopal Diocese,
2 members of the Non-Immigrant Visa Class, Plaintiffs, or indeed anyone else prior to the mass
3 revocation of these visas.

4 70. The Provisional Revocation Letter compounded the chaos caused by the
5 Executive Order. The federal government has issued no public and legally binding guidance
6 regarding the meaning or proper interpretation of the Provisional Revocation Letter. A copy of
7 this letter is attached to this Complaint as **Exhibit C**.

8 71. The Provisional Revocation Letter also appears to expand the scope of the
9 Executive Order’s application: it applies on its face to persons who are present inside the United
10 States as well as persons outside the United States, rather than being limited to persons seeking
11 to enter the United States. Under section 221(a)(1)(B) of the INA, 8 U.S.C. § 1227(a)(i)(B),
12 “[a]ny alien . . . whose nonimmigrant visa . . . has been revoked under section 1201(i) of this
13 title” INA § 221(i), referenced in the Provisional Revocation Letter “is deportable.”
14

15 72. The State Department estimates that it revoked up to 60,000 visas.⁶

16 73. The CBP states on its website that all F1, J1, and M1 visas belonging to persons
17 from the affected countries were provisionally revoked.⁷
18

19 74. Upon information and belief, all H1B visas belonging to persons from the
20 affected countries were also provisionally revoked.
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24 ⁶ Mary Emily O’Hara, *Over 100,000 Visas Have Been Revoked by Immigration Ban, Justice Dept. Reveals*, NBC
25 (Feb. 3, 1027), available at <http://www.nbcnews.com/news/us-news/over-100-000-visas-have-been-revoked-immigration-ban-justice-n716121> (last accessed Feb. 6, 2017).

26 ⁷ *Q&A for Executive Order: Protecting the Nation from Foreign Terrorist Entry into the United States*, U.S.
Customs and Border Protection (Feb. 2, 2017), available at <https://www.cbp.gov/document/faqs/questions-and-answers-protecting-nation-foreign-terrorist-entry-united-states> (last accessed Feb. 5, 2017).

1 **3. Implementation of the Executive Order and Visa Revocations**

2 75. The disastrous effects of the Executive Order were immediately apparent.

3 Countless news reports document the chaotic scene at airports across the country as those who
4 were legally entitled to entry when they boarded airplanes heading to the United States—
5 refugees, immigrants, and those traveling on non-immigrant visas alike—were designated
6 deportable by the time they landed. For example, 109 travelers from the Designated Countries on
7 non-immigrant visas were in transit to the country at the time the Executive order was signed.⁸
8 Up to 13 people were detained at the Seattle-Tacoma International Airport on January 28, 2017
9 pursuant to the Executive Order.⁹

10
11 76. Application of the Executive Order has been, moreover, inconsistent and
12 confusing, with contradictory official statements issued within days of one another—further
13 heightening Plaintiffs reasonable and on-going fear that if they leave the country they will not be
14 permitted to return to their work and studies.

15
16 77. For example, DHS’s position on the application of the Executive Order to lawful
17 permanent residents, or green card holders, changed three times over the course of six days
18 following the issuance of the order:

- 19
- 20 • On January 28, 2017, a spokesperson for DHS stated that lawful permanent
21 residents, or green card holders, would be barred from entry pursuant to the
22 Executive Order.
 - 23 • Secretary Kelly reversed course the next day on January 29th, issuing a statement
24 that: “In applying the provisions of the president’s executive order, I hereby deem

24 ⁸ Jeremy Diamond & Steve Almasy, *Trump’s immigration ban sends shockwaves*, CNN (Jan. 30, 2017), available at
25 <http://www.cnn.com/2017/01/28/politics/donald-trump-executive-order-immigration-reaction/> (last accessed Feb.
26 6, 2017).

⁹ Liz Jones & Isolde Raftery, *Roller coaster of heartbreak and fury at Sea-Tac in wake of Trump order*, KUOW.org
(Jan. 28, 2017), available at <http://kuow.org/post/roller-coaster-heartbreak-and-fury-sea-tac-wake-trump-order>
(last accessed Feb. 6, 2017).

1 the entry of lawful permanent residents to be in the national interest. Accordingly,
2 absent the receipt of significant derogatory information indicating a serious threat
3 to public safety and welfare, lawful permanent resident status will be a dispositive
4 factor in our case-by-case determinations.”

- 5 • Two days later on January 31, 2017, U.S. Customs and Border Protection, a DHS
6 sub-agency, issued a statement that, while repeating Secretary Kelly’s January
7 29th statement, then stated in the “Questions and Answers” Section that the entry
8 of lawful permanent residents would depend on receipt of a “national interest
9 waiver[] consistent with the provisions of the Executive Order.”
- 10 • DHS changed its position yet again two days later. This time, the February 2,
11 2017 version of the “Questions and Answers” stated that “[u]nder recent guidance
12 from the White House...the Executive Order issued January 27, 2017, does not
13 apply to their [lawful permanent residents] entry to the United States.” As of
14 February 2, 2017, DHS had processed 1,610 waivers for legal permanent residents
15 to re-enter the United States.

16 78. Provisions of the Executive Order relating to refugees have also been
17 inconsistently interpreted and applied by Defendants, further heightening the need for judicial
18 intervention.

19 79. For example, although Section 5(a) of the Executive Order unequivocally states
20 that “[t]he Secretary of State shall suspend the U.S. Refugee Admissions Program (USRAP) for
21 120 days,” four business days later on February 2, 2017, and in a reversal of the clear mandate in
22 the Executive Order, the Acting Director of the U.S. Immigration and Citizenship Services
23 (“USCIS”) issued a guidance to all USCIS employees that “USCIS will adjudicate
24 Refugee/Asylee Relative Petitions [] for all beneficiaries, from any country of nationality,
25 currently in the United States...”. **A copy of this guidance is attached as Exhibit D.**

26 80. In further contradiction of the clear language of unequivocal suspension of
USRAP, DHS instructed that “[a]dditionally, USCIS will continue refugee interviews in
jurisdictions where there is a preexisting international agreement related to refugee processing.”
Exhibit D.

1 81. The February 2, 2017 guidance to USCIS employees also stated that “USCIS will
2 *continue* refugee interviews when the person is a religious minority in his or her country of
3 nationality facing religious persecution.” Exhibit D (emphasis added).

4 **4. Court Orders and President Trump’s Defiance Thereof**

5 82. Although both this Court and other courts around the country have granted writs
6 of habeas and temporary restraining orders, some nationwide, Plaintiffs are compelled to file this
7 action to ensure their rights are protected. Many, if not all, of the existing litigation and court
8 orders do not help members of the Non-Immigrant Visa Class, most of whom are stuck inside the
9 country, rather than outside of it.

11 83. Further, Defendants’ repeated actions and statements, as well as the temporary
12 nature of the restraining orders issued thus far further underscore Plaintiffs’ plight: until there is
13 some legal certainty as to the status of their non-immigrant visas, they cannot leave the country
14 now—no matter how urgently they wish to do so—should they want to be guaranteed the ability
15 to return at a later date to resume their work and studies.

17 84. Immediately after the first nationwide stay was granted, *see Darweesh v. Trump*,
18 No. 17 CIV. 480 (AMD), 2017 WL 388504, at *1 (E.D.N.Y. Jan. 28, 2017), Defendant DHS
19 issued a statement that “President Trump’s Executive Orders remain in place—prohibited travel
20 will remain prohibited, and the U.S. government retains its right to revoke visas at any time if
21 required for national security or public safety.”¹⁰

23 85. On January 31, 2017, acting United States Attorney General Sally Yates issued a
24 memorandum to Department of Justice employees instructing them to not act to enforce the

25 _____
26 ¹⁰ *Department Of Homeland Security Response To Recent Litigation*, Dep’t Homeland Security (Jan. 29, 2017),
available at <https://www.dhs.gov/news/2017/01/29/department-homeland-security-response-recent-litigation> (last
accessed Feb. 6, 2017).

1 Executive Order because she was “not convinced . . . that the Executive Order is lawful.”¹¹ Ms.

2 Yates wrote:

3 My responsibility is to ensure that the position of the Department of Justice is not
4 only legally defensible, but is informed by our best view of what the law is after
5 consideration of all the facts. In addition, I am responsible for ensuring that the
6 positons we take in court remain consistent with this institution’s solemn
7 obligation to always seek justice and stand for what is right. At present, I am not
8 convinced that the defense of the Executive Order is consistent with these
9 responsibilities, nor am I convinced that the Executive Order is lawful.¹²

86. Within hours of her issuance of this statement, and its hand-delivery to Defendant
9 Trump, Defendant Trump fired Ms. Yates, calling her statement a “betrayal.”

10 87. After this Court issued a TRO on February 3, 2017, Defendants vowed an
11 immediate appeal. Even more unusual were Defendant Trump’s statements that followed the
12 District Court’s Order:

- 13 • @realDonaldTrump: “The opinion of this so-called judge, which essentially takes
14 law-enforcement away from our country, is ridiculous and will be overturned!” --
15 5:12 AM - 4 Feb 2017¹³
- 16 • @realDonaldTrump: “What is our country coming to when a judge can halt a
17 Homeland Security travel ban and anyone, even with bad intentions, can come
18 into U.S.?” -- 12:44 PM - 4 Feb 2017¹⁴

19
20
21
22 ¹¹ Letter from Sally Yates to Dep’t of Justice (Jan. 30, 2017), *available at*
23 https://www.nytimes.com/interactive/2017/01/30/us/document-Letter-From-Sally-Yates.html?_r=1 (last accessed
24 Feb. 6, 2017).

¹² See *supra* note 12.

25 ¹³ Donald J. Trump (@realDonaldTrump), Twitter (Feb. 4, 2017, 5:12 PM),
<https://twitter.com/realdonaldtrump/status/827867311054974976>

26 ¹⁴ Donald J. Trump (@realDonaldTrump), Twitter (Feb. 4, 2017, 12:44 PM),
<https://twitter.com/realdonaldtrump/status/827981079042805761>

- 1 • @realDonaldTrump: "Because the ban was lifted by a judge, many very bad and
2 dangerous people may be pouring into our country. A terrible decision" -- 1:44
3 PM - 4 Feb 2017¹⁵
- 4 • @realDonaldTrump: "Why aren't the lawyers looking at and using the Federal
5 Court decision in Boston, which is at conflict with ridiculous lift ban decision?" --
6 3:37 PM - 4 Feb 2017¹⁶
- 7 • @realDonaldTrump: "The judge opens up our country to potential terrorists and
8 others that do not have our best interests at heart. Bad people are very happy!" --
9 4:48 PM - 4 Feb 2017¹⁷
- 10 • @realDonaldTrump: "Just cannot believe a judge would put our country in such
11 peril. If something happens blame him and court system. People pouring in. Bad!"
12 -- 12:39 PM - 5 Feb 2017¹⁸
- 13 • @realDonaldTrump: "I have instructed Homeland Security to check people
14 coming into our country VERY CAREFULLY. The courts are making the job
15 very difficult!" -- 12:42 PM - 5 Feb 2017¹⁹

16 88. These statements appear to be designed to inflame and incite further animus
17 against persons affected by the ban, and grossly distort and misrepresent the actual process
18 through which Plaintiffs were screened and reviewed before their admittance to the United States
19 was allowed.
20

21 ¹⁵ Donald J. Trump (@realDonaldTrump), Twitter (Feb. 4, 2017, 1:44 PM),
<https://twitter.com/realDonaldTrump/status/827996357252243456>

22 ¹⁶ Donald J. Trump (@realDonaldTrump), Twitter (Feb. 4, 2017, 3:37 PM),
<https://twitter.com/realDonaldTrump/status/828024835670413312>

23 ¹⁷ Donald J. Trump (@realDonaldTrump), Twitter (Feb. 4, 2017, 4:48 PM),
<https://twitter.com/realDonaldTrump/status/828042506851934209>

24 ¹⁸ Donald J. Trump (@realDonaldTrump), Twitter (Feb. 5, 2017, 12:39 PM),
<https://twitter.com/realDonaldTrump/status/828342202174668800>

25 ¹⁹ Donald J. Trump (@realDonaldTrump), Twitter (Feb. 5, 2017, 12:42 PM),
<https://twitter.com/realDonaldTrump/status/828343072840900610>

1 89. Unless and until this Court preliminarily and permanently enjoins the Executive
2 Order, any provisional reinstatement of the previously provisionally revoked visas does not
3 provide Plaintiffs adequate and full relief.

4 **B. The Discriminatory Intent Behind the Executive Order**

5 90. The Executive Order and the Provisional Revocation Letter currently apply only
6 to nationals of seven countries, all of which are majority-Muslim: Iraq, Iran, Libya, Somalia,
7 Sudan, Syria, and Yemen.

8 91. The Executive Order, by its express terms, suspends immigrant and nonimmigrant
9 entry into the United States based on nationality, place of birth or place of residence.
10

11 92. The Provisional Revocation Letter similarly revokes “all valid nonimmigrant and
12 immigrant visas of nationals” based on nationality, place of birth, or place of residence.
13

14 93. The Executive Order is Defendant Trump’s fulfillment of a clearly stated
15 campaign promise to ban Muslims from entering the United States. In a December 7, 2015
16 written statement, “Donald J. Trump Statement on Preventing Muslim Immigration,” then-
17 candidate Trump said that he was “calling for a total and complete shutdown of Muslims
18 entering the United States.” This statement is still displayed on the official Trump-Pence
19 website.²⁰

20 94. Defendant Trump repeatedly referred to a ban on Muslim immigration on the
21 campaign trail.²¹
22

23
24 ²⁰ Press Release, *Donald J. Trump Statement on Preventing Muslim Immigration* (Dec. 7, 2015), available at
<https://www.donaldjtrump.com/press-releases/donald-j.-trump-statement-on-preventing-muslim-immigration> (last
25 accessed Feb. 6, 2017).

26 ²¹ See, e.g., Donald J. Trump (@realDonaldTrump), Twitter (Dec. 7, 2015, 2:32 PM),
<https://twitter.com/realDonaldTrump/status/673993417429524480> (last accessed Feb. 6, 2017), Jenna Johnson,
Trump calls for ‘total and complete shutdown of Muslims entering the United States’, The Washington Post (Dec. 7,
2015), available at <http://wpo.st/O0uY2> (last accessed Feb. 6, 2017).

1 95. After the election, on December 22, 2016, a reporter asked Defendant Trump
2 whether his “plans to create a Muslim register or ban Muslim immigration to the United States”
3 had changed. Defendant Trump responded “you’ve known my plans all along” and that he was
4 “100% correct” in his position.²²

5 96. On the day Defendant Trump issued the Executive Order, he gave an interview to
6 the Christian Broadcasting Network during which he confirmed his intent to prioritize non-
7 Muslims nationals of the Designated Countries over Muslim nationals of those countries:
8

9 They’ve been horribly treated. Do you know if you were a Christian in Syria it
10 was impossible, at least very tough to get into the United States? If you were a
11 Muslim you could come in, but if you were a Christian, it was almost impossible
12 and the reason that was so unfair, everybody was persecuted in all fairness, but
they were chopping off the heads of everybody but more so the Christians. And I
thought it was very, very unfair.²³

13 97. Consistent with Defendant Trump’s expressed intent to favor Christians, Section
14 5(e) of the Executive Order authorizes the Secretaries of the Departments of State and Homeland
15 Security to admit individuals who are “member[s] of a religious minority” in their countries of
16 nationality who are “facing religious persecution.” This provision directly grants Christians
17 preference over Muslim refugees.
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22 ⁴ A video of this interview is available on CNN’s Youtube Channel at
23 <https://www.youtube.com/watch?v=JKtcdn0zAqw>; the referenced comments occur during the first 15 seconds of the
24 interview and at 8:45 (last accessed on February 1, 2017). <http://www.vox.com/2016/6/13/11925122/trump-orlando-foreign-policy-transcript> (last accessed on February 1, 2017), <http://www.nbcnews.com/meet-the-press/meet-press-july-24-2016-n615706> (last accessed on February 1, 2017), <http://time.com/4611229/donald-trump-berlin-attack/> (last accessed February 1, 2017).

25 ²² <http://time.com/4611229/donald-trump-berlin-attack/> (last accessed Feb. 1, 2017).

26 ²³ <http://www1.cbn.com/thebrodyfile/archive/2017/01/27/brody-file-exclusive-president-trump-says-persecuted-christians-will-be-given-priority-as-refugees> (last accessed February 4, 2017).

1 98. During a signing ceremony for the Executive Order on January 27, 2017,
2 Defendant Trump stated that the purpose of the Executive Order was to “establish[] new vetting
3 measures to keep radical Islamic terrorists out of the United States of America.”²⁴

4 99. Senior advisors to Defendant Trump have engaged in anti-Muslim rhetoric that
5 provide additional support for the notion that the Executive Order was prompted by animus
6 toward Islam and Muslims.
7

8 100. In an interview on January 28, 2017, one of Defendant Trump’s senior advisors,
9 Rudolph Giuliani, left no doubt that the ban on entry from nationals of the Designated Countries
10 was intended to carry out a ban on Muslims, and that the Executive Order was crafted to create a
11 pretextual cover for a Muslim ban. Mr. Giuliani stated: “I’ll tell you the whole history of it. So,
12 when he [Defendant Trump] first announced it, he said, ‘Muslim ban.’ He called me up. He said,
13 ‘Put a commission together. Show me the right way to do it legally.’”²⁵
14

15 101. On January 29, an anonymous “senior administration official” briefed a staffer of
16 Breitbart.com on the intended purpose of the Executive Order: “The reality, though, is that the
17 situation [of large Islamic populations] that exists today in parts of France, in parts of Germany,
18 in Belgium, etcetera, is not a situation we want replicated inside the United States.”²⁶
19
20
21
22

23 ²⁴ <http://www.cnn.com/2017/01/27/politics/trump-plans-to-sign-executive-action-on-refugees-extreme-vetting/> (last
24 accessed February 4, 2017).

25 ²⁵ <http://wpo.st/xzuY2> (last accessed on February 1, 2017).

26 ²⁶ <http://www.breitbart.com/big-government/2017/01/30/trump-changes-immigration-favor-american-values/>
(parenthetical in original) (last accessed on February 1, 2017).

1 102. While Defendant Trump has subsequently tried to deny that his Executive Order
2 was “a Muslim ban as the media [was] falsely reporting,”²⁷ his own prior conflicting, recorded
3 statements as well as those of his senior advisors make clear the rationale for the Executive
4 Order is in fact to ban Muslims from entering the United States.

5 103. Individual Plaintiffs Jane Doe and John Doe, and members of the class—non-
6 immigrants with valid visas—are among the targets of the Executive Order. The Executive Order
7 and the manner in which it is being implemented is causing these Individual Plaintiffs and
8 members of the proposed class direct, ongoing, and immediate harm because they are suffering
9 ““the indignity of being singled out [by a government] for special burdens”” on the basis of
10 religion or assumed religion. *Hassan v. City of New York*, 804 F.3d 277 (2015) (quoting *Locke v.*
11 *Davey*, 540 U.S. 712, 731, (2004) (Scalia, J., dissenting).

12
13
14 **C. Facts Common to all Members of the Plaintiff Class**

15 104. Since the Executive Order was announced on January 27, 2017, its
16 implementation by Defendants and their agents has been marked by chaos and confusion.

17 105. Individual Plaintiffs and members of the Plaintiff Class reasonably fear that, if
18 they attempt to enter or re-enter the United States, they will be denied permission to do so,
19 notwithstanding their previously established lawful presence in the United States and the fact
20 that they have otherwise been deemed appropriate by the U.S. government for admission.

21 106. The suspension of entry for class members with valid, pre-screened, pre-approved
22 student visas has left vast numbers of foreign students in Washington, and in the United States
23

24
25
26 ²⁷ <https://www.whitehouse.gov/the-press-office/2017/01/29/president-donald-j-trump-statement-regarding-recent-executive-order> (last accessed February 4, 2017).

1 more generally, trapped and stripped of their ability to travel home to see their families or, if they
2 had the misfortune of being out of the country at the time the Executive Order was issued,
3 stranded and unable to continue with their otherwise lawful education and research endeavors in
4 the United States.

5
6 107. The suspension of entry for class members with valid, pre-screened, pre-approved
7 work visas has left vast numbers of hardworking people who happen to be foreign nationals
8 trapped and stripped of their ability to travel home to see their families and significantly affects
9 their ability to work and earn a living, as well as their well-being. If these individuals had the
10 misfortune of being out of the country at the time the Executive Order was issued, they are now
11 stranded and unable to return to their jobs and at risk of losing their livelihood.

12 V. CLASS ACTION ALLEGATIONS

13
14 108. The Individual Plaintiffs bring this action as a class action pursuant to Fed. R.
15 Civ. P. 23(b) (1) and (b) (2), on their own behalf and on behalf of all other persons with non-
16 immigrant visas who are nationals of Iran, Iraq, Libya, Somalia, Sudan, Syria or Yemen (the
17 “Designated Countries”) who currently are, or recently have been, lawfully present in
18 Washington.

19 109. The Plaintiff Class is so numerous that joinder is impracticable. According to the
20 Annual Report of the Visa Office, in 2015, the last year for which data are available, the United
21 States issued over 70,000 non-immigrant visas to nationals from the seven Designated
22 Countries.²⁸ On information and belief, a large number of such persons reside, or have recently
23 resided, in Washington.
24
25

26 ²⁸<https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2015AnnualReport/FY15AnnualReport-TableXVIII.pdf> (last accessed on February 5, 2017).

1 110. The claims of the Plaintiff Class members share common issues of law, including
2 but not limited to whether the Executive Order violates their associational, religious exercise and
3 due process rights under the First and Fifth Amendments, the Religious Freedom Restoration
4 Act, and the Administrative Procedure Act.

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

9 112. The claims or defenses of the named Plaintiffs are typical of the claims or
10 defenses of members of the Plaintiff Class.

11 113. The named Plaintiffs will fairly and adequately protect the interests of the
12 Plaintiff class. The named Plaintiffs have no interest that is now or may be potentially
13 antagonistic to the interests of the Plaintiff class. The attorneys representing the named Plaintiffs
14 include experienced civil rights attorneys and are considered able practitioners in federal
15 constitutional litigation. These attorneys should be appointed as class counsel.

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

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

1
2 **VI. CAUSES OF ACTION**

3 **COUNT ONE**
4 **FIRST AMENDMENT – ESTABLISHMENT, FREE EXERCISE, SPEECH AND**
5 **ASSEMBLY CLAUSES**
6 **(Against All Defendants, Asserted by All Plaintiffs)**

7 116. Plaintiffs repeat and incorporate by reference each and every allegation contained
8 in the preceding paragraphs as if fully set forth herein.

9 117. The First Amendment prohibits the establishment of a religion or the prohibition
10 of the free exercise of religion.

11 118. The Executive Order constitutes an unlawful attempt to discriminate against
12 Muslims and to establish a preference for one religion over another. References in the Executive
13 Order to the seven Designated Countries are transparently a pretext to establish this preference.
14 Singling out Muslims for disfavored treatment and granting special preferences to non-Muslims
15 is neither justified by, nor closely fitted to, any compelling governmental interest.

16 119. The Executive Order also violates the rights of Plaintiff the Episcopal Diocese to
17 receive information and speech from, and to associate freely with, refugees.

18 **COUNT TWO**
19 **RELIGIOUS FREEDOM RESTORATION ACT**
20 **(Against All Defendants, Asserted by All Plaintiffs)**

21 120. Plaintiffs repeat and incorporate by reference each and every allegation contained
22 in the preceding paragraphs as if fully set forth herein.

23 121. Pursuant to the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb-1 et seq.,
24 the government “shall not substantially burden a person’s exercise of religion” unless it “(1) is in
25
26

1 pursuant to the Executive Order, violate the substantive due process rights guaranteed by the
2 Fifth Amendment to Plaintiffs.

3
4 **COUNT SIX**
5 **ADMINISTRATIVE PROCEDURE ACT—PROCEDURAL VIOLATION**
6 **(Against all Defendants except Defendant Trump, Asserted by All Plaintiffs)**

7 136. Plaintiffs repeat and incorporate by reference each and every allegation contained
8 in the preceding paragraphs as if fully set forth herein.

9 137. Sections 553 and 706 of the Administrative Procedure Act, 5 U. S. C. §§ 553
10 and 706 (2), require that federal agencies conduct formal rule making before engaging in action
11 that impacts substantive rights.

12 138. In implementing Sections 3 and 5 of the Executive Order, Defendants federal
13 agencies and Defendant secretaries and/or directors of those agencies have changed the
14 substantive criteria by which individuals from the Designated Countries may enter the United
15 States. Such Defendants did not follow the procedures required by the Administrative Procedure
16 Act before taking action impacting the substantive rights of the Plaintiffs.

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

22 140. By failing to follow the procedures required of them prior to changing the
23 substantive criteria by which individuals from the Designated Countries may enter the United
24 States, Defendants federal agencies and Defendant secretaries and/or directors of those agencies
25 violated the Administrative Procedure Act.
26

1 141. These violations continue to cause ongoing harm to Plaintiffs.

2 **COUNT SEVEN**
3 **ADMINISTRATIVE PROCEDURE ACT—SUBSTANTIVE VIOLATION**
4 **(Against all Defendants except Defendant Trump, Asserted by all Plaintiffs)**

5 142. Plaintiffs repeat and incorporate by reference each and every allegation contained
6 in the preceding paragraphs as if fully set forth herein

7 143. The Administrative Procedure Act, 5 U. S. C. § 706(2), prohibits federal agency
8 action that is arbitrary, unconstitutional, or contrary to statute.

9 144. In implementing Sections 3 and 5 of the Executive Order, Defendants federal
10 agencies and Defendant secretaries and/or directors of those agencies have taken unconstitutional
11 and unlawful action, as alleged in this Complaint, in violation of the Administrative Procedures
12 Act.

13 145. In implementing Sections 3 and 5 of the Executive Order, Defendants federal
14 agencies and Defendant secretaries and/or directors of those agencies have applied provisions of
15 the Executive Order arbitrarily, in violation of the Administrative Procedures Act.

16 146. Defendants' actions as set forth above were arbitrary, capricious, discriminatory,
17 an abuse of discretion, or otherwise not in accordance with law; contrary to constitutional right,
18 power, privilege, or immunity; in excess of statutory jurisdiction, authority, or limitations, or
19 short of statutory right; and without observance of procedure required by law, in violation of the
20 Administrative Procedure Act, 5 U.S.C. §§ 706(2)(A)-(D).
21
22

23 **PRAYER FOR RELIEF**

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

25 1. A determination that the Individual Plaintiffs' claims may properly be maintained
26 as a class action pursuant to Fed. R. Civ. P. 23(b)(1) and (b)(2);

1 2. A declaration that the Executive Order and the manner in which it has been
2 implemented are in violation of the rights of Plaintiffs and Plaintiff Class members for the
3 reasons set forth above.

4 3. An injunction that the Executive Order may not be enforced as against Plaintiffs
5 and Plaintiff Class members in connection with their entry or re-entry into the United States;
6

7 4. A permanent injunction of the Executive Order as contrary to the Constitution;

8 5. An award to the organizational Plaintiff and to the Plaintiff Class of reasonable
9 costs and attorneys' fees; and,

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

11 DATED this 7th day of February, 2017.
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1 AMERICAN CIVIL LIBERTIES UNION
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*Pro hac vice applications forthcoming

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CLASS ACTION COMPLAINT
PAGE 37

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