

The Honorable James L. Robart

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

John Doe, Jack Doe, Jason Doe, Joseph Doe  
and James Doe, individually, and on behalf of  
all others similarly situated; the Episcopal  
Diocese of Olympia, and the Council on  
American Islamic Relations-Washington,

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. 2:17-cv-00178-JLR

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

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**I. INTRODUCTION**

1  
2 1. Just as “the world is not made brand new every morning,” *McCreary County v.*  
3 *American Civil Liberties Union of Kentucky*, 545 U.S. 844, 866 (2005), “a person is not made  
4 brand new simply by taking the oath of office.” *Aziz v. Trump*, No. 17-116, 2017 WL 580855, at  
5 \*8 (E.D. Va. Feb. 13, 2017). Impermissible animus cannot be cleansed with a few “mostly minor  
6 technical differences”:<sup>1</sup> a Muslim ban is a Muslim ban.

7 2. One week after taking the oath of office as President of the United States,  
8 Defendant Trump carried out a promise he made repeatedly and explicitly on the campaign trail,  
9 launching “a total and complete shutdown of Muslims entering the United States” with his  
10 signature on Executive Order 13769 “Protecting the Nation from Foreign Terrorist Entry into the  
11 United States” (the “Original Executive Order” or “Original Order”), 82 Fed. Reg. 8977, on  
12 January 27, 2017. The vice chairman of Defendant Trump's transition team confirmed the next  
13 day that the Original Executive Order was, in fact, Defendant Trump’s attempt to institute his  
14 “Muslim ban.”<sup>2</sup>

15 3. With the stroke of a pen, he threw into chaotic uncertainty the lives of tens of  
16 thousands of individuals who had been granted valid student and work visas and disrupted the  
17 passage to safety for refugees and their families, including women and children who had been  
18 victimized by actual terrorists, all of whom had already been subjected to an exhaustive and  
19 thorough screening by the United States government

20 4. May 7, 2017, marked the 100th day since the signing of the Original Order.<sup>3</sup>

21 5. Multiple courts—including this Court and the Ninth Circuit Court of Appeals—  
22 recognized the ban for the affront to our Constitution it was and promptly stayed it. While  
23 continuing to insist “nothing was wrong” with the Original Order, Defendants openly advertised  
24

25 <sup>1</sup> See *infra* note 116.

26 <sup>2</sup> See *infra* note 38.

<sup>3</sup> April 27, 2017, marked the 90th day which was the initial time frame for the travel ban.

1 that the Revised Order would have “mostly minor technical differences” from the Original Order  
 2 and “fundamentally” would be “the same basic policy outcome for the country.”<sup>4</sup> Defendants  
 3 then spent more than a month publicly struggling to figure out how to do exactly what they  
 4 repeatedly said they wanted to do: ban Muslims.

5 6. In the meantime, Defendant Trump continued to stoke fear and sow  
 6 misinformation, claiming “our country [is] in such peril. . . . People pouring in. Bad!”<sup>5</sup>, “THE  
 7 SECURITY OF OUR NATION IS AT STAKE!”<sup>6</sup> and ““77% of refugees allowed into U.S.  
 8 since travel reprieve hail from seven suspect countries.’ (WT) [sic] SO DANGEROUS!”<sup>7</sup>

9 7. Defendant Trump was supposed to issue the new order on March 1, 2017, the day  
 10 after he addressed Congress.<sup>8</sup> But despite his public statements regarding the urgent national  
 11 security need for the ban, Defendant Trump delayed signing a new order for five days more to  
 12 maximize the favorable press coverage of his first address to Congress and to allow the executive  
 13 order “to have its own ‘moment.’”<sup>9</sup>

14 8. On March 6, 2017, Defendant Trump signed Executive Order 13780, also titled  
 15 “Protecting the Nation from Foreign Terrorist Entry into the United States” (“Revised Executive  
 16 Order” or “Revised Order”), 82 Fed. Reg. 13209. Despite the fact that Defendant Trump had  
 17 originally claimed that “[i]f the ban were announced with a one week notice, the ‘bad’ would  
 18  
 19

20 \_\_\_\_\_  
 21 <sup>4</sup> See *infra* note 116.

22 <sup>5</sup> See *infra* note 109.

23 <sup>6</sup> See *infra* note 111.

24 <sup>7</sup> See *infra* note 112.

25 <sup>8</sup> See *infra* note 44.

26 <sup>9</sup> Laura Jarrett, Ariane de Vogue & Jeremy Diamond, *Trump Delays New Travel Ban After Well-Reviewed Speech*,  
 CNN (Mar. 1, 2017), <http://www.cnn.com/2017/02/28/politics/trump-travel-ban-visa-holders> (last accessed Mar. 13,  
 2017); Marina Feng, *Pence Says Trump’s Revised Immigration and Travel Ban Coming ‘In a Few Days,’*  
 Huffington Post (Mar. 1, 2017), [http://www.huffingtonpost.com/entry/trump-revised-immigration-  
 ban\\_us\\_58b6cc57e4b0a8a9b787b1f0](http://www.huffingtonpost.com/entry/trump-revised-immigration-ban_us_58b6cc57e4b0a8a9b787b1f0) (last accessed Mar. 13, 2017).

1 rush into our country during that week,”<sup>10</sup> the Revised Order was set to go into effect ten days  
2 after its signing, on March 16, 2017.

3 9. As Defendant Trump has admitted, the Revised Order is just a “watered-down  
4 version” of his first travel ban.<sup>11</sup>

5 10. The Revised Order is every bit as much of a Muslim ban as the Original Order  
6 and every bit as unconstitutional. It reflects Defendant Trump’s explicit vow to “follow[ ]  
7 through on what I pledged to do”<sup>12</sup> and “keep my campaign promises.”<sup>13</sup> True to that promise,  
8 Defendants made a few cosmetic changes to address some of the most obvious facial legal  
9 deficiencies with the Original Order.

10 11. But the Constitution is not so easily fooled. Cosmetic changes made openly and  
11 explicitly to evade judicial scrutiny fail to mask the discriminatory animus that continues to  
12 pervade the Order. Even if not as plain on its face as the Original Order, the Revised Order  
13 remains in contravention of “[t]he clearest command of the Establishment Clause . . . that one  
14 religious denomination cannot be officially preferred over another.” *Larson v. Valente*, 456 U.S.  
15 228, 244 (1982).

16 12. Just like the Original Order, the Revised Order bans the entry into this country of  
17 nationals from the Muslim-majority countries of Iran, Libya, Somalia, Sudan, Syria, and Yemen  
18 (the “Designated Countries”) and completely halts refugee entries for 120 days. And although  
19 Iraqis are no longer banned under the Revised Order, it targets no new countries.

20 13. Far from eliminating the need for judicial scrutiny, the combined Orders  
21 underscore the need for it. The secret revocation of tens of thousands of valid visas pursuant to  
22 the Original Order, the subsequent post hoc attempt to exempt green card holders—but not other  
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24 <sup>10</sup> See *infra* note 101.

25 <sup>11</sup> See *infra* note 49.

26 <sup>12</sup> See *infra* note 41.

<sup>13</sup> *Id.*

1 valid visa holders—from the Original Order, the implication by Defendant Trump that he would  
 2 not abide by court orders staying the Original Order, and the eventual issuance of a Revised  
 3 Order with an arcane waiver scheme dependent solely upon the discretion of individual consular  
 4 officers has created an unstable, unpredictable, and uncertain situation for all Plaintiffs.

5 14. Plaintiffs are Washington residents from the Designated Countries with lawful  
 6 non-immigrant status but without re-entry visas (e.g., expired multiple-entry visas or used single-  
 7 entry visas) who are trapped inside the United States—unable to visit their families in their home  
 8 countries or carry out education-related travel for fear they will be unable to return to their lives  
 9 here (“the Non-Immigrant Visa Class”). Unlike similarly situated people from the non-  
 10 Designated Countries, once members of the Non-Immigrant Visa class leave the country, they  
 11 know they will be singled out: the default for them is denial of a new visa unless they are  
 12 fortunate enough to procure a waiver from the general ban.

13 15. Plaintiffs are also refugees and asylees who reside in Washington and have filed  
 14 petitions to reunify with their family members who have completed and cleared their final  
 15 security screenings (“the Refugee Class”). They have fled war-torn countries, survived brutal  
 16 conditions in refugee camps, and finally made it into the United States—some, after years of  
 17 uncertainty and fear. They anxiously await reunification with dearly loved family members who  
 18 were cleared for travel prior to the signing of the Original Order and now reasonably fear those  
 19 family members will never make it into the United States. Plaintiffs seek to directly represent  
 20 themselves and others similarly situated.

21 16. Also harmed by the Revised Order is Plaintiff the Episcopal Diocese of Olympia  
 22 (the “Episcopal Diocese” or “Diocese”), a religious entity organized in the State of Washington  
 23 to do charitable works, including to support the resettlement of refugees in Washington. The  
 24 Diocese has had its refugee resettlement activities completely upended as a result of the Original  
 25 and Revised Executive Orders which barred the arrival of persons admitted through the United  
 26 States Refugee Admissions Program (“USRAP”). As of the filing of the Second Amended

1 Complaint, nearly a dozen families from the Designated Countries and nearly the same number  
2 of families from other countries whom the Episcopal Diocese was supporting in resettlement  
3 were granted refugee status and approved for travel to the United States but had their trips  
4 canceled as a result of the Orders, wasting precious resources and frustrating the activities of the  
5 Diocese.

6 17. The Council on American-Islamic Relations-Washington (“CAIR-WA”) is  
7 harmed by the Revised Order. CAIR-WA is a non-profit organization based in Seattle that works  
8 to promote an understanding of Islam through dialogue, education, protection of civil liberties,  
9 and coalition-building. As a result of the Orders, CAIR-WA has received numerous inquiries  
10 from its constituent about American-Muslim travelers who have become the target of  
11 unconstitutional ideological questioning by Transportation Security Administration and Customs  
12 and Border Protection agents about their personal beliefs. CAIR-WA has had to devote  
13 substantial, unplanned-for resources to respond.

14 18. The Episcopal Diocese of Olympia, CAIR-WA, and the individual Plaintiffs—on  
15 behalf of themselves and two classes of similarly situated people in Washington State—bring  
16 this suit to challenge the provisions and implementation of the Revised Executive Order that  
17 violate the First Amendment, the Fifth Amendment, the Religious Freedom Restoration Act  
18 (“RFRA”), 42 U.S.C. § 2000bb *et seq.*, the Immigration and Nationality Act, 8 U.S.C. § 1101 *et*  
19 *seq.*, and the Administrative Procedure Act (“APA”), 5 U.S.C. § 701 *et seq.*

20 19. The individual Plaintiffs, the classes they seek to represent, the Episcopal  
21 Diocese, and CAIR-WA (collectively, “Plaintiffs”), currently suffer serious harm and will  
22 continue to suffer such harm until and unless this Court preliminarily and permanently enjoins  
23 the Revised Executive Order. Plaintiffs have no adequate remedy at law.  
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**II. JURISDICTION AND VENUE**

20. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 over Plaintiffs’ claims under the U.S. Constitution and federal statutes, as well as under the Administrative Procedure Act, 5 U.S.C. § 706.

21. The Court has the authority to grant declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

22. Venue is proper under 28 U.S.C. § 1391(b)(2) and (e)(1). A substantial part of the events or omissions giving rise to the claims occurred in this district, and all individual Plaintiffs reside in this District. Further, Defendants are officers or employees of the United States acting in their official capacities, and agencies of the United States.

23. Plaintiff the Episcopal Diocese, also known as the Episcopal Church in Western Washington, is a diocese of the Episcopal Church in Washington State west of the Cascade Range. The Episcopal Diocese is headquartered in Seattle and is a registered 501(c)(3) corporation.

24. The Council on American-Islamic Relations-Washington (CAIR-WA) is a 501(c)(3) non-profit organization that operates from its offices in downtown Seattle.

**III. PARTIES**

**A. Plaintiffs**

**1. Plaintiff John Doe**

25. Plaintiff John Doe is an Iranian national who resides in Seattle, Washington. John Doe is a fourth year Ph.D. candidate in Aeronautic and Astronautic Engineering at the University of Washington. John Doe is simultaneously studying for a master’s degree in applied mathematics at the University of Washington. John Doe has a provisional patent, “patent pending,” in the United States pertaining to battery function. He is also a graduate fellow with the Clean Energy Institute in Seattle.

1           26.     John Doe holds a multiple entry F-1 student visa that will expire in August 2017.  
2 This is his second such visa that allows him to pursue full-time educational study in the United  
3 States. John Doe received both of his F-1 visas after an intensive vetting and screening process  
4 abroad that included an in-person interview and proof of his admission status at the University of  
5 Washington as a full-time doctoral student.

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

12           28.     John Doe's immediate and extended family, including maternal grandparents, all  
13 live in Iran.

14           29.     John Doe is engaged in collaborative research with the Chinese Academy of  
15 Science. He co-authors publications with Chinese researchers and is actively advising and  
16 directing joint research with students in the United States and China on these projects. As part of  
17 this collaboration, John Doe conducted research in China for three months in 2016. John Doe  
18 was planning to return to China for further research and collaboration in April of 2017 but  
19 canceled that trip because of the travel ban. John Doe hopes to be able to go to China this  
20 summer but remains fearful of what position Defendants may take next that might potentially  
21 leave him stranded outside the country if he makes the trip.

22           30.     As part of his doctorate studies, it is anticipated and expected that John Doe will  
23 participate in international conferences, because such endeavors are essential to his training and  
24 his ability to be fully active in the scientific and research community. There are numerous  
25 upcoming academic conferences that John Doe was planning to attend such as the International  
26 Renewable Energy Storage Conference in Dusseldorf, Germany on March 14-16, 2017, the

1 International Conference on Hybrid and Organic Photovoltaics in Lausanne, Switzerland in May  
2 2017, and the Third International Conference on Perovskite Solar Cells and Optoelectronics in  
3 Oxford, England in September 2017. However, as the submission deadline for the conferences  
4 are often several months before the event, and given the multiple times Defendants changed their  
5 mind while implementing the Original Order, John Doe either decided not to submit proposals  
6 for several of the conferences to which he otherwise would have applied to make presentations  
7 or canceled his travel plans to attend as a result of Defendants' actions. In addition, given the  
8 uncertainty that remains with the Revised Order, he continues to fear that if he leaves the United  
9 States to attend an academic conference, he may be prevented from re-entering the United States.  
10 John Doe's inability to reenter the United States would prevent him from completing his  
11 doctorate.

12 31. John Doe's research and career have suffered and will continue to suffer as long  
13 as the Revised Executive Order is in place.

14 32. John Doe is pursuing his claims anonymously because he is afraid of retaliation  
15 from the United States government or others for asserting his rights.

16 **2. Plaintiff Jack Doe**

17 33. Plaintiff Jack Doe is an Iranian national who resides in Seattle.

18 34. Jack Doe was born and raised in a Muslim family.

19 35. Jack Doe is a post-doctorate researcher at the University of Washington in a joint  
20 appointment that includes Electrical Engineering. Until recently, he was working under his F-1  
21 visa Optional Practical Training ("OPT") status, and subsequent extension for STEM students  
22 ("STEM OPT"), which together allowed him, after completing his degree, to work for 3 years in  
23 academia. OPT is temporary employment that is directly related to an F-1 student's major area of  
24 study, and the STEM OPT extension allows certain F-1 students who receive science,  
25 technology, engineering, and mathematics (STEM) degrees, and who meet other specified  
26

1 requirements, to apply for a 24-month extension of their post-completion OPT. Application for  
2 both OPT and STEM OPT requires endorsement by the student's "designated school official" at  
3 the student's U.S. academic institution.

4 36. Jack Doe's OPT status was due to expire on May 31, 2017, and with it, his  
5 student visa. Recently, since the issuance of the Revised Order, Jack Doe received his H1-B  
6 status.

7 37. Jack Doe has an undergraduate degree in Electrical Engineering from Sharif  
8 University in Tehran.

9 38. Jack Doe first came to the United States in 2006 with an F-1 visa to work on a  
10 Ph.D. at the University of Maryland. He obtained his first F-1 student visa from the United States  
11 embassy in Cypress.

12 39. In 2008, Jack Doe returned briefly to Iran to visit his family. Most of his family  
13 lives in Iran. He also traveled to Dubai to obtain another F-1 single entry student visa that  
14 allowed him to return to the United States to continue his educational training. It has been years  
15 since he has been able to see his mother and sister in Iran. Because of the Executive Orders, Jack  
16 Doe has lost hope that he will be able to see family any time in the near future.

17 40. Since completing his Ph.D. in 2014 until the recent receipt of his H1-B status,  
18 Jack Doe was operating under the OPT provision of his visa to do post-doc research at the  
19 University of Washington.

20 41. Although Jack Doe is in the United States and working legally, the timing of his  
21 status change during the 90-day ban set out in Section 2(c) of the Revised Order has been a  
22 complicating factor. Prior to the issuance of the Executive Orders, Jack Doe had been  
23 interviewing with employers. His future employment prospects are now in complete jeopardy  
24 because he is at a significant disadvantage compared to other foreign nationals who are not from  
25 one of the Designated Countries and who can therefore travel freely both for the duration of the  
26 90-day ban and in the future.

1           42.     Since the issuance of the Executive Orders, Jack Doe has felt marginalized,  
 2 stigmatized, and less than a full member of the community. Jack Doe feels subjected to increased  
 3 suspicion, scrutiny, and social and political isolation on the basis of his religion (or perceived  
 4 religion) and national origin. He had plans to take some business and leisure trips within the  
 5 United States but has cancelled them because he fears for his safety and the hostility he might  
 6 face in places which are less exposed to immigrants and Muslims. Jack Doe is aware of recent  
 7 press reports of evidence targeted at Muslims and fears for his safety as a result. In particular, the  
 8 wide spread press coverage of the shooting of two Indian men in a Kansas bar who were asked  
 9 what type of visa they held before being yelled at to “get out of my country”<sup>14</sup> and shot on the  
 10 mistaken belief that they were from Iran cause Jack Doe substantial concern for his own safety  
 11 and well-being.<sup>15</sup>

12           43.     Jack Doe is pursuing his claims anonymously because he is afraid of retaliation  
 13 from the United States government or others for asserting his rights.

14  
 15           **3.     Plaintiff Jason Doe**

16           44.     Plaintiff Jason Doe is a resident of Seattle.

17           45.     Jason Doe is Muslim.

18           46.     Jason Doe is an Iranian national. He first came to the United States in 2013 with  
 19 his wife, who was enrolled in a doctorate program at the University of Washington. His wife  
 20 held an F-1 visa, and he held an F-2 visa.

21           47.     In 2014, Jason Doe was accepted into a 5-year doctorate program at the Business  
 22 School of the University of Washington to study Information Systems. He is halfway through his  
 23

24  
 25 <sup>14</sup> Alyssa Ayres, *The Kansas City Shooting Is Quickly Changing How Indians View the U.S.*, Forbes (Mar. 3, 2017),  
<https://www.forbes.com/sites/alyssaayres/2017/03/03/the-kansas-city-shooting-is-quickly-changing-how-indians-view-the-u-s/#9476acc60909> (last accessed May 4, 2017).

26 <sup>15</sup> Eric Levenson, *911 Calls Reveal the Kansas Suspect Thought He'd Shot 'Two Iranians,'* CNN (Feb. 28, 2017),  
<http://www.cnn.com/2017/02/27/us/kansas-olathe-bar-shooting-indian-court/> (last accessed May 4, 2017).

1 program and anticipates graduating in 2019. Jason Doe would like to stay in academia, as a  
2 researcher, writer, and professor in his field.

3 48. After he was admitted to the University of Washington, Jason Doe left the United  
4 States to obtain a multiple entry F-1 visa. He obtained one in 2014 and returned to the University  
5 of Washington to work on his Ph.D. Jason Doe's visa expired in August 2016, but he is in the  
6 United States lawfully because his F-1 status is valid until 2019 pursuant to his Form I-20. His F-  
7 1 status may also be extended if it takes him longer to finish his degree.

8 49. Jason Doe's wife currently holds an F-2 visa and associated I-20. Her F-2 status  
9 will also expire in 2019.

10 50. The majority of his family and his wife's family are in Iran.

11 51. Given Jason Doe's time horizon on graduation and the fact that he is halfway  
12 through his program, he should be starting to attend conferences to present papers, expand his  
13 contacts, and develop his expertise. Most of the conferences that would be appropriate for him to  
14 attend are international conferences, which would require travel outside of the United States in  
15 the coming months.

16 52. However, as a result of the travel ban, Jason Doe cannot leave the country for fear  
17 he will not be permitted to return. He is particularly reluctant to leave without his wife for fear  
18 that they will be separated. His research and career will suffer as long as the Revised Executive  
19 Order is in place.

20 53. Since the issuance of the Executive Orders, Jason Doe has felt marginalized,  
21 stigmatized, and less than a full member of the community. Jason Doe has felt subjected to  
22 increased suspicion, scrutiny, and social and political isolation on the basis of his religion (or  
23 perceived religion) and national origin. He read reports of an Iranian man in Oregon who was not  
24 Muslim but who returned home from a trip to find his house vandalized, sprayed with hate-filled  
25 racist graffiti ("F\*\*\* YOU TERRORIST") and a note weighted down by bullets in the shape of a  
26

1 cross that said “if I see you here next month, I will shoot you and burn your house.”<sup>16</sup> When  
2 someone asks him where he is from or what his religion is, he is no longer comfortable  
3 answering that he is from Iran or that he is a Muslim because he is worried about the  
4 consequences. Jason Doe no longer feels safe walking in the streets at night because he worries  
5 someone might shoot him because of how he looks and because they hate Muslims.<sup>17</sup>

6 54. Jason Doe is pursuing his claims anonymously because he is afraid of retaliation  
7 from the United States government or others for asserting his rights.

8 **4. Plaintiff Joseph Doe**

9  
10 55. Plaintiff Joseph Doe is a Somali national who currently resides in Des Moines,  
11 Washington.

12 56. Joseph Doe is a practicing Muslim.

13 57. Joseph Doe is married with three children.

14 58. Prior to arriving in the United States, Joseph Doe had lived in refugee camps in  
15 Kenya since 1992—for nearly 22 years. Joseph Doe’s family fled Somalia during that country’s  
16 violent civil war to escape persecution and the risk of being killed because of their clan  
17 membership. While trying to reach safety, Joseph Doe’s family spent weeks in the forest without  
18 food. Fighters from one of the warring factions found them in the forest and raped Joseph Doe’s  
19 older sister. His mother tried to stop the rape of her daughter, but the men clubbed her in the  
20 head with the butt of their guns. His sister, who was pregnant, bled to death following the rape.  
21 Joseph Doe was approximately ten years old at the time and witnessed all of these events. He  
22 struggles with these memories to this day.

23  
24  
25 <sup>16</sup> Lizzy Acker, *Portland-Area Man’s Home Vandalized with Death Threats and Racist Graffiti*, The Oregonian  
26 (Mar. 31, 2017), [http://www.oregonlive.com/pacific-northwest-news/index.ssf/2017/03/portland-area\\_mans\\_home\\_vandal.html](http://www.oregonlive.com/pacific-northwest-news/index.ssf/2017/03/portland-area_mans_home_vandal.html) (last accessed May 5, 2017).

<sup>17</sup> See *supra* notes 14-15.

1           59.     Joseph Doe’s family eventually reached Kenya and began living in a refugee  
2 camp. Joseph Doe had his initial interview with the United Nations High Commissioner for  
3 Refugees (“UNHCR”) in 2000 with his mother, two brothers, and three surviving sisters.

4           60.     In 2004, Joseph Doe left the camp one morning as he often did to try to earn some  
5 money for his family. But when he returned, he found out that the local Turkana people had  
6 raided the camp, and in the subsequent fighting and upheaval, his family was nowhere to be  
7 found. To this day, Joseph Doe does not know where his mother or siblings are or what  
8 happened to them. He still hopes to find them someday.

9           61.     When he was finally called for an interview with DHS/USCIS in 2011, Joseph  
10 Doe had just gotten married. He went through the screening process with DHS/USCIS starting in  
11 2011 and completed it in December 2013.

12           62.     Joseph Doe finally arrived in the United States on January 28, 2014, as a refugee.  
13 He only had refugee status for himself as the refugee process was begun for him with his mother  
14 and siblings when he was a child.

15           63.     Joseph Doe became a legal permanent resident in 2016. Joseph Doe is currently  
16 working, sending money to his family in Kenya, and preparing for their arrival.

17           64.     When he came to the United States, Joseph Doe had to leave behind in Kenya his  
18 wife and children, the youngest of whom was just about six months old at the time. His children  
19 are now 3, 4, and 9 years old.

20           65.     Joseph Doe filed a Refugee/Asylee Relative Petition, Form I-730, for his wife and  
21 three children in June 2015. His wife and children had their final interviews in November 2016,  
22 which they successfully passed; they have completed the security clearance; they completed their  
23 medical clearance on January 31, 2017; and they received their final required injections on  
24 March 1, 2017. They are only waiting to be scheduled for travel to the United States.

25           66.     Joseph Doe was told that the only thing left before his family would travel to the  
26 United States was for their travel arrangements to be finalized. However, as of the date of this



1 filing, Joseph Doe’s family members have not received their tickets for travel, and they have not  
2 been permitted to come to the United States.

3 67. Joseph Doe has been unable to learn why his family’s travel has not been  
4 arranged or why they have not been able to travel to the United States.

5 68. Because of the Revised Order, Joseph Doe now understands that his family’s  
6 travel to the United States will be delayed for at least 120 days, and possibly indefinitely if the  
7 refugee cap is met before they are admitted. With this delay, it is likely that his family’s medical  
8 clearance will expire and they will be required to repeat that part of the process.

9 69. Joseph Doe’s youngest son often cries for him, asks his mother where his dad is,  
10 and asks to talk to his dad. When Joseph Doe speaks with his son, his son constantly asks  
11 “Where are you?” and “Why can’t you come for us?” Joseph Doe has applied for an I-131 travel  
12 document to visit his wife and children in Kenya. However, he is afraid to leave the country even  
13 with a travel document because he fears he will not be allowed to return to the United States.

14 70. The Revised Order has interfered with and delayed the arrival to the United States  
15 of the only family Joseph Doe has left. Joseph Doe is injured by that interference and delay.

16 71. Joseph Doe is pursuing his claims anonymously because he is afraid of retaliation  
17 from the United States government or others for asserting his rights.

18 **5. Plaintiff James Doe**

19 72. James Doe is an Eritrean national who resides in Seattle, Washington.

20 73. James Doe fled Eritrea in 2009 after being imprisoned because of his political  
21 beliefs. In 2009, he was working at Sawa Military Training Camp (“Sawa”) as part of his  
22 mandatory national service, which is required of every Eritrean for 18 months by law, but in  
23 practice is a system of indefinite conscription. The Eritrean government requires all Eritrean  
24 students to spend their last year of high school at Sawa, and James Doe was working as an  
25 instructor there, teaching accounting, which was his focus of study at university. While he was  
26

1 forced to work at Sawa, he was only able to go home to see his wife and children every three or  
2 four months. At that time, his oldest child was about a year old, and his wife was expecting their  
3 second child.

4 74. In or around March 2009, the Eritrean government called a meeting to ask people  
5 at Sawa what changes they would like to see implemented, and James Doe participated in this  
6 meeting and voiced his opinions. Two or three days later, government officers came to his room  
7 at Sawa and arrested him.

8 75. They took him to an underground prison and kept him there for approximately  
9 five months. The prisoners were not given enough food to eat, and they had no water for  
10 washing. Many prisoners were tortured with beatings and by being tied up for long periods of  
11 time, including one technique well known in Eritrean prisons called the “helicopter,” in which  
12 the hands and feet of a prisoner are tied behind his back and he is made to lie on the ground, face  
13 down, or suspended in the air. Sometimes the guards would remove prisoners and not bring them  
14 back, and the other prisoners did not know what became of them. James Doe knew not to speak  
15 out to the prison guards and was able to avoid being tortured, and eventually, he escaped the  
16 prison.

17 76. He fled first to Sudan, then through Egypt, and made it to Israel. Once he had  
18 made it to Israel, he was finally able to contact his wife and let her know what had happened to  
19 him.

20 77. James Doe stayed in Israel for a significant time, but he could not get permanent  
21 status in Israel as a refugee. He was able to get a visa for travel to Sri Lanka as a refugee, but  
22 after he arrived there, the Sri Lankan government began detaining Eritrean refugees. He was  
23 detained and kept in prison for almost two years.

24 78. The United Nations, investigating the Sri Lankan detention centers, became aware  
25 of him and worked with him to help him obtain refugee status in the United States. In April  
26 2015, nearly six years after he escaped prison in Eritrea, he made it to the United States.

1 79. In July 2015, James Doe filed a Refugee/Asylee Relative Petition, Form I-730, for  
2 his wife and children. His family is currently living in Ethiopia, and his children, including the  
3 daughter whom he has never met, are now 8 and 9 years old.

4 80. James Doe became a lawful permanent resident in 2016. He currently works two  
5 jobs, one full-time and one part-time, and provides financial support for his wife and children.

6 81. In late September 2016, James Doe's I-730 petition for his wife and children was  
7 approved. At that time, James Doe learned that his family would come to the United States  
8 within the next 4-5 months. His family had been interviewed at the US Embassy in Addis Ababa  
9 and had passed their security clearance. They also went through the required medical  
10 examinations and immunizations.

11 82. James Doe was told that the only thing left before his family would travel to the  
12 United States was for their travel arrangements to be finalized. However, as of the date of this  
13 filing, James Doe's family has not received their tickets for travel, and they have not come to the  
14 United States.

15 83. James Doe has been unable to learn why his family's travel has not been arranged  
16 or why they have not been able to travel to the United States.

17 84. Because of the Revised Order, James Doe now understands that his family's  
18 travel to the United States will be delayed for at least 120 days. With this delay, it is likely that  
19 his family's medical clearance will expire and they will be required to repeat that part of the  
20 process.

21 85. The Revised Order has interfered with and delayed James Doe's family's travel to  
22 the United States. James Doe is injured by that interference and delay.

23 86. Since the issuance of the Executive Orders, James Doe has felt subjected to  
24 increased suspicion, scrutiny, and social and political questioning on the basis of his religion (or  
25 perceived religion) and national origin. Because of his features, coloring, and accent, James Doe  
26 is frequently asked by customers at his workplace where he is from and if he is Muslim. He has

1 also had Muslim customers confide in him that they do not feel comfortable speaking in Arabic  
2 in public because they are afraid of being discriminated against and that, as a result, they  
3 consciously try to speak English in public to avoid being targeted as Muslim. The number and  
4 frequency of questions about his national origin and religion that James Doe has received have  
5 increased since the issuance of the Executive Orders. When he responds that he is Christian,  
6 some customers have confided in him that they “don’t like Muslims,” that they “think all  
7 Muslims are bad,” or that they “think that Muslims are terrorists.”

8 87. James Doe is pursuing his claims anonymously because he is afraid of retaliation  
9 from the United States government or others for asserting his rights.

10 **6. Plaintiff The Episcopal Diocese of Olympia**

11  
12 88. The Episcopal Diocese of Olympia, also known as the Episcopal Church in  
13 Western Washington, is a diocese of The Episcopal Church located in western Washington. It is  
14 headquartered in Seattle’s Capitol Hill neighborhood.

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

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

8           91.     Before a refugee arrives in the United States, the RRO is notified by the  
9 Department of State that a family has been approved for refugee status and that the RRO should  
10 “assure” the case. The RRO is required to make contact with friends or relatives of the arriving  
11 refugees living in the U.S. (known as the “U.S. ties”) who were listed on the refugee’s  
12 application. The RRO expends significant time making phone calls, sending mail, and making  
13 in-person visits to meet with the U.S. tie to evaluate his or her capacity to help the RRO during  
14 the resettlement process. The evaluation process includes a home visit to view and evaluate the  
15 living space. If there is no possibility that the arriving refugee can live with a U.S. tie, the RRO  
16 further interviews the U.S. tie to determine if the relative or friend can assist with transportation,  
17 job search, enrollment of kids in school, or any of the other daily tasks with which newly  
18 arriving refugees need assistance.

19           92.     If the U.S. tie cannot perform these tasks, the RRO invests its own resources to  
20 perform this pre-arrival legwork for the incoming refugees. These tasks include, among other  
21 things, searching for and obtaining safe housing, furnishing the residence, and stocking it with  
22 food and household items prior to the arrival of the refugees. If the refugee family or U.S. tie  
23 rejects the apartment or house, RRO staff begin a process of evaluating alternative locations. The  
24 RRO undertakes housing inspections that consume significant RRO staff time to ensure that the  
25 neighborhood is safe, that there is no bare wiring visible in the living space, no peeling or flaking  
26 interior paint or plaster, no visible mold or unsanitary odors, that all windows and doors have

1 working locks, that heat, ventilation, lighting, and running water are adequate, that kitchen  
2 appliances and bathroom fixtures are in good repair, and that there are easily accessible storage  
3 or disposal facilities for garbage.

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

9 94. When the Original Executive Order was issued on January 27, 2017, the RRO  
10 was expecting to welcome over 20 refugee families—including families from Syria, Iraq, and  
11 Somalia—into the community in the coming days, weeks, and months, and had been actively  
12 preparing for their arrival and resettlement in the greater Seattle area by carrying out on their  
13 behalves the activities described above. As a result of the RRO's efforts, these refugee families  
14 already had domestic arrangements supporting their arrival in the United States and were  
15 approved for travel. Yet, these families had their dreams dashed when they had to abruptly  
16 cancel their travel plans as a result of the Original Executive Order.

17 95. Since the Original Executive Order, the RRO's work has been completely  
18 disrupted. The chaos surrounding the implementation of the Original and Revised Executive  
19 Orders has also required the RRO to expend additional, unplanned-for resources. RRO staff are  
20 working around-the-clock to address the immediate needs of these families in crisis and to  
21 respond to questions and concerns from their families and loved ones already in the United  
22 States who had been planning for the arrival of these already-approved refugees. In addition,  
23 many of the RRO's resources devoted to these refugee families over the past months have now  
24 been wasted.

25 96. The Revised Executive Order only exacerbates the harm to the Diocese and the  
26 population it serves. A few of the refugees the Diocese was expecting have arrived between the

1 time the Original Order was halted by court orders and the effective date of the Revised Order.  
2 However as of the filing of this Second Amended Complaint, over a dozen families from the  
3 Designated Countries and nearly the same number of families from other countries the Diocese  
4 was expecting have not arrived and certainly will not be able to complete their trips once the  
5 Revised Order goes into effect.

6 97. The Diocese serves refugees and displaced persons of all faiths, but many of its  
7 clients are Muslim.

8 98. The Diocese and its RRO believe that the Executive Orders convey an official  
9 message of disapproval and hostility by the Defendants toward the Muslim refugees and their  
10 families with whom the RRO works, sending the message that the government deems them to be  
11 outsiders who are not and should not become full members of the political community. The  
12 Diocese and its RRO believe that the Executive Orders thus serve to marginalize these refugees  
13 and their families, subjecting them to suspicion, scrutiny, and social and political isolation on the  
14 basis of their religion or national origin, and inflicting other stigmatic and dignitary injuries on  
15 them.

16 99. Both the Original and Revised Executive Orders have caused and continue to  
17 cause significant additional harm to the most vulnerable population that the RRO and Episcopal  
18 Diocese are focused on serving. These refugees are fleeing persecution in their country of origin,  
19 and are now facing persecution in the safe haven they had been promised in the United States.  
20 The dramatic reduction in the overall number of refugees allowed this year will not only rob  
21 families of hope and a future but may also cost some of them their lives. The mission and  
22 efficacy of the RRO, and through it the Episcopal Diocese, has been thwarted by the Original  
23 Executive Order. Because the Revised Executive Order is substantively the same, these injuries  
24 will continue once the new Order takes effect.  
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1           **7. Plaintiff The Council on American-Islamic Relations-Washington**

2           100. The Council on American-Islamic Relations-Washington (CAIR-WA) is a  
3 grassroots civil rights and advocacy group. CAIR-WA is a 501(c)(3) non-profit organization that  
4 was incorporated in 2004 and operates from its offices in downtown Seattle.

5           101. The mission of CAIR-WA is to enhance the understanding of Islam in  
6 Washington state and throughout the United States by encouraging dialogue, protecting civil  
7 liberties, empowering American Muslims, and building coalitions that promote justice and  
8 mutual understanding. CAIR-WA also provides direct service to its Muslim constituents in the  
9 form of information, training, and access to a network of over 50 pro bono attorneys.

10           102. Since January 27, 2017, and the issuance of the first Executive Order, CAIR-WA  
11 has received several inquiries from American-Muslim travelers in Washington who have become  
12 the target of unconstitutional and systematic ideological questioning by Transportation Security  
13 Administration and Customs and Border Patrol agents about their religious values and political  
14 views. The number of such inquiries has increased dramatically since January 27, 2016, and  
15 CAIR-WA has devoted and continues to devote considerable unplanned-for resources to respond  
16 to these inquiries and to educate the community about its rights in the face of the Executive  
17 Orders.

18           103. Since January 27, 2017, CAIR-WA has also been flooded with inquiries from  
19 affected persons about the impact of the Executive Orders on their ability or the ability of their  
20 families to travel, cross borders, or with respect to visa or immigration status. CAIR-WA has  
21 received over 90 such requests for help from US citizens and others between January 27, 2017  
22 and April 30, 2017. In all of 2016, CAIR-WA opened a total of about 250 cases—but in just the  
23 first four months of 2017, it has already received over 250 requests for assistance, and opened as  
24 many cases in the first third of the year as it did in all of 2016.  
25  
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1           104. In addition to its direct staff, CAIR-WA also works with a network of over 20 pro  
2 bono attorneys in Washington who provide direct services to its constituents on civil rights,  
3 immigration, and visa issues.

4           105. CAIR-WA has provided referrals and advice to many United States citizens  
5 originally from the Affected Countries who are trying to reunite with their immediate families.  
6 For example, a Somali national has contacted CAIR-WA regarding his petition to be reunited  
7 with his wife and two children who remain in Djibouti. On January 23, 2017, the US Embassy  
8 in Djibouti scheduled screening interviews for his family. The Embassy canceled these  
9 interviews on January 29, 2017. Despite the injunction preventing the implementation of the  
10 Original Order, the US Embassy has refused to reschedule the interviews, and his family is now  
11 subject to the restrictions and delays of the Revised Order.

12           106. Another United States citizen originally from Sudan has contacted CAIR-WA  
13 regarding her petition for her Sudanese father to receive an IR-5 visa. Her father was scheduled  
14 for a screening interview at the US Embassy in the United Arab Emirates on February 15, 2017.  
15 The Embassy canceled the interview when the Original Order issued. The interview was  
16 rescheduled after the Original Order was enjoined, and her father received his visa on February  
17 20, 2017. Unfortunately, however, her father's efforts to book travel to the United States have  
18 been thwarted, due to the issuance of the Revised Order. The airlines have required him to return  
19 to the US Embassy to ensure that his recently issued visa is still valid. Her father is now afraid to  
20 book his airline travel only to be detained or deported at the border when he tries to enter the  
21 United States.

22           107. CAIR-WA assists and advises American Muslims such as those described above  
23 and provides education, advocacy, and referrals so they may navigate both the stated and implied  
24 ramifications of the Defendants' Orders.

25           108. CAIR-WA has also experienced a dramatic increase in the number of inquiries  
26 from the Muslim community regarding the signed Executive Orders since January 27, 2017, in

1 addition to inquiries about bullying, hate crimes, and other injuries suffered by those it serves as  
 2 a direct result of Defendants' open antipathy for those observing the Muslim faith.

3 109. The Executive Orders convey an official message of disapproval and hostility  
 4 toward CAIR-WA as well as its Muslim members and clients, making clear that the government  
 5 deems them outsiders, not full members of the political community. CAIR-WA's Muslim clients  
 6 in the United States have been marginalized as a result of this anti-Muslim message, have been  
 7 subjected to baseless suspicion, scrutiny, and social and political isolation on the basis of religion  
 8 and national origin, and have suffered other dignitary and stigmatic injuries.

9 110. CAIR-WA has had to hire a part-time civil rights team member to handle the  
 10 extra work. This additional part-time position was not in CAIR's 2017 budget, but was deemed a  
 11 necessary expenditure as part of CAIR-WA's commitment to providing a rapid response to the  
 12 number of questions and reports of disruption in travel experienced by CAIR-WA constituents.  
 13 CAIR-WA has also taken on the task of printing and distributing 10,000 business cards, depicted  
 14 below, that have legal assistance contact information for immigrants and travelers stranded at  
 15 U.S. airports as a result of the Executive Orders. CAIR-WA had not budgeted for this expense  
 16 or forecasted its need prior to January 27, 2017, but CAIR-WA decided to do so in direct  
 17 response to the turmoil caused by the Executive Orders. The printing costs for these business  
 18 cards was yet another off-budget expenditure necessitated by Defendants' conduct.





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111. In direct response to the original and revised Executive Orders, CAIR-WA has also organized several informational presentations for the Washington Muslim community to address the confusion, concern, and fear the Orders have stimulated.

112. In 2015 and prior years, at least 98 percent of CAIR-WA’s funding was from individual donors, almost all of whom reside in the state of Washington, or from matching funds from companies that employ its individual donors and volunteers. The remaining 2 percent of CAIR-WA’s funding comes from sponsorship from locally-based non-profits, mosques, and businesses that serve Washington communities.

113. The mission and efficacy of CAIR-WA has been thwarted by the Original Executive Order. Because the Revised Executive Order is substantively the same, these injuries will continue once the new Order takes effect.

**B. Defendants**

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

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



1           123. The Original Executive Order cited the threat of domestic terrorism committed by  
2 foreign nationals and purported to direct a variety of changes to the manner and extent to which  
3 non-citizens may seek and obtain admission to the United States.

4           124. Section 3(c) of the Original Executive Order suspended immigrant and  
5 nonimmigrant entry into the country for 90 days for all people from countries referred to in  
6 section 217(a)(12) of the INA, 8 U.S.C. § 1187(a)(12), with narrow exceptions not relevant here.  
7 The Original Executive Order applied only to nationals of Syria, Sudan, Iraq, Iran, Libya,  
8 Somalia, and Yemen (the “Original Targeted Countries”).<sup>18</sup> The ban applied regardless of  
9 whether such persons held valid visas and regardless of whether their visas were immigration or  
10 non-immigration related.

11           125. Section 5(a) suspended the U.S. Refugee Admissions Program for 120 days.

12           126. Section 5(b) stated that “refugee claims made by individuals on the basis of  
13 religious-based persecution, provided that the religion of the individual is a minority religion in  
14 the individual’s country of nationality” will be prioritized.

15           127. Section 5(c) contained as its statement of government interest a proclamation  
16 “that “the entry of nationals of Syria as refugees is detrimental to the interests of the United  
17 States,” and suspends the entry of Syrian refugees into the country.

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

23           129. The Original Executive Order stated that “the United States should not admit  
24 those who engage in acts of bigotry or hatred (including . . . the persecution of those who  
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26 <sup>18</sup> *Fact Sheet: Protecting The Nation from Foreign Terrorist Entry to The United States*, Dep’t of Homeland Sec.  
(Jan. 29, 2017), <https://www.dhs.gov/news/2017/01/29/protecting-nation-foreign-terrorist-entry-united-states> (last  
accessed Mar. 13, 2017).

1 practice religions different from their own)” and yet it singled out practitioners of a single  
2 religion for exclusion. *See* Exhibit A, § 1.

3  
4 **1. Visa Revocations Pursuant to the Original Executive Order**

5 130. The same day the Original Executive Order issued, the Deputy Assistant  
6 Secretary for Visa Services at the Bureau of Consular Affairs of the Department of State, relying  
7 on the Original Executive Order, issued a letter purporting to provisionally revoke all valid  
8 nonimmigrant and immigrant visas of nationals of the Original Targeted Countries, subject to  
9 exceptions not relevant here.

10 131. The Provisional Revocation Letter was not publicized; to the contrary, it was  
11 withheld from the public until it was filed four days later under a “Notice of Supplemental  
12 Authority” in court cases challenging the Original Executive Order.

13 132. Neither notice nor opportunity to be heard was provided to the members of the  
14 Non-Immigrant Visa Class, the members of the Refugee Class, the Episcopal Diocese, CAIR-  
15 WA, Plaintiffs, or indeed anyone else prior to the mass revocation of these visas.

16 133. The Provisional Revocation Letter compounded the chaos caused by the Original  
17 Executive Order. The federal government issued no public and legally binding guidance  
18 regarding the meaning or proper interpretation of the Provisional Revocation Letter. A copy of  
19 this letter is attached to this Complaint as Exhibit B.

20 134. The Provisional Revocation Letter also appeared to expand the scope of the  
21 Original Executive Order’s application: it applied on its face to persons who were present inside  
22 the United States as well as persons outside the United States, rather than being limited to  
23 persons seeking to enter the United States. Under section 221(a)(1)(B) of the INA, 8 U.S.C. §  
24 1227(a)(i)(B), “[a]ny alien . . . whose nonimmigrant visa . . . has been revoked under section  
25 1201(i) of this title” INA § 221(i), referenced in the Provisional Revocation Letter “is  
26 deportable.”

1 135. The State Department estimated that it revoked up to 60,000 visas.<sup>19</sup>

2 136. The CBP stated on its website that all F-1, J-1, and M-1 visas belonging to  
3 persons from the affected countries were provisionally revoked.<sup>20</sup>

4 137. Upon information and belief, all H1B visas belonging to persons from the  
5 affected countries were also provisionally revoked.

6 **2. Chaos, Confusion, and Whiplash in the Implementation of the Original**  
7 **Executive Order**

8 138. The disastrous effects of the Original Executive Order were immediately  
9 apparent. Countless news reports document the chaotic scene at airports across the country as  
10 those who were legally entitled to entry when they boarded airplanes heading to the United  
11 States—refugees, immigrants, and those traveling on non-immigrant visas alike—were  
12 designated deportable by the time they landed. For example, 109 travelers from the Original  
13 Targeted Countries on non-immigrant visas were in transit to the country at the time the Original  
14 Executive Order was signed.<sup>21</sup> Up to 13 people were detained at the Seattle-Tacoma  
15 International Airport on January 28, 2017 pursuant to the Original Executive Order.<sup>22</sup>

16 139. Application of the Original Executive Order was inconsistent and confusing, with  
17 contradictory official statements issued within days of one another—further heightening  
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20 <sup>19</sup> Mary Emily O'Hara, *Over 100,000 Visas Have Been Revoked by Immigration Ban, Justice Dept. Reveals*, NBC  
21 News (Feb. 3, 2017), <http://www.nbcnews.com/news/us-news/over-100-000-visas-have-been-revoked-immigration-ban-justice-n716121> (last accessed Mar. 13, 2017).

22 <sup>20</sup> *Q&A for [Original] Executive Order: Protecting the Nation from Foreign Terrorist Entry into the United States*,  
23 U.S. Customs & Border Prot. (Feb. 2, 2017), <https://www.cbp.gov/document/faqs/questions-and-answers-protecting-nation-foreign-terrorist-entry-united-states> (last accessed Mar. 13, 2017).

24 <sup>21</sup> Jeremy Diamond & Steve Almasy, *Trump's Immigration Ban Sends Shockwaves*, CNN (Jan. 30, 2017),  
25 <http://www.cnn.com/2017/01/28/politics/donald-trump-executive-order-immigration-reaction/> (last accessed Mar.  
13, 2017).

26 <sup>22</sup> Liz Jones & Isolde Raftery, *Roller Coaster of Heartbreak and Fury at Sea-Tac in Wake of Trump Order*,  
KUOW.org (Jan. 28, 2017), <http://kuow.org/post/roller-coaster-heartbreak-and-fury-sea-tac-wake-trump-order>  
(last accessed Mar. 13, 2017).

1 Plaintiffs' reasonable and on-going fear that if they left the country, they would not be permitted  
2 to return to their work and studies.

3 140. For example, the Secretary of Homeland Security reportedly received his first full  
4 briefing on the Original Order as the President signed it,<sup>23</sup> resulting in DHS's position on the  
5 application of the Original Executive Order to lawful permanent residents, or green card holders,  
6 changing three times over the course of six days following the issuance of the Original Executive  
7 Order:

- 8
- 9 • On January 28, 2017, a spokesperson for DHS stated that lawful permanent  
10 residents, or green card holders, would be barred from entry pursuant to the  
11 Original Executive Order.
- 12 • Secretary Kelly reversed course the next day on January 29th, issuing a statement  
13 that: "In applying the provisions of the president's [Original] Executive Order, I  
14 hereby deem the entry of lawful permanent residents to be in the national interest.  
15 Accordingly, absent the receipt of significant derogatory information indicating a  
16 serious threat to public safety and welfare, lawful permanent resident status will  
17 be a dispositive factor in our case-by-case determinations."
- 18 • Two days later on January 31, 2017, U.S. Customs and Border Protection, a DHS  
19 sub-agency, issued a statement that, while repeating Secretary Kelly's January  
20 29th statement, then stated in the "Questions and Answers" Section that the entry  
21 of lawful permanent residents would depend on receipt of a "national interest  
22 waiver[]" consistent with the provisions of the [Original] Executive Order."
- 23 • DHS changed its position yet again two days later. This time, the February 2,  
24 2017 version of the "Questions and Answers" stated that "[u]nder the recent  
25 guidance from the White House . . . the [Original] Executive Order [issued  
26 January 27, 2017,] does not apply to their [lawful permanent residents] entry to  
the United States." As of February 2, 2017, DHS had processed 1,610 waivers for  
legal permanent residents to re-enter the United States.

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<sup>23</sup> Michael D. Shear & Ron Nixon, *How Trump's Rush to Enact an Immigration Ban Unleashed Global Chaos*, N.Y. Times (Jan. 29, 2017), [https://www.nytimes.com/2017/01/29/us/politics/donald-trump-rush-immigration-order-chaos.html?\\_r=0](https://www.nytimes.com/2017/01/29/us/politics/donald-trump-rush-immigration-order-chaos.html?_r=0) (last accessed May 4, 2017).



1 141. Customs and Border Protection officers were caught unaware and were  
 2 blindsided, with even managers not seeming to have clear guidance.<sup>24</sup> The chief of passenger  
 3 operations for U.S. Customs and Border Protection at John F. Kennedy International Airport  
 4 admitted, “[w]e are as much in the dark as everybody else.”<sup>25</sup>

5 142. In addition, according to two State Department officials, most officials at the  
 6 department first heard of the Original Executive Order through the media.<sup>26</sup> On the day  
 7 Defendant Trump issued the Original Order, Deputy Assistant Secretary for Visa Services at the  
 8 U.S. Department of State, Edward J. Ramotowski, issued a letter that <sup>27</sup> “provisionally revoke[d]  
 9 all valid nonimmigrant and immigrant visas of nationals of Iraq, Iran, Libya, Somalia, Sudan,  
 10 Syria, and Yemen.” But then on February 1, 2017, White House Counsel Donald F. McGahn  
 11 II—who is not in the chain of command for any of the Executive Departments—issued  
 12 “Authoritative Guidance,” admitting there was “reasonable uncertainty” surrounding provisions  
 13 of the Original Order such that he needed to clarify that sections 3(c) and 3(e) of the Executive  
 14 Order did not apply to lawful permanent residents.<sup>28</sup>

15 143. Provisions of the Original Executive Order relating to refugees also were  
 16 inconsistently interpreted and applied by Defendants, further heightening the need for judicial  
 17 intervention.

18 144. For example, although Section 5(a) of the Original Executive Order  
 19 unequivocally stated that “[t]he Secretary of State shall suspend the U.S. Refugee Admissions  
 20

21 <sup>24</sup> See *supra* note 21.

22 <sup>25</sup> Jonathan Allen & Brendan O’Brien, *How Trump’s Abrupt Immigration Ban Sowed Confusion at Airports, Agencies*, Reuters (Jan. 29, 2017), <http://www.reuters.com/article/us-usa-trump-immigration-confusion-idUSKBN15D07S> (last accessed May 4, 2017).

23 <sup>26</sup> See *supra* note 23.

24 <sup>27</sup> *Letter from Edward J. Ramotowski*, Deputy Assistant Secretary for Visa Services at the U.S. Dep’t of State (Jan. 27, 2017), <http://www.politico.com/f/?id=00000159-f6bd-d173-a959-ffff671a0001> (last accessed Mar. 14, 2017).

25 <sup>28</sup> Emergency Mot. Under Circuit Rule 27-3 for Admin. Stay & Mot. for Stay Pending Appeal at 72, *State v. Trump*  
 26 (“*State*”), No. 17-35105 (9th Cir. Feb. 4, 2017), Dkt. # 14.

1 Program (USRAP) for 120 days,” four business days later on February 2, 2017, and in a reversal  
2 of the clear mandate in the Original Executive Order, the Acting Director of the U.S.  
3 Immigration and Citizenship Services (“USCIS”), a division of DHS, issued a guidance to all  
4 USCIS employees that “USCIS will adjudicate Refugee/Asylee Relative Petitions [ ] for all  
5 beneficiaries, from any country of nationality, currently in the United States . . . .” A copy of this  
6 guidance is attached as Exhibit C.

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

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

14 147. As summed up by the Ten National Security Experts:

15  
16 [T]he repeated need for the Administration to clarify confusion after the Order  
17 issued suggest that that Order received little, if any advance scrutiny by the  
18 Departments of State, Justice, Homeland Security or the Intelligence Community.  
19 Nor have we seen any evidence that the Order resulted from experienced  
intelligence and security professionals recommending changes in response to  
identified threats.”

20 Joint Decl. ¶ 7, *State v. Trump*, No. 17-35105 (9th Cir. Feb. 6, 2017), Dkt. # 28-2 (attached as  
21 Exhibit D).

22  
23 **3. The Discriminatory Intent Behind the Original Executive Order**

24 148. The Original Executive Order and the Provisional Revocation Letter applied only  
25 to nationals of seven countries, all of which are majority-Muslim: Iraq, Iran, Libya, Somalia,  
26 Sudan, Syria, and Yemen.

1 149. The Original Executive Order, by its express terms, suspended immigrant and  
 2 nonimmigrant entry into the United States based on nationality, place of birth or place of  
 3 residence.

4 150. The Provisional Revocation Letter similarly revoked “all valid nonimmigrant and  
 5 immigrant visas of nationals” based on nationality, place of birth, or place of residence.

6 151. The Original Executive Order was Defendant Trump’s fulfillment of a clearly  
 7 stated campaign promise to ban Muslims from entering the United States. In a December 7, 2015  
 8 written statement, “Donald J. Trump Statement on Preventing Muslim Immigration,” then-  
 9 candidate Trump said that he was “calling for a total and complete shutdown of Muslims  
 10 entering the United States.” While the statement was briefly removed due to a glitch post-  
 11 election, the statement was returned to the website and displayed on the official Trump-Pence  
 12 website through the morning of May 8, 2017.<sup>29</sup>

13 152. When questioned about the “shutdown,” and asked whether a customs agent  
 14 would ask a person his or her religion, then candidate Trump responded, “They would say, ‘Are  
 15 you Muslim?’” The interviewer then asked, “And if they said, ‘yes,’ they would not be allowed  
 16 in the country?” “That’s correct,” Mr. Trump responded.<sup>30</sup>

17 153. Defendant Trump repeatedly referred to a ban on Muslim immigration on the  
 18 campaign trail.<sup>31</sup>

20  
 21 <sup>29</sup> Donald J. Trump *Statement on Preventing Muslim Immigration*, DonaldJTrump.com (Dec. 7, 2015),  
 22 <https://www.donaldjtrump.com/press-releases/donald-j.-trump-statement-on-preventing-muslim-immigration> (last  
 23 accessed May 8, 2017); Emily Flitter, *Glitch Briefly Removes ‘Muslim Ban’ Proposal from Trump Website*,  
 24 Reuters (Nov. 10, 2016), <http://www.reuters.com/article/us-usa-trump-immigration-idUSKBN135284> (last  
 25 accessed May 8, 2017); Ann E. Marimow & Robert Barnes, *President Trump’s Lawyers on Revised Travel Ban*  
*Repeatedly Asked about Campaign Promises*, Wash. Post (May 8, 2017),  
 26 [https://www.washingtonpost.com/local/public-safety/presidents-trump-revised-travel-ban-faces-new-legal-challenges/2017/05/08/c4c6f968-3387-11e7-b373-418f6849a004\\_story.html?hpid=hp\\_hp-more-top-stories\\_travelban-1238p%3Ahomepage%2Fstory&utm\\_term=.2642306be29e](https://www.washingtonpost.com/local/public-safety/presidents-trump-revised-travel-ban-faces-new-legal-challenges/2017/05/08/c4c6f968-3387-11e7-b373-418f6849a004_story.html?hpid=hp_hp-more-top-stories_travelban-1238p%3Ahomepage%2Fstory&utm_term=.2642306be29e) (last accessed May 8, 2017).

<sup>30</sup> Nick Gass, *Trump Not Bothered by Comparisons to Hitler*, Politico (Dec. 8, 2015),  
<http://www.politico.com/trump-muslims-shutdown-hitler-comparison> (last accessed Mar. 13, 2017).

<sup>31</sup> Donald J. Trump (@realDonaldTrump), Twitter (Dec. 7, 2015, 2:32 PM),  
<https://twitter.com/realDonaldTrump/status/673993417429524480> (last accessed Mar. 13, 2017); Jenna Johnson,

1           154. Defendant Trump also indicated that he knew that he would need to find an  
2 alternative way to describe the Muslim ban. In response to a question on the July 17, 2016  
3 episode of 60 Minutes about the evolution of his earlier rhetoric of an outright ban on Muslim  
4 immigration to a ban on persons from territories that have a Muslim majority, the following  
5 exchange took place:

6  
7           Stahl: [I]n December, you [*i.e.*, Pence] tweeted, and I quote you, “Calls to ban  
8 Muslims from entering the U.S. are offensive and unconstitutional.”

9           Trump: So you call it territories. OK? We’re gonna do territories. We’re not  
10 gonna let people come in from Syria that nobody knows who they are.

11           ...

12           Stahl: [S]o you’re changing... your position.

13           Trump: —No, I—call it whatever you want. We’ll call it territories, OK?

14           Stahl: So not Muslims?

15           Trump: You know—the Constitution—there’s nothing like it. But it doesn’t  
16 necessarily give us the right to commit suicide, as a country, OK? And I’ll tell  
17 you this. Call it whatever you want, change territories [*sic*], but there are  
territories and terror states and terror nations that we’re not gonna allow the  
people to come into our country.<sup>32</sup>

18           155. Seven days later in response to a question on NBC’s Meet the Press about  
19 whether his acceptance speech at the Republican National Convention was a rollback on his  
20 position, Defendant Trump reiterated the point when he replied:

21  
22           I don’t think so. I actually don’t think it’s a rollback. In fact, you could say it’s an  
23 expansion. I’m looking now at territory. People were so upset when I used the  
24

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25 *Trump Calls for ‘Total and Complete Shutdown of Muslims Entering the United States,’* Wash. Post (Dec. 7, 2015),  
26 <http://wpo.st/O0uY2> (last accessed Mar. 13, 2017).

<sup>32</sup> Lesley Stahl, *The Republican Ticket: Trump and Pence*, CBS (Jul. 17, 2016), <http://www.cbsnews.com/news/60-minutes-trump-pence-republican-ticket/> (last accessed Mar. 13, 2017).

1 word Muslim. Oh, you can't use the word 'Muslim.' Remember this. And I'm  
2 okay with that, because I'm talking territory instead of Muslim.<sup>33</sup>

3 156. After the election, on December 22, 2016, a reporter asked Defendant Trump  
4 whether his "plans to create a Muslim register or ban Muslim immigration to the United States"  
5 had changed. Defendant Trump responded "you've known my plans all along" and that he was  
6 "100% correct" in his position.<sup>34</sup>

7 157. After reading the title of the Original Order when signing it, Defendant Trump  
8 said, "We all know what that means."<sup>35</sup>

9 158. On the day Defendant Trump issued the Original Executive Order, he gave an  
10 interview to the Christian Broadcasting Network during which he confirmed his intent to  
11 prioritize non-Muslims nationals over Muslim nationals of those countries:

12 They've been horribly treated. Do you know if you were a Christian in Syria it  
13 was impossible, at least very tough to get into the United States? If you were a  
14 Muslim you could come in, but if you were a Christian, it was almost impossible  
15 and the reason that was so unfair, everybody was persecuted in all fairness, but  
16 they were chopping off the heads of everybody but more so the Christians. And I  
17 thought it was very, very unfair.<sup>36</sup>

18 159. Consistent with Defendant Trump's expressed intent to favor Christians, Section  
19 5(e) of the Original Executive Order authorized the Secretaries of the Departments of State and  
20 Homeland Security to admit individuals who are members of "a religious minority in [their]

21 <sup>33</sup> Rebecca Shabad, *Donald Trump Says He's Expanding His Muslim Ban*, CBS News (July 25, 2016),  
22 <http://www.cbsnews.com/news/donald-trump-says-hes-expanding-muslim-ban/> (last accessed Mar. 13, 2017).

23 <sup>34</sup> Katie Reilly, *Donald Trump on Proposed Muslim Ban: 'You Know My Plans,'* Time (Dec. 21, 2016),  
24 <http://time.com/4611229/donald-trump-berlin-attack> (last accessed Mar. 13, 2017).

25 <sup>35</sup> *Transcript of Ceremonial Swearing in of the Secretary of Defense*, CNN (Jan. 27, 2017),  
26 <http://transcripts.cnn.com/TRANSCRIPTS/1701/27/cg.02.html> (last accessed Mar. 13, 2017).

<sup>36</sup> David Brody, *Brody File Exclusive: President Trump Says Persecuted Christians Will Be Given Priority As Refugees*, CBN News (Jan. 27, 2017), <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 Mar. 13, 2017).

1 count[ries] of nationality facing religious persecution.” Exhibit A. This provision directly grants  
2 Christians preference over Muslim refugees.

3 160. During a signing ceremony for the Original Executive Order on January 27, 2017,  
4 Defendant Trump stated that the purpose of the Original Executive Order was to “establish[] new  
5 vetting measures to keep radical Islamic terrorists out of the United States of America.”<sup>37</sup>

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

9 162. In an interview on January 28, 2017, one of Defendant Trump’s senior advisors,  
10 Rudolph Giuliani, left no doubt that the ban on entry from nationals of the Original Targeted  
11 Countries was intended to carry out a ban on Muslims, and that the Original Executive Order  
12 was crafted to create a pretextual cover for a Muslim ban. Mr. Giuliani stated: “I’ll tell you the  
13 whole history of it . . . . So, when [Defendant Trump] first announced it, he said, ‘Muslim ban.’  
14 He called me up. He said, ‘Put a commission together. Show me the right way to do it  
15 legally.’”<sup>38</sup>

16 163. On January 29, an anonymous “senior administration official” briefed a staffer of  
17 Breitbart.com on the intended purpose of the Original Executive Order: “The reality, though, is  
18 that the situation [of large Islamic populations] that exists today in parts of France, in parts of  
19 Germany, in Belgium, etcetera, is not a situation we want replicated inside the United States.”<sup>39</sup>  
20  
21  
22

23 <sup>37</sup> Dan Merica, *Trump Signs [Original] Executive Order to Keep out ‘Radical Islamic Terrorists,’* CNN (Jan. 30,  
2017), <http://www.cnn.com/2017/01/27/politics/trump-plans-to-sign-executive-action-on-refugees-extreme-vetting/> (last accessed Mar. 13, 2017).

24 <sup>38</sup> Amy B. Wang, *Trump Asked for a ‘Muslim Ban,’ Giuliani Says – and Ordered a Commission to Do it ‘Legally,’*  
25 Wash. Post (Jan. 29, 2017), <http://wpo.st/xzuY2> (last accessed Mar. 13, 2017).

26 <sup>39</sup> Neil Munro, *Left Protests While Trump Junks Obama’s Global Immigration Plan,* Breitbart.com (Jan. 30, 2017),  
<http://www.breitbart.com/big-government/2017/01/30/trump-changes-immigration-favor-american-values/>  
(parenthetical in original) (last accessed Mar. 13, 2017).

1           164. While Defendant Trump has subsequently tried to deny that his Original  
2 Executive Order was “a Muslim ban, as the media [was] falsely reporting.”<sup>40</sup> His own prior  
3 conflicting, recorded statements as well as those of his senior advisors make clear the rationale  
4 for the Original Executive Order is in fact to ban Muslims from entering the United States[.]

5           165. The Original Executive Order and the manner in which it was implemented  
6 caused individual Plaintiffs and members of the proposed classes direct, ongoing, and immediate  
7 harm by causing them to suffer “[t]he indignity of being singled out [by a government] for  
8 special burdens” on the basis of religion or assumed religion. *Hassan v. City of New York*, 804  
9 F.3d 277, 289 (3d Cir. 2015), *as amended* (Feb. 2, 2016) (quoting *Locke v. Davey*, 540 U.S. 712,  
10 731 (2004) (Scalia, J., dissenting)).

## 11           **B. President Trump’s March 6, 2017 Revised Executive Order**

12           166. During a February 16, 2017 news conference, Donald Trump twice declared that  
13 he would follow through on his campaign promise of a Muslim ban, albeit changing his  
14 terminology to “radical Islamic terrorists”:  
15

- 16
- 17           • “Some of the things I’m doing probably aren’t popular but they’re necessary for  
18 security and for other reasons...I’m here following through on what I pledged to  
19 do.”
  - 20           • “We have taken decisive action to keep radical Islamic terrorists out of our  
21 country. No parts are necessary and constitutional actions were blocked by  
22 judges, in my opinion, incorrect, and unsafe ruling. [sic]...I got elected on defense  
23 of our country. I keep my campaign promises, and our citizens will be very happy  
24 when they see the result. They already are, I can tell you that. Extreme vetting  
25 will be put in place and it already is in place in many places.”<sup>41</sup>

24 <sup>40</sup> Press Release, *President Donald J. Trump Statement Regarding Recent [Original] Executive Order Concerning  
25 Extreme Vetting*, White House (Jan. 29, 2017), [https://www.whitehouse.gov/the-press-  
office/2017/01/29/president-donald-j-trump-statement-regarding-recent-executive-order](https://www.whitehouse.gov/the-press-office/2017/01/29/president-donald-j-trump-statement-regarding-recent-executive-order) (last accessed Mar. 13,  
2017).

26 <sup>41</sup> *Full Transcript: President Donald Trump’s News Conference*, CNN (Feb. 16, 2017),  
<http://www.cnn.com/2017/02/16/politics/donald-trump-news-conference-transcript/> (last accessed Mar. 13, 2017).

1  
2 167. Defendant Trump also announced during the February 16<sup>th</sup> news conference that  
3 he would be “issuing a new executive action next week that will comprehensively protect our  
4 country. . . . That will be done sometime next week, toward the beginning or middle at the latest  
5 part.”<sup>42</sup> Defendant Trump did not issue a new order that following week.

6 168. On February 21, 2017, Stephen Miller, Senior Advisor to the President, described  
7 the administration’s plans with regard to the Revised Order: “Fundamentally, you’re still going  
8 to have the same basic policy outcome for the country, but you’re going to be responsive to a lot  
9 of very technical issues that were brought up by the court and those will be addressed. But in  
10 terms of protecting the country, those basic policies are still going to be in effect.”<sup>43</sup>

11 169. While the White House indicated that the new order would be signed on March 1,  
12 2017—the day after Defendant Trump’s first address to Congress on February 28<sup>th</sup><sup>44</sup>—the  
13 signing of the new order was delayed yet again.

14 170. On February 28<sup>th</sup>, an administration official told a news outlet that the delay was  
15 due to the busy news cycle, that Defendant Trump wanted it to get plenty of attention, and “[w]e  
16 need [the executive order] to have its own time to breathe.”<sup>45</sup>

17 171. On March 1, 2017, another senior Administration official told a different news  
18 outlet that Defendant Trump delayed plans to sign a reworked travel ban in the wake of positive  
19 reaction to his first address to Congress, explaining that “We want the (executive order) to have  
20 its own ‘moment.’”<sup>46</sup>

21 \_\_\_\_\_  
<sup>42</sup> *Id.*

22 <sup>43</sup> *See infra* note 116.

23 <sup>44</sup> Justin Fishel, *New Trump Order on Travel and Immigration Expected Wednesday*, ABC News (Feb. 2, 2017),  
24 <http://abcnews.go.com/Politics/trump-order-travel-immigration-expected-wednesday/story?id=45814211> (last  
accessed on Mar. 13, 2017).

25 <sup>45</sup> Shane Goldmacher & Nahal Toosi, *Trump Delays Signing New Travel Ban Order, Officials Say*, Politico (Feb.  
26 28, 2017), <http://www.politico.com/story/2017/02/trump-delays-travel-ban-order-235548> (last accessed Mar. 13,  
2017).

<sup>46</sup> *See supra* note 9.



1 172. Five days later on March 6, 2017, Defendant Trump signed the Revised Executive  
 2 Order that has the exact same title as the Original Order, “Protecting the Nation from Foreign  
 3 Terrorist Entry into the United States.” A copy of this Revised Executive Order is attached to  
 4 this Complaint as Exhibit E.

5 173. Although the Revised Order was designed to appear facially neutral, Defendants  
 6 cannot erase the history or facts preceding its issuance, *see supra* Section IV.A.2., the taint of the  
 7 discriminatory motivation behind it, *supra* Section IV.A.3., or the complete arbitrariness of its  
 8 requirements. *See infra* Section IV.C.

9 174. Indeed, Defendant Trump has openly promoted that the Revised Order was his  
 10 continued fulfillment of his campaign promises. For example, on the day Defendant Trump  
 11 signed the Revised Order, he sent a fundraising email requesting support for the Revised Order  
 12 because he was “implement[ing] the policies you—and millions of American like you—voted  
 13 for.”<sup>47</sup> And at a press conference the next day on March 7, 2017, White House Press Secretary  
 14 Sean Spicer confirmed that with the issuance of the Revised Order, Defendant Trump was  
 15 “deliver[ing]” on one of his “most significant campaign promises: protecting the country against  
 16 radical Islamic terrorism . . . .”<sup>48</sup>

17 175. At a March 15, 2017 rally, Defendant Trump admitted that the Revised Order is  
 18 just a “watered-down version” of his first travel ban.<sup>49</sup>

19  
 20  
 21 <sup>47</sup> Matt Zaptosky, David Nakamura, & Abigail Hauslohner, *Revised Executive Order Bans Travelers from Six*  
 22 *Muslim-Majority Countries from Getting New Visas*, Wash. Post (Mar. 6, 2017),  
 23 [https://www.washingtonpost.com/world/national-security/new-executive-order-bans-travelers-from-six-muslim-majority-countries-applying-for-visas/2017/03/06/3012a42a-0277-11e7-ad5b-d22680e18d10\\_story.html?utm\\_term=.c2b939d5bb80](https://www.washingtonpost.com/world/national-security/new-executive-order-bans-travelers-from-six-muslim-majority-countries-applying-for-visas/2017/03/06/3012a42a-0277-11e7-ad5b-d22680e18d10_story.html?utm_term=.c2b939d5bb80) (last accessed Mar. 13, 2017).

24 <sup>48</sup> *Press Briefing by Press Secretary Sean Spicer, 3/7/2017, #18*, White House (Mar. 7, 2017),  
 25 <https://www.whitehouse.gov/the-press-office/2017/03/07/press-briefing-press-secretary-sean-spicer-372017-18>  
 26 (last accessed Mar. 13, 2017).

<sup>49</sup> Matt Zaptosky, Kalani Takase & Maria Sacchetti, *Federal Judge in Hawaii Freezes President Trump’s New*  
*Entry Ban*, Wash. Post (Mar. 16, 2017), [https://www.washingtonpost.com/local/social-issues/lawyers-face-off-on-trump-travel-ban-in-md-court-wednesday-morning/2017/03/14/b2d24636-090c-11e7-93dc-00f9bdd74ed1\\_story.html?utm\\_term=.e95cfd5a6df1&wpisrc=nl\\_buzz&wpmm=1](https://www.washingtonpost.com/local/social-issues/lawyers-face-off-on-trump-travel-ban-in-md-court-wednesday-morning/2017/03/14/b2d24636-090c-11e7-93dc-00f9bdd74ed1_story.html?utm_term=.e95cfd5a6df1&wpisrc=nl_buzz&wpmm=1) (last accessed May 5, 2017).

1           176. And as recently as April 24, 2017, Defendant Trump once again revealed his true  
 2 motivation for the Revised Executive Order. During a White House reception for conservative  
 3 media guests, Defendant Trump stated “I’m Christian,”<sup>50</sup> noted that “he had done very well with  
 4 Christian voters in the election,”<sup>51</sup> reiterated that “[n]obody’s been treated worse, it seems to me,  
 5 than Christians in the Middle East,”<sup>52</sup> and once again argued that that it was easier for Muslims  
 6 to come into the United States as refugees than Christians while it was far more dangerous for  
 7 Christians there.<sup>53</sup> He then declared, “[w]e’re going to be helping the Christians big league.”<sup>54</sup>

8           177. Pursuant to Section 13 of the Revised Order, the Original Order will be revoked  
 9 as of the effective date of the Revised Order.

10           178. Pursuant to Section 14 of the Revised Order, it will take effect on March 16,  
 11 2017.<sup>55</sup>

12           179. The Revised Order shares two fundamental features with the Original Order: it  
 13 continues to violate the rights of non-immigrants who need to renew their visas, and it continues  
 14 to violate the rights of refugees and asylees seeking to reunite with family members who have  
 15 already cleared all security hurdles.

16  
 17  
 18 <sup>50</sup> Scott Johnson, *At the White House with Trump*, Power Line (Apr. 25, 2017),  
 19 <http://www.powerlineblog.com/archives/2017/04/at-the-white-house-with-trump.php> (last accessed May 4, 2017).

20 <sup>51</sup> *Id.*

21 <sup>52</sup> Charlie Spiering, *Donald Trump Invites Conservative Media to White House for Exclusive Briefing*, Breitbart.com  
 (Apr. 24, 2017), <http://www.breitbart.com/big-government/2017/04/24/donald-trump-invites-conservative-media-to-white-house-for-exclusive-briefing/> (last accessed May 4, 2017).

22 <sup>53</sup> *Id.*

23 <sup>54</sup> *Id.*

24 <sup>55</sup> On March 15, 2017, the Honorable Derrick Watson of the United States District Court for the District of Hawai‘i  
 25 temporarily enjoined the implementation of Sections 2 and 6 of the Revised Executive Order, Order Granting  
 Motion for Temporary Restraining Order, *Hawai‘i v. Trump*, No. 17-50 (D. Haw. Mar. 15, 2017), Dkt. # 219, and  
 26 converted the temporary injunction into a preliminary injunction on March 29, 2017. Order Granting Mot. to  
 Convert TRO to a Prelim. Inj., *Hawai‘i* (Mar. 29, 2017), Dkt. # 270. Section 2(c) of the Revised Executive Order  
 was also enjoined by the Honorable Theodore Chuang of the United States District Court for the District of  
 Maryland on March 16, 2017. Mem. Order, *IRAP v. Trump*, No. 17-361 (D. Md. Mar. 16, 2017), Dkt. # 149.

1           180. Six of the seven countries targeted in the Original Order are still targeted by the  
2 Revised Order. Sections 1(f) and 2(c) of the Revised Order suspend entry into the United States  
3 by the nationals of Iran, Libya, Somalia, Sudan, Syria, and Yemen for ninety days from the  
4 effective date of the Revised Order.

5           181. All six banned countries have overwhelmingly Muslim populations.

6           182. Pursuant to Section 2(e) of the Revised Order, at the end of the ninety-day ban,  
7 the Secretary of Homeland Security shall submit to the President a list of countries recommended  
8 for inclusion in a Presidential proclamation that would prohibit the entry of categories of foreign  
9 nationals of countries that have not provided the requested information until they do so or until  
10 the Secretary of Homeland Security certifies that the country has an adequate plan to do so, or  
11 has adequately shared information through other means. The names of additional countries may  
12 also be submitted to the President.

13           183. Pursuant to Section 3(a) of the Revised Order, the Order shall apply only to  
14 foreign nationals of the designated countries who: (i) are outside the United States on the  
15 effective date of this order; (ii) did not have a valid visa at 5:00 p.m., eastern standard time on  
16 January 27, 2017; and (iii) do not have a valid visa on the effective date of the Revised Order.

17           184. Section 3 of the Revised Order provides for certain “exceptions” and potential  
18 “waivers” to the travel ban.

19           185. Section 3(b) states that the Revised Order will not apply to: (i) any lawful  
20 permanent resident of the United States; (ii) any foreign national who is admitted to or paroled  
21 into the United States on or after the effective date of this order; (iii) any foreign national who  
22 has a document other than a visa, valid on the effective date of this order or issued on any date  
23 thereafter, that permits him or her to travel to the United States and seek entry or admission, such  
24 as an advance parole document; (iv) any dual national of a country designated under section 2 of  
25 this order when the individual is traveling on a passport issued by a non-designated country;  
26 (v) any foreign national traveling on a diplomatic or diplomatic-type visa, North Atlantic Treaty

1 Organization visa, C-2 visa for travel to the United Nations, or G-1, G-2, G-3, or G-4 visa; or  
 2 (vi) any foreign national who has been granted asylum; any refugee who has already been  
 3 admitted to the United States; or any individual who has been granted withholding of removal,  
 4 advance parole, or protection under the Convention Against Torture.

5 186. Foreign nationals of the Targeted Countries who do not fall within the categories  
 6 enumerated in Section 3(b) will be required to seek a waiver to enter the United States for the  
 7 duration of the Revised Order. Section 3(c) allows a consular officer, or, as appropriate, the  
 8 Commissioner, U.S. Customs and Border Protection (CBP), or the Commissioner's delegee, to  
 9 decide on a case-by-case basis to authorize the issuance of a visa to, or to permit the entry of, a  
 10 foreign national for whom entry is otherwise suspended if the foreign national has demonstrated  
 11 to the officer's satisfaction that denying entry during the suspension period would cause undue  
 12 hardship, and that his or her entry would not pose a threat to national security and would be in  
 13 the national interest.

14 187. This waiver provision is of little solace in light of statements and actions taken by  
 15 Defendants in support of a Muslim ban, such as Defendant Trump's prior statement that a person  
 16 who admitted being a Muslim should be denied entry into the country. *See supra* ¶ 152.

17 188. Defendant Trump's message and intent of the travel ban has clearly been heard by  
 18 those with the discretion to admit people into this country and already used to harass Muslims or  
 19 those perceived to be Muslim at our borders. For example:

- 21 • On February 4, 2017, a woman from the Montreal suburb of Brossard was denied  
 22 entry into the U.S. after being fingerprinted, photographed and questioned in  
 detail about her religion and her views on U.S. President Donald Trump;<sup>56</sup>
- 23 • On February 7, 2017, the U.S. Customs and Border Protection held Muhammad  
 24 Ali Jr., the son of the late legendary boxer, as well as his mother for questioning

25 \_\_\_\_\_  
 26 <sup>56</sup> Steve Rukavina, *Canadian Woman Turned Away from U.S. Border After Questions About Religion, Trump*, CBC  
 News (Feb. 8, 2017), [http://www.cbc.ca/news/canada/montreal/canadian-woman-turned-away-from-u-s-border-  
 after-questions-about-religion-trump-1.3972019](http://www.cbc.ca/news/canada/montreal/canadian-woman-turned-away-from-u-s-border-after-questions-about-religion-trump-1.3972019) (last accessed May 4, 2017).

1 in a Florida airport because of their Arabic-sounding names, repeatedly asking  
2 them, “Where did you get your name from?” and “Are you Muslim?”<sup>57</sup>

- 3 • On or about February 27, 2017, a Canadian doctor originally from Afghanistan  
4 was held for over five hours at the US border and questioned about his “tribal  
5 chief,” his life in Afghanistan, the family he had left behind and whether he had  
6 seen “a lot of gunmen” while growing up there.<sup>58</sup>
- 7 • On April 23, 2017, Dr. Osman “Ozzie” Ahmed, a former NASA shuttle mission  
8 physician and a U.S. citizen since 1991 who is an approved “low-risk” traveler,  
9 had his passport taken from him and was detained for about an hour by U.S.  
10 Customs and Border Protection officers upon his arrival at Tampa International  
11 Airport due to his Muslim name and birthplace (Egypt).<sup>59</sup>
- 12 • On April 24, 2017, American composer Mohammed Fairouz was detained for  
13 hours at John F. Kennedy International Airport with the only reason given to him  
14 for his detention being his Muslim name.<sup>60</sup>

15 These examples demonstrate that the waiver process is in grave danger of being administered in  
16 a discriminatory fashion.

17 189. Neither the Original nor Revised Order single out any countries for disfavored  
18 treatment that are not majority-Muslim.

19 190. Section 6(a) of the Revised Order suspends all decisions on applications for  
20 refugee status as well as travel of refugees into the United States for 120 days. The suspension

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21 <sup>57</sup> Jennie Jarvie, *Muhammed Ali’s Son May Sue After Being Detained at Florida Airport and Questioned About His  
22 Religion*, L.A. Times (Feb. 25, 2017), [http://www.latimes.com/nation/la-na-muhammad-ali-son-detained-  
23 20170225-story.html](http://www.latimes.com/nation/la-na-muhammad-ali-son-detained-20170225-story.html) (last accessed May 8, 2017).

24 <sup>58</sup> Ashifa Kassam, *Afghan-Canadian Doctor Detained at US Border and Asked About ‘Tribal Chief,’* Guardian  
25 (Mar. 1, 2017), <https://www.theguardian.com/world/2017/mar/01/canada-doctor-sardar-ahmad-us-border-detained>  
26 (last accessed May 4, 2017).

<sup>59</sup> Christopher O’Donnell, *Former NASA Doctor Says He Was Detained at TIA Because of His Muslim Name*,  
Tampa Bay Times (Apr. 29, 2017), [http://www.tbo.com/news/transportation/former-nasa-doctor-says-he-was-  
detained-at-tia-because-of-his-muslim-name/2322062](http://www.tbo.com/news/transportation/former-nasa-doctor-says-he-was-detained-at-tia-because-of-his-muslim-name/2322062) (last accessed May 4, 2017).

<sup>60</sup> Kristine Phillips, *American Composer Says He Was Detained at JFK Because of His ‘Super Common’ Muslim  
Name*, Wash. Post (May 2, 2017), [https://www.washingtonpost.com/news/post-nation/wp/2017/04/29/american-  
composer-says-he-was-detained-for-hours-at-jfk-for-his-super-common-muslim-name/?utm\\_term=.1e729661f7a2](https://www.washingtonpost.com/news/post-nation/wp/2017/04/29/american-composer-says-he-was-detained-for-hours-at-jfk-for-his-super-common-muslim-name/?utm_term=.1e729661f7a2)  
(last accessed May 5, 2017).

1 required in Section 6 does not apply to refugee applicants who, before the effective date of the  
2 Revised Order, have been formally scheduled for transit by the Department of State.

3 191. Section 6(c) allows the Secretary of State and the Secretary of Homeland Security  
4 to jointly determine to admit individuals to the United States as refugees on a case-by-case basis,  
5 in their discretion, but only so long as they determine that the entry of such individuals as  
6 refugees is in the national interest and does not pose a threat to the security or welfare of the  
7 United States, including in circumstances such as the following: the individual's entry would  
8 enable the United States to conform its conduct to a preexisting international agreement or  
9 arrangement, or the denial of entry would cause undue hardship.

10 192. Like the waiver provision in Section 3 of the Revised Executive Order, the  
11 procedure set forth in section 6(e) is of little comfort as Defendant Trump continues to make it  
12 clear that his intent is "to be helping the Christians big league."<sup>61</sup>

13 193. Refugees or asylees who seek to have a family member(s) join them in the United  
14 States must file Refugee/Asylee Relative Petitions (Form I-730). However, the Revised Order  
15 will suspend all decisions on these petitions as well as travel for these family members.

16 194. On March 6, 2017, the Department of Homeland Security issued a Q&A:  
17 Protecting the Nation from Foreign Terrorist Entry to The United States. A copy of the Q&A is  
18 attached as Exhibit F. The Q&A provides:

19  
20 Q27. Can the exception for refugee admission be used for Refugee/Asylee  
21 Relative Petitions (Form I-730) cases where a family member is requesting a  
beneficiary follow to join?

22 No. Individuals who already have valid visas or travel documents that permit  
23 them to travel to the United States are exempt from the Executive Order. To the  
24 extent that an individual does not yet have such documents, please contact the  
Department of State.

25  
26  

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<sup>61</sup> See *supra* note 52.

1           195. Defendant Tillerson issued a series of cables implementing the Revised Order,<sup>62</sup>  
2 including a March 10, 2017 State Department Cable, 17 STATE 23338, with the subject, “New  
3 Executive Order 13780: Protecting the Nation from Foreign Terrorist Entry Into the United  
4 States – Guidance to Visa-Issuing Posts.” (“Cable 23338”) (attached as Exhibit G). The  
5 “guidance” in these cables include mandatory orders regarding implementation of EO-2 and thus  
6 constitute final agency action.

7           196. For example, Section 16 of Cable 23338 orders agency employees to suspend the  
8 processing of V93 cases:

9  
10           16. (SBU) The U.S. Refugee Admissions Program (USRAP) is suspended for 120  
11 days. This includes the processing of boarding foils for any V93 cases, regardless  
12 of nationality, since those follow-to-join cases are admitted to the United States as  
13 refugees. After receiving cable instructions to implement the new E.O., posts  
14 should halt the issuance of these cases immediately and cancel any scheduled V93  
15 appointments. [The National Visa Center] will halt the processing of all V93  
16 cases and will not forward these cases to posts. The Department will notify posts  
17 when the suspension is lifted.

18           197. “V93 cases” refers to the follow-to-join I-730 petitions filed by refugees such as  
19 Plaintiffs James Doe and Joseph Doe.

20           198. While the Original Order suspended USRAP for 120 days, the Revised Executive  
21 Order contains slightly different language, specifically suspending travel of refugees into the  
22 United States under USRAP as well as decisions on applications for refugee status. However, the  
23 cable states that USRAP “is suspended for 120 days.”

24           199. In ordering agency employees to halt the processing of V93 cases and cancel any  
25 scheduled V93 appointments, Defendant Tillerson exceeded his authority under the law and  
26 failed to fulfill the requirements of the APA.

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<sup>62</sup> Yeganeh Torbati, Mica Rosenberg & Arshad Mohammed, *Exclusive: U.S. Embassies Ordered to Identify Population Groups for Tougher Visa Screening*, Reuters (Mar. 23, 2017), <http://www.reuters.com/article/us-usa-immigration-visas-exclusive-idUSKBN16U12X> (last accessed May 4, 2017).

1  
2 **C. The Arbitrariness of the Executive Orders**

3 200. Despite repeated claims by Defendants regarding the immediate national security  
4 need for the Orders, Defendant Trump took thirty-one days after the time this Court issued the  
5 first injunction against the Original Order on February 3, 2017, to issue the Revised Order. At  
6 least five of those days were due purely to timing of press coverage desired by Defendant Trump  
7 and had nothing to do with national security.<sup>63</sup>

8  
9 **1. Arbitrariness of the Travel Ban**

10 **a. The Faulty Logic Behind Invoking the 9/11 Attacks to Justify the**  
11 **Travel Ban**

12 201. Section 1 of the Original Executive Order, entitled “Purpose,” stated that at the  
13 time of the September 11, 2001 (“9/11”) terrorist attacks, “State Department policy prevented  
14 consular officers from properly scrutinizing the visa applications of several of the 19 foreign  
15 nationals” involved in those attacks. Further, DHS’s Fact Sheet on the Original Executive Order  
16 stated that “[t]he [Original] Executive Order protects the United States from countries  
17 compromised by terrorism . . . .”<sup>64</sup> The Revised Order continues to justify the actions of  
18 Defendants based on events from 2001. *See* Exhibit E, § 1(h).

19 202. Yet, neither the Original nor the Revised Executive Order impose any restrictions  
20 on nationals of Egypt, Lebanon, Saudi Arabia, or the United Arab Emirates—the countries of  
21 which the 9/11 attackers were citizens. A March 9, 2017 Breitbart article stated that ISIS boasted  
22 that Saudi Arabia is the top provider of terrorists for its group, citing a high-ranking Iraqi  
23  
24

25 \_\_\_\_\_  
<sup>63</sup> *See supra* note 9.

26 <sup>64</sup> *See supra* note 18.



1 intelligence officer as saying, “The Saudi presence in ISIS is very large. What we have left are  
2 mainly Iraqis and Saudis.”<sup>65</sup>

3 203. According to an article published on CNN, “[i]n financial disclosure forms during  
4 the presidential campaign, [Defendant Trump] listed two companies with dealings in Egypt and  
5 eight with business in Saudi Arabia. And in the UAE, the Trump Organization is partnering with  
6 a local billionaire to develop two golf courses in Dubai.”<sup>66</sup>

7 204. Ten former national security, foreign policy, and intelligence officials at the  
8 highest levels of the United States government, including John F. Kerry (former Secretary of  
9 State), Avril D. Haines (former Deputy National Security Advisor ), Lisa O. Monaco (former  
10 Assistant to the President for Homeland Security and Counterterrorism and Deputy National  
11 Security Advisor), and Susan E. Rice (former National Security Advisor)—all of whom were  
12 serving in their official capacities and “were current on active intelligence regarding all credible  
13 terrorist threat streams directed against the U.S” up until January 20, 2017, just seven days prior  
14 to the issuance of the Original Executive Order (“Ten National Security Experts”)—filed a joint,  
15 sworn declaration in *State v. Trump*, No. 17-35105 (9th Cir. Feb. 6, 2017), Dkt. # 28-2 (“Joint  
16 Declaration”), attached as Exhibit D, stating that they were “unaware of any specific threat that  
17 would justify the travel ban established by the [Original] Executive Order” and that “[t]here is no  
18 national security purpose for a total bar on entry for aliens from the seven named countries. *See*  
19 Exhibit D, ¶¶ 3–4.

20 205. These officials who were in office a mere seven days before the Original Order  
21 issued “kn[e]w of no interagency process underway before January 20, 2017 to change current  
22 vetting procedures, and the repeated need for the Administration to clarify confusion after the  
23

24 <sup>65</sup> Edwin Mora, *Report: More Citizens of Saudi Arabia Have Joined Islamic State Than Any Other Country*,  
Breitbart.com (Mar. 9, 2017), <http://www.breitbart.com/national-security/2017/03/09/report-key-u-s-ally-saudi-arabia-no-1-jihadist-supplier-for-islamic-state/> (last accessed Mar. 13, 2017).

26 <sup>66</sup> Kyle Blaine & Julia Horowitz, *How the Trump Administration Chose the 7 Countries in the Immigration*  
[Original] Executive Order, CNN (Jan. 30, 2017), <http://www.cnn.com/2017/01/29/politics/how-the-trump-administration-chose-the-7-countries/> (last accessed Mar. 13, 2017).

1 Order issued suggest that that Order received little, if any advance scrutiny by the Departments  
 2 of State, Justice, Homeland Security or the Intelligence Community.” *Id.* ¶ 7. Nor had the  
 3 officials seen “any evidence that the Order resulted from experienced intelligence and security  
 4 professionals recommending changes in response to identified threats.” *Id.*

5 206. Therefore, in their opinion, the Original Executive Order “[ould] not be justified  
 6 on national security or foreign policy grounds.” *Id.* ¶ 3. They explained that:

8 Since September 11, 2001, not a single terrorist attack in the United States has  
 9 been perpetrated by aliens from the countries named in the Order. Very few  
 10 attacks on U.S. soil since September 11, 2001 have been traced to foreign  
 11 nationals at all. The overwhelming majority of attacks have been committed by  
 12 U.S. citizens. The Administration has identified no information or basis for  
 13 believing there is now a heightened or particularized future threat from the seven  
 14 named countries. Nor is there any rational basis for exempting from the ban  
 15 particular religious minorities (e.g., Christians), suggesting that the real target of  
 the ban remains one religious group (Muslims). In short, *the Administration offers  
 no reason why it abruptly shifted to group-based bans when we have a tested  
 individualized vetting system developed and implemented by national security  
 professionals across the government to guard the homeland, which is continually  
 re-evaluated to ensure that it is effective.*

16 *Id.* ¶ 4 (emphasis added).

17 207. These respected civil servants, who have collectively “devoted decades to  
 18 combatting the various terrorist threats that the United States faces in a dynamic and dangerous  
 19 world” declared, in their professional opinions, that the Original Executive Order “does not  
 20 perform its declared task” of “protecting the nation from foreign terrorist entry into the United  
 21 States,” and instead actually undermined the national security of the United States. *Id.* ¶¶ 2–3.

22 208. Specifically, the Joint Declaration stated that the Original Executive Order:  
 23 (1) will endanger U.S. troops in the field; (2) will disrupt key counterterrorism, foreign policy,  
 24 and national security partnerships that are critical to addressing the threat posed by terrorist  
 25 groups such as ISIL; (3) will endanger intelligence sources in the field; (4) will likely feed the  
 26 recruitment narrative of ISIL and other extremists that portray the United States as at war with

1 Islam; (5) will disrupt ongoing law enforcement efforts; (6) will have a devastating humanitarian  
2 impact; and 7) will cause economic damage to American citizens and residents. *Id.* ¶ 5.

3 209. The Joint Declaration also described pre-existing national security-based  
4 immigration restrictions as “consistently tailored to respond to: (1) specific, credible threats  
5 based on individualized information, (2) the best available intelligence and (3) thorough  
6 interagency legal and policy review.” *Id.* ¶ 6. The document further described:

7  
8 Since the 9/11 attacks, the United States has developed a rigorous system of  
9 security vetting, leveraging the full capabilities of the law enforcement and  
10 intelligence communities. This vetting is applied to travelers not once, but  
11 multiple times. Refugees receive the most thorough vetting of any traveler to the  
12 United States, taking on the average more than a year. Successive administrations  
13 have continually worked to improve this vetting through robust information  
14 sharing and data integration to identify potential terrorists without resorting to a  
15 blanket ban on all aliens and refugees. Because various threat streams are  
16 constantly mutating, as government officials, we sought continually to improve  
17 that vetting, as was done in response to particular threats identified by U.S.  
18 intelligence in 2011 and 2015. Placing additional restrictions on individuals from  
19 certain countries in the visa waiver program –as has been done on occasion in the  
20 past – merely allows for more individualized vettings before individuals with  
21 particular passports are permitted to travel to the United States.

22 *Id.* ¶ 6.

23 210. While the Original Order allowed for the Secretaries of State and Homeland  
24 Security to agree to admit travelers from these countries on a case-by-case basis, these experts  
25 concluded that “in our experience it would be unrealistic for these overburdened agencies to  
26 apply such procedures to every one of the thousands of affected individuals with urgent and  
27 compelling needs to travel.” *Id.* ¶ 5.f.

28 211. On the unprecedented scope of the Original Order, these experts wrote:

29 We know of no case where a President has invoked his statutory authority to  
30 suspend admission for such a broad class of people. Even after 9/11, the U.S.  
31 Government did not invoke the provisions of law cited by the Administration to  
32 broadly bar entrants based on nationality, national origin, or religious affiliation.

1 In past cases, suspensions were limited to particular individuals or subclasses of  
 2 nationals who posed a specific, articulable threat based on their known actions  
 3 and affiliations. In adopting this Order, the Administration alleges no specific  
 4 derogatory factual information about any particular recipient of a visa or green  
 5 card or any vetting step omitted by current procedures.

6 *Id.* ¶ 8.

7 212. Nearly 1,000 current State Department officials formally registered their dissent  
 8 to the Original Order.<sup>67</sup> These career diplomats explained:

9 A policy which closes our doors to over 200 million legitimate travelers in the  
 10 hopes of preventing a small number of travelers who intend to harm Americans  
 11 from using the visa system to enter the United States will not achieve its aim of  
 12 making our country safer. Moreover, such a policy runs counter to core American  
 13 values of nondiscrimination, fair play, and extending a warm welcome to foreign  
 14 visitors and immigrants. Alternative solutions are available to address the risk of  
 15 terror attacks which are both more effective and in line with Department of State  
 16 and American values...

17 [ ] This ban, which can only be lifted under conditions which will be difficult or  
 18 impossible for countries to meet, will not achieve its stated aim of to protect the  
 19 American people from terrorist attacks by foreign nationals admitted to the United  
 20 States. Despite the Executive Order's focus on them, a vanishingly small number  
 21 of terror attacks on U.S. soil have been committed by foreign nationals who  
 22 recently entered the United States on an immigrant or nonimmigrant visa. Rather,  
 23 the overwhelming majority of attacks have been committed by native-born or  
 24 naturalized U.S. citizens--individuals who have been living in the United States  
 25 for decades, if not since birth. In the isolated incidents of foreign nationals  
 26 entering the U.S. on a visa to commit acts of terror, the nationals have come from  
 a range of countries, including many (such as Pakistan or Saudi Arabia) which are  
 not covered by the Executive Order.

[ ] Given the near-absence of terror attacks committed in recent years by Syrian,  
 Iraqi, Irani, Libyan, Somalia, Sudanese, and Yemeni citizens who are in the U.S.  
 in after entering on a visa, this ban will have little practical effect in improving  
 public safety...

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<sup>67</sup> Steve Herman & Nike Ching, *Sources: Nearly 1,000 at State Department Officially Dissent on Immigration Order*, VOA News (Jan. 31, 2017), <http://www.voanews.com/a/over-a-thousand-state-dept-personnel-officially-dissent-to-immigration-order/3700399.html> (last accessed Mar. 13, 2017).

1 The end result of this ban will not be a drop in terror attacks in the United States;  
2 rather, it will be a drop in international good will towards Americans and a threat  
3 towards our economy.

4 A copy of this letter is attached as Exhibit H.<sup>68</sup>

5 213. The Original Order failed to cite a scintilla of evidence supporting the need for the  
6 travel ban of nationals from the seven originally banned countries. Nor did or could Defendants  
7 provide any such support in any of their briefings in the numerous courts where the Original  
8 Order was challenged in the weeks following its signing or the time leading up to the issuance of  
9 the Revised Order. This is because Defendants simply do not have the facts to do so.

10 **b. The Faulty Logic Behind Invoking 2015 Data to Justify the Travel**  
11 **Ban**

12 214. The best Defendants could do to try and justify the Revised Order was to cite to a  
13 June 2016 Department of State *Country Report on Terrorism 2015*. However, according to the  
14 report, the majority (i.e., over 55%) of all terrorist attacks took place in five countries *that are*  
15 *not subject to the travel ban*—Iraq, Afghanistan, Pakistan, India, and Nigeria.<sup>69</sup> In addition, 74%  
16 of all deaths due to terrorist attacks took place in five countries—Iraq, Afghanistan, Nigeria,  
17 Syria, and Pakistan— *none of which are subject to the travel ban*.<sup>70</sup>

18 215. The Revised Order cites facts purportedly demonstrating why the Targeted  
19 Countries continue to present heightened risks to security.<sup>71</sup> However, the facts are based on the  
20  
21  
22

23 \_\_\_\_\_  
24 <sup>68</sup> Document also available at <https://assets.documentcloud.org/documents/3438487/Dissent-Memo.pdf>.

25 <sup>69</sup> *Annex of Statistical Information: Country Reports on Terrorism 2015* at 3, Dep't of Homeland Sec. (June 2016),  
<https://www.state.gov/documents/organization/257738.pdf> (last accessed May 4, 2017).

26 <sup>70</sup> *Id.*

<sup>71</sup> Exhibit E, § 1(e).

1 June 2015 data that is nearly two years old and which were specifically addressed by changes  
2 made to the Visa Waiver Program at that time to respond to the specific information.<sup>72</sup>

3 216. Further, in relying on information for data from two years ago (or more),  
4 Defendants ignore more recent data from not only respected research organizations sources but  
5 also the United States government's own national security experts.

6 217. According to a September 2016 report from the Cato Institute, "[i]ncluding those  
7 murdered in the terrorist attacks of September 11, 2001 (9/11), the chance of an American  
8 perishing in a terrorist attack on U.S. soil that was committed by a foreigner over the 41-year  
9 period studied here is 1 in 3.6 million per year."<sup>73</sup> Similarly, *The Boston Globe* reported in 2016  
10 that "a person living in the United States is more than over 100 times more likely to be killed by  
11 falling objects than by a jihadi terrorist."<sup>74</sup> Indeed, it appears that in 2016, Americans were less  
12 likely to be killed by Muslim extremists (1 in six million) than for being Muslim (1 in one  
13 million).<sup>75</sup>

14 218. In the process of creating the Revised Order, the Office of Intelligence and  
15 Analysis within the Department of Homeland Security that is charged with equipping the  
16 Homeland Security Enterprise with timely intelligence and information,<sup>76</sup> developed a paper  
17 assessing the international terrorist threat to the United States and worldwide posed by citizens of  
18

19  
20  
21 <sup>72</sup> 8 U.S.C. § 1187; *Visa Waiver Program*, U.S. Dep't of State, <https://travel.state.gov/content/visas/en/visit/visa-waiver-program.html> (last accessed May 4, 2017).

22 <sup>73</sup> Alex Nowrasteh, *Terrorism and Immigration: A Risk Analysis*, 798 Policy Analysis Cato Institute 1 (Sept. 13, 2016), [https://object.cato.org/sites/cato.org/files/pubs/pdf/pa798\\_1\\_1.pdf](https://object.cato.org/sites/cato.org/files/pubs/pdf/pa798_1_1.pdf) (last accessed Mar. 13, 2017).

23 <sup>74</sup> Graham Allison, *Fear Death from Tree Limbs, Not Terrorists*, Boston Globe (Feb. 19, 2016),  
24 <https://www.bostonglobe.com/opinion/editorials/2016/02/19/fear-death-from-tree-limbs-not-terrorists/2ZrHzpP54GBHwbv2AVD6aM/story.html> (last accessed Mar. 13, 2017).

25 <sup>75</sup> Charles Kurzman, *Muslim-American Involvement with Violent Extremism, 2016* (Jan. 26, 2017),  
<http://kurzman.unc.edu/muslim-american-terrorism/> (last accessed Mar. 13, 2017).

26 <sup>76</sup> *Office of Intelligence & Analysis*, Dep't of Homeland Sec. (last published date Jan. 30, 2017),  
<https://www.dhs.gov/office-intelligence-and-analysis> (last accessed Mar. 13, 2017).

1 the seven Original Targeted Countries. Although the paper did not assess the risk of domestic  
2 terrorism, included in the key findings were:

- 3 • citizens of the seven Original Targeted Countries were rarely implicated in US-  
4 based terrorism;
- 5 • “country of citizenship is unlikely to be a reliable indicator of potential terrorist  
6 activity”; and
- 7 • Of the at least 82 primarily US-based individuals who died in the pursuit of or  
8 were convicted of any terrorism-related federal offense inspired by a foreign  
9 terrorist organization since the beginning of the Syrian conflict in March 2011, of  
10 the seven Original Targeted Countries, Iran, Sudan, and Yemen had 1 each, and  
11 there were no individuals from Syria.

11 *Citizenship Likely an Unreliable Indicator of Terrorist Threat to the United States*, Office of  
12 Intelligence & Analysis, Dep’t of Homeland Sec. (Feb. 2017) (attached as Exhibit I).<sup>77</sup>

13 219. A second, March 1, 2017, Intelligence Assessment announced in its title that  
14 “Most Foreign-born, US-based Violent Extremists Radicalized after Entering Homeland . . . .”  
15 (“March 1 Intelligence Assessment”)<sup>78</sup> also negates the necessity of the Revised Order’s travel  
16 ban. A copy of this report is as it appeared in the MSNBC article attached as Exhibit J.

17 220. The March 1 Intelligence Assessment was based on information available as of  
18 December 31, 2016. One of the key judgments of the March 1 Intelligence Assessment was that:

19  
20 [M]ost foreign-born, US-based violent extremists likely radicalized several years  
21 after their entry to the United States, limiting the ability of screening and vetting  
22 officials to prevent their entry because of national security concerns. We base this  
23 assessment on our findings that nearly half of the foreign-born, US-based violent  
24 extremists examined in our dataset were less than 16 years old when they entered  
25 the country and that the majority of foreign-born individuals resided in the United  
26 States for more than 10 years before their indictment or death. A separate DHS

<sup>77</sup> Document also available at <https://assets.documentcloud.org/documents/3474730/DHS-intelligence-document-on-President-Donald.pdf>.

<sup>78</sup> Rachel Maddow, *TRMS Exclusive: DHS Document Undermines Trump Case for Travel Ban*, MSNBC (Mar. 2, 2017), <http://www.msnbc.com/rachel-maddow-show/trms-exclusive-dhs-document-undermines-trump-case-travel-ban> (last accessed Mar. 13, 2017).

1 study that found recent foreign-born US violent extremists began radicalizing, on  
2 average, 13 years after their entry to the United States further supports our  
3 assessment.

4 *Id.*

5 221. The examples of terrorist activity cited in Section 1(h) of the Revised Order only  
6 underscore the points raised in all of these reports and statements by national security experts  
7 that the travel ban is unnecessary and will be ineffective. The first example cited relates to two  
8 Iraqi nationals; yet, the Revised Order removed Iraq from the list of targeted countries. The  
9 second example was of a native of Somali who had been brought to the United States as a child  
10 but then committed the act in question after he had been naturalized as a United States citizen  
11 and when he was an adult.

12 222. On March 10, 2017, more than 130 foreign policy and national security experts  
13 wrote an open letter to President Trump (“Open Letter”) concluding that the Revised Order  
14 “suffers from the same core substantive defects as the previous version.” The experts raise the  
15 concern that the Revised Order will “weaken U.S. national security” because it “jeopardize[s]  
16 our relationships with allies and partners on whom we rely for vital counterterrorism cooperation  
17 and information sharing. To Muslims— including those victimized by or fighting against ISIS—  
18 it will send a message that reinforces the propaganda of ISIS and other extremist groups, that  
19 falsely claim the United States is at war with Islam.” The Open Letter is attached as Exhibit K.<sup>79</sup>

20 223. The experts explain in the Open Letter: “Following the 9/11 attacks, the United  
21 States developed a rigorous system of security vetting for travelers to our homeland, leveraging  
22 the full capabilities of the intelligence and law enforcement communities. Since then, the U.S.  
23 has added enhanced vetting procedures for travelers and has revised them continuously. Our  
24 government applies this process to travelers not once, but multiple times.”<sup>80</sup>

25 <sup>79</sup> Document also available at  
26 <https://assets.documentcloud.org/documents/3515708/LetterFormerOfficialsonMarch6EO-Pdf.pdf>.

<sup>80</sup> Exhibit K at 1.



1           224. In addition, the Revised Order now allows automatic entry for nationals of the  
2 Designated Countries with valid visas, an admission by Defendants that the current screening  
3 and vetting process for the admission of non-immigrant visa holders is adequate and effective to  
4 protect this country's national security interests.

5           225. Adding to the evidence of the arbitrariness of the travel ban, on March 20, 2017,  
6 the Transportation Security Administration—a component of Defendant Department of  
7 Homeland Security— issued what was, at first, a confidential directive banning laptops, iPads  
8 and other electronics “larger than a cellphone” on flights from 10 airports because “‘evaluated  
9 intelligence’ emerged that terrorists favored ‘smuggling explosive devices in various consumer  
10 items’”.<sup>81</sup> The countries covered by the electronics ban are Jordan, Egypt, Turkey, Saudi Arabia,  
11 Morocco, Qatar, Kuwait and the United Arab Emirates<sup>82</sup>—none of which are covered by either  
12 the Original or Revised Executive Orders.

13           226. Rather than wasting the resources of our security agencies banning millions of  
14 individuals who are already being thoroughly analyzed through current procedures put in place  
15 by national security experts, Defendants should be focusing on the small but very dangerous  
16 individuals for whom they have specific information that will lead to actually stopping attacks in  
17 this country.

## 18           2.       Arbitrariness of the Suspension of the Refugee Admissions Program

19           227. In priming the country for the Revised Order, Defendant Trump relies upon  
20 arbitrary and irrational animus towards refugees with no factual basis. For example, in discussing  
21 refugees at a February 18, 2017 rally in Melbourne, Florida, he claimed: “We've allowed  
22  
23  
24

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25 <sup>81</sup> Sam Thielman & Sam Levin, *Experts Criticize US Electronic Devices Ban on Some Flights from Middle East*,  
26 *Guardian* (Mar. 21, 2017), <https://www.theguardian.com/us-news/2017/mar/21/us-electronic-devices-ban-flights-tsa-airports> (last accessed May 4, 2017).

<sup>82</sup> *Id.*

1 thousands and thousands of people into our country and there was no way to vet those people.  
2 There was no documentation. There was no nothing. So we're going to keep our country safe.”<sup>83</sup>

3 228. However, according to the State Department's January 20, 2017 Bureau of  
4 Population, Refugees, and Migration Fact Sheet:

5  
6 All refugees undergo the most intensive security screening of any traveler to the  
7 United States. This screening includes multiple federal intelligence, security, and  
8 law enforcement agencies, including the National Counterterrorism Center, the  
9 FBI Terrorist Screening Center, and the Departments of Homeland Security,  
10 State, and Defense. Syrian refugees go through yet additional forms of security  
11 screening. A refugee applicant cannot be approved for travel until all required  
12 security checks have been completed and cleared.<sup>84</sup>

13 229. The U.S. Government has a great deal of experience screening and admitting  
14 large numbers of refugees from chaotic environments, including where intelligence holdings are  
15 limited.

16 230. According to the U.S. Citizenship and Immigration Services (“USCIS”), the  
17 government agency that oversees lawful immigration to the United States:

18 Refugee applicants are subject to intensive biographic and biometric security  
19 checks. Through close coordination with the federal law enforcement and  
20 intelligence communities, these checks are continually reviewed and enhanced to  
21 address specific populations that may pose particular threats.

22 The United Nations High Commissioner for Refugees (UNHCR) identifies and  
23 refers many refugees to the U.S. Refugee Admissions Program (“USRAP”) for  
24 resettlement consideration. UNHCR also provides important information about  
25 the worldwide refugee situation.

26 The Department of State (State) coordinates and manages the USRAP.  
Resettlement Support Centers (RSCs) work with State to carry out administrative

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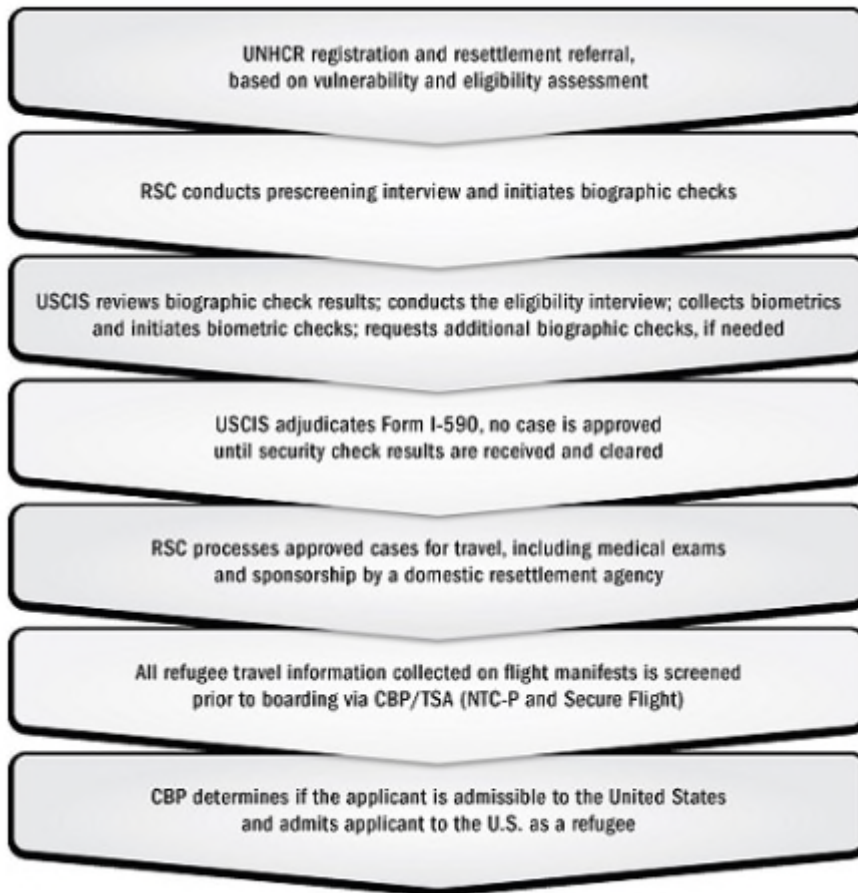
<sup>83</sup> Jacob Gardenswartz, *Transcript: President Donald Trump's Rally in Melbourne, Florida*, Vox (Feb. 18, 2017), <https://www.vox.com/2017/2/18/14659952/trump-transcript-rally-melbourne-florida> (last accessed Mar. 13, 2017).

<sup>84</sup> *Fact Sheet: U.S. Refugee Admissions Program FAQ's*, U.S. Dep't of State-Bureau of Population, Refugees, and Migration (Jan. 20, 2017), <https://www.state.gov/j/prm/releases/factsheets/2017/266447.htm> (last accessed Mar. 13, 2017).

1 and processing functions, such as file preparation, data collection, and out-  
2 processing activities during the refugee admissions process.

3 USCIS conducts interviews with applicants to determine their eligibility for  
4 refugee status, including whether they are credible, meet the refugee definition,  
and are otherwise admissible to the United States under U.S. law.<sup>85</sup>

5 231. The general refugee process encompasses the following:<sup>86</sup>



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22 232. The non-existent vetting process claimed by Defendant Trump actually consists of  
23 the following numerous steps:

24  
25 <sup>85</sup> *Refugee Processing and Security Screening*, U.S. Citizenship & Immigration Servs., Dep’t of Homeland Sec. (last  
26 reviewed/updated Dec. 3, 2015), <https://www.uscis.gov/refugeescreening> (last accessed Mar. 2, 2017).

<sup>86</sup> *Id.*

1 **USRAP Screening**

2 USRAP screening is a shared responsibility. It includes both biometric and  
3 biographic checks at multiple stages during the process, including immediately  
4 before a refugee’s departure to the United States and upon his or her arrival in the  
United States.

5 The screening of refugee applicants involves numerous biographic checks that are  
6 initiated by the RSCs and reviewed and/or resolved by USCIS. These include:

7 **The Department of State’s Consular Lookout and Support System (CLASS)**

8 State initiates CLASS name checks for all refugee applicants when they are  
9 being prescreened by an RSC. Name checks are conducted on the applicant’s  
10 primary names as well as any variations used by the applicant. Responses are  
11 received before the USCIS interview, and possible matches are reviewed and  
12 adjudicated by USCIS headquarters. Evidence of the response is included in  
the case file. If a new name or variation is identified at the interview, USCIS  
requests another CLASS name check on the new name and places the case on  
hold until that response is received.

13 CLASS is owned by State. The name-check database provides access to  
14 critical information for adjudicating immigration applications. The system  
15 contains records provided by numerous agencies and includes information on  
16 individuals who have been denied visas, immigration violations, criminal  
histories, and terrorism concerns, as well as intelligence information and child  
support enforcement data.

17 In addition to containing information from State sources, CLASS also  
includes information from:

- 18
- 19 ○ National Counterterrorism Center/Terrorist Screening Center (terrorist  
watch lists),
  - 20 ○ TECS,
  - 21 ○ Interpol,
  - 22 ○ Drug Enforcement Administration,
  - 23 ○ Health and Human Services, and
  - 24 ○ FBI (extracts of the National Crime Information Center’s Wanted Persons  
File, Immigration Violator File, Foreign Fugitive File, Violent Gang and  
Terrorist Organization File (and the Interstate Identification Index)).

25 **Security Advisory Opinion (SAO)**

26 State initiates SAO name checks for certain refugee applicants when they are  
being prescreened by an RSC. The SAO biographic check is conducted by the  
FBI and intelligence community partners. SAOs are conducted for an  
applicant who is a member of a group or nationality that the U.S. government

1 has designated as requiring this higher level check. SAOs are processed, and a  
2 response must be received before finalizing the decision. If there is a new  
3 name or variation identified at the interview, USCIS requests another SAO for  
the new name and places the case on hold until that response is received.

4 The SAO process was implemented after Sept. 11, 2001, to provide an  
5 additional security mechanism to screen individuals in certain higher-risk  
6 categories who are seeking to enter the United States through a variety of  
means, including refugee applicants.

7 Interagency Check (IAC)

8 The IAC screens biographic data, including names, dates of birth, and other  
9 additional data of all refugee applicants within designated age ranges. This  
10 information is captured at the time the applicant is prescreened and is  
provided to intelligence community partners. This screening procedure began  
11 in 2008 and has expanded over time to include a broader range of applicants  
and records. These checks occur throughout the process.

12 At the time of USCIS interview, USCIS staff collects fingerprints and begins  
biometric checks. These checks include:

- 13 • **FBI Fingerprint Check through Next Generation Identification**  
14 **(NGI):** Recurring biometric record checks pertaining to criminal history  
and previous immigration data.
- 15 • **DHS Automated Biometric Identification System (IDENT - f/n/a US-**  
16 **VISIT):** A biometric record check related to travel and immigration  
17 history as well as immigration violations, and law enforcement and  
national security concerns. Enrollment in IDENT also allows U.S.  
18 Customs and Border Protection (CBP) to confirm the applicant's identity  
at U.S. ports of entry.
- 19 • **DOD Defense Forensics and Biometrics Agency (DFBA)'s Automated**  
20 **Biometric Identification System (ABIS):** A biometric record check of  
21 the Department of Defense's (DOD) records collected in areas of conflict  
(predominantly Iraq and Afghanistan). DOD screening began in 2007 for  
22 Iraqi applicants and has now been expanded to all nationalities. CBP's  
National Targeting Center-Passenger (NTC-P) conducts biographic vetting  
23 of all ABIS biometric matches against various classified and unclassified  
24 U.S. government databases.

25 USCIS Interview

1 The USCIS refugee interview is an important part of the refugee screening  
2 process. Highly trained USCIS officers conduct extensive interviews with each  
3 refugee applicant to learn more about the applicant's claim for refugee status and  
4 admissibility. These officers have undergone specialized and extensive training  
5 on:

- 6 • Refugee law,
- 7 • Grounds of inadmissibility,
- 8 • Fraud detection and prevention,
- 9 • Security protocols,
- 10 • Interviewing techniques,
- 11 • Credibility analysis, and
- 12 • Country conditions research.

13 Before deploying overseas, officers also receive additional training on the specific  
14 population that they will be interviewing, detailed country of origin information,  
15 and updates on any fraud trends or security issues that have been identified.

16 Officers conducting interviews of Syrian applicants undergo an expanded 1-week  
17 training focusing on Syria-specific topics, including a classified intelligence  
18 briefing. During the interview, the officer develops lines of questioning to obtain  
19 information on whether the applicant has been involved in terrorist activity,  
20 criminal activity, or the persecution/torture of others. The officer will also  
21 conduct a credibility assessment on each applicant.

### 22 **Controlled Application Review and Resolution Process (CARRP)**

23 During the process of adjudicating any USCIS benefit, if any national security  
24 concerns are raised, either based on security and background checks or personal  
25 interviews or testimony, USCIS conducts an additional review through the  
26 internal CARRP process. CARRP is an internal USCIS process that a case can go  
through to ensure that immigration benefits or services are not granted to  
individuals who pose a threat to national security and/or public safety, or who  
seek to defraud our immigration system.

### 27 **Enhanced Review for Syrian Applicants**

28 USCIS' Refugee, Asylum, and International Operations Directorate and Fraud  
29 Detection and National Security Directorate (FDNS) work together to provide  
30 enhanced review of certain Syrian cases. This review involves FDNS providing  
31 intelligence-driven support to refugee adjudicators, including identifying threats  
32 and suggesting topics for questioning. FDNS also monitors terrorist watch lists  
33 and disseminates intelligence information reports on any applicants who are  
34 determined to present a national security threat.

### 35 **CBP Vetting**

1 CBP inspects all applicants who are approved for refugee resettlement to the  
 2 United States to determine their admissibility before they are admitted as  
 3 refugees. CBP receives a manifest of all approved individuals who have been  
 4 booked for travel to the United States. CBP receives this manifest 8 days before  
 5 the scheduled travel. CBP begins vetting the individuals before they arrive at a  
 6 U.S. airport and then conducts an inspection and additional background checks of  
 7 these individuals upon their arrival at a U.S. airport.<sup>87</sup>

8 233. Defendant Trump has misrepresented that “there was no way to vet those people”  
 9 in an attempt to justify his arbitrary and unjustified suspension of the refugee admissions  
 10 program. However, USCIS Director León Rodríguez’s explained in his September 28, 2016  
 11 written testimony for a Senate Committee on the Judiciary, Subcommittee on Immigration and  
 12 the National Interest hearing that “[a]ll refugees entering our country are subject to the highest  
 13 level of security check of any category of any traveler to the United States and admitted only  
 14 after successfully completing a stringent security screening process.”<sup>88</sup> He further detailed:

15 Recognizing that a well-trained cadre of officers is critical to protecting the  
 16 integrity of the refugee process, we have focused our efforts on providing the  
 17 highest quality training to our officers. In addition to the basic training required of  
 18 all USCIS officers, refugee officers receive nine weeks of specialized training that  
 19 includes comprehensive instruction on all aspects of the job, including refugee  
 20 law, grounds of inadmissibility, fraud detection and prevention, security  
 21 protocols, interviewing techniques, credibility analysis, and country conditions  
 22 research. Before deploying overseas, officers also receive pre-departure training,  
 23 which focuses on the specific population that they will be interviewing. This  
 24 includes information on the types of refugee claims that they are likely to  
 25 encounter, detailed country of origin information, and updates on any fraud trends  
 26 or security issues that have been identified. With the advent of large-scale  
 processing of Iraqi applicants in 2007, USCIS officers who adjudicate Iraqi  
 refugee applications began receiving an additional two-day training on country-  
 specific issues, including briefings from outside experts from the law  
 enforcement, intelligence, policy, and academic communities. This training has

24 <sup>87</sup> *Id.*

25 <sup>88</sup> *Written Testimony of USCIS Director Leon Rodriguez for a Senate Committee on Immigration and the National*  
 26 *Interest Hearing titled “Oversight of the Administration’s FY 2017 Refugee Resettlement Program,”* Dep’t of  
 Homeland Sec. (Sep. 28, 2016), [https://www.dhs.gov/news/2016/09/28/written-testimony-uscis-director-senate-](https://www.dhs.gov/news/2016/09/28/written-testimony-uscis-director-senate-judiciary-subcommittee-immigration-and)  
[judiciary-subcommittee-immigration-and](https://www.dhs.gov/news/2016/09/28/written-testimony-uscis-director-senate-judiciary-subcommittee-immigration-and) (last accessed Mar. 13, 2017).

1 since expanded to a one-week training in order to include Syria-specific topics in  
2 addition to Iraqi ones.

3 In order to fully explore refugee claims and to identify any possible grounds of  
4 ineligibility, specially-trained USCIS officers conduct an in-person, in-depth  
5 interview of every principal refugee applicant. The officer assesses the credibility  
6 of the applicant and evaluates whether the applicant's testimony is consistent with  
7 known country conditions. These officers also interview each accompanying  
8 family member age 14 and older. All applicants must establish admissibility to the  
9 United States before the case (i.e., the collection of applicants) is approved. In  
10 addition, refugee applicants are subject to robust security screening protocols to  
11 identify potential fraud, criminal or national security issues. All refugee status  
12 determinations made by interviewing officers undergo supervisory review before  
13 a final decision is made. Refugee Affairs Division policy requires officers to  
14 submit certain categories of sensitive cases – including certain national security-  
15 related cases – to Refugee Affairs Division Headquarters to obtain concurrence  
16 prior to the issuance of a decision. This allows for Headquarters staff to conduct  
17 additional research, liaise with law enforcement or intelligence agencies, or  
18 consult with an outside expert before finalizing the decision.<sup>89</sup>

19 234. In addition, as recently as January 20, 2017, the U.S. Department of State issued a  
20 Fact Sheet that makes clear that the reality of the refugee screening process was, is, and  
21 continues to be the complete opposite of what Defendant Trump has claimed:

22 *No traveler to the United States is subject to more rigorous security screening  
23 than the refugees the U.S. Government considers for admission. Only after the  
24 U.S. Government's rigorous and lengthy security screening process has been  
25 completed and an applicant is not found to pose a threat does the U.S.  
26 Government grant that individual refugee admission to the U.S. Security  
screening of all refugees involves multiple U.S. agencies, including the  
Departments of State, Homeland Security (DHS), and Defense, the Federal  
Bureau of Investigation, The National Counterterrorism Center, the Terrorist  
Screening Center, and two federal intelligence agencies.<sup>90</sup>*

Emphasis added.

235. Finally, the Open Letter from the foreign policy and national security experts  
affirms:

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<sup>89</sup> *Id.*

<sup>90</sup> *See supra* note 84.



1  
2 [r]efugees are vetted more intensively than any other category of traveler. They  
3 are screened by national intelligence agencies and INTERPOL, their fingerprints  
4 and other biometric data are checked against terrorist and criminal databases, and  
5 they are interviewed several times. These processes undergo review on an  
6 ongoing basis to ensure that the most updated and rigorous measures are applied,  
7 and any additional enhancements can be added without halting refugee  
8 resettlement or banning people from certain countries.<sup>91</sup>

9  
10 236. A person who is granted refugee status in the United States can petition to have  
11 their spouse and children join them. However, the family members are subject to a lengthy  
12 screening process that includes, *inter alia*,<sup>92</sup> confirming the beneficiary's identity and  
13 relationship to the petitioner in the United States, the collection of fingerprint scans, medical  
14 examinations, and interviews. The required medical clearances have a limited shelf life and  
15 expire after six months, so if travel is not scheduled within six months of receiving medical  
16 clearance, medical clearance must be obtained again.<sup>93</sup>

17 237. The actual facts are that the already existing refugee admissions process is  
18 stringent, robust, lengthy, and rigorous. Extreme vetting is already in place.

19 238. Flailing for additional support for the misguided suspension of refugee travel into  
20 the United States, the Executive Order includes two curious anecdotes from 2013 and 2014. The  
21 first situation was one that was specifically addressed by the previous administration.<sup>94</sup> The  
22 second situation involved a refugee brought to this country as a child refugee and radicalized  
23 years after he had arrived, only amplifying the finding in the March 1, 2017 Intelligence  
24 Assessment that most foreign-born, US-based violent extremists are radicalized years after  
25  
26

<sup>91</sup> Exhibit K at 1.

<sup>92</sup> *Follow-to-Join Refugees and Asylees*, U.S. Dep't of State-Bureau of Consular Affairs,  
<https://travel.state.gov/content/visas/en/immigrate/join-refugees-and-asylees.html> (last accessed May 4, 2017).

<sup>93</sup> 9 FAM 302.2-3(C) (U) *Validity Period of an Applicant's Medical Examination for Immigrant Visa Applicants*,  
U.S. Dep't of State (Sept. 15, 2016), <https://fam.state.gov/fam/09FAM/09FAM030202.html> (last accessed May 4,  
2017).

<sup>94</sup> See *supra* note 72.

1 entering the United States, calling into question the effectiveness of the refugee travel ban in the  
2 Revised Order.<sup>95</sup>

3 239. The Revised Order also claims that more than 300 persons who entered the  
4 United States as refugees are currently the subjects of counterterrorism investigations by the  
5 Federal Bureau of Investigation.<sup>96</sup> But according to a Washington Post article:

7 [O]fficials familiar with the list say that at least 70 percent of the people under  
8 review are from countries not targeted by the new travel ban. More than half are  
9 or were at one time Iraqi nationals. Officials familiar with the data said roughly  
10 two-thirds of the people on the administration's tally also arrived seven or more  
11 years ago, before the government significantly tightened its vetting procedures for  
12 Iraqis entering the United States.

13 Roughly 20 percent of the individuals came to the United States from Somalia,  
14 which is covered by the ban. Others hail from a range of countries, including  
15 several that the Trump administration has never indicated as a national security  
16 threat. For example, there are more nationals from Ethiopia, Uzbekistan and  
17 Bosnia that are subjects in counterterrorism investigation than there are from  
18 some of the banned countries, such as Yemen, Iran and Libya.

19 The list refers to people who are under some form of investigation, but officials  
20 familiar with the data cautioned that the classification of those people varies  
21 widely from individuals who have aroused serious suspicion to those who might  
22 have a relative who is a convicted or suspected terrorist. None of the individuals  
23 on the list have been charged with a -terrorism-related crime, and the number of  
24 people under investigation by the FBI at any given time fluctuates regularly as  
25 investigations are started and concluded.<sup>97</sup>

26 240. Defendant Trump repeatedly demonized Syrian refugees,<sup>98</sup> and made clear his  
intention to ban them from the country:

<sup>95</sup> See *supra* note 78.

<sup>96</sup> Exhibit E, § 1(h).

<sup>97</sup> Devlin Barrett, Abigail Hauslohner & David Nakamura, *International Trump Administration Data Undercuts Travel Ban*, Wash. Post (Mar. 16, 2017), [https://www.washingtonpost.com/world/national-security/internal-trump-administration-data-undercuts-travel-ban/2017/03/16/9a2dc6b4-098e-11e7-93dc-00f9bdd74ed1\\_story.html?utm\\_term=.fcc94e54867e](https://www.washingtonpost.com/world/national-security/internal-trump-administration-data-undercuts-travel-ban/2017/03/16/9a2dc6b4-098e-11e7-93dc-00f9bdd74ed1_story.html?utm_term=.fcc94e54867e) (last accessed May 5, 2017).

<sup>98</sup> Jesselyn Cook, *7 Lies Donald Trump Has Spread About Syrian Refugees Entering the U.S.*, Huffington Post (Oct. 20, 2016), [http://www.huffingtonpost.com/entry/donald-trump-refugee-crisis\\_us\\_5807809ae4b0180a36e7ac14](http://www.huffingtonpost.com/entry/donald-trump-refugee-crisis_us_5807809ae4b0180a36e7ac14)



241. In line with his rhetoric and on the list of goals of his chief strategist,<sup>99</sup> the Original Order indefinitely suspended the admission of Syrian refugees because the “entry of nationals of Syria as refugees is detrimental to the interests of the United States.” Original Order Section 5(c).

242. The Revised Order removed the provision suspending the admission of Syrian refugees indefinitely, further demonstrating the farce behind the assertion in the Original Order that their entry was detrimental to the national interests of the country and highlighting the arbitrary nature in which Defendants have gone about developing and implementing both the Original and Revised Executive Orders.

(last accessed Mar. 13, 2017); Donald J. Trump (@realDonaldTrump), Twitter (Apr. 7, 2016, 7:48 PM), <https://twitter.com/realDonaldTrump/status/718269255872081922>.

<sup>99</sup> Z. Byron Wolf, *Steve Bannon’s White House Whiteboard Revealed*, CNN (May 3, 2017), <http://www.cnn.com/2017/05/03/politics/steve-bannons-white-house-whiteboard/index.html> (listed and checked off on the white board of Steve Bannon, White House Chief Strategist, is “[s]uspend the Syrian refugee program”) (last accessed May 4, 2017).

1  
2 **D. President Trump’s Continuing Defiance of Court Orders Regarding the Executive**  
3 **Orders**

4 243. Although both this Court and other courts around the country have granted writs  
5 of habeas, temporary restraining orders and preliminary injunctions (some nationwide) and the  
6 Original Order has been rescinded, Plaintiffs are compelled to continue this action to ensure their  
7 rights are protected. Many, if not all, of the existing litigation and court orders do not help  
8 Washington residents who entered the country on single entry or now expired multiple entry  
9 non-immigrant visas. They are now stuck inside the country. In addition, numerous Washington  
10 residents who are asylees still await the arrival of their families who have completed the rigorous  
11 refugee security clearance process.

12 244. In addition, despite the fact that he revoked the Original Executive Order,  
13 Defendants’ repeated actions and statements make it far from clear that Defendant Trump will  
14 not revert to his original position.

15 245. Immediately after the first nationwide stay was granted, *see Darweesh v. Trump*,  
16 No. 17-480, 2017 WL 388504, at \*1 (E.D.N.Y. Jan. 28, 2017), Defendant DHS issued a  
17 statement that “President Trump’s Original Executive Orders remain in place—prohibited travel  
18 will remain prohibited, and the U.S. government retains its right to revoke visas at any time if  
19 required for national security or public safety.”<sup>100</sup> And Defendant Trump claimed, “If the ban  
20 were announced with a one week notice, the ‘bad’ would rush into our country during that week.  
21 A lot of bad ‘dudes’ out there!”<sup>101</sup>

22 246. On January 30, 2017, acting United States Attorney General Sally Yates issued a  
23 memorandum to Department of Justice employees instructing them to not act to enforce the

24 <sup>100</sup> *Department of Homeland Security Response To Recent Litigation*, Dep’t of Homeland Sec. (Jan. 29, 2017),  
25 <https://www.dhs.gov/news/2017/01/29/department-homeland-security-response-recent-litigation> (last accessed  
Mar. 13, 2017).

26 <sup>101</sup> Donald J. Trump (@realDonaldTrump, Twitter (Jan. 30, 2017 5:31 AM),  
<https://twitter.com/realdonaldtrump/status/826060143825666051>.

1 Original Executive Order because she was “not convinced . . . that the [Original] Executive  
2 Order is lawful.”<sup>102</sup> Ms. 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 positions 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 [Original] Executive Order is consistent with  
9 these responsibilities nor am I convinced that the [Original] Executive Order is  
10 lawful.<sup>103</sup>

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

13 248. After this Court issued a Temporary Restraining Order (“TRO”) on February 3,  
14 2017 and the Ninth Circuit issued a unanimous decision upholding the TRO on February 9,  
15 2017, Defendants vowed to keep fighting the court orders.

16 249. Even more unusual were Defendant Trump’s statements that followed the District  
17 Court and Ninth Circuit’s Orders:

- 18 • @realDonaldTrump: “The opinion of this so-called judge, which essentially takes  
19 law-enforcement away from our country, is ridiculous and will be overturned!” --  
20 5:12 AM - 4 Feb 2017<sup>104</sup>
- 21 • @realDonaldTrump: “What is our country coming to when a judge can halt a  
22 Homeland Security travel ban and anyone, even with bad intentions, can come  
23 into U.S.?” -- 12:44 PM - 4 Feb 2017<sup>105</sup>

24 <sup>102</sup> *Letter from Sally Yates to Dep’t of Justice*, N.Y. Times (Jan. 30, 2017),  
25 [https://www.nytimes.com/interactive/2017/01/30/us/document-Letter-From-Sally-Yates.html?\\_r=1](https://www.nytimes.com/interactive/2017/01/30/us/document-Letter-From-Sally-Yates.html?_r=1) (last accessed  
26 Mar. 13, 2017).

<sup>103</sup> *Id.*

<sup>104</sup> Donald J. Trump (@realDonaldTrump), Twitter (Feb. 4, 2017, 5:12 AM),  
<https://twitter.com/realdonaldtrump/status/827867311054974976>.

<sup>105</sup> 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 2017<sup>106</sup>
- 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 2017<sup>107</sup>
- 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 2017<sup>108</sup>
- 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 2017<sup>109</sup>
- 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 2017<sup>110</sup>
- 16 • @realDonaldTrump: "SEE YOU IN COURT, THE SECURITY OF OUR  
17 NATION IS AT STAKE!" -- 3:35 PM - 9 Feb 2017<sup>111</sup>
- 18 • @realDonaldTrump "Our legal system is broken! '77% of refugees allowed into  
19 U.S. since travel reprieve hail from seven suspect countries.' (WT) [sic] SO  
20 DANGEROUS!" -- 4:12 AM - 11 Feb 2017<sup>112</sup>

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21 <sup>106</sup> Donald J. Trump (@realDonaldTrump), Twitter (Feb. 4, 2017, 1:44 PM),  
22 <https://twitter.com/realDonaldTrump/status/827996357252243456>.

23 <sup>107</sup> Donald J. Trump (@realDonaldTrump), Twitter (Feb. 4, 2017, 3:37 PM),  
24 <https://twitter.com/realDonaldTrump/status/828024835670413312>.

25 <sup>108</sup> Donald J. Trump (@realDonaldTrump), Twitter (Feb. 4, 2017, 4:48 PM),  
26 <https://twitter.com/realDonaldTrump/status/828042506851934209>.

<sup>109</sup> Donald J. Trump (@realDonaldTrump), Twitter (Feb. 5, 2017, 12:39 PM),  
<https://twitter.com/realDonaldTrump/status/828342202174668800>.

<sup>110</sup> Donald J. Trump (@realDonaldTrump), Twitter (Feb. 5, 2017, 12:42 PM),  
<https://twitter.com/realDonaldTrump/status/828343072840900610>.

<sup>111</sup> Donald J. Trump (@realDonaldTrump), Twitter (Feb. 9, 2017, 3:35 PM),  
<https://twitter.com/realDonaldTrump/status/829836231802515457>.

<sup>112</sup> Donald J. Trump (@realDonaldTrump), Twitter (Feb. 11, 2017, 4:12 AM),  
<https://twitter.com/realDonaldTrump/status/830389130311921667>.

1           250. The day before the Ninth Circuit issued its ruling, Defendant Trump declared that  
 2 the Original Order was “so simple and so beautifully written and so perfectly written”<sup>113</sup> and cast  
 3 further aspersions this country’s judicial system, stating, “I don’t ever want to call a court biased,  
 4 so I won’t call it biased. And we haven’t had a decision yet. But courts seem to be so political and  
 5 it would be so great for our justice system if they would be able to read a statement and do what’s  
 6 right.”

7           251. In their February 16, 2017 supplemental brief regarding review of the Ninth  
 8 Circuit’s decision to deny Defendant’s request for a stay of the TRO by the entire panel,  
 9 Defendants represented that “[r]ather than continuing this litigation, the President intends in the  
 10 near future to rescind the Order and replace it with a new, substantially revised Executive Order .  
 11 . . .”<sup>114</sup>

12           252. Yet on that very same day, Defendant Trump directly contradicted the  
 13 representations made to the Ninth Circuit in the supplemental briefing filed by the United States  
 14 government on his behalf. During a news conference, Defendant Trump stated: “We’re issuing a  
 15 new executive action next week that will comprehensively protect our country. So we’ll be going  
 16 along the one path and hopefully winning that, at the same time we will be issuing a new and  
 17 very comprehensive order to protect our people.”<sup>115</sup>

18           253. Further, on February 21, 2017, senior policy adviser Stephen Miller not only  
 19 claimed “[n]othing was wrong with the first executive order” but also revealed that the revised  
 20  
 21  
 22

23 <sup>113</sup> Matt Zapotosky & Robert Barnes, *As Judges Weigh Travel Ban, Trump Asserts that Courts are ‘so Political,’*  
 24 *Wash. Post* (Feb. 8, 2017), <http://www.chicagotribune.com/news/nationworld/politics/ct-trump-defends-travel-ban-20170208-story.html> (last accessed Mar. 13, 2017).

25 <sup>114</sup> Suppl. Br. on *En Banc* Consideration at 4, *State* (9th Cir. Feb. 16, 2017), Dkt. # 154.

26 <sup>115</sup> *Presidential News Conference*, *N.Y. Times* (Feb. 16, 2017), transcript and video is available at  
<https://www.nytimes.com/video/us/politics/100000004937194/trump-labor-secretary.html> (last accessed Mar. 13, 2017).

1 travel ban will have “mostly minor technical differences” from the Original Order and  
 2 “fundamentally” would be “the same basic policy outcome for the country.”<sup>116</sup>

3 254. In addition, during White House press briefings on February 21, 22, and 23, 2017,  
 4 Press Secretary Sean Spicer stated that the Defendant Trump will continue to pursue the case in  
 5 the Ninth Circuit. In particular, Mr. Spicer stated:

- 6
- 7 • On February 21, 2017: The President has “made very clear” that there will be  
 8 a “dual-track system” and is <sup>117</sup>“confident that we’re still going to prevail on  
 9 the case—the merits of the case.”
- 10 • On February 22, 2017: The President is “fighting this on both fronts, making  
 11 sure that we keep evolving through the <sup>118</sup>court system on the existing EO,”  
 12 while drafting an additional executive order.
- 13 • On February 23, 2017: “So with respect to the executive order [on  
 14 immigration], there are several courts that this is being fought in—10 or so—  
 15 and we continue to deal with that in all of those venues. And then again, I  
 16 guess, the only way to say this is, then obviously on the dual-track side we  
 17 have the additional executive order that we’ve talked about earlier that will  
 18 come out and further address the problems. We continue to believe that the  
 19 issues that we face specifically in the 9th district—9th Circuit, rather, that we  
 20 will prevail on, on the merits of that. But on the other challenges that have  
 21 come and the other venues and the others—that we feel equally confident, as  
 22 we did in Massachusetts and other venues. So it’s not a single-track  
 23 system.”<sup>119</sup>

24 <sup>116</sup> Martha McCallum, *Miller: New Order Will Be Responsive to the Judicial Ruling; Rep. Ron DeSantis: Congress  
 25 has Gotten Off to a Slow Start*, Fox (Feb. 21, 2017), <http://www.foxnews.com/transcript/2017/02/21/miller-new-order-will-be-responsive-to-judicial-ruling-rep-ron-desantis/> (last accessed Mar. 13, 2017).

26 <sup>117</sup> *Press Briefing by Press Secretary Sean Spicer, 2/21/17, #13*, White House (Feb. 21, 2017),  
<https://www.whitehouse.gov/the-press-office/2017/02/21/press-briefing-press-secretary-sean-spicer-2212017-13>  
 (last accessed Mar. 13, 2017).

<sup>118</sup> *Press Briefing by Press Secretary Sean Spicer, 2/22/17, #14*, White House (Feb. 22, 2017),  
<https://www.whitehouse.gov/the-press-office/2017/02/22/press-briefing-press-secretary-sean-spicer-2222017-14>  
 (last accessed Feb. 27, 2017).

<sup>119</sup> *Press Briefing by Press Secretary Sean Spicer, 2/23/17, #15*, White House (Feb. 23, 2017),  
<https://www.whitehouse.gov/the-press-office/2017/02/23/press-briefing-press-secretary-sean-spicer-2232017-15>  
 (last accessed Feb. 27, 2017).



1           255. On February 27, 2017, Press Secretary Spicer reiterated that as to the Revised  
2 Order, “the goal is obviously to maintain the way that we did it the first time.”<sup>120</sup>

3           256. Defendants’ statements appear to be designed to inflame and incite further animus  
4 against persons affected by the ban, and grossly distort and misrepresent the actual process  
5 through which Plaintiffs were screened and reviewed before their admittance to the United States  
6 was allowed.

7           257. Defendants’ statements underscore the continued discriminatory motive behind  
8 the Revised Order. And Defendants’ statements make it abundantly clear that there is no  
9 guarantee that Defendants will not revert to the Original Order at some point in time.

10           258. Indeed, as recently as on March 1, 2017, Vice President Pence stated during an  
11 interview on CBS This Morning that “[t]he president is just determined to not only defend the  
12 first executive order in the courts, which we continue to believe is fully within his purview and in  
13 his presidential authority, but also to take that authority that is undisputed in the law within the  
14 executive order.”<sup>121</sup>

15           259. Given the numerous, inconsistent positions Defendants have taken with regard to  
16 the Original and Revised Orders over time, individual Plaintiffs and members of the Non-  
17 Immigrant Visa Class reasonably fear that, if they attempt to enter or re-enter the United States,  
18 they will be denied permission to do so, notwithstanding their previously established lawful  
19 presence in the United States and the fact that they have otherwise been deemed appropriate by  
20 the U.S. government for admission.

21           260. Because the Revised Order continues to suspend the refugee admissions program,  
22 Joseph Doe and others similarly situated are left in the exact same purgatory they were in with  
23 the Original Order.

24 \_\_\_\_\_  
25 <sup>120</sup> *Press Briefing by Press Secretary Sean Spicer, 2/27/17, #17*, White House (Feb 27, 2017),  
26 <https://www.whitehouse.gov/the-press-office/2017/02/27/press-briefing-press-secretary-sean-spicer-2272017-17>  
(last accessed Mar. 13, 2017).

<sup>121</sup> *See supra* note 9.



1           265. The claims of the Non-Immigrant Visa Class as well as the Refugee Class  
2 members share common issues of law, including but not limited to whether the Revised  
3 Executive Order violates their associational, religious exercise, and due process rights under the  
4 First and Fifth Amendments; the Religious Freedom Restoration Act; and the Administrative  
5 Procedure Act.

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

11           267. The claims or defenses of the named Plaintiffs are typical of the claims or  
12 defenses of members of each of the Plaintiff Classes.

13           268. Jack Doe and Jason Doe will fairly and adequately protect the interests of the  
14 Non-Immigrant Visa Class, and Joseph Doe and James Doe will fairly and adequately protect the  
15 interests of the Refugee Class. None of the named Plaintiffs have any interest that is now or may  
16 be potentially antagonistic to the interests of the Plaintiff class they seek to represent. The  
17 attorneys representing the named Plaintiffs include experienced civil rights attorneys and are  
18 considered able practitioners in federal constitutional litigation. These attorneys should be  
19 appointed as class counsel.

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

24           270. Prosecution of separate actions by individual members of either of the Plaintiff  
25 Classes would create the risk of inconsistent or varying adjudications and would establish  
26

1 incompatible standards of conduct for individual members of each Plaintiff Class. Both Plaintiff  
2 Classes may therefore be properly certified under Fed. R. Civ. P. 23(b)(1).

3 **VI. CAUSES OF ACTION**

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

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

10 272. The First Amendment prohibits the establishment of a religion or the prohibition  
11 of the free exercise of religion.

12 273. The Original and Revised Executive Orders violate the Establishment Clause by  
13 singling out Muslims for disfavored treatment. It has the purpose and effect of inhibiting  
14 religion, and it is neither justified by, nor closely fitted to, any compelling governmental interest.

15 274. The Original and Revised Executive Order discriminates on the basis of religion  
16 and national origin, each a suspect classification, and is not narrowly tailored to serve a  
17 compelling governmental interest, and thereby violates the equal protection component of the  
18 Due Process Clause.

19 275. The Original and Revised Executive Orders constitute an unlawful attempt to  
20 discriminate against Muslims and to establish a preference for one religion over another.  
21 References in the Original and Revised Executive Orders to the Designated Countries are  
22 transparently a pretext to establish this preference. And the removal of the language prioritizing  
23 the admission of refugees of the minority religion of their countries that was in Section 5 of the  
24 Original Executive Order from Section 6 of the Revised Executive Order cannot erase the taint  
25 nor the true motivation behind either the Original or Revised Executive Orders. Singling out  
26 Muslims for disfavored treatment and granting special preferences to non-Muslims is neither  
justified by, nor closely fitted to, any compelling governmental interest.







1 **COUNT SEVEN**  
2 **VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT**  
3 **(Against all Defendants, Asserted by Jason Doe, Joseph Doe, James Doe, and the**  
4 **Non-Immigrant Visa and Refugee Classes)**

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

7 296. The formulation of policies pertaining to the entry of aliens is entrusted  
8 exclusively to Congress. *Galvan v. Press*, 347 U.S. 522, 531 (1954). Through the enactment of  
9 and amendments to the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101 *et seq.*,  
10 Congress has established an extensive statutory scheme governing the admission and exclusion  
11 of aliens. Where Congress has delegated authority to the Executive, that authority remains  
12 constrained by the parameters of the INA. Defendants have exceeded the scope of their delegated  
13 authority because their actions are contrary to the INA.

14 297. Specifically, INA section 212(a) establishes, in detail, the classes of aliens who  
15 are ineligible for visas or admission into the United States, including under “Security and related  
16 grounds,” section 212(a)(3), 8 U.S.C. § 1182(a)(3). INA section 212(a)(3)(C)(iii) prohibits  
17 ideological exclusions like those embodied in Defendants’ Orders. Namely, an alien may not be  
18 excludable or subject to restrictions or conditions on entry “because of the alien’s past, current,  
19 or expected beliefs, statements, or associations.” 8 U.S.C. § 1182(a)(3)(C)(iii).

20 298. In enacting this provision of the INA, Congress specifically sought to end a  
21 practice of excluding or denying entry to aliens based on their beliefs.

22 299. Defendants, in issuing the Orders, have directly contradicted the expressed will of  
23 Congress and violated the INA. To the extent that the delegation of authority in INA section  
24 212(f) is viewed as encompassing the authority to violate the expressed will of Congress, it is an  
25 unconstitutional delegation of authority.  
26



1 **COUNT EIGHT**  
2 **ADMINISTRATIVE PROCEDURE ACT— PROCEDURAL VIOLATION**  
3 **(Against all Defendants except Defendant Trump, Asserted by All Plaintiffs)**

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

6 301. Defendants U.S. Department of State, U.S. Department of Homeland Security,  
7 and U.S. Customs and Border Protection are “agencies” under the APA. *See* 5 U. S. C. § 551(1).

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

11 303. The APA further requires courts to hold unlawful and set aside any agency action  
12 taken “without observance of procedure required by law.” 5 U. S. C. § 706(2)(D).

13 304. The creation of the administrative rules contained in Sections 3 and 5 of the  
14 Original Executive Order and Sections 2, 3, and 6 of the Revised Executive Order was an agency  
15 action subject to the APA.

16 305. Additionally, in implementing Sections 3 and 5 of the Original Executive Order  
17 and Sections 2, 3, and 6 of the Revised Executive Order, Defendants federal agencies and  
18 Defendant secretaries and/or directors of those agencies have taken an agency action subject to  
19 the APA because they have changed the substantive criteria by which individuals from the  
20 Designated Countries may enter the United States, which impacts substantive rights.

21 306. In addition, in issuing Cable 23338, an agency action under the APA, Defendant  
22 Secretary of State failed to fulfill the procedural requirements of the APA. Defendants federal  
23 agencies and Defendant secretaries and/or directors of those agencies did not follow the  
24 procedures required by the APA before taking action impacting the substantive rights of the  
25 Plaintiffs.

26 307. By failing to follow the rulemaking procedures required of them prior to changing  
the substantive criteria by which individuals from the Designated Countries may enter the United

1 States, Defendants federal agencies and Defendant secretaries and/or directors of those agencies  
2 violated the APA.

3 308. These violations continue to cause ongoing harm to Plaintiffs.

4 **COUNT NINE**  
5 **ADMINISTRATIVE PROCEDURE ACT—SUBSTANTIVE VIOLATION**  
6 **(Against all Defendants except Defendant Trump, Asserted by all Plaintiffs)**

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

9 310. Defendants U.S. Department of State, U.S. Department of Homeland Security,  
10 and U.S. Customs and Border Protection are “agencies” under the APA. *See* 5 U. S. C. § 551(1).

11 311. The Administrative Procedure Act prohibits federal agency action that is  
12 “contrary to constitutional right, power, privilege, or immunity,” 5 U. S. C. § 706(2)(B), or “in  
13 excess of statutory jurisdiction, authority, or limitations, or short of statutory right.” 5 U. S. C. §  
14 706(2)(C), or “arbitrary, capricious, an abuse of discretion or otherwise not in accordance with  
15 law.” 5 U. S. C. § 706(2)(A).

16 312. The creation of the administrative rules contained in Sections 3 and 5 of the  
17 Original Executive Order and Sections 2, 3, and 6 of the Revised Executive Order was an agency  
18 action subject to the APA.

19 313. Additionally, in implementing Sections 3 and 5 of the Original Executive Order  
20 and Sections 2, 3, and 6 of the Revised Executive Order, Defendants federal agencies and  
21 Defendant secretaries and/or directors of those agencies have taken unconstitutional and  
22 unlawful action, as alleged in this Complaint, in violation of the Administrative Procedure Act.

23 314. In implementing Sections 3 and 5 of the Original Executive Order and Sections  
24 2(c), 3(c), and 6(c) and (d) of the Revised Executive Order, Defendants federal agencies have  
25 arbitrarily and capriciously exercised their discretion.

26 315. In implementing Sections 3 and 5 of the Original Executive Order and Sections 2,  
3, and 6 of the Revised Executive Order, Defendants federal agencies and Defendant secretaries

1 and/or directors of those agencies exceeded their statutory authority and engaged in nationality  
2 and religion-based discrimination in violation of RFRA.

3 316. In addition, the issuance of Cable 23338, an agency action under the APA, is  
4 arbitrary and capricious.

5 317. Finally, in implementing Sections 3 and 5 of the Original Executive Order and  
6 Sections 2, 3, and 6 of the Revised Executive Order, Defendants' actions as set forth above were  
7 arbitrary, capricious, or discriminatory. Defendants have offered no satisfactory explanation for  
8 the countries that are or are not included within the scope of the Revised Order while banning  
9 millions of people with no connection whatsoever to terrorism and causing harm to Plaintiffs.  
10 Accordingly, Defendants have violated the substantive requirements of the Administrative  
11 Procedure Act.

12 **PRAYER FOR RELIEF**

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

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

16 2. A declaration that Sections 3(c), 5(a)–(c), and 5(e) of the Original Executive  
17 Order and Sections 1(f), 2(c), and 6(a) of the Revised Executive Order violate the rights of all  
18 Plaintiffs as well as members of the Non-Immigrant Visa Class and the Refugee Class for the  
19 reasons set forth above.

20 3. A declaration that Sections 1(f), 2(c), and 6(a) of the Revised Executive Order  
21 and the manner in which they will be implemented are in violation of the rights of all Plaintiffs  
22 as well as members of the Non-Immigrant Visa Class and the Refugee Class for the reasons set  
23 forth above.

24 4. An injunction that the Original and Revised Executive Order may not be enforced  
25 as against Plaintiffs or members of members of the Non-Immigrant Visa Class or the Refugee  
26 Class in connection with their entry or re-entry into the United States;

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5. A permanent injunction of the Original and Revised Executive Orders as contrary to the Constitution;

6. An award to the Plaintiffs as well as members of the Non-Immigrant Visa Class and the Refugee Class of reasonable costs and attorneys' fees; and,

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

1 DATED this 14th day of May, 2017.

2 AMERICAN CIVIL LIBERTIES UNION  
3 OF WASHINGTON FOUNDATION

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16 *Attorneys for the American Civil Liberties*  
17 *Union Of Washington Foundation*

**CERTIFICATE OF SERVICE**

I hereby certify that on May 8, 2017, I electronically filed the foregoing Second Amended Class Action Complaint for Declaratory and Injunctive Relief with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the email addresses on the Court’s Electronic Mail Notice List.

DATED this 8th day of May, 2017.

KELLER ROHRBACK L.L.P.

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