

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

MAZDAK POURABDOLLAH
TOOTKABONI and
ARGHAVAN LOUHGHALAM,

Case No. 17-cv-10154

Petitioners,

v.

DONALD TRUMP, President of the United
States; U.S. DEPARTMENT OF
HOMELAND SECURITY (“DHS”); U.S.
CUSTOMS AND BORDER PROTECTION
(“CBP”); JOHN KELLY, Secretary of DHS;
KEVIN K. MCALEENAN, Acting
Commissioner of CBP; and WILLIAM
MOHALLEY, Boston Field Director, CBP,

Date: January 28, 2017

Respondents.

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

INTRODUCTION

Petitioners Mazdak Pourabdollah Tootkaboni and Arghavan Louhghalam, two lawful permanent residents of United States, are being unlawfully held at Logan Airport as a consequence of an Executive Order recently issued by President Donald Trump. Both Petitioners are associate professors at the University of Massachusetts-Dartmouth, Iranian nationals, and Muslims. Both Petitioners landed at Logan at approximately 5:30 p.m. on January 28, 2017, and, on information and belief, have been detained since then. They were returning from an academic conference and was outside the United States for fewer than 180 days.

As lawful permanent residents, and as set forth in detail below, Petitioners have a constitutional right to return home to the United States after a brief trip abroad, and cannot be deprived of their lawful permanent status without justification and due process protections.

Even though Petitioners were returning home to the United States as lawful permanent residents, U.S. Customs and Border Protection (“CBP”) blocked them from exiting Logan and detained them therein. No magistrate has determined that there is sufficient justification for the continued detention of Petitioners. Instead, CBP is holding them at Logan solely pursuant to an executive order issued by President Donald Trump on January 27, 2017.

Because the executive order is unlawful as applied to Petitioners, their continued detention based solely on the executive order violates his Fifth Amendment procedural and substantive due process rights, violates the First Amendment Establishment Clause, is ultra vires under the immigration statutes, and violates the Administrative Procedure Act and Religious Freedom Restoration Act. Further, Petitioners’ continued unlawful detention is part of a widespread policy,

pattern, and practice applied to many refugees and arriving aliens detained after the issuance of the January 27, 2017 executive order. Therefore, Petitioners respectfully apply to this Court for a writ of habeas corpus to remedy his unlawful detention by Respondents, and for declaratory and injunctive relief to prevent such harms from recurring.

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331, 1361, 2241, 2243, and the Habeas Corpus Suspension Clause of the U.S. Constitution. This court has further remedial authority pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*

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

3. No petition for habeas corpus has previously been filed in any court to review Petitioner's case.

PARTIES

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

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

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

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

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

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

10. Respondent James T. Madden is the Director of the New York Field Office of CBP, which has immediate custody of Petitioners and other members of the proposed class. He is sued in his official capacity.

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

STATEMENT OF FACTS

President Trump’s January 27, 2017 Executive Order

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

13. On January 27, one week after his inauguration, President Trump signed an executive order entitled, “Protecting the Nation from Foreign Terrorist Entry into the United States,” which is attached hereto as Exhibit A and is hereinafter referred to as the “EO.”

14. In statements to the press in connection with his issuance of the EO, President Trump stated that his order would help Christian refugees to enter the United States.

15. Citing the threat of terrorism committed by foreign nationals, the EO directs a variety of changes to the manner and extent to which non-citizens may seek and obtain entry to the United States. Among other things, the EO imposes a 120-day moratorium on the refugee resettlement program as a whole; proclaims that “that the entry of nationals of Syria as refugees is detrimental to the interests of the United States”; and therefore singles out Syrian refugees for an indefinite “suspension” on their admission to the country.

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

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

Petitioner Tootkaboni

18. Petitioner Tootkaboni is an Iranian national and a lawful permanent resident of the United States.

19. Petitioner Tootkaboni is Muslim.

20. Petitioner Tootkaboni joined the Department of Civil Engineering at the Johns Hopkins University in 2004 and earned his PhD degree in Structural Mechanics in May 2009

21. Petitioner Tootkaboni is now an Associate Professor at the University of Massachusetts-Dartmouth.

22. Petitioner Tootkaboni arrived at Logan Airport on January 28, 2017, following a trip out of the country to attend an academic conference.

23. Petitioner Tootkaboni has been detained since that arrival.

24. Counsel for Petitioner Tootkaboni have attempted to make contact with him at Logan Airport but have been unsuccessful due to Petitioner Tootkaboni's detention.

25. Upon knowledge and belief, Petitioner remains in the custody of CBP at Logan Airport.

26. Petitioner Tootkaboni is being detained at Logan Airport and not being permitted to go home, in violation of the U.S. law.

Petitioner Louhghalam

27. Petitioner Louhghalam is an Iranian national and a lawful permanent resident of the United States.

28. Petitioner Louhghalam is Muslim.

29. Petitioner Louhghalam holds a Ph.D. and a M.S. in Engineering Mechanics from the Johns Hopkins University.

30. Petitioner Louhghalam is now an Associate Professor at the University of Massachusetts-Dartmouth.

31. Petitioner Louhghalam arrived at Logan Airport on January 28, 2017, following a trip out of the country to attend an academic conference.

32. Petitioner Louhghalam has been detained since that arrival.

33. Counsel for Petitioner Louhghalam have attempted to make contact with her at Logan Airport but have been unsuccessful due to Petitioner Louhghalam's detention.

34. Upon knowledge and belief, Petitioner Louhghalam remains in the custody of CBP at Logan Airport.

35. Petitioner Louhghalam is being detained at Logan Airport and not being permitted to go home, in violation of the U.S. law.

36. Congress has provided that lawful permanent residents in Petitioners' situation are entitled to enter the United States. Under 8 U.S.C. § 1101(a)(13)(C), a lawful permanent resident is regarded as seeking an admission into the United States for purposes of the immigration laws" only if he or she "has abandoned or relinquished that status," *id.* § 1101(a)(13)(C)(i), has been absent from the United States for more than 180 days continuously, is in removal proceedings, has committed one of a class of enumerated offenses, or has attempted to enter without inspection.

37. None of the foregoing circumstances applies to Petitioners and therefore they are not deemed to be seeking admission and have a right to enter. In *In re Collado-Munoz*, 21 I. & N. Dec. 1061, 1065-1066 (1998) (en banc) (requiring immigration judge to look to 8 U.S.C. § 1101(a)(13)(C) in determining whether lawful permanent resident was applicant for admission);

Vartelas v. Holder, 566 U.S. 257 (2012) (citing *In re Collado-Munoz* and recognizing that the definition supersedes previous statute’s definition of entry).

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

39. As a lawful permanent residents of the United States, Petitioners are attempting to return home. They have been left in limbo while detained by the Respondents for no reason other than the discriminatory and unconstitutional EO

**CAUSES OF ACTION
COUNT ONE
FIFTH AMENDMENT – PROCEDURAL DUE PROCESS**

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

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

42. In particular, returning lawful permanent residents have constitutional due process rights with respect to their return to the United States. In evaluating the due process rights available to a lawful permanent resident, “courts must consider the interest at stake for the individual, the risk of an erroneous deprivation of the interest through the procedures used as well as the probable value of additional or different procedural safeguards, and the interest of the government in using the current procedures rather than additional or different procedures.” *Landon v. Plasencia*, 459 U.S. 21, 34 (1982).

43. Respondents’ actions, taken pursuant to the EO, violate the procedural due process rights guaranteed by the Fifth Amendment.

COUNT TWO

FIRST AMENDMENT – ESTABLISHMENT CLAUSE

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

45. The EO exhibits hostility to a specific religious faith, Islam, and gives preference to other religious faiths, principally Christianity. The EO therefore violates the Establishment

Clause of the First Amendment by not pursuing a course of neutrality with regard to different religious faiths.

COUNT THREE
FIFTH AMENDMENT – EQUAL PROTECTION

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

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

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

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

50. Applying a general law in a fashion that discriminate on the basis of religion in this way violates Petitioner’s rights to equal protection under the Fifth Amendment Due Process

Clause. *Hayden v. County of Nassau*, 180 F.3d 42, 48 (2d Cir. 1999); *Yick Wo v. Hopkins*, 118 U.S. 356, 373-74 (1886). Petitioners satisfy the Supreme Court’s test to determine whether a facially neutral law – in the case, the EO and federal immigration law – has been applied in a discriminatory fashion. The Supreme Court requires an individual bringing suit to challenge the application of a law bear the burden of demonstrating a “prima facie case of discriminatory purpose.” *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266-7 (1977). This test examines the impact of the official action, whether there has been a clear pattern unexplainable on other grounds besides discrimination, the historical background of the decision, the specific sequence of events leading up to the challenged decision, and departures from the normal procedural sequence. *Id.*

51. Here, President Donald Trump and senior staff have made clear that EO will be applied to primarily exclude individuals on the basis of their national origin and being Muslim. *See, e.g.*, Donald J. Trump, *Donald J. Trump Statement On Preventing Muslim Immigration*, (Dec. 7, 2015), <https://www.donaldjtrump.com/press-releases/donald-j.-trump-statement-on-preventing-muslim-immigration> (“Donald J. Trump is calling for a total and complete shutdown of Muslims entering the United States until our country's representatives can figure out what is going on.”); Abby Phillip and Abigail Hauslohner, *Trump on the Future of Proposed Muslim Ban, Registry: ‘You know my plans’*, Wash. Post (Dec. 22, 2016). Further, the President has promised that preferential treatment will be given to Christians, unequivocally demonstrating the special preferences and discriminatory impact that the EO has upon Petitioner. *See supra.*

52. Thus, Respondents have applied the EO with forbidden animus and discriminatory intent in violation of the equal protection of the Fifth Amendment and violated Petitioner's equal protection rights.

**COUNT FOUR
ADMINISTRATIVE PROCEDURE ACT**

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

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

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

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

57. The INA and implementing regulations, including 8 U.S.C. § 1225(b)(1) (expedited removal), 8 C.F.R. §§ 235.3(b)(4), 208.30, and 1003.42; 8 U.S.C. § 1158 (asylum), and 8 U.S.C. § 1231(b)(3) (withholding of removal), and the United Nations Convention Against Torture ("CAT"), implemented in the Foreign Affairs Reform and Restructuring Act of 1998 ("FARRA"), Pub.L. No. 105-277, div. G, Title XXII, § 2242, 112 Stat. 2681, 2681-822 (1998) (codified at 8 U.S.C. § 1231 note), entitle Petitioner to an opportunity to apply for asylum, withholding of removal, and CAT relief.

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

**COUNT FIVE
RELIGIOUS FREEDOM RESTORATION ACT**

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

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

PRAYER FOR RELIEF

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

- (1) Issue a Writ of Habeas Corpus requiring Respondents to release Petitioners;
- (2) Issue an injunction ordering Respondents not to detain any individual solely on the basis of the EO;

(3) Enter a judgment declaring that Respondents' detention of Petitioners is and will be unauthorized by statute and contrary to law;

(4) Award Petitioners reasonable costs and attorney's fees; and

(5) Grant any other and further relief that this Court may deem fit and proper.

DATED: January 28, 2017
Boston, Massachusetts

Respectfully submitted,

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The White House

Office of the Press Secretary

For Immediate Release

January 25, 2017

Executive Order: Border Security and Immigration Enforcement Improvements

EXECUTIVE ORDER

BORDER SECURITY AND IMMIGRATION ENFORCEMENT IMPROVEMENTS

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) (INA), the Secure Fence Act of 2006 (Public Law 109 367) (Secure Fence Act), and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104 208 Div. C) (IIRIRA), and in order to ensure the safety and territorial integrity of the United States as well as to ensure that the Nation's immigration laws are faithfully executed, I hereby order as follows:

Section 1. Purpose. Border security is critically important to the national security of the United States. Aliens who illegally enter the United States without inspection or admission present a significant threat to national security and public safety. Such aliens have not been identified or inspected by Federal immigration officers to determine their admissibility to the United States. The recent surge of illegal immigration at the southern border with Mexico has placed a significant strain on Federal resources and overwhelmed agencies charged with border security and immigration enforcement, as well as the local communities into which many of the aliens are placed.

Transnational criminal organizations operate sophisticated drug- and human-trafficking networks and smuggling operations on both sides of the southern border,

contributing to a significant increase in violent crime and United States deaths from dangerous drugs. Among those who illegally enter are those who seek to harm Americans through acts of terror or criminal conduct. Continued illegal immigration presents a clear and present danger to the interests of the United States.

Federal immigration law both imposes the responsibility and provides the means for the Federal Government, in cooperation with border States, to secure the Nation's southern border. Although Federal immigration law provides a robust framework for Federal-State partnership in enforcing our immigration laws and the Congress has authorized and provided appropriations to secure our borders the Federal Government has failed to discharge this basic sovereign responsibility. The purpose of this order is to direct executive departments and agencies (agencies) to deploy all lawful means to secure the Nation's southern border, to prevent further illegal immigration into the United States, and to repatriate illegal aliens swiftly, consistently, and humanely.

Sec. 2. Policy. It is the policy of the executive branch to:

- (a) secure the southern border of the United States through the immediate construction of a physical wall on the southern border, monitored and supported by adequate personnel so as to prevent illegal immigration, drug and human trafficking, and acts of terrorism;
- (b) detain individuals apprehended on suspicion of violating Federal or State law, including Federal immigration law, pending further proceedings regarding those violations;
- (c) expedite determinations of apprehended individuals' claims of eligibility to remain in the United States;
- (d) remove promptly those individuals whose legal claims to remain in the United States have been lawfully rejected, after any appropriate civil or criminal sanctions have been imposed; and
- (e) cooperate fully with States and local law enforcement in enacting Federal-State partnerships to enforce Federal immigration priorities, as well as State monitoring and detention programs that are consistent with Federal law and do not undermine Federal immigration priorities.

Sec. 3. Definitions. (a) "Asylum officer" has the meaning given the term in section 235(b)(1)(E) of the INA (8 U.S.C. 1225(b)(1)).

(b) "Southern border" shall mean the contiguous land border between the United States and Mexico, including all points of entry.

(c) "Border States" shall mean the States of the United States immediately adjacent to the contiguous land border between the United States and Mexico.

(d) Except as otherwise noted, "the Secretary" shall refer to the Secretary of Homeland Security.

(e) "Wall" shall mean a contiguous, physical wall or other similarly secure, contiguous, and impassable physical barrier.

(f) "Executive department" shall have the meaning given in section 101 of title 5, United States Code.

(g) "Regulations" shall mean any and all Federal rules, regulations, and directives lawfully promulgated by agencies.

(h) "Operational control" shall mean the prevention of all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband.

Sec. 4. Physical Security of the Southern Border of the United States. The Secretary shall immediately take the following steps to obtain complete operational control, as determined by the Secretary, of the southern border:

(a) In accordance with existing law, including the Secure Fence Act and IIRIRA, take all appropriate steps to immediately plan, design, and construct a physical wall along the southern border, using appropriate materials and technology to most effectively achieve complete operational control of the southern border;

(b) Identify and, to the extent permitted by law, allocate all sources of Federal funds for the planning, designing, and constructing of a physical wall along the southern border;

(c) Project and develop long-term funding requirements for the wall, including preparing Congressional budget requests for the current and upcoming fiscal years; and

(d) Produce a comprehensive study of the security of the southern border, to be completed within 180 days of this order, that shall include the current state of southern border security, all geophysical and topographical aspects of the southern border, the availability of Federal and State resources necessary to achieve complete operational control of the southern border, and a strategy to obtain and maintain complete operational control of the southern border.

Sec. 5. Detention Facilities. (a) The Secretary shall take all appropriate action and allocate all legally available resources to immediately construct, operate, control, or establish contracts to construct, operate, or control facilities to detain aliens at or near the land border with Mexico.

(b) The Secretary shall take all appropriate action and allocate all legally available resources to immediately assign asylum officers to immigration detention facilities for the purpose of accepting asylum referrals and conducting credible fear determinations pursuant to section 235(b)(1) of the INA (8 U.S.C. 1225(b)(1)) and applicable regulations and reasonable fear determinations pursuant to applicable regulations.

(c) The Attorney General shall take all appropriate action and allocate all legally available resources to immediately assign immigration judges to immigration detention facilities operated or controlled by the Secretary, or operated or controlled pursuant to contract by the Secretary, for the purpose of conducting proceedings authorized under title 8, chapter 12, subchapter II, United States Code.

Sec. 6. Detention for Illegal Entry. The Secretary shall immediately take all appropriate actions to ensure the detention of aliens apprehended for violations of immigration law pending the outcome of their removal proceedings or their removal from the country to the extent permitted by law. The Secretary shall issue new policy guidance to all Department of Homeland Security personnel regarding the appropriate and consistent use of lawful detention authority under the INA, including the termination of the practice commonly known as "catch and release," whereby aliens are routinely released in the United States shortly after their apprehension for violations of immigration law.

Sec. 7. Return to Territory. The Secretary shall take appropriate action, consistent with the requirements of section 1232 of title 8, United States Code, to ensure that aliens described in section 235(b)(2)(C) of the INA (8 U.S.C. 1225(b)(2)(C)) are returned to the territory from which they came pending a formal removal proceeding.

Sec. 8. Additional Border Patrol Agents. Subject to available appropriations, the Secretary, through the Commissioner of U.S. Customs and Border Protection, shall take all appropriate action to hire 5,000 additional Border Patrol agents, and all appropriate action to ensure that such agents enter on duty and are assigned to duty stations as soon as is practicable.

Sec. 9. Foreign Aid Reporting Requirements. The head of each executive department and agency shall identify and quantify all sources of direct and indirect Federal aid or assistance to the Government of Mexico on an annual basis over the past five years, including all bilateral and multilateral development aid, economic assistance, humanitarian aid, and military aid. Within 30 days of the date of this order, the head of each executive department and agency shall submit this information to the Secretary of State. Within 60 days of the date of this order, the Secretary shall submit to the President a consolidated report reflecting the levels of such aid and assistance that has been provided annually, over each of the past five years.

Sec. 10. Federal-State Agreements. It is the policy of the executive branch to empower State and local law enforcement agencies across the country to perform the functions of an immigration officer in the interior of the United States to the maximum extent permitted by law.

(a) In furtherance of this policy, the Secretary shall immediately take appropriate action to engage with the Governors of the States, as well as local officials, for the purpose of preparing to enter into agreements under section 287(g) of the INA (8 U.S.C. 1357(g)).

(b) To the extent permitted by law, and with the consent of State or local officials, as appropriate, the Secretary shall take appropriate action, through agreements under section 287(g) of the INA, or otherwise, to authorize State and local law enforcement officials, as the Secretary determines are qualified and appropriate, to perform the functions of immigration officers in relation to the investigation, apprehension, or detention of aliens in the United States under the direction and the supervision of the

Secretary. Such authorization shall be in addition to, rather than in place of, Federal performance of these duties.

(c) To the extent permitted by law, the Secretary may structure each agreement under section 287(g) of the INA in the manner that provides the most effective model for enforcing Federal immigration laws and obtaining operational control over the border for that jurisdiction.

Sec. 11. Parole, Asylum, and Removal. It is the policy of the executive branch to end the abuse of parole and asylum provisions currently used to prevent the lawful removal of removable aliens.

(a) The Secretary shall immediately take all appropriate action to ensure that the parole and asylum provisions of Federal immigration law are not illegally exploited to prevent the removal of otherwise removable aliens.

(b) The Secretary shall take all appropriate action, including by promulgating any appropriate regulations, to ensure that asylum referrals and credible fear determinations pursuant to section 235(b)(1) of the INA (8 U.S.C. 1125(b)(1)) and 8 CFR 208.30, and reasonable fear determinations pursuant to 8 CFR 208.31, are conducted in a manner consistent with the plain language of those provisions.

(c) Pursuant to section 235(b)(1)(A)(iii)(I) of the INA, the Secretary shall take appropriate action to apply, in his sole and unreviewable discretion, the provisions of section 235(b)(1)(A)(i) and (ii) of the INA to the aliens designated under section 235(b)(1)(A)(iii)(II).

(d) The Secretary shall take appropriate action to ensure that parole authority under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) is exercised only on a case-by-case basis in accordance with the plain language of the statute, and in all circumstances only when an individual demonstrates urgent humanitarian reasons or a significant public benefit derived from such parole.

(e) The Secretary shall take appropriate action to require that all Department of Homeland Security personnel are properly trained on the proper application of section 235 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (8 U.S.C. 1232) and section 462(g)(2) of the Homeland Security Act of 2002 (6 U.S.C. 279(g)(2)), to ensure that unaccompanied alien children are properly

processed, receive appropriate care and placement while in the custody of the Department of Homeland Security, and, when appropriate, are safely repatriated in accordance with law.

Sec. 12. Authorization to Enter Federal Lands. The Secretary, in conjunction with the Secretary of the Interior and any other heads of agencies as necessary, shall take all appropriate action to:

(a) permit all officers and employees of the United States, as well as all State and local officers as authorized by the Secretary, to have access to all Federal lands as necessary and appropriate to implement this order; and

(b) enable those officers and employees of the United States, as well as all State and local officers as authorized by the Secretary, to perform such actions on Federal lands as the Secretary deems necessary and appropriate to implement this order.

Sec. 13. Priority Enforcement. The Attorney General shall take all appropriate steps to establish prosecution guidelines and allocate appropriate resources to ensure that Federal prosecutors accord a high priority to prosecutions of offenses having a nexus to the southern border.

Sec. 14. Government Transparency. The Secretary shall, on a monthly basis and in a publicly available way, report statistical data on aliens apprehended at or near the southern border using a uniform method of reporting by all Department of Homeland Security components, in a format that is easily understandable by the public.

Sec. 15. Reporting. Except as otherwise provided in this order, the Secretary, within 90 days of the date of this order, and the Attorney General, within 180 days, shall each submit to the President a report on the progress of the directives contained in this order.

Sec. 16. Hiring. The Office of Personnel Management shall take appropriate action as may be necessary to facilitate hiring personnel to implement this order.

Sec. 17. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP

THE WHITE HOUSE,

January 25, 2017.

The White House

Office of the Press Secretary

For Immediate Release

January 25, 2017

Executive Order: Enhancing Public Safety in the Interior of the United States

EXECUTIVE ORDER

ENHANCING PUBLIC SAFETY IN THE INTERIOR OF THE UNITED STATES

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Immigration and Nationality Act (INA) (8 U.S.C. 1101 et seq.), and in order to ensure the public safety of the American people in communities across the United States as well as to ensure that our Nation's immigration laws are faithfully executed, I hereby declare the policy of the executive branch to be, and order, as follows:

Section 1. Purpose. Interior enforcement of our Nation's immigration laws is critically important to the national security and public safety of the United States. Many aliens who illegally enter the United States and those who overstay or otherwise violate the terms of their visas present a significant threat to national security and public safety. This is particularly so for aliens who engage in criminal conduct in the United States.

Sanctuary jurisdictions across the United States willfully violate Federal law in an attempt to shield aliens from removal from the United States. These jurisdictions have caused immeasurable harm to the American people and to the very fabric of our Republic.

Tens of thousands of removable aliens have been released into communities across the country, solely because their home countries refuse to accept their repatriation. Many of these aliens are criminals who have served time in our Federal, State, and local jails. The presence of such individuals in the United States, and the practices of foreign nations that refuse the repatriation of their nationals, are contrary to the national interest.

Although Federal immigration law provides a framework for Federal-State partnerships in enforcing our immigration laws to ensure the removal of aliens who have no right to be in the United States, the Federal Government has failed to discharge this basic sovereign responsibility. We cannot faithfully execute the immigration laws of the United States if we exempt classes or categories of removable aliens from potential enforcement. The purpose of this order is to direct executive departments and agencies (agencies) to employ all lawful means to enforce the immigration laws of the United States.

Sec. 2. Policy. It is the policy of the executive branch to:

- (a) Ensure the faithful execution of the immigration laws of the United States, including the INA, against all removable aliens, consistent with Article II, Section 3 of the United States Constitution and section 3331 of title 5, United States Code;
- (b) Make use of all available systems and resources to ensure the efficient and faithful execution of the immigration laws of the United States;
- (c) Ensure that jurisdictions that fail to comply with applicable Federal law do not receive Federal funds, except as mandated by law;
- (d) Ensure that aliens ordered removed from the United States are promptly removed; and
- (e) Support victims, and the families of victims, of crimes committed by removable aliens.

Sec. 3. Definitions. The terms of this order, where applicable, shall have the meaning provided by section 1101 of title 8, United States Code.

Sec. 4. Enforcement of the Immigration Laws in the Interior of the United States. In furtherance of the policy described in section 2 of this order, I hereby direct agencies

to employ all lawful means to ensure the faithful execution of the immigration laws of the United States against all removable aliens.

Sec. 5. Enforcement Priorities. In executing faithfully the immigration laws of the United States, the Secretary of Homeland Security (Secretary) shall prioritize for removal those aliens described by the Congress in sections 212(a)(2), (a)(3), and (a)(6)(C), 235, and 237(a)(2) and (4) of the INA (8 U.S.C. 1182(a)(2), (a)(3), and (a)(6)(C), 1225, and 1227(a)(2) and (4)), as well as removable aliens who:

- (a) Have been convicted of any criminal offense;
- (b) Have been charged with any criminal offense, where such charge has not been resolved;
- (c) Have committed acts that constitute a chargeable criminal offense;
- (d) Have engaged in fraud or willful misrepresentation in connection with any official matter or application before a governmental agency;
- (e) Have abused any program related to receipt of public benefits;
- (f) Are subject to a final order of removal, but who have not complied with their legal obligation to depart the United States; or
- (g) In the judgment of an immigration officer, otherwise pose a risk to public safety or national security.

Sec. 6. Civil Fines and Penalties. As soon as practicable, and by no later than one year after the date of this order, the Secretary shall issue guidance and promulgate regulations, where required by law, to ensure the assessment and collection of all fines and penalties that the Secretary is authorized under the law to assess and collect from aliens unlawfully present in the United States and from those who facilitate their presence in the United States.

Sec. 7. Additional Enforcement and Removal Officers. The Secretary, through the Director of U.S. Immigration and Customs Enforcement, shall, to the extent permitted by law and subject to the availability of appropriations, take all appropriate action to hire 10,000 additional immigration officers, who shall complete relevant training and

be authorized to perform the law enforcement functions described in section 287 of the INA (8 U.S.C. 1357).

Sec. 8. Federal-State Agreements. It is the policy of the executive branch to empower State and local law enforcement agencies across the country to perform the functions of an immigration officer in the interior of the United States to the maximum extent permitted by law.

(a) In furtherance of this policy, the Secretary shall immediately take appropriate action to engage with the Governors of the States, as well as local officials, for the purpose of preparing to enter into agreements under section 287(g) of the INA (8 U.S.C. 1357(g)).

(b) To the extent permitted by law and with the consent of State or local officials, as appropriate, the Secretary shall take appropriate action, through agreements under section 287(g) of the INA, or otherwise, to authorize State and local law enforcement officials, as the Secretary determines are qualified and appropriate, to perform the functions of immigration officers in relation to the investigation, apprehension, or detention of aliens in the United States under the direction and the supervision of the Secretary. Such authorization shall be in addition to, rather than in place of, Federal performance of these duties.

(c) To the extent permitted by law, the Secretary may structure each agreement under section 287(g) of the INA in a manner that provides the most effective model for enforcing Federal immigration laws for that jurisdiction.

Sec. 9. Sanctuary Jurisdictions. It is the policy of the executive branch to ensure, to the fullest extent of the law, that a State, or a political subdivision of a State, shall comply with 8 U.S.C. 1373.

(a) In furtherance of this policy, the Attorney General and the Secretary, in their discretion and to the extent consistent with law, shall ensure that jurisdictions that willfully refuse to comply with 8 U.S.C. 1373 (sanctuary jurisdictions) are not eligible to receive Federal grants, except as deemed necessary for law enforcement purposes by the Attorney General or the Secretary. The Secretary has the authority to designate, in his discretion and to the extent consistent with law, a jurisdiction as a sanctuary jurisdiction. The Attorney General shall take appropriate enforcement action against

any entity that violates 8 U.S.C. 1373, or which has in effect a statute, policy, or practice that prevents or hinders the enforcement of Federal law.

(b) To better inform the public regarding the public safety threats associated with sanctuary jurisdictions, the Secretary shall utilize the Declined Detainer Outcome Report or its equivalent and, on a weekly basis, make public a comprehensive list of criminal actions committed by aliens and any jurisdiction that ignored or otherwise failed to honor any detainers with respect to such aliens.

(c) The Director of the Office of Management and Budget is directed to obtain and provide relevant and responsive information on all Federal grant money that currently is received by any sanctuary jurisdiction.

Sec. 10. Review of Previous Immigration Actions and Policies. (a) The Secretary shall immediately take all appropriate action to terminate the Priority Enforcement Program (PEP) described in the memorandum issued by the Secretary on November 20, 2014, and to reinstitute the immigration program known as "Secure Communities" referenced in that memorandum.

(b) The Secretary shall review agency regulations, policies, and procedures for consistency with this order and, if required, publish for notice and comment proposed regulations rescinding or revising any regulations inconsistent with this order and shall consider whether to withdraw or modify any inconsistent policies and procedures, as appropriate and consistent with the law.

(c) To protect our communities and better facilitate the identification, detention, and removal of criminal aliens within constitutional and statutory parameters, the Secretary shall consolidate and revise any applicable forms to more effectively communicate with recipient law enforcement agencies.

Sec. 11. Department of Justice Prosecutions of Immigration Violators. The Attorney General and the Secretary shall work together to develop and implement a program that ensures that adequate resources are devoted to the prosecution of criminal immigration offenses in the United States, and to develop cooperative strategies to reduce violent crime and the reach of transnational criminal organizations into the United States.

Sec. 12. Recalcitrant Countries. The Secretary of Homeland Security and the Secretary of State shall cooperate to effectively implement the sanctions provided by section 243(d) of the INA (8 U.S.C. 1253(d)), as appropriate. The Secretary of State shall, to the maximum extent permitted by law, ensure that diplomatic efforts and negotiations with foreign states include as a condition precedent the acceptance by those foreign states of their nationals who are subject to removal from the United States.

Sec. 13. Office for Victims of Crimes Committed by Removable Aliens. The Secretary shall direct the Director of U.S. Immigration and Customs Enforcement to take all appropriate and lawful action to establish within U.S. Immigration and Customs Enforcement an office to provide proactive, timely, adequate, and professional services to victims of crimes committed by removable aliens and the family members of such victims. This office shall provide quarterly reports studying the effects of the victimization by criminal aliens present in the United States.

Sec. 14. Privacy Act. Agencies shall, to the extent consistent with applicable law, ensure that their privacy policies exclude persons who are not United States citizens or lawful permanent residents from the protections of the Privacy Act regarding personally identifiable information.

Sec. 15. Reporting. Except as otherwise provided in this order, the Secretary and the Attorney General shall each submit to the President a report on the progress of the directives contained in this order within 90 days of the date of this order and again within 180 days of the date of this order.

Sec. 16. Transparency. To promote the transparency and situational awareness of criminal aliens in the United States, the Secretary and the Attorney General are hereby directed to collect relevant data and provide quarterly reports on the following:

- (a) the immigration status of all aliens incarcerated under the supervision of the Federal Bureau of Prisons;
- (b) the immigration status of all aliens incarcerated as Federal pretrial detainees under the supervision of the United States Marshals Service; and
- (c) the immigration status of all convicted aliens incarcerated in State prisons and local detention centers throughout the United States.

Sec. 17. Personnel Actions. The Office of Personnel Management shall take appropriate and lawful action to facilitate hiring personnel to implement this order.

Sec. 18. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP

THE WHITE HOUSE,

January 25, 2017.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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**HAMEED KHALID DARWEESH and
HAIDER SAMEER ABDULKHALEQ
ALSHAWI, on behalf of themselves and others
similarly situated,**

Petitioners,

- against -

**DONALD TRUMP, President of the United
States; U.S. DEPARTMENT OF
HOMELAND SECURITY (“DHS”); U.S.
CUSTOMS AND BORDER PROTECTION
 (“CBP”); JOHN KELLY, Secretary of DHS;
KEVIN K. MCALEENAN, Acting
Commissioner of CBP; JAMES T.
MADDEN, New York Field Director, CBP,,**

Respondents.

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ANN DONNELLY, District Judge.

On January 28, 2017, the petitioners filed an Emergency Motion for Stay of Removal on behalf of themselves and others similarly situated.

IT APPEARING to the Court from the Emergency Motion for Stay of Removal, the other submissions, the arguments of counsel, and the hearing held on the 28th of January, 2017,

1. The petitioners have a strong likelihood of success in establishing that the removal of the petitioner and others similarly situated violates their rights to Due Process and Equal Protection guaranteed by the United States Constitution;

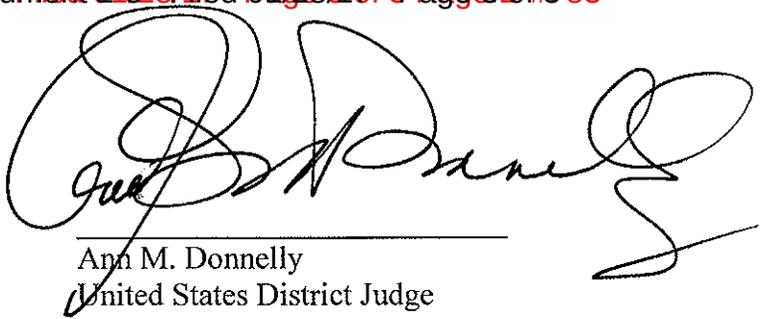
2. There is imminent danger that, absent the stay of removal, there will be substantial and irreparable injury to refugees, visa-holders, and other individuals from nations subject to the January 27, 2017 Executive Order;
3. The issuance of the stay of removal will not injure the other parties interested in the proceeding;
4. It is appropriate and just that, pending completion of a hearing before the Court on the merits of the Petition, that the Respondents be enjoined and restrained from the commission of further acts and misconduct in violation of the Constitution as described in the Emergency Motion for Stay of Removal.

WHEREFORE, IT IS HEREBY ORDERED that the respondents, their officers, agents, servants, employees, attorneys, and all members and persons acting in concert or participation with them, from the date of this Order, are

ENJOINED AND RESTRAINED from, in any manner or by any means, removing individuals with refugee applications approved by U.S. Citizenship and Immigration Services as part of the U.S. Refugee Admissions Program, holders of valid immigrant and non-immigrant visas, and other individuals from Iraq, Syria, Iran, Sudan, Libya, Somalia, and Yemen legally authorized to enter the United States.

IT IS FURTHER ORDERED that to assure compliance with the Court's order, the Court directs service of this Order upon the United States Marshal for the Eastern District of New York, and further directs the United States Marshals Service to take those actions deemed necessary to enforce the provisions and prohibitions set forth in this Order.

SO ORDERED.



Ann M. Donnelly
United States District Judge

Dated: Brooklyn, New York
January 28, 2017