From: Yates, Sally (ODAG)
Sent: Monday, January 30, 2017 10:17 PM
To: [redacted]
Subject: FW: Immigration

-----Original Message-----
From: Delahanty, Thomas (USAME) [mailto:Thomas.Delahanty@usdoj.gov]
Sent: Monday, January 30, 2017 9:58 PM
To: Yates, Sally (ODAG) (JMD) <Sally.Yates2@usdoj.gov>
Subject: Immigration

You are my new hero.
Being a native Mainer, your stand on principle reminds me of Sen. Margaret Chase Smith in her "Declaration of Conscience" when she called out Sen. Joe McCarthy for his witch hunt on Communism.
Thank you.....

Tom Delahanty

THOMAS E. DELAHANTY II
United States Attorney
District of Maine

Document ID: 0.7.10904.5012

From: Yates, Sally (ODAG)
Sent: Monday, January 30, 2017 10:17 PM
To: [redacted]
Subject: FW: I am so proud

-----Original Message-----
From: Weissmann, Andrew (CRM)
Sent: Monday, January 30, 2017 9:50 PM
To: Yates, Sally (ODAG) <sayates@jmd.usdoj.gov>
Subject: I am so proud

And in awe. Thank you so much.
All my deepest respects,
Andrew Weissmann

Sent from my iPhone

Document ID: 0.7.10904.5011

From: Yates, Sally (ODAG)
Sent: Monday, January 30, 2017 10:17 PM
To: [redacted]
Subject: FW: Thank you

-----Original Message-----
From: Aloi, Elizabeth
Sent: Monday, January 30, 2017 10:11 PM
To: Yates, Sally (ODAG) <sayates@jmd.usdoj.gov>
Subject: Thank you

Thank you for your service. Inspirational and heroic.

Liz Aloi

Sent from my iPhone

Document ID: 0.7.10904.5014

From: Yates, Sally (ODAG)
Sent: Monday, January 30, 2017 8:58 PM
To: [redacted]
Subject: FW: Your Message on the EO

-----Original Message-----
From: Rice, Emily (USANH) [mailto:Emily.Rice@usdoj.gov]
Sent: Monday, January 30, 2017 7:16 PM
To: Yates, Sally (ODAG) (JMD) <Sally.Yates2@usdoj.gov>
Subject: Your Message on the EO

AAG Yates, thank you, as always, for making us proud. It is truly an honor to work for you.

Gratefully,

Emily Gray Rice

Sent from my iPhone

Document ID: 0.7.10904.5050

From: Yates, Sally (ODAG)
Sent: Monday, January 30, 2017 9:07 PM
To: [redacted]
Subject: FW: Message from the Acting Attorney General

From: McQuade, Barbara (USAMIE) [mailto:Barbara.McQuade@usdoj.gov]
Sent: Monday, January 30, 2017 6:30 PM
To: Yates, Sally (ODAG) (JMD) <Sally.Yates2@usdoj.gov>
Subject: Fwd: Message from the Acting Attorney General

Thank you for your courage and leadership. This is wonderful news.

Barbara L. McQuade

United States Attorney

Eastern District of Michigan

211 West Fort Street, Suite 2001

Detroit, Michigan 48226

Offic [redacted]

Mobil [redacted]

barbara.mcquade@usdoj.gov

Begin forwarded message:

Document ID: 0.7.10904.5046

From: "Wilkinson, Monty (USAEO)" <MWilkinson@usa.doj.gov>
Date: January 30, 2017 at 6:17:47 PM EST
To: USAEO-USAttorneysOnly <USAEO-USAttorneysOnly@usa.doj.gov>
Subject: Message from the Acting Attorney General

The Acting Attorney General asked that I forward the attached message to you.

Monty


Message from the Acting Attorn...


ATT00001.htm

Document ID: 0.7.10904.5046

On January 27, 2017, the President signed an Executive Order regarding immigrants and refugees from certain Muslim-majority countries. The order has now been challenged in a number of jurisdictions. As the Acting Attorney General, it is my ultimate responsibility to determine the position of the Department of Justice in these actions.

My role is different from that of the Office of Legal Counsel (OLC), which, through administrations of both parties, has reviewed Executive Orders for form and legality before they are issued. OLC's review is limited to the narrow question of whether, in OLC's view, a proposed Executive Order is lawful on its face and properly drafted. Its review does not take account of statements made by an administration or it surrogates close in time to the issuance of an Executive Order that may bear on the order's purpose. And importantly, it does not address whether any policy choice embodied in an Executive Order is wise or just.

Similarly, in litigation, DOJ Civil Division lawyers are charged with advancing reasonable legal arguments that can be made supporting an Executive Order. But my role as leader of this institution is different and broader. My responsibility is to ensure that the position of the Department of Justice is not only legally defensible, but is informed by our best view of what the law is after consideration of all the facts. In addition, I am responsible for ensuring that the positions we take in court remain consistent with this institution's solemn obligation to always seek justice and stand for what is right. At present, I am not convinced that the defense of the Executive Order is consistent with these responsibilities nor am I convinced that the Executive Order is lawful.

Consequently, for as long as I am the Acting Attorney General, the Department of Justice will not present arguments in defense of the Executive Order, unless and until I become convinced that it is appropriate to do so.

Document ID: 0.7.10904.5116-000001

From: Horn, John (USAGAN) <John.Horn@usdoj.gov>
Sent: Friday, January 27, 2017 2:11 PM
To: Yates, Sally (ODAG) (JMD); Schools, Scott (ODAG) (JMD)
Cc: Wilkinson, Monty (USAEO)
Subject: LaGrange Ga

Every now and again, being US Attorney allows me to participate in things that change my life. Yesterday was one of those events. If you're needing a lift to your day, this is it.

Nearly 8 Decades Later, an Apology for a Lynching in Georgia

By ALAN BLINDER and RICHARD FAUSSETJAN. 26, 2017

Photo

Ernest Ward, right, the N.A.A.C.P. president in Troup County, Ga., said he had "a newfound respect" for Louis M. Dekmar, the police chief in LaGrange. Credit Dustin Chambers for The New York Times

LaGRANGE, Ga. Some people here had never heard about the lynching of Austin Callaway about how, almost 77 years ago, he was dragged out of a jail cell by a band of masked white men, then shot and left for dead.

Some people never forgot.

But on Thursday evening, the fatal cruelties inflicted upon Mr. Callaway long obscured by time, fear, professional malfeasance and a reluctance to investigate the sins of the past were acknowledged in this city of 31,000 people when LaGrange's police chief, Louis M. Dekmar, who is white, issued a rare apology for a Southern lynching.

"I sincerely regret and denounce the role our Police Department played in Austin's lynching, both through our action and our inaction," Chief Dekmar told a crowd at a traditionally African-American church. "And for that, I'm profoundly sorry. It should never have happened."

He also said that all citizens had the right to expect that their police department "be honest, decent, unbiased and ethical."

The apology for the Sept. 8, 1940, killing is part of a renewed push across the American South to acknowledge the brutal mob violence that was used to enforce the system of racial segregation after Reconstruction: In a 2015 study, the Equal Justice Initiative, a nonprofit based in Montgomery, Ala., documented 4,075 of what it called the "racial terror lynchings" of blacks by white mobs in 12 Southern states from 1877 to 1950.

Document ID: 0.7.10904.5305

The group has begun construction of a memorial to lynching victims in Montgomery, which could open by March 2018.

To Chief Dekmar, however, the apology in the town he has called home since 1995 is about more than righting history's wrongs. It is also an effort, in the age of the Black Lives Matter movement, to address some of the deepest roots of minority mistrust in the police, and create a better working relationship between officers and the community.

"It became clear that something needed to be done to recognize that some things we did in the past are a burden still carried by officers today," Chief Dekmar said in a recent phone interview. "Institutions are made up of people, and relationships go like this: Before you trust somebody, you need to know that they know that they did you wrong, and that you're stepping up and apologizing for it."

Photo

A Sept. 9, 1940, article in The New York Times about the lynching of Austin Callaway. The fatal cruelties inflicted upon him are to be acknowledged Thursday evening. Credit The New York Times

Chief Dekmar, 61, a New Jersey native raised in Oregon, embraces a view of law enforcement that extends beyond the narrow goals of protecting the good and locking up the bad.

He tends to speak about his department as one organ of a broader social body, though one that is perhaps more exposed than others to its ills. He leads regular meetings of a "community outreach committee" in which he shares with other civic leaders what his officers see on the streets homelessness, juvenile delinquency, children with learning and literacy issues and looks for ways that various small-town entities might work together to solve them. He has also sought to address trust issues: The department, he said, has mandated the use of body cameras on officers for the last five years.

The chief became familiar with the lynching of Mr. Callaway only about two or three years ago, when one of his officers overheard two older African-American women who were looking at old photos of the LaGrange police on display at the headquarters building.

One woman said to the other, "They killed our people."

Chief Dekmar began researching the episode but found, he said, only "sketchy reports" there was "no investigation I could find, no arrest, no follow-up by the media."

Indeed, the details of the crime appear to have been deliberately obscured for the 1940-era residents of LaGrange. Then, in 2014, Jason M. McGraw, a student at the Northeastern University School of Law in Boston, wrote a research paper about the lynching. He noted that while newspapers around the country had reported that a band of masked whites had abducted Mr. Callaway, the local paper, The LaGrange Daily News, wrote only that Mr. Callaway had died "as a result of bullets fired by an unknown person or group of individuals."

The paper's headline on the Sept. 9, 1940, article declared, "Negro Succumbs to Shot Wounds."

Document ID: 0.7.10904.5305

Mr. Callaway is generally believed to have been 16 or 18 years old on Sept. 7, the day he was arrested and charged with trying to assault a white woman. According to Mr. McGraw's research, six white men arrived at the jail that night with at least one gun, forced the jailer to open the cell and forced Mr. Callaway into a car. He was driven to a spot eight miles away and shot in the head and arms.

He was later found by a roadside and taken to a hospital, where he died.

Mr. McGraw noted that the investigation of Mr. Callaway's death fell to the town's police chief, J. E. Matthews, and the Troup County sheriff, E. V. Hillyer, but that an investigative report was never made public.

Chief Dekmar has learned that generations of African-Americans were well aware of what happened.

"There are relatives here and people who still remember," he said. "Even if those people are not still alive, down through the generations, that memory is still alive. That's a burden that officers carry."

As Chief Dekmar learned more about the case, he decided that something must be done to acknowledge it. The city he has sworn to protect is less than 70 miles southwest of Atlanta. Before the Civil War, LaGrange was a wealthy hub in Georgia's cotton kingdom: Troup County, of which LaGrange is the seat, had the state's fifth-largest number of slaves.

Today, according to recent census figures, the city is about 48 percent black and 45 percent white. A Kia plant in nearby West Point, Ga., suggests an economic future for the area beyond the textile industry that once sustained it. But nearly one in three LaGrange residents live in poverty.

Photo

The audience at LaGrange College on Thursday for a speech by Representative John Lewis, Democrat of Georgia. Credit Dustin Chambers for The New York Times

Residents say race relations here, as in many multicultural American communities, run the gamut from friendly to frayed, depending on the day and the issue. When LaGrange College, a private liberal arts school in town, announced that it had invited Representative John Lewis, the Georgia Democrat, to speak at a Martin Luther King Jr. event scheduled for Thursday, protests poured in, in part because Mr. Lewis had questioned the legitimacy of President Donald J. Trump.

On Thursday, some businesses around town bore signs promoting Mr. Lewis's appearance, while some homes featured pro-police signs declaring "Back the Blue."

For the last two years or so, city and county residents, including Chief Dekmar, have been engaged in a program of racial reconciliation and racial trust-building. At a monthly meeting this summer, Chief Dekmar approached the president of the county N.A.A.C.P. chapter, Ernest Ward, and asked if he would help set up a public apology for the lynching.

Mr. Ward served on the police force for nearly two decades starting in the mid-1980s. He acknowledged that some of his fellow black residents harbored an us-versus-them attitude toward the police. "I lost many friends when I became a police officer," he said, "because they felt that I sold out."

Document ID: 0.7.10904.5305

He was asked how much the apology would help with day-to-day police work. “I believe it’s a start,” he said. “And it’s helped me to have a newfound respect for Chief Dekmar.”

“Historically certain people in the white race don’t like to bring up the past when it may not show a good light on their ancestors,” Mr. Ward said. “And so they would prefer to keep things hidden.”

Chief Dekmar issued his apology to relatives of Mr. Callaway on Thursday night at Warren Temple United Methodist Church here.

The month after the shooting, Mr. McGraw noted, a church minister named L. W. Strickland wrote to Thurgood Marshall, the future Supreme Court justice who was then a lawyer for the N.A.A.C.P., telling him that the local branch of the rights group had asked the authorities to look into the case, but that “nothing is being done not even acknowledgment of our requests.”

Some white LaGrange residents said on Thursday that they were deeply skeptical about whether the apology would have any practical effect. They noted that the crime took place before most people here were even born.

“I don’t care if they apologize or don’t,” said Jessie East, 74, who works at a furniture and appliance shop. “It’s not going to change a thing that happened 77 years ago.”

But to others, including one of Mr. Callaway’s relatives, the apology was a step toward healing.

“I speak your name, Austin Callaway, and ask God for forgiveness for the people that did this inhumane thing to you,” Deborah Tatum, a descendant of Mr. Callaway, told the congregation. “Some might say ‘forgiveness’? And I say to you that I believe God when he tells us that there is power and freedom in forgiveness.”

Alan Blinder reported from LaGrange, and Richard Fausset from Atlanta.

Document ID: 0.7.10904.5305

From: McCord, Mary (NSD)
Sent: Monday, January 30, 2017 12:49 PM
To: Yates, Sally (ODAG); Axelrod, Matthew (ODAG)
Subject: please call when available

Document ID: 0.7.10904.5166

From: Tomney, Brian (ODAG)
Sent: Friday, January 27, 2017 8:25 AM
To: Yates, Sally (ODAG)
Subject: FW: Photos 3
Attachments: P011817PS-0820.jpg; P011817PS-0821.jpg; P011817PS-0829.jpg; P011817PS-0836.jpg; P011817PS-0840.jpg; P011817PS-0844.jpg; P011817PS-0846.jpg; P011817PS-0847.jpg; P011817PS-0850.jpg

Good morning, I won't send you all the photos, but I thought you might like a few in this set. Thank you for everything! Brian

From: Claire McComb (b) (6)
Sent: Thursday, January 26, 2017 8:51 AM
To: Robert.A.Zauzmer@usdoj.gov; Brian.Tomney2@usdoj.gov
Subject: Photos 3

Please note that these photos are being sent to you for personal use only. If you share them with friends or family, make sure to include the disclaimer below. Thank you.

President Barack Obama greets clemency staff including representatives from the Pardon Attorney's Office, the Deputy Attorney General's Office and the White House Counsel's Office, and joins them for a group photo on the Rose Garden Colonnade steps of the White House, Jan. 18, 2017. (Official White House Photo by Pete Souza)

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Document ID: 0.7.10904.5418

From: Yates, Sally (ODAG)
Sent: Monday, January 30, 2017 2:54 PM
To: [redacted]
Subject: letter
Attachments: letter.docx

Document ID: 0.7.10904.5157

From: Gamble, Nathaniel (ODAG)
Sent: Monday, January 30, 2017 7:00 PM
To: Yates, Sally (ODAG)
Subject: Before you leave for the day

If you want to say hello, Josh is here cleaning out some of his files. But he knows you are busy/on the phone and can see you another time.

Document ID: 0.7.10904.5097

From: Yates, Sally (ODAG)
Sent: Monday, January 30, 2017 9:00 PM
To: [redacted]
Subject: FW: Channing Phillips (b) (6) [redacted] (cell)

From: Gamble, Nathaniel (ODAG)
Sent: Monday, January 30, 2017 6:31 PM
To: Yates, Sally (ODAG) <sayates@jmd.usdoj.gov>
Subject: Channing Phillips (b) (6) [redacted] (cell)

Document ID: 0.7.10904.5038

From: Yates, Sally (ODAG) <sayates@jmd.usdoj.gov>
Sent: Monday, January 30, 2017 11:08 PM
To: [redacted]
Subject: Test

Document ID: 0.7.10904.5143

From: Gamble, Nathaniel (ODAG)
Sent: Tuesday, January 31, 2017 1:05 PM
To: Brinkley, Winnie (ODAG); Yates, Sally (ODAG)
Subject: Calls:

If any legitimate calls come in for former AG Yates, you can send them to me and I will make sure she gets them.

Thanks in advance,

Document ID: 0.7.10904.5044

From: Yates, Sally (ODAG)
Sent: Monday, January 30, 2017 10:16 PM
To: [redacted]
Subject: FW: To best serve the nation and the world

From (b) (6) **On Behalf Of** L Sommerfeld
Sent: Monday, January 30, 2017 9:10 PM
To: Yates, Sally (ODAG) <Sally.Yates2@usdoj.gov>
Subject: Fwd: To best serve the nation and the world

Hi Sally,

Some night.

I received the following and thought you might be interested, if you find time and have the inclination to read it.

Be well!

Larry

---------- Forwarded message ----------
From: **President L. Rafael Rei** (b) (6)
Date: Monday, January 30, 2017
Subject: To best serve the nation and the world
To (b) (6)

http://mit.imodules.com/s/1314/images/gid13/editor/institute president/10-07-2015 emailheader reif.jpg

To the members of the MIT community,

Document ID: 0.7.10904.5020

For those of you who have been following the developments at MIT since Friday, I was hoping to write to you today with some uplifting news. Yet, as I write, we continue to push hard to bring back to MIT those members of our community, including two undergraduates, who were barred from the US because of the January 27 Executive Order on immigration. We are working personally with all the affected individuals we are aware of. If you know of other students, faculty or staff *who are directly affected*, please inform us immediately so we can try to help:

- **International Students Office** (b) (6) [international-students@mit.edu]
- **International Scholars Offic** (b) (6) [international-scholars@mit.edu]

Over and over since the order was issued, I have been moved by the outpouring of support from hundreds across our community. I could not be more proud, and I am certain that you join me in thanking everyone inside and outside of MIT whose extraordinary efforts have helped us address this difficult situation. We hope we can welcome everyone back to MIT very soon.

MIT, the nation and the world

I found the events of the past few days deeply disturbing. The difficulty we have encountered in seeking to help the individuals from our community heightens our overall sense of concern. I would like to reflect on the situation we find ourselves in, as an institution and as a country.

MIT is profoundly American. The Institute was founded deliberately to accelerate the nation's industrial revolution. With classic American ingenuity and drive, our graduates have invented fundamental technologies, launched new industries and created millions of American jobs. Our history of national service stretches back to World War I; especially through the work of Lincoln Lab, we are engaged every day in keeping America safe. We embody the American passion for boldness, big ideas, hard work and hands-on problem-solving. Our students come to us from every faith, culture and background and from all fifty states. And, like other institutions rooted in science and engineering, we are proud that, for many of our students, MIT supplies their ladder to the middle class, and sometimes beyond. We are as American as the flag on the Moon.

At the same time, and without the slightest sense of contradiction, MIT is profoundly global. Like the United States, and thanks to the United States, MIT gains tremendous strength by being a magnet for talent from around the world. More than 40% of our faculty, 40% of our graduate students and 10% of our undergraduates are international. Faculty, students, post-docs and staff from 134 other nations join us here because they love our mission, our values and our community. And as I have a great many stay in this country for life, repaying the American promise of freedom with their energy and their ideas. Together, through teaching, research, and innovation, MIT's magnificently global, absolutely American community pursues its mission of service to the nation and the world.

Document ID: 0.7.10904.5020

What the moment demands of us

The Executive Order on Friday appeared to me a stunning violation of our deepest American values, the values of a nation of immigrants: fairness, equality, openness, generosity, courage. The Statue of Liberty is the “Mother of Exiles”; how can we slam the door on desperate refugees? Religious liberty is a founding American value; how can our government discriminate against people of any religion? In a nation made rich by immigrants, why would we signal to the world that we no longer welcome new talent? In a nation of laws, how can we reject students and others who have established legal rights to be here? And if we accept this injustice, where will it end? Which group will be singled out for suspicion tomorrow?

On Sunday, many members of our campus community joined a protest in Boston to make plain their rejection of these policies and their support for our Muslim friends and colleagues. As an immigrant and the child of refugees, I join them, with deep feeling, in believing that the policies announced Friday tear at the very fabric of our society.

I encourage anyone who shares that view to work constructively to improve the situation. Institutionally, though we may not be vocal in every instance, you can be confident we are paying attention; as we strive to protect our community, sustain our mission and advance our shared values, we will speak and act when and where we judge we can be most effective.

Yet I would like us to think seriously about the fact that both within the MIT community and the nation at large, there are people of goodwill who see the measures in the Executive Order as a reasonable path to make the country safer. We would all like our nation to be safe. I am convinced that the Executive Order will make us less safe. Yet all of us, across the spectrum of opinion, are Americans.

In this heated moment, I urge every one of us to avoid with all our might the forces that are driving America into two camps. If we love America, and if we believe in America, we cannot allow those divisions to grow worse. We need to imagine a shared future together, if we hope to have one. I am certain our community can help work on this great problem, too, by starting right here at home.

Sincerely,

L. Rafael Reif

Document ID: 0.7.10904.5020

MASSACHUSETTS INSTITUTE OF TECHNOLOGY
77 MASSACHUSETTS AVE, W98-300 | CAMBRIDGE, MA 02139

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http://emclick.imodules.com/wf/open?upn=YRsKMklngQfYgNhgARByUJGyVWV-2BVvgbiytF8fV82AWsNlpJcNJ7MpQIc0Eo8zENkVsfrZ79ALkJsx8XUuXcQZVhaebMIhmN4q2EOI5JjDGsX4t26XpzQkVQwQC2kxk-2BVWN6pfgCXDrgZT9JNIZ9zlr-2FuXVgvXKu9LiMAw1rZSq62sxpJmFN8jugftJveSFCDvhbRYCrmVIpm3GBLr2wGG2lrGHJvbnFaoXYLBbnxuTEWh0r52XDbMdoRL8qRSI-2BinOjC4BMG2VI3oKxXqTqxYCJnPdJfzIZ5TakmKsurgFJqagq0YJCgBu9XnTRqAurph3MveffoPW4N5TUsEviGOEoTiaNrH6A2m-2F66ja581gX-2BVYz-2BzvaCnhl3f1r7B4j-2FE-2BbWpVt1jISjdJCXurcd5Ku9-2B8CQkryia6H4SLXNwjp1L-2BU8yGmF9LExsopP0sg8ZPI4C31Qz-2FmEh2OKvOVklApvHvXUa93oFjg6ZEwC9E-3D

Axelrod, Matthew (ODAG)

From: Axelrod, Matthew (ODAG)
Sent: Sunday, January 29, 2017 12:34 PM
To: Yates, Sally (ODAG)
Subject: Fwd: Press

Begin forwarded message:

From: "Crowell, James (ODAG)" <jcrowell@jmd.usdoj.gov>
Date: January 29, 2017 at 12:09:48 PM EST
To: "Axelrod, Matthew (ODAG)" <maaxelrod@jmd.usdoj.gov>
Subject: Fwd: Press

Here's what I emailed. (b) (5) [redacted]

(b) (5) [redacted]

Yates, Sally (ODAG)

From: Yates, Sally (ODAG)
Sent: Sunday, January 29, 2017 12:24 PM
To: Axelrod, Matthew (ODAG)
Subject: Re: Press

(b) (5) [redacted]

On Jan 29, 2017, at 12:06 PM, Axelrod, Matthew (ODAG) <maaxelrod@jmd.usdoj.gov> wrote:

Begin forwarded message:

(b) (5) [redacted]


(b) (5)

From: Yates, Sally (ODAG)
Sent: Monday, January 30, 2017 10:16 PM
To: [redacted]
Subject: FW: Notice of Removal
Attachments: [Untitled].pdf; ATT00001.txt

-----Original Message-----
From: DeStefano, John J. EOP/WH (b) (6) [redacted]
Sent: Monday, January 30, 2017 9:05 PM
To: sally.yates2@usdoj.gov
Subject: Notice of Removal

Please see attached.

John J. DeStefano
Assistant to the President
Director, Presidential Personnel

Document ID: 0.7.10904.5032

THE WHITE HOUSE

WASHINGTON

January 30, 2017

Hon. Sally Q. Yates
Department of Justice
950 Pennsylvania Ave, NW
Washington, DC 20530

Dear Deputy Attorney General Yates:

I am informing you that the President has removed you from the office of Deputy Attorney General of the United States.

Sincerely,

John J. DeStefano
Assistant to the President and Director, Presidential Personnel

Document ID: 0.7.10904.5032-000001

Axelrod, Matthew (ODAG)

From: Axelrod, Matthew (ODAG)
Sent: Sunday, January 22, 2017 7:50 PM
To: Yates, Sally (ODAG)
Subject: Fwd: UPDATE: SIOC SITUATIONAL AWARENESS NOTIFICATION - MALL SHOOTING (NOT AN ACTIVE SHOOTER EVENT) - FBI SAN ANTONIO

Begin forwarded message:

From: (b) (7)(E)
Date: January 22, 2017 at 7:12:44 PM EST
To: (b) (6), (b) (7)(C), (b) (7)(E)
(IR) (OGA)" (b) (6), (b) (7)(C), (b) (7)(E)
Cc: "Combs, Christopher H. (SA) (FBI)" (b) (6), (b) (7)(C), (b) (7)(E)
Subject: UPDATE: SIOC SITUATIONAL AWARENESS NOTIFICATION - MALL SHOOTING (NOT AN ACTIVE SHOOTER EVENT) - FBI SAN ANTONIO

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ALCON,

Source of Information

SAC Christopher Combs, FBI San Antonio

Situation

The Rolling Oaks Mall remains on lockdown as a second suspect in the robbery has been confirmed and a search for this individual is ongoing. Reporting also indicates that during the course of the robbery, an armed civilian witnessing the robbery engaged the suspects and shots were exchanged.

Background

At approximately 3:29pm CST (4:29pm EST), FBI San Antonio was notified of an Active Shooter at the Rolling Oaks Mall, San Antonio, Texas. San Antonio Police Department (SAPD) established a Command Post at a nearby IHOP and FBI San Antonio deployed Agents to the scene. The initial report also indicated that the shooter had been shot and was in custody, and that the scene had been secured. Shortly thereafter, FBI San Antonio received further information from

the SAPD Police Chief that the incident was NOT an Active Shooter and was in fact a robbery gone bad. The report also indicated that there had been one fatality at the scene and six injured victims. This incident is being treated as a Criminal matter, and no CT/DT nexus is suspected at this time.

SAPD has taken the lead on the investigation. FBI San Antonio has offered investigated assistance but no assistance has been requested at this time.

Persons of Interest

N/A

Coordination and Response

SIOC is coordinating with FBI San Antonio and will provide updates as information becomes available.

*****THIS IS A SIOC SITUATIONAL AWARENESS NOTIFICATION*****
All information and inquiries should be directed to SIOC at (b) (7)(E)

Emergency Action Specialist [redacted]
Supervisory Special Agent [redacted]
Strategic Information & Operations Center (SIOC)
FBI Headquarters, Room 5712
(b) (7)(E) [redacted]

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Axelrod, Matthew (ODAG)

From:	Axelrod, Matthew (ODAG)
Sent:	Sunday, January 22, 2017 9:48 AM
To:	Yates, Sally (ODAG)
Subject:	Fwd: Meeting with POTUS Today

FYI.

Begin forwarded message:

> **From:** "Rybicki, James E. (DO) (FBI)" (b) (6), (b) (7)(C)
> **Date:** January 22, 2017 at 9:44:33 AM EST
> **To:** "Axelrod, Matthew (ODAG)" <maaxelrod@jmd.usdoj.gov>, "Crowell, James (USAMD)" <James.A.Crowell@usdoj.gov>
> **Subject: Meeting with POTUS Today**
>
> FYI only - the President requested a meeting today with all agencies that participated in security for the inaugural activities. The Director has been asked to represent the FBI and he will attend along with WFO ADIC Paul Abbate.

Axelrod, Matthew (ODAG)

From: Axelrod, Matthew (ODAG)
Sent: Monday, January 30, 2017 6:22 AM
To: Yates, Sally (ODAG)
Subject: Fwd: SIOC SITUATIONAL AWARENESS NOTIFICATION: Shooting at Mosque in Quebec City, Canada - Legat Ottawa

Begin forwarded message:

From: (b) (7)(E)
Date: January 30, 2017 at 6:00:50 AM EST
To: (b) (6), (b) (7)(C), (b) (7)(E) [redacted] Sweeney, William F. (NY) (FBI)" (b) (6), (b) (7)(C), (b) (7)(E) "Fernandez, Carlos T. (NY) (FBI)" (b) (6), (b) (7)(C), (b) (7)(E) [redacted] NY) (FBI)" (b) (6), (b) (7)(C), (b) (7)(E), NY (b) (6), (b) (7)(C), (b) (7)(E)
Cc: (b) (6), (b) (7)(E), (b) (7)(C) [redacted]
Subject: SIOC SITUATIONAL AWARENESS NOTIFICATION: Shooting at Mosque in Quebec City, Canada - Legat Ottawa

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ALCON,

Source of Information

Legat Ottawa and Open Source Media

Situation

Quebec police confirmed in a news briefing that six people had been killed and eight injured, some seriously, in a mass shooting Sunday night at a mosque in suburban Quebec City as worshipers were finishing their prayers. Government officials called the attack an act of terrorism. A spokeswoman for the Sûreté du Québec, the Quebec provincial police, said that two suspects had been arrested.

Person Of Interest

N/A

Coordination and Response

SIOC is coordinating with Legat Ottawa and will provide updates as information becomes available.

*****THIS IS A SIOC SITUATIONAL AWARENESS NOTIFICATION*****
All information and inquiries should be directed to SIOC at [redacted] /
[redacted]

Emergency Action Specialist [redacted]
Supervisory Special Agent [redacted]
Strategic Information & Operations Center (SIOC)
FBI Headquarters, Room 5712
[redacted]

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Yates, Sally (ODAG)

From:	Yates, Sally (ODAG)
Sent:	Tuesday, January 24, 2017 6:11 PM
To:	Rodgers, Janice (JMD); Felter, Monica (JMD); Shaw, Cynthia K. (JMD); Axelrod, Matthew (ODAG); Marketos, Peter (ODAG)
Subject:	Ethics De-Brief for DAG

POC: Nathaniel Gamble

Document ID: 0.7.10904.6554

Yates, Sally (ODAG)

From:	Yates, Sally (ODAG)
Sent:	Monday, January 23, 2017 5:55 PM
To:	Childs, Thomas (JMD); Scholz, Paula A (JMD); Price, Robert (JMD); Mosolf, Jacob (JMD); Mathers, Amy A (JMD); MacLeod, Lisa (JMD); Hunter, Javon M. (JMD); Foushee, Felicia (JMD)
Subject:	Hold: DAG Portrait

Ms. Yates requests Ms. Mathers to take official portrait in office (4111).

Point of Contact: Nathaniel Gamble (b) (6) [redacted]

Yates, Sally (ODAG)

From:	Yates, Sally (ODAG)
Sent:	Monday, January 30, 2017 7:10 PM
To:	Rodgers, Janice (JMD); Felter, Monica (JMD); Shaw, Cynthia K. (JMD); Axelrod, Matthew (ODAG); Marketos, Peter (ODAG)
Subject:	Ethics De-Brief for DAG

Yates, Sally (ODAG)

From:	Yates, Sally (ODAG)
Sent:	Monday, January 30, 2017 8:01 PM
To:	Axelrod, Matthew (ODAG)
Subject:	FW: Official Portrait
Attachments:	170125-DAG-A-8.jpg

From: Mathers, Amy A (JMD)
Sent: Wednesday, January 25, 2017 4:00 PM
To: Yates, Sally (ODAG) <sayates@jmd.usdoj.gov>
Subject: Official Portrait

Hello Mrs. Yates,

It was a pleasure working with you at the Department. I hope you like some of these images for the ODAG wall. The first 31 are cropped as an 8X10 would print in the frames outside the front office. The remaining images are straight from the camera. All of them are cropped vertical, but we can certainly print horizontal as well. I have not done any editing. If you would like anything specific to be touched up for the final print, please let me know. We can soften any fine lines, etc., but I feel they look great as is!! I will also leave 2 CD's with you to review. I have also attached a few in this email.

Best Regards,

Amy Alexander Mathers
Department of Justice • Facilities and Administrative Support Staff
950 Pennsylvania Ave, NW | 7135 | Washington, DC 20530 | ☎: (b) (6)
amy.mathers@usdoj.gov

Yates, Sally (ODAG)

From:	Yates, Sally (ODAG)
Sent:	Wednesday, January 25, 2017 5:41 PM
To:	Mathers, Amy A (JMD)
Subject:	RE: Official Portrait

Amy, Thanks so much for doing such a great job and making me feel so comfortable, too! I'll take a look at the CDs when I get them and circle back. Thanks again!

From: Mathers, Amy A (JMD)
Sent: Wednesday, January 25, 2017 4:00 PM
To: Yates, Sally (ODAG) <sayates@jmd.usdoj.gov>
Subject: Official Portrait

Hello Mrs. Yates,

It was a pleasure working with you at the Department. I hope you like some of these images for the ODAG wall. The first 31 are cropped as an 8X10 would print in the frames outside the front office. The remaining images are straight from the camera. All of them are cropped vertical, but we can certainly print horizontal as well. I have not done any editing. If you would like anything specific to be touched up for the final print, please let me know. We can soften any fine lines, etc., but I feel they look great as is!! I will also leave 2 CD's with you to review. I have also attached a few in this email.

Best Regards,

Amy Alexander Mathers
Department of Justice • Facilities and Administrative Support Staff
950 Pennsylvania Ave, NW | 7135 | Washington, DC 20530 | ☎: (b) (6)
amy.mathers@usdoj.gov

JCC (JMD)

From: JCC (JMD)
Sent: Thursday, January 26, 2017 6:50 PM
To: Yates, Sally (ODAG)
Cc: Sanz-Rexach, Gabriel (NSD)
Subject: Pending Call

Good Evening Ma'am,

Gabriel Sanz-Rexach is requesting to speak with you.

r/

JCC (Ike)
202.514.5000

Yates, Sally (ODAG)

From:	Yates, Sally (ODAG)
Sent:	Friday, January 27, 2017 11:10 AM
To:	Doumas, Alexandra (NSD)
Subject:	FW: FISA

From: Gamble, Nathaniel (ODAG)On Behalf OfYates, Sally (ODAG)
Sent: Friday, January 27, 2017 11:10:23 AM (UTC-05:00) Eastern Time (US & Canada)
To: Axelrod, Matthew (ODAG); Gauhar, Tashina (ODAG); Evans, Stuart (NSD); Sanz-Rexach, Gabriel (NSD); [redacted] (NSD); [redacted] (NSD)
Cc: Doumas, Alexandra (ODAG)
Subject: FISA
When: Friday, January 27, 2017 11:45 AM-12:15 PM.
Where: 4111

Yates, Sally (ODAG)

From:	Yates, Sally (ODAG)
Sent:	Thursday, January 26, 2017 9:47 AM
To:	Doumas, Alexandra (NSD)
Subject:	FW: FISA

From: Brinkley, Winnie (ODAG)On Behalf OfYates, Sally (ODAG)
Sent: Thursday, January 26, 2017 9:46:35 AM (UTC-05:00) Eastern Time (US & Canada)
To: Axelrod, Matthew (ODAG); Sanz-Rexach, Gabriel (NSD); [redacted] (NSD); Evans, Stuart (NSD); Doumas, Alexandra (ODAG); [redacted] (NSD); Gauhar, Tashina (ODAG)
Cc: [redacted] (NSD); Doumas, Alexandra (NSD)
Subject: FISA
When: Thursday, January 26, 2017 2:00 PM-2:30 PM.
Where: 4111

Participants:
ODAG: Matt Axelrod, Tashina Gauhar, Alexandra Doumas
NSD: Stuart Evans, Gabriel Sanz-Rexach, (b) (6), (b) (7)(C)

POC: Josh Mogil

Yates, Sally (ODAG)

From:	Yates, Sally (ODAG)
Sent:	Monday, January 23, 2017 10:51 AM
To:	Doumas, Alexandra (NSD)
Subject:	FW: FISA

From: Gamble, Nathaniel (ODAG)On Behalf OfYates, Sally (ODAG)
Sent: Monday, January 23, 2017 10:50:50 AM (UTC-05:00) Eastern Time (US & Canada)
To: Axelrod, Matthew (ODAG); Sanz-Rexach, Gabriel (NSD); (b) (6), (b) (7)(C) (NSD); Evans, Stuart (NSD); Doumas, Alexandra (ODAG); (b) (6), (b) (7)(C) (NSD); Gauhar, Tashina (ODAG)
Cc: (b) (6), (b) (7)(C) (NSD)
Subject: FISA
When: Monday, January 23, 2017 1:30 PM-2:00 PM.
Where: 4111

Participants:
ODAG: Matt Axelrod, Tashina Gauhar, Alexandra Doumas
NSD: Stuart Evans, Gabriel Sanz-Rexach, (b) (6), (b) (7)(C)

POC: Josh Mogil

Yates, Sally (ODAG)

From:	Yates, Sally (ODAG)
Sent:	Monday, January 23, 2017 12:09 PM
To:	Doumas, Alexandra (NSD)
Subject:	FW: FISA

From: Gamble, Nathaniel (ODAG)On Behalf OfYates, Sally (ODAG)
Sent: Monday, January 23, 2017 12:08:57 PM (UTC-05:00) Eastern Time (US & Canada)
To: Axelrod, Matthew (ODAG); Sanz-Rexach, Gabriel (NSD); [redacted] (NSD); Evans, Stuart (NSD); Doumas, Alexandra (ODAG); [redacted] (NSD); Gauhar, Tashina (ODAG)
Cc: [redacted] (NSD); Doumas, Alexandra (NSD)
Subject: FISA
When: Monday, January 23, 2017 2:00 PM-2:30 PM.
Where: 4111

Participants:
ODAG: Matt Axelrod, Tashina Gauhar, Alexandra Doumas
NSD: Stuart Evans, Gabriel Sanz-Rexach, (b) (6), (b) (7)(C)

POC: Josh Mogil

Yates, Sally (ODAG)

From:	Yates, Sally (ODAG)
Sent:	Monday, January 23, 2017 6:03 PM
To:	Doumas, Alexandra (NSD)
Subject:	FW: FISA

From: Gamble, Nathaniel (ODAG)On Behalf OfYates, Sally (ODAG)
Sent: Monday, January 23, 2017 6:03:20 PM (UTC-05:00) Eastern Time (US & Canada)
To: Axelrod, Matthew (ODAG); Sanz-Rexach, Gabriel (NSD); [redacted] (NSD); Evans, Stuart (NSD); Doumas, Alexandra (ODAG); [redacted] (NSD); Gauhar, Tashina (ODAG)
Cc: [redacted] (NSD); Doumas, Alexandra (NSD)
Subject: FISA
When: Wednesday, January 25, 2017 3:00 PM-3:30 PM.
Where: 4111

Participants:
ODAG: Matt Axelrod, Tashina Gauhar, Alexandra Doumas
NSD: Stuart Evans, Gabriel Sanz-Rexach, [redacted]

POC: Josh Mogil

Gauhar, Tashina (ODAG)

From:	Gauhar, Tashina (ODAG)
Sent:	Wednesday, January 25, 2017 4:01 PM
To:	Schools, Scott (ODAG); Yates, Sally (ODAG)
Cc:	Axelrod, Matthew (ODAG)
Subject:	FW: HPSCI Press Statement

FYI, below.

From: Bradley A Brooker (b) (6), (b) (7)(C)
Sent: Wednesday, January 25, 2017 3:38 PM
To: Gauhar, Tashina (ODAG) <tagauhar@jmd.usdoj.gov>; McCord, Mary (NSD) <mmccord@jmd.usdoj.gov>
Subject: HPSCI Press Statement

Tash and Mary,

(b) (5)

http://intelligence.house.gov/news/documentsingle.aspx?DocumentID=758

Brad Brooker
Acting General Counsel
Office of the Director of National Intelligence Office of General Counsel
(b) (6), (b) (7)(C)

Wilson, Leslie (OJP)

From: Wilson, Leslie (OJP)
Sent: Wednesday, January 25, 2017 3:43 PM
Subject: Save the Date: 2017 National Crime Victims Service Awards - April 7, 2017

Good Afternoon,

Our 2017 National Crime Victims' Rights Week will be held April 2-8, 2017. The ceremony is scheduled for **Friday, April 7, 2017 from 2:00 p.m. to 3:30 p.m.** at the;

National Archives
William McGowan Theatre
700 Pennsylvania Ave, NW
Washington, DC 20408

Please "Save the Date." Details regarding registration will be sent at a later date.

Many thanks,

Leslie Wilson
Meeting Planner
Office of Justice Programs • Office for Victims of Crime
810 Seventh Street, NW
Suite 2222
Washington, DC 20531
Direct: (b) (6) [redacted]
Email: Leslie.Wilson@ojp.usdoj.gov

Document ID: 0.7.10904.5476

Gamble, Nathaniel (ODAG)

From:	Gamble, Nathaniel (ODAG)
Sent:	Monday, January 30, 2017 9:42 AM
To:	Yates, Sally (ODAG); Burton, Faith (OLA); Axelrod, Matthew (ODAG)
Subject:	Incoming Letter from the Senate Committee of Intelligence:
Attachments:	scanned-image_1_30_2017_9_33_30.pdf

Document ID: 0.7.10904.5177

RICHARD BURR, NORTH CAROLINA, CHAIRMAN
MARK R. WARNER, VIRGINIA, VICE CHAIRMAN

JAMES E. RISCH, IDAHO
MARCO RUBIO, FLORIDA
SUSAN M. COLLINS, MAINE
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JOHN CORNYN, TEXAS

DIANNE FEINSTEIN, CALIFORNIA
RON WYDEN, OREGON
MARTIN HEINRICH, NEW MEXICO
ANGUS S. KING, JR., MAINE
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CHRISTOPHER A. JOYNER, STAFF DIRECTOR
MICHAEL CASEY, MINORITY STAFF DIRECTOR
DESIREE THOMPSON SAYLE, CHIEF CLERK

United States Senate

SELECT COMMITTEE ON INTELLIGENCE

WASHINGTON, DC 20510-6475

January 26, 2017

SSCI# 2017-0788

The President
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Mr. President:

In your January 25, 2017, interview with ABC News, you stated that you were considering the resumption of torture. These statements, and press reports that your administration is considering an Executive Order to review the possible resumption of CIA detention and interrogation activities, as well as changes to the Army Field Manual, are profoundly troubling. Moreover, they highlight the critical importance of disseminating within the Executive Branch the full Senate Select Committee on Intelligence Study of the CIA's Detention and Interrogation Program. On December 10, 2014, the Study was transmitted to the White House, the DNI, the CIA, the CIA Inspector General, the FBI, and the Departments of Justice, Defense and State.

The full Study, which is over 6,700 pages long and includes approximately 38,000 footnotes citing mostly the CIA's own documents, is a thorough, fact-based documented history of the program. It was, and remains, a critical resource for anyone considering detention and interrogation policy. As was stated in the transmittal letter, "the full report should be made available within the CIA and other components of the Executive Branch for use as broadly as appropriate to help make sure that this experience is never repeated." The transmittal letter also specifically encouraged the use of the full report in the development of any future guidelines and procedures.

Both the Director of the CIA and the nominee to be attorney general have committed to reviewing the full Study. Director Pompeo, during his confirmation process, wrote, "If confirmed, I will be happy to review parts of the classified Study relevant to the position of DCIA and the SSCI." Senator Sessions committed that he would ensure that he and other "appropriate officials are fully briefed on the contents of the report to the extent it is pertinent to the operations

Document ID: 0.7.10904.5177-000001

and mission of the Department of Justice." To avoid making the mistakes of the past it is of the utmost importance that you familiarize yourself with, and ensure that any Executive Branch officials involved in the formation of policy on detention and interrogation review, the full Committee Study.

Thank you for your attention to this important matter.

Sincerely,

cc: Mr. Michael Dempsey, Acting Director of National Intelligence
The Honorable Mike Pompeo, Director, Central Intelligence Agency
The Honorable Sally Q. Yates, Acting Attorney General
The Honorable James Mattis, Secretary of Defense
The Honorable Thomas A. Shannon, Jr., Acting Secretary of State
The Honorable James B. Comey, Director, Federal Bureau of Investigation
The Honorable Christopher Sharpley, Acting CIA Inspector General

Document ID: 0.7.10904.5177-000001

Yates, Sally (ODAG)

From: Yates, Sally (ODAG)
Sent: Wednesday, January 25, 2017 7:23 PM
To: Axelrod, Matthew (ODAG)
Subject: Fwd: Incoming Fax from Congresswoman Sheila Jackson Lee:

?

Begin forwarded message:

> **From:** "Gamble, Nathaniel (ODAG)" <nagamble@jmd.usdoj.gov>
> **Date:** January 25, 2017 at 6:44:21 PM EST
> **To:** "Burton, Faith (OLA)" <fburton@jmd.usdoj.gov>
> **Cc:** "Yates, Sally (ODAG)" <sayates@jmd.usdoj.gov>, "Axelrod, Matthew (ODAG)" <maaxelrod@jmd.usdoj.gov>, "Brinkley, Winnie (ODAG)" <wbrinkley@jmd.usdoj.gov>
> **Subject: Incoming Fax from Congresswoman Sheila Jackson Lee:**

Document ID: 0.7.10904.5423

Gamble, Nathaniel (ODAG)

From:	Gamble, Nathaniel (ODAG)
Sent:	Wednesday, January 25, 2017 8:00 PM
To:	Burton, Faith (OLA)
Cc:	Yates, Sally (ODAG); Axelrod, Matthew (ODAG); Brinkley, Winnie (ODAG)
Subject:	Incoming Fax from Congresswoman Sheila Jackson Lee:
Attachments:	scanned-image_1_25_2017_18_39_44.pdf

With apologies, please see attached:

From: Gamble, Nathaniel (ODAG)
Sent: Wednesday, January 25, 2017 6:44 PM
To: Burton, Faith (OLA) <fburton@jmd.usdoj.gov>
Cc: Yates, Sally (ODAG) <sayates@jmd.usdoj.gov>; Axelrod, Matthew (ODAG) (maaxelrod@jmd.usdoj.gov) <maaxelrod@jmd.usdoj.gov>; Brinkley, Winnie (ODAG) <wbrinkley@jmd.usdoj.gov>
Subject: Incoming Fax from Congresswoman Sheila Jackson Lee:

Congresswoman Sheila Jackson Lee

2252 Rayburn House Office Building
Washington, D.C. 20515
Tel: 202.225.3816
Fax: 202.225.3317

1919 Smith Street, Suite 1180
Houston, TX 77002
Tel: 713.655.0050
Fax: 713.655.1612

To: Acting Attorney General Sally Yates **Recipient's Fax:** (202) 307-6777 (202) 514-0467

From:

(✓) Congresswoman Sheila Jackson Lee
( ) Glenn Rushing: *Chief of Staff*
( ) Gregory Berry: *Chief Counsel*
( ) Krystal Williams: *Legislative Director*
( ) Lillie Coney: *Policy Director*
( ) Mike McQuerry: *Communications Director*
( ) Abiola Afolayan: *Legislative Assistant*
( ) Sharef Al Najjar: *Operations Manager/Legislative Aide*
( ) LaDedra Drummond: *Scheduler/Legislative Aide*
( ) Richard Ryan Bruno: *Congressional Aide*
( ) Other: _____

Date: January 25, 2017 **Number of Pages** (including cover): 3

Comments:

Urgent communication for Acting Attorney General from Congresswoman Jackson Lee.

If all pages are not received or are not legible, please contact our office at (202) 225-3816 for assistance. *Confidentiality Note: The documents accompanying this telecopy contain confidential information that is legally privileged. The information is intended only for the use of the named recipient. Any dissemination, distribution, or copying of this communications is strictly prohibited. If you have received this telecopy in error, please notify the sender immediately by telephone and return the original transmittal to us.

Document ID: 0.7.10904.5433-000001

Congress of the United States
Washington, DC 20515

January 25, 2017

The Honorable Sally Q. Yates
Acting Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530-0001

Dear Attorney General Yates:

In recent days, President Trump, personally or through his spokespersons, has repeatedly, consistently, and confidently asserted that the 2016 presidential election was marked by "voter fraud." The president has not identified or produced any credible evidence to support the claim that he is the rightful winner of the popular vote which he lost to Democratic candidate Hillary Clinton by more than 2.8 million votes, the largest vote deficit in history.

Coming from the current President of the United States, these allegations of "widespread vote fraud" are serious and should be taken seriously because, at bottom, what is now at stake is public confidence and certainty as to who really won the 2016 presidential election. For this reason, we believe that the Department of Justice should conduct a thorough and comprehensive investigation of voting irregularities and anomalies, which should include a full examination of voting machines and other voting devices, in all 50 states.

Voter fraud is a threat to democratic governance because it threatens the ability of the election results to reflect the preference of the people. This type of fraud, however, can manifest itself in two distinct ways: first, by counting votes cast by persons not eligible to cast them; and second, by actions designed to prevent, deter, and exclude eligible

Document ID: 0.7.10904.5433-000001

persons from casting their votes. To ensure public confidence, both of these types of "voter fraud" allegations must be investigated by the Department of Justice.

The November 8, 2016 election was the first presidential election held since the Supreme Court decided *Shelby County v. Holder,* which neutered the preclearance provisions of the Voting Rights Act and adversely affected the ability of hundreds of thousands of persons to cast a ballot and have their vote counted because of numerous hindrances, including the curtailment of early voting, photo identification requirements, serendipitous changes to voting places, purging of voting rolls, and the use of outdated, obsolete, unreliable, and insecure voting machines disproportionately placed in underrepresented communities.

Every American has a vested interest in an electoral system that is fair, transparent, and reliable. That is why we believe that where, as is the case this year, the results in the Electoral College and of the popular vote diverge by the largest and most astounding margin in American history, it is particularly fitting, appropriate, and necessary for the Department of Justice to conduct a thorough investigation of all credible allegations of voter fraud in all 50 states to determine whether the reported outcomes reflected the preference of the American people. The fate of our democracy is at stake.

Thank you for your consideration. If you have any questions or need additional information, please contact Congresswoman Jackson Lee at (202) 225-3816 or by email at (b) (6) [redacted]

Sincerely,

Sheila Jackson Lee
Member of Congress

Henry C. "Hank" Johnson
Member of Congress

Karen Bass
Member of Congress

Gwen Moore
Member of Congress

Document ID: 0.7.10904.5433-000001

Gamble, Nathaniel (ODAG)

From:	Gamble, Nathaniel (ODAG)
Sent:	Monday, January 30, 2017 4:24 PM
To:	Yates, Sally (ODAG)
Cc:	Axelrod, Matthew (ODAG); Burton, Faith (OLA); Aminfar, Amin (ODAG)
Subject:	FW: Letter to Acting AG Yates from SJC Members
Attachments:	Letter to DOJ 1-30-17.pdf

From: Quint, Lara (Judiciary-Dem) [mailto(b) (6)
Sent: Monday, January 30, 2017 4:00 PM
To: Nathaniel.gamble@usdoj.gov
Subject: Letter to Acting AG Yates from SJC Members

Dear Mr. Gamble—

Please find attached a letter from Senator Whitehouse and other members of the Senate Judiciary Committee to Acting Attorney General Yates.

Many thanks,
Lara

Lara Quint
Chief Counsel
Senator Sheldon Whitehouse
Subcommittee on Crime & Terrorism
Senate Committee on the Judiciary
(b) (6)

United States Senate

WASHINGTON, DC 20510

January 30, 2017

The Honorable Sally Yates
Acting Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Acting Attorney General Yates,

As members of the Senate Judiciary Committee, we write to express concern about the Department of Justice's ambiguous response to inquiries about the Department's role in reviewing the legality of President Trump's recent executive orders and memoranda. On Friday, the press reported that the Department had "no comment" when asked whether its Office of Legal Counsel (OLC) had reviewed any of the executive orders issued by the new Administration to date. In the vast majority of cases, the answer to this question should be a straightforward "yes."

As you are well aware, the Department of Justice's website states that:

> "All executive orders and proclamations proposed to be issued by the President are reviewed by the Office of Legal Counsel for form and legality, as are various other matters that require the President's formal approval."

In addition, under Executive Order 11030 on the "preparation, presentation, filing, and publication of Executive orders and proclamations," a president "shall" submit proposed executive orders and proclamations to both the Office of Management and Budget and the Attorney General, who reviews the materials for both "form and legality."

Several of the executive orders and memoranda issued this past week, including those relating to deportation priorities and "sanctuary cities," have already been questioned by local law enforcement officials because of their vagueness, negative impact on public safety, and potential conflict with legal precedent. One of them has already been stayed by a Federal court, after causing damage to families around the country and our standing around the globe.

The American public has the right to know that the White House is following the long-standing and sensible practice that new mandates affecting their lives and communities have been deemed legal by the Justice Department. If, on the other hand, the Administration has chosen to deviate from these well-established norms, the public has the right to know that, too.

Based on our understanding, the President has issued the executive orders and memoranda listed below since January 20th. Given the scope and significance of many of

Document ID: 0.7.10904.5158-000001

these, we ask that you provide the following information by no later than February 1, 2017:

- Identify which orders and memoranda listed below, or issues subsequent to the date of this letter, were reviewed by OLC before they were issued and which were not;
- Advise whether, to your knowledge, Executive Order 11030 remains in effect.
- For orders issued through a process that failed to comply with 1 C.F.R. Part 19, advise what legal effect, if any, they have;
- Advise whether the procedure followed with respect to the executive orders and memoranda listed reflects a change of Department policy or practice and describe what the policy or practice of the Department will be going forward;
- Advise whether OLC has advised the Department of Homeland Security or any other federal agency on the meaning of any court order staying the President's January 27, 2017, order related to the entry of certain persons into the United States; and
- Advise whether OLC has advised the Department of Homeland Security or any other federal agency with respect to the legality of failing to comply with court orders related to that executive action.

We need an independent Department of Justice to serve as a bulwark against rash and illegal executive actions and flagrant disrespect of our judicial system. It is our hope, and expectation, that the Department will continue to serve this role.

Executive Orders:

1. Executive Order: Reducing Regulation and Controlling Regulatory Costs (January 30, 2017)
2. Executive Order: Protecting the Nation from Foreign Terrorist Entry into the United States. (January 27, 2017)
3. Executive Order: Border Security and Immigration Enforcement Improvements (January 25, 2017)
4. Executive Order: Enhancing Public Safety in the Interior of the United States (January 25, 2017)
5. Executive Order Expediting Environmental Reviews and Approvals For High Priority Infrastructure Projects (January 24, 2017)
6. Executive Order Minimizing the Economic Burden of the Patient Protection and Affordable Care Act Pending Repeal (January 20, 2017)

Memoranda:

1. Presidential Memorandum Organization of the National Security Council and the Homeland Security Council (January 28, 2017)
2. Presidential Memorandum Plan to Defeat the Islamic State of Iraq and Syria (January 28, 2017)

Document ID: 0.7.10904.5158-000001

3. Presidential Memorandum Streamlining Permitting and Reducing Regulatory Burdens for Domestic Manufacturing (January 24, 2017)
4. Presidential Memorandum Regarding Construction of the Dakota Access Pipeline (January 24, 2017)
5. Presidential Memorandum Regarding Construction of the Keystone XL Pipeline (January 24, 2017)
6. Presidential Memorandum Regarding Construction of American Pipelines (January 24, 2017)
7. Presidential Memorandum Regarding the Hiring Freeze (January 24, 2017)
8. Presidential Memorandum Regarding Withdrawal of the United States from the Trans-Pacific Partnership Negotiations and Agreement (January 24, 2017)
9. Presidential Memorandum Regarding the Mexico City Policy (January 23, 2017)
10. Memorandum for the Heads of Executive Departments and Agencies (January 20, 2017)

Sincerely,

Sheldon Whitehouse
United States Senator

Dianne Feinstein
United States Senator

Patrick Leahy
United States Senator

Richard J. Durbin
United States Senator

Amy Klobuchar
United States Senator

Al Franken
United States Senator

Christopher A. Coons
United States Senator

Richard Blumenthal
United States Senator

Mazie K. Hirono
United States Senator

Document ID: 0.7.10904.5158-000001

Axelrod, Matthew (ODAG)

From: Axelrod, Matthew (ODAG)
Sent: Monday, January 30, 2017 2:38 PM
To: Yates, Sally (ODAG)
Subject: Fwd: Whitehouse letter to AG re EO

Begin forwarded message:

From: "Carr, Peter (OPA)" <pcarr@jmd.usdoj.gov>
Date: January 30, 2017 at 2:21:49 PM EST
To: "Burton, Faith (OLA)" <fburton@jmd.usdoj.gov>
Cc: "Axelrod, Matthew (ODAG)" <maaxelrod@jmd.usdoj.gov>, "Crowell, James (ODAG)" <jcrowell@jmd.usdoj.gov>, "Gannon, Curtis E. (OLC)" <(b) (6) [redacted]>
Subject: Whitehouse letter to AG re EO

Faith,

A reporter just flagged for me that Sen. Whitehouse today issued this release and letter to the acting AG. You should know that we provided the following information to reporters over the weekend – prior to his letter – but I expect his staff did not see the later stories. We provided the information in red today to respond to a clarifying question.

Best,
Peter

Through administrations of both parties, the Office of Legal Counsel (OLC) has consistently been asked by the White House to review Executive Orders for form and legality before they are issued. That review is limited to the narrow question of whether, in OLC's view, a proposed Executive Order is on its face lawful and properly drafted.

OLC has continued to serve this traditional role in the present administration, and to date has approved the signed orders with respect to form and legality.

OLC's legal review has been conducted without the involvement of Department of Justice leadership, and OLC's legal review does not address the broader policy issues inherent in any executive order.

From: Davidson, Richard (Whitehouse) [(b) (6) [redacted]]
Sent: Monday, January 30, 2017 12:55 PM
To: Davidson, Richard (Whitehouse) <(b) (6) [redacted]>
Subject: RELEASE: Senate Judiciary Members: Is DOJ Doing Its Job to Review Trump's Executive

Orders?

FOR IMMEDIATE RELEASE
January 30, 2017

Contact: Rich Davidson
(202) 228-6291 (press office)

Senate Judiciary Members: Is DOJ Doing Its Job to Review Trump's Executive Orders?

"We need an independent Department of Justice to serve as a bulwark against rash and illegal executive actions and flagrant disrespect of our judicial system"

Washington, DC – Members of the Senate Judiciary Committee want to know whether the Justice Department lawyers charged with ensuring that the President is following the law are actually reviewing Donald Trump's executive actions. On Friday, when asked if its Office of Legal Counsel (OLC) was performing its duty to review the "form and legality" of executive orders and proclamations, the Justice Department responded "no comment." While subsequent reports have suggested OLC may have reviewed at least some of Trump's executive orders, all Democratic members of the Senate Judiciary Committee are writing to Acting Attorney General Sally Yates today seeking clarification of the ambiguous statement and noting that, "In the vast majority of cases, the answer to this question should be a straightforward 'yes.'"

"We need an independent Department of Justice to serve as a bulwark against rash and illegal executive actions and flagrant disrespect of our judicial system. It is our hope, and expectation, that the Department will continue to serve this role," the Senators write.

Reports have indicated that the executive order signed Friday banning immigration from certain Muslim countries, and even disrupting return of fully legal immigrants over the weekend, was not reviewed by OLC. Several courts imposed stays of the executive order after numerous challenges to its legality.

Full text of the letter is below. A PDF copy will be available upon request.

January 30, 2017

The Honorable Sally Yates
Acting Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Acting Attorney General Yates,

As members of the Senate Judiciary Committee, we write to express concern about the Department of Justice's ambiguous response to inquiries about the Department's role in reviewing the legality of President Trump's recent executive orders and memoranda. On Friday, the press reported that the Department had "no comment" when asked whether its Office of Legal Counsel (OLC) had reviewed any of the executive orders issued by the new Administration to date. In the vast majority of cases, the answer to this question should be a straightforward "yes."

Document ID: 0.7.10904.5161

As you are well aware, the Department of Justice's website states that:

> "All executive orders and proclamations proposed to be issued by the President are reviewed by the Office of Legal Counsel for form and legality, as are various other matters that require the President's formal approval."

In addition, under Executive Order 11030 on the "preparation, presentation, filing, and publication of Executive orders and proclamations," a president "shall" submit proposed executive orders and proclamations to both the Office of Management and Budget and the Attorney General, who reviews the materials for both "form and legality."

Several of the executive orders and memoranda issued this past week, including those relating to deportation priorities and "sanctuary cities," have already been questioned by local law enforcement officials because of their vagueness, negative impact on public safety, and potential conflict with legal precedent. One of them has already been stayed by a Federal court, after causing damage to families around the country and our standing around the globe.

The American public has the right to know that the White House is following the long-standing and sensible practice that new mandates affecting their lives and communities have been deemed legal by the Justice Department. If, on the other hand, the Administration has chosen to deviate from these well-established norms, the public has the right to know that, too.

Based on our understanding, the President has issued the executive orders and memoranda listed below since January 20th. Given the scope and significance of many of these, we ask that you provide the following information by no later than February 1, 2017:

- Identify which orders and memoranda listed below, or issues subsequent to the date of this letter, were reviewed by OLC before they were issued and which were not;
- Advise whether, to your knowledge, Executive Order 11030 remains in effect.
- For orders issued through a process that failed to comply with 1 C.F.R. Part 19, advise what legal effect, if any, they have;
- Advise whether the procedure followed with respect to the executive orders and memoranda listed reflects a change of Department policy or practice and describe what the policy or practice of the Department will be going forward;
- Advise whether OLC has advised the Department of Homeland Security or any other federal agency on the meaning of any court order staying the President's January 27, 2017, order related to the entry of certain persons into the United States; and
- Advise whether OLC has advised the Department of Homeland Security or any other federal agency with respect to the legality of failing to comply with court orders related to that executive action.

We need an independent Department of Justice to serve as a bulwark against rash and illegal

Document ID: 0.7.10904.5161

executive actions and flagrant disrespect of our judicial system. It is our hope, and expectation, that the Department will continue to serve this role.

Executive Orders:

1. Executive Order: Reducing Regulation and Controlling Regulatory Costs (January 30, 2017)
2. Executive Order: Protecting the Nation from Foreign Terrorist Entry into the United States. (January 27, 2017)
3. Executive Order: Border Security and Immigration Enforcement Improvements (January 25, 2017)
4. Executive Order: Enhancing Public Safety in the Interior of the United States (January 25, 2017)
5. Executive Order Expediting Environmental Reviews and Approvals For High Priority Infrastructure Projects (January 24, 2017)
6. Executive Order Minimizing the Economic Burden of the Patient Protection and Affordable Care Act Pending Repeal (January 20, 2017)

Memoranda:

1. Presidential Memorandum Organization of the National Security Council and the Homeland Security Council (January 28, 2017)
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3. Presidential Memorandum Streamlining Permitting and Reducing Regulatory Burdens for Domestic Manufacturing (January 24, 2017)
4. Presidential Memorandum Regarding Construction of the Dakota Access Pipeline (January 24, 2017)
5. Presidential Memorandum Regarding Construction of the Keystone XL Pipeline (January 24, 2017)
6. Presidential Memorandum Regarding Construction of American Pipelines (January 24, 2017)
7. Presidential Memorandum Regarding the Hiring Freeze (January 24, 2017)
8. Presidential Memorandum Regarding Withdrawal of the United States from the Trans-Pacific Partnership Negotiations and Agreement (January 24, 2017)
9. Presidential Memorandum Regarding the Mexico City Policy (January 23, 2017)
10. Memorandum for the Heads of Executive Departments and Agencies (January 20, 2017)

###

Document ID: 0.7.10904.5161

Axelrod, Matthew (ODAG)

From:	Axelrod, Matthew (ODAG)
Sent:	Monday, January 23, 2017 6:43 PM
To:	Yates, Sally (ODAG)
Subject:	FW: Text of Hiring Freeze

From: Crowell, James (ODAG)
Sent: Monday, January 23, 2017 6:08 PM
To: Axelrod, Matthew (ODAG) <maaxelrod@jmd.usdoj.gov>
Subject: FW: Text of Hiring Freeze

fyi

From: Gannon, Curtis E. (OLC)
Sent: Monday, January 23, 2017 6:07 PM
To: Crowell, James (ODAG) <jcrowell@jmd.usdoj.gov>; Terwilliger, Zachary (ODAG) <zterwilliger@jmd.usdoj.gov>; Hall, William A. (ODAG) <wahall@jmd.usdoj.gov>
Cc: Lofthus, Lee J (JMD) <llofthus@jmd.usdoj.gov>
Subject: Text of Hiring Freeze

FYI: The White House website has posted the text of the presidential memorandum ordering a hiring freeze:
https://www.whitehouse.gov/the-press-office/2017/01/23/presidential-memorandum-regarding-hiring-freeze

Document ID: 0.7.10904.5604

From: Axelrod, Matthew (ODAG)
To: Yates, Sally (ODAG)
Subject: Fwd: EO review
Date: Saturday, January 28, 2017 1:45:52 PM

Begin forwarded message:

> **From:** "Crowell, James (ODAG)" <jcrowell@jmd.usdoj.gov>
> **Date:** January 28, 2017 at 1:36:55 PM EST
> **To:** "Carr, Peter (OPA)" <pcarr@jmd.usdoj.gov>
> **Cc:** "Axelrod, Matthew (ODAG)" <maaxelrod@jmd.usdoj.gov>, "Hart, Rosemary (OLC)" <(b) (6) >, "Koffsky, Daniel L (OLC)" <(b) (6) >, "Raimondi, Marc (OPA)" <mraimondi@jmd.usdoj.gov>, (b)(6) - Curtis Gannon Email Address <(b)(6) - Curtis Gannon Email Address >
> **Subject: Re: EO review**
>
> This certainly fine by me.
>
> > On Jan 28, 2017, at 1:32 PM, Carr, Peter (OPA) <pcarr@jmd.usdoj.gov> wrote:
> >
> > Here is a draft statement based on my conversation with Matt. Once we get an approved version, I'll flag this for WH comms.
> >
> > (b) (5)
> >
> > > On Jan 28, 2017, at 12:49 PM, Axelrod, Matthew (ODAG) <maaxelrod@jmd.usdoj.gov> wrote:

On Jan 28, 2017, at 12:46 PM, Axelrod, Matthew (ODAG) <maaxelrod@jmd.usdoj.gov> wrote:

OLC,

We've been getting media inquiries about the EO process. (b) (5) [redacted]

Thanks,

Matt

Axelrod, Matthew (ODAG)

From: Axelrod, Matthew (ODAG)
Sent: Saturday, January 28, 2017 5:27 PM
To: Yates, Sally (ODAG)
Subject: Fwd: EO review

Can you call me when you have a minute?

Begin forwarded message:

> **From:** "Carr, Peter (OPA)" <pcarr@jmd.usdoj.gov>
> **Date:** January 28, 2017 at 5:12:19 PM EST
> **To:** "Axelrod, Matthew (ODAG)" <maaxelrod@jmd.usdoj.gov>
> **Cc:** "Gannon, Curtis E. (OLC)" <(b) (6) >, "Hart, Rosemary (OLC)" <(b) (6) >, "Koffsky, Daniel L (OLC)" <(b) (6) >, "Raimondi, Marc (OPA)" <mraimondi@jmd.usdoj.gov>, "Crowell, James (ODAG)" <jcrowell@jmd.usdoj.gov>
> **Subject: Re: EO review**
>
> It comes from a tweet from John Harwood an hour ago that says:
>
> Senior Justice official tells @NBCNews that Dept had no input. not sure who in WH is writing/reviewing. standard NSC process not functioning.
>
> He then followed up with a tweet 15 mins ago that says:
>
> new info from @PeteWilliamsNBC: another DOJ official says proposed immigration order WAS reviewed by Department lawyers before it was issued.
>
> Have inquires from NYT, NPR, Financial Times and ABC asking whether we reviewed.

(b) (5) [redacted]

> On Jan 28, 2017, at 4:28 PM, Axelrod, Matthew (ODAG) <maaxelrod@jmd.usdoj.gov> wrote:
>
> Thanks, Peter. Please let us know once you have more. On EDNY, good to continue to decline comment. Thx.
>
> On Jan 28, 2017, at 4:18 PM, Carr, Peter (OPA) <pcarr@jmd.usdoj.gov> wrote:

Issues with download - this section is a duplicate of above - below is the message that follows

On Jan 28, 2017, at 4:18 PM, Carr, Peter (OPA) <pcarr@jmd.usdoj.gov> wrote:

(b) (5)

On Jan 28, 2017, at 3:52 PM, Axelrod, Matthew (ODAG) <maaxelrod@jmd.usdoj.gov> wrote:

Peter, what kind of incoming are we getting? (b) (5)

Thanks,
Matt

On Jan 28, 2017, at 2:42 PM, Gannon, Curtis E. (OLC) (b) (6) > wrote:

(b) (5)

(b) (6)

-----Original Message-----
From: Gannon, Curtis E. (OLC) [mailto:(b) (6)]
Sent: Saturday, January 28, 2017 1:57 PM
To: Axelrod, Matthew (ODAG) <maaxelrod@jmd.usdoj.gov>; Carr, Peter (OPA) <pcarr@jmd.usdoj.gov>
Cc: Hart, Rosemary (OLC) <(b) (6) >; Koffsky, Daniel L (OLC) <(b) (6) >; Raimondi, Marc (OPA) <mraimondi@jmd.usdoj.gov>; (b)(6) - Curtis Gannon Email Address ; Crowell, James (ODAG) <jcrowell@jmd.usdoj.gov>
Subject: RE: EO review

(b) (5)
.

-----Original Message-----
From: Axelrod, Matthew (ODAG) [mailto:maaxelrod@jmd.usdoj.gov]
Sent: Saturday, January 28, 2017 1:52 PM
To: Carr, Peter (OPA) <pcarr@jmd.usdoj.gov>
Cc: Hart, Rosemary (OLC) <(b) (6) >; Koffsky, Daniel L (OLC) <(b) (6) >; Raimondi, Marc (OPA) <mraimondi@jmd.usdoj.gov>; (b)(6) - Curtis Gannon Email Address Crowell, James (ODAG) <jcrowell@jmd.usdoj.gov>
Subject: Re: EO review

Please hold. I will send a revised version around in a little bit.

On Jan 28, 2017, at 1:32 PM, Carr, Peter (OPA) <pcarr@jmd.usdoj.gov> wrote:

(b) (5)

(b) (5) [redacted]

On Jan 28, 2017, at 12:49 PM, Axelrod, Matthew (ODAG) <maaxelrod@jmd.usdoj.gov> wrote:

On Jan 28, 2017, at 12:46 PM, Axelrod, Matthew (ODAG) <maaxelrod@jmd.usdoj.gov> wrote:

OLC,

We've been getting media inquiries about the EO process. (b) (5) [redacted]

Thanks,
Matt

Axelrod, Matthew (ODAG)

From: Axelrod, Matthew (ODAG)
Sent: Sunday, January 29, 2017 1:05 PM
To: Yates, Sally (ODAG)
Subject: Fwd: Quick question

Begin forwarded message:

From: "Carr, Peter (OPA)" <pcarr@jmd.usdoj.gov>
Date: January 29, 2017 at 1:03:39 PM EST
To: "Axelrod, Matthew (ODAG)" <maaxelrod@jmd.usdoj.gov>
Cc: "Raimondi, Marc (OPA)" <mraimondi@jmd.usdoj.gov>, "Crowell, James (ODAG)" <jcrowell@jmd.usdoj.gov>
Subject: Re: Quick question

Getting additional calls from CNN, Yahoo, and others. (b) (5) [redacted]

(b) (5) [redacted]

On Jan 29, 2017, at 11:37 AM, Axelrod, Matthew (ODAG) <maaxelrod@jmd.usdoj.gov> wrote:

(b) (5) [redacted]

On Jan 29, 2017, at 10:55 AM, Carr, Peter (OPA) <pcarr@jmd.usdoj.gov> wrote:

Yes, the Post also called me. CBS, NPR, ABC and NBC all called again late yesterday. (b) (5) [redacted]

On Jan 29, 2017, at 10:53 AM, Raimondi, Marc (OPA) <mraimondi@jmd.usdoj.gov> wrote:

WP just called me.

Sent from my iPhone

On Jan 29, 2017, at 10:50 AM, Axelrod, Matthew (ODAG) <maaxelrod@jmd.usdoj.gov> wrote:

(ODAG) <mdaxelrod@jmd.usdoj.gov> wrote:

(b) (5)

[redacted]

On Jan 29, 2017, at 10:43 AM, Carr, Peter (OPA) <pcarr@jmd.usdoj.gov> wrote:

(b) (5)

[redacted]

Begin forwarded message:

From: "Chris Strohm (BLOOMBERG/ WASHINGTO)" <cstrohm1@bloomberg.net>
Date: January 29, 2017 at 10:35:32 AM EST
To: <Peter.Carr@usdoj.gov>, <Marc.Raimondi@usdoj.gov>
Subject: Quick question
Reply-To: Chris Strohm <cstrohm1@bloomberg.net>

Marc, Peter: The White House is saying the executive orders were reviewed by OLC before being issued. On background can you confirm this? Thanks

Axelrod, Matthew (ODAG)

From:	Axelrod, Matthew (ODAG)
Sent:	Friday, January 27, 2017 4:24 PM
To:	Yates, Sally (ODAG)
Subject:	FW: DAG twitter account

What do you think? I think it makes sense to do this, even if you don't presently plan to tweet in your personal capacity.

From: Carr, Peter (OPA)
Sent: Friday, January 27, 2017 4:10 PM
To: Axelrod, Matthew (ODAG) <maaxelrod@jmd.usdoj.gov>
Cc: Hornbuckle, Wyn (OPA) <whornbuckle@jmd.usdoj.gov>
Subject: DAG twitter account

Matt,

When the DAG leaves, we'll archive all of her twitter activity under a new account - @DAGYates. If she wishes, we can transition her current DOJ twitter account - @SallyQYates – into a personal account she can continue to use. All we would need from her is a non-DOJ email address to associate with the account. We wanted to reach out now so there isn't any scrambling trying to connect with her later.

Thx,
Peter

Axelrod, Matthew (ODAG)

From: Axelrod, Matthew (ODAG)
Sent: Sunday, January 29, 2017 10:57 AM
To: Yates, Sally (ODAG)
Subject: Fwd: Quick question

Begin forwarded message:

From: "Axelrod, Matthew (ODAG)" <maaxelrod@jmd.usdoj.gov>
Date: January 29, 2017 at 10:57:11 AM EST
To: "Carr, Peter (OPA)" <pcarr@jmd.usdoj.gov>
Cc: "Raimondi, Marc (OPA)" <mraimondi@jmd.usdoj.gov>, "Crowell, James (ODAG)" <jcrowell@jmd.usdoj.gov>
Subject: Re: Quick question

Got it. (b) (5) [redacted]

On Jan 29, 2017, at 10:55 AM, Carr, Peter (OPA) <pcarr@jmd.usdoj.gov> wrote:

> Yes, the Post also called me. CBS, NPR, ABC and NBC all called again late yesterday. (b) (5) [redacted]
>
> On Jan 29, 2017, at 10:53 AM, Raimondi, Marc (OPA) <mraimondi@jmd.usdoj.gov> wrote:
>
> > WP just called me.
> >
> > Sent from my iPhone
> >
> > On Jan 29, 2017, at 10:50 AM, Axelrod, Matthew (ODAG) <maaxelrod@jmd.usdoj.gov> wrote:
> >
> > > (b) (5) [redacted]
> > >
> > > On Jan 29, 2017, at 10:43 AM, Carr, Peter (OPA) <pcarr@jmd.usdoj.gov> wrote:
> > >
> > > > (b) (5) [redacted]

Begin forwarded message:

From: "Chris Strohm (BLOOMBERG/ WASHINGTO)" <cstrohm1@bloomberg.net>
Date: January 29, 2017 at 10:35:32 AM EST
To: <Peter.Carr@usdoj.gov>, <Marc.Raimondi@usdoj.gov>
Subject: Quick question
Reply-To: Chris Strohm <cstrohm1@bloomberg.net>

Marc, Peter: The White House is saying the executive orders were reviewed by OLC before being issued. On background can you confirm this? Thanks

Axelrod, Matthew (ODAG)

From: Axelrod, Matthew (ODAG)
Sent: Saturday, January 28, 2017 10:57 PM
To: Yates, Sally (ODAG)
Subject: Fwd: Emergency Order Staying Deportation ...

Begin forwarded message:

From: "Wilkinson, Monty (USAEO)" <Monty.Wilkinson@usdoj.gov>
Date: January 28, 2017 at 10:54:12 PM EST
To: "Axelrod, Matthew (ODAG) (JMD)" <Matthew.Axelrod@usdoj.gov>, "Crowell, James (ODAG) (JMD)" <James.Crowell@usdoj.gov>
Cc: "Lan, Iris (ODAG) (JMD)" <Iris.Lan3@usdoj.gov>
Subject: Fwd: Emergency Order Staying Deportation ...

Sent from my iPhone

Begin forwarded message:

From: (b)(6) (USAWAW) 1" (b)(6) @usa.doj.gov>
Date: January 28, 2017 at 10:45:35 PM EST
To: "Wilkinson, Monty (USAEO)" <MWilkinson@usa.doj.gov>, "Lan, Iris (ODAG) (JMD)" <Iris.Lan3@usdoj.gov>
Subject: Emergency Order Staying Deportation ...

(b) (5)

[redacted]

Let me know if you need anything further on this matter in the meantime.

(b)(6)

(b)(6) [redacted]

Sent from my iPhone

Axelrod, Matthew (ODAG)

From: Axelrod, Matthew (ODAG)
Sent: Sunday, January 22, 2017 5:51 PM
To: Yates, Sally (ODAG)
Subject: Fwd: Issues

FYI. He also called and left me a VM. I just tried him back but didn't get him. Will call you after I speak to him.

Begin forwarded message:

> **From:** "Crowell, James (USAMD)" <James.A.Crowell@usdoj.gov>
> **Date:** January 22, 2017 at 4:44:01 PM EST
> **To:** "Axelrod, Matthew (ODAG)" <maaxelrod@jmd.usdoj.gov>
> **Subject: Issues**
>
> (b) (5) [redacted]
>
> Sent from my iPhone

(b) (5)

[redacted]

From: Simon Sandoval-Moshenberg [mailto:simon@justice4all.org]
Sent: Saturday, January 28, 2017 8:33 PM
To (b) (6) [redacted]
Cc: Hughes, Paul W. <PHughes@mayerbrown.com>; 'Pincus, Andrew J.' <APincus@mayerbrown.com>; Barghaan, Dennis (USAVAE) <DBarghaan@usa.doj.gov>
Subject: Motion for TRO -- Dulles Airport situation, Aziz v. Trump
Importance: High

Judge Brinkema,

I am writing you at the recommendation of Stuart Raphael, Solicitor General of the Commonwealth of Virginia.

Attached please find a Petition for Habeas Corpus, and a Motion for Temporary Restraining Order, in the matter of Aziz v. Trump (dealing with the chaotic situation right now at Dulles Airport). They have also been filed to ECF.

Given the urgency of the situation, we request an immediate telephonic hearing on this matter. I can be

Given the urgency of the situation, we request an immediate telephonic hearing on this matter. I can be reached on my cell phone, which is 434-218-9376.

Thank you.

Cc by e-mail: Mr. Dennis Carl Barghaan, Jr., Assistant U. S. Attorney: dennis.barghaan@usdoj.gov

---Simon Y. Sandoval-Moshenberg---
Director, Immigrant Advocacy Program
Legal Aid Justice Center
6066 Leesburg Pike #520
Falls Church, VA 22041
(703) 720-5605 / simon@justice4all.org

Document ID: 0.7.10904.5251-000005

From: Axelrod, Matthew (ODAG)
Sent: Monday, January 30, 2017 5:53 PM
To: Yates, Sally (ODAG)
Subject: FW: Message from the Acting Attorney General
Attachments: Message from the Acting Attorney General.pdf

From: Axelrod, Matthew (ODAG)
Sent: Monday, January 30, 2017 5:53 PM
To: Gannon, Curtis E. (OLC) <cegannon@jmd.usdoj.gov>; Parker, Rachel (ASG) <racparker@jmd.usdoj.gov>; Whitaker, Henry (ASG) <hwhitaker@jmd.usdoj.gov>; Schools, Scott (ODAG) <sschools@jmd.usdoj.gov>; Aminfar, Amin (ODAG) <amaminfar@jmd.usdoj.gov>; Swartz, Bruc (b) (6), (b) (7)(C) @CRM.USDOJ.GOV>; Branda, Joyce (CIV) <JBranda@CIV.USDOJ.GOV>; Flentje, August (CIV) <AFlentje@CIV.USDOJ.GOV>; Readler, Chad A. (CIV) <creadler@CIV.USDOJ.GOV>; Terwilliger, Zachary (ODAG) <zterwilliger@jmd.usdoj.gov>; Crowell, James (ODAG) <jcrowell@jmd.usdoj.gov>; Murray, Michael (ODAG) <mmurray@jmd.usdoj.gov>
Subject: Message from the Acting Attorney General

All,

Thanks so much for meeting with the Acting Attorney General earlier today. Attached, please find a message from her. Please make sure that others who are working on these matters are made aware of her direction as well.

Thanks,
Matt

Matthew S. Axelrod
Office of the Deputy Attorney General
U.S. Department of Justice
Desk: (202) 514-2105
Cell: (b) (6) [redacted]

Document ID: 0.7.10904.5116

Goldsmith, Andrew (ODAG)

From:	Goldsmith, Andrew (ODAG)
Sent:	Thursday, January 26, 2017 6:29 AM
To:	Yates, Sally (ODAG); Schools, Scott (ODAG)
Cc:	Crowell, James (ODAG)
Subject:	Fwd: (b) (5)

Good morning. (b) (5)

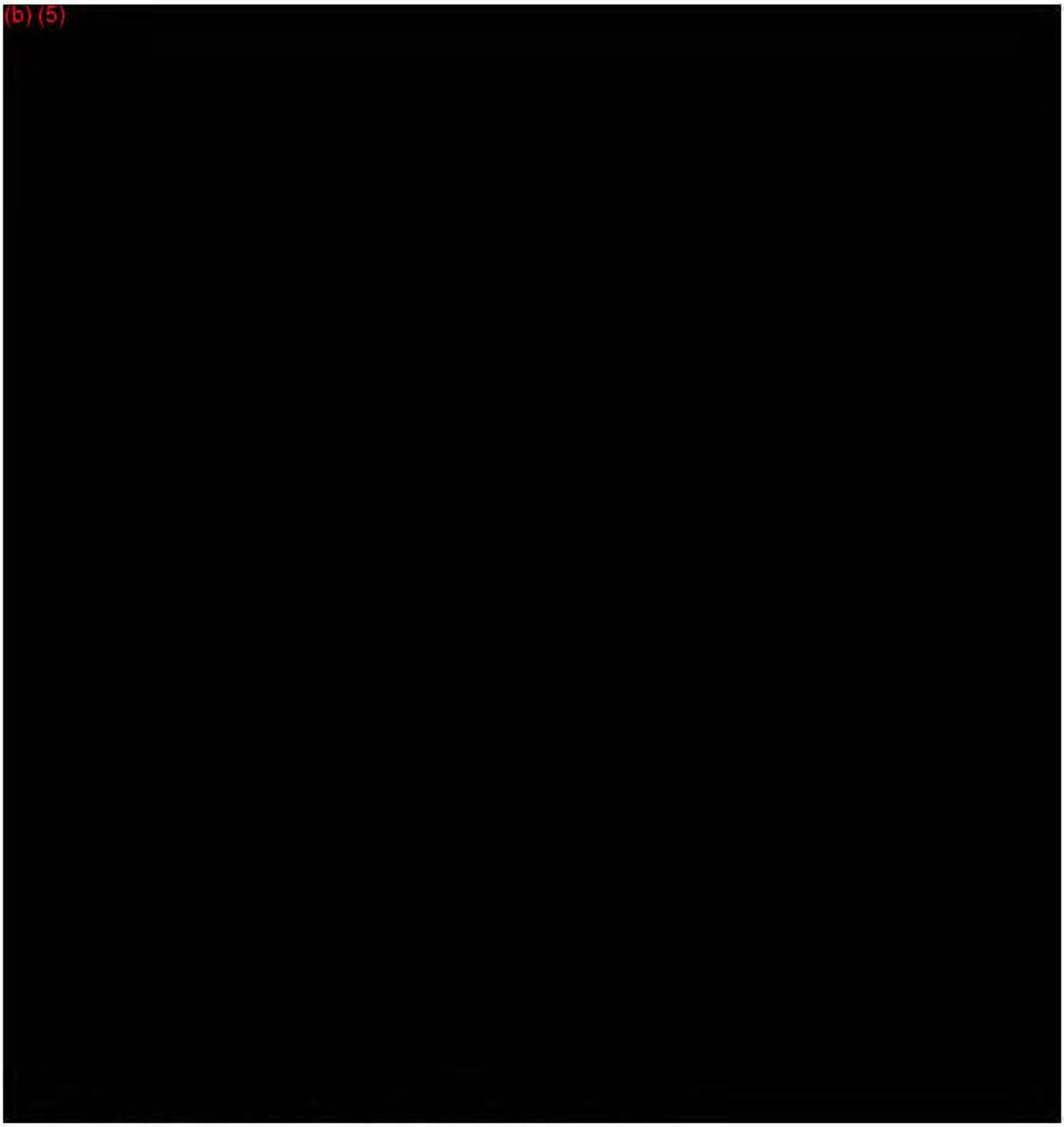
Andrew

Begin forwarded message:

From: "Gelber, Bruce (ENRD)" <BGelber@ENRD.USDOJ.GOV>
Date: January 26, 2017 at 2:39:13 AM EST
To: "Goldsmith, Andrew (ODAG)" <AGoldsmith@jmd.usdoj.gov>
Cc: "Williams, Jean (ENRD)" <JWilliams@ENRD.USDOJ.GOV>, "Weissmann, Andrew (CRM)" (b) (6), (b) (7)(C) @CRM.USDOJ.GOV>, "Mann, James (CRM)" (b) (6), (b) (7)(C) @CRM.USDOJ.GOV>
Subject: (b) (5)

(b) (5)

(b) (5)



Please let me know if you need any additional information.

cc: Jean Willams, James Mann, Andrew Weissmann

Sent from my iPhone

Axelrod, Matthew (ODAG)

From: Axelrod, Matthew (ODAG)
Sent: Saturday, January 21, 2017 2:56 PM
To: Yates, Sally (ODAG)
Subject: Re: Call to Max AG

Forgot to ask you about this. What do you think?

On Jan 20, 2017, at 9:26 PM, Axelrod, Matthew (ODAG) <maaxelrod@jmd.usdoj.gov> wrote:

> What do you think? I think it's fine for it just to be Ken.
>
> Begin forwarded message:
>
> **From:** "Lan, Iris (ODAG)" <irlan@jmd.usdoj.gov>
> **Date:** January 20, 2017 at 8:33:02 PM EST
> **To:** "Axelrod, Matthew (ODAG)" <maaxelrod@jmd.usdoj.gov>
> **Subject: Fwd: Call to Max AG**
>
> What do you think of the question below?
>
> > On Jan 20, 2017, at 8:28 PM, Mann, James (CRM) (b) (6), (b) (7)(C)@CRM.USDOJ.GOV> wrote:
> >
> > Iris--Ken would like to call the MX AG on Monday to thank them for all their work on Chapo. Would the Acting AG be interested in doing the call?
> >
> > Thanks.

Carmen Iguina (CA SBN #277369)
Jennifer Pasquarella (CA SBN #263241)
Ahilan Arulanantham (CA SBN# 237841)
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Email: Megan@Tolchinimmigration.com

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

FATEMA FARMAD, MARZIEH MOOSAVIZADEH YAZDI,

Petitioners,

v.

DONALD TRUMP, President of the United States; JOHN F. KELLY, Secretary, Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY ("DHS"); U.S. CUSTOMS AND BORDER PROTECTION ("CBP"); KEVIN K. MCALEENAN, Acting Commissioner of CBP; and MITCHELL MERRIAM, Los Angeles Field Director, CBP,

Respondents.

Case No. 2:17-cv-706

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

INTRODUCTION

1. Petitioners are forced to file this action on short notice because Respondents have unlawfully detained Petitioners at Los Angeles International Airport ("LAX Airport") and are coercing them in an attempt to forcibly expel them from the United States.

2. Petitioner Fatema Farmad is a native of Iran, but has been a lawful permanent resident of the United States for about the last five years. She has applied for United States citizenship and her application has been granted. Her swearing-in as a United States citizen is scheduled for February 13, 2017. She arrived at LAX Airport on January 28, 2017 on a flight from Amsterdam, accompanied by her infant son, who is a United States citizen, and her mother-in-law, who is also a lawful permanent resident of the United States. Petitioner Farmad was returning from Iran after visiting her family, whom she had not seen in about four years. Petitioner and her mother in law have both been refused entry and are being detained at LAX. Petitioner Farmad was outside the United States for approximately 44 days.

3. Petitioner Marzieh Moosavizadeh Yazdi is an Iranian citizen and has been a lawful permanent resident of the United States since 1997. She is seventy-two years old. She suffers from poor health, having suffered two heart attacks, two triple bypass surgeries, and chronic pulmonary obstructive disorder. She was returning to the United States from Iran via Turkey. Her flight landed at 4:15 p.m. on January 28, 2017. CBP officials refused to admit her to the United States, and detained her. Her grandson received a phone call from her around 6:00 pm when her wheelchair attendant allowed her to place a call to him and translate for her what was happening. Petitioner does not speak English. Her grandson has not heard from her or received any other information about her situation since.

4. Even though Petitioners were returning home to the United States as lawful permanent resident, U.S. Customs and Border Protection ("CBP") blocked

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Petitioners from exiting LAX Airport and detained Petitioners therein. No magistrate has determined that there is sufficient justification for the continued detention of Petitioners. Instead, CBP is holding Petitioners at LAX Airport solely pursuant to an executive order issued by President Donald Trump on January 27, 2017. Although the executive order never authorized officials to deny them re-entry, it was in any event stayed by a federal district court on January 28, 2017. *See infra*. Upon information and belief, Respondents are coercing Petitioner Farmad and other individuals in their custody to sign a form to relinquish their lawful permanent resident status and return to their home countries. Petitioners have been denied access to counsel while being sequestered at LAX Airport for hours on end.

5. Because the executive order is unlawful as applied to Petitioners, their continued detention based solely on the executive order violates the Immigration and Nationality Act, their Fifth Amendment procedural and substantive due process rights, the First Amendment Establishment Clause, and 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 noncitizens 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 their unlawful detention by Respondents, and for declaratory and injunctive relief to prevent such harms from recurring.

6. On January 28, 2017, the Honorable Ann M. Donnelly of the U.S. District Court for the Eastern District of New York issued a nationwide stay of removal which provides that the federal government is "enjoined and restrained from, in any manner, 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

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the United States." The court found that the "petitioners have a strong likelihood of success in establishing that the removal of the petitioner and other similarly situation violates their rights to Due Process and Equal Protection guaranteed by the United States Constitution." A copy of the order is attached as Exhibit A.

JURISDICTION AND VENUE

7. 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*.

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

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

PARTIES

10. Petitioner Fatema Farmad is a native of Iran, but is a lawful permanent resident of the United States. Upon information and belief, she has held that status for about the last five years. She is currently detained at LAX Airport and is being denied entry into the United States, despite her returning lawful permanent resident status.

11. Petitioner Marzieh Moosavizadeh Yazdi is a native of Iran and has been a lawful permanent since 1997. She is currently detained at LAX Airport and is being denied entry into the United States solely on the basis of the January 27, 2017 Executive Order issued by Respondent Donald Trump.

12. 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.

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13. 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.

14. Respondent John Kelly is the Secretary of DHS. Secretary Kelly has immediate custody of Petitioner. He is sued in his official capacity.

15. Respondent Kevin K. McAleenan is the Acting Commissioner of CBP. Acting Commissioner McAleenan has immediate custody of Petitioner. He is sued in his official capacity.

16. Respondent Mitchell Merriam is the Director of the Los Angeles Field Office of CBP, which has immediate custody of. He is sued in his official capacity.

17. 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

18. 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.

19. 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 B and is hereinafter referred to as the "EO."

20. 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.

21. 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-

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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.

22. 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.

23. 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 Fatema Farmad

24. Petitioner Fatema Farmad is a native of Iran, but lives in Minnesota with her husband and infant son. She is a lawful permanent resident of the United States, and has held her green card for about the past five years. She has applied for U.S. citizenship, and the United States has granted her citizenship application. Her swearing-in as a United States citizen has been set for February 13, 2017. Petitioner Farmad is Muslim.

25. Petitioner Farmad arrived at LAX at about noon on January 28, 2017 on a flight from Amsterdam on KLM airlines. She is traveling with her 11-month-old son, who is a United States citizen, and her mother-in-law, Latifeh Mashayekh.

26. Upon their arrival at LAX, CBP officers detained Petitioner Farmad, her son, and her mother-in-law.

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27. After a district court in *Darweesh v. Trump*, No. 17-cv-0480 (E.D.N.Y., filed Jan. 28, 2017), issued a temporary order barring the removal of individuals pursuant to the Executive Order, and after Petitioner Farhad had been detained for numerous hours, CBP officials in Los Angeles attempted to get Petitioner Farmad to sign a form I-407, by which she would have abandoned her lawful permanent resident status.

28. Petitioner is not being permitted to meet with her attorneys who are present at LAX Airport and have made multiple attempts to meet with her.

29. Upon knowledge and belief, Petitioner remains in the custody of CBP at LAX Airport.

30. Petitioner remains detained at LAX Airport and has not been permitted to go home to Minnesota.

Petitioner Marzieh Moosavizadeh Yazdi

31. Petitioner Marzieh Moosavizadeh Yazdi is an Iranian citizen and has been a lawful permanent resident of the United States since 1997. She is seventy-two years old.

32. Petitioner Moosavizadeh Yazdi suffers from poor health, having suffered two heart attacks, two triple bypass surgeries, and chronic pulmonary obstructive disorder.

33. She was returning to the United States from Iran via Turkey. Her flight landed at 4:15pm on January 28, 2017 and she was detained by CBP. Her grandson received a phone call from her around 6:00 pm when her wheelchair attendant allowed her to place a call to him and translate for her what was happening.

34. Petitioner Moosavizadeh Yazdi does not speak English and was born into the Muslim faith. Her grandson has not heard from her or received any other information about her situation since.

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35. Moosavizadeh Yazdi has not had access to counsel during her detention, and upon information and belief she is being coerced into abandoning her permanent residency, by signing a Form I-407.

36. Congress has provided that lawful permanent residents in Petitioner's 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, 132 S. Ct. 1479, 1484, 182 L. Ed. 2d 473 (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

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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 longtime lawful permanent residents of the United States, Petitioners are attempting to return to their homes. 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

IMMIGRATION AND NATIONALITY ACT 8 U.S.C. § 1101(a)(13)

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

41. Respondents' actions in denying Petitioners entry into the United States, attempting to coerce them into relinquishing their lawful permanent resident status, and continuing to detain them under color of the immigration laws violate 8 U.S.C. § 1101(a)(13), which requires that returning lawful permanent residents be granted admission unless they satisfy one of the criteria set forth in the statute, which Petitioners do not.

COUNT TWO

FIFTH AMENDMENT SUBSTANTIVE DUE PROCESS

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

43. Respondents' actions in denying Petitioners entry into the United States, attempting to coerce them into relinquishing their lawful permanent resident status, and continuing to detain them under color of the immigration laws violate their right to substantive due process, because Petitioners cannot be denied the benefits of lawful permanent resident status in an arbitrary manner.

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COUNT THREE

FIFTH AMENDMENT PROCEDURAL DUE PROCESS

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

45. 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.

46. 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).

47. Respondents' actions in denying Petitioners entry into the United States, attempting to coerce them into relinquishing their lawful permanent resident status, and continuing to detain them without any hearing or other process, violate the procedural due process rights guaranteed by the Fourteenth Amendment.

COUNT FOUR

FIRST AMENDMENT ESTABLISHMENT CLAUSE

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

49. 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.

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COUNT FIVE

FIFTH AMENDMENT EQUAL PROTECTION

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

51. 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.

52. 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).

53. 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).

54. Applying a general law in a fashion that discriminates on the basis of religion 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 this 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

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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.*

55. 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 religion. *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*.

56. Thus, Respondents have applied the EO with forbidden animus and discriminatory intent in violation of the equal protection component of the Fifth Amendment.

COUNT SIX

ADMINISTRATIVE PROCEDURE ACT

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

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58. Respondents detained and mistreated Petitioners solely pursuant to the EO, which expressly discriminates against Petitioners on the basis of their country of origin and was substantially motivated by animus toward Muslims. *See supra*.

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

60. 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).

61. 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 SEVEN

RELIGIOUS FREEDOM RESTORATION ACT

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

63. 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 Petitioners' exercise of religion in a way that is not the least restrictive means of furthering a compelling governmental interest.

COUNT EIGHT

COERCION TO ABANDON PERMANENT RESIDENCY

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

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65. Due process and governing regulations specifically prevent Petitioners from being coerced into abandoning their permanent resident status. *See* 8 C.F.R. § 287.8(c)(2)(vii) ("The use of threats, coercion, or physical abuse by the designated immigration officer to induce a suspect to waive his or her rights or to make a statement is prohibited.").

PRAYER FOR RELIEF

WHEREFORE, Petitioners pray 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 Petitioners solely on the basis of the EO;
3) Enter an Order declaring that Respondents' detention of Petitioners is and will be unauthorized by statute and contrary to law;
4) Issue an injunction prohibiting Respondents from accepting a voluntary withdrawal of an application for admission or a voluntary relinquishment of legal status in the United States;
5) Issue an injunction requiring Respondents to inform Petitioners that they are legally entitled to enter the United States as lawful permanent residents, and that no federal official can or will take retaliatory action in response to Petitioners' refusal to withdraw their applications for admission or refusal to relinquish legal status in the United States;
6) Issue declaratory relief holding that Respondents have an obligation under the governing law to inform all individuals detained within their custody that the Executive Order has been stayed, and that there can be no retaliatory action taken in response to Petitioners' refusal to withdraw application for admission or refusal to relinquish legal status in the United States;

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7) Issue an Order prohibiting Respondents from denying Petitioners admission to the United States pursuant to their status as lawful permanent residents and the terms of the Immigration and Nationality Act;
8) Award Petitioners reasonable costs and attorneys' fees; and
9) Grant any other and further relief that this Court may deem fit and proper.

DATED: January 28, 2017

Respectfully submitted,

ACLU FOUNDATION OF SOUTHERN CALIFORNIA

LAW OFFICES OF STACY TOLCHIN

/s/ Carmen Iguina

CARMEN IGUINA

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Exhibit A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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.

DECISION AND ORDER

17 Civ. 480 (AMD)

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;

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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.

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SO ORDERED.

Ann M. Donnelly
United States District Judge

Dated: Brooklyn, New York
January 28, 2017

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Exhibit B

EXHIBIT A

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

January 27, 2017

EXECUTIVE ORDER

- - - - - - -

PROTECTING THE NATION FROM FOREIGN TERRORIST ENTRY INTO THE UNITED STATES

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.*, and section 301 of title 3, United States Code, and to protect the American people from terrorist attacks by foreign nationals admitted to the United States, it is hereby ordered as follows:

Section 1. Purpose. The visa-issuance process plays a crucial role in detecting individuals with terrorist ties and stopping them from entering the United States. Perhaps in no instance was that more apparent than the terrorist attacks of September 11, 2001, when State Department policy prevented consular officers from properly scrutinizing the visa applications of several of the 19 foreign nationals who went on to murder nearly 3,000 Americans. And while the visa-issuance process was reviewed and amended after the September 11 attacks to better detect would-be terrorists from receiving visas, these measures did not stop attacks by foreign nationals who were admitted to the United States.

Numerous foreign-born individuals have been convicted or implicated in terrorism-related crimes since September 11, 2001, including foreign nationals who entered the United States after receiving visitor, student, or employment visas, or who entered through the United States refugee resettlement program. Deteriorating conditions in certain countries due to war, strife, disaster, and civil unrest increase the likelihood that terrorists will use any means possible to enter the United States. The United States must be vigilant during the visa-

issuance process to ensure that those approved for admission do not intend to harm Americans and that they have no ties to terrorism.

In order to protect Americans, the United States must ensure that those admitted to this country do not bear hostile attitudes toward it and its founding principles. The United States cannot, and should not, admit those who do not support the Constitution, or those who would place violent ideologies over American law. In addition, the United States should not admit those who engage in acts of bigotry or hatred (including "honor" killings, other forms of violence against women, or the persecution of those who practice religions different from their own) or those who would oppress Americans of any race, gender, or sexual orientation.

Sec. 2. Policy. It is the policy of the United States to protect its citizens from foreign nationals who intend to commit terrorist attacks in the United States; and to prevent the admission of foreign nationals who intend to exploit United States immigration laws for malevolent purposes.

Sec. 3. Suspension of Issuance of Visas and Other Immigration Benefits to Nationals of Countries of Particular Concern. (a) The Secretary of Homeland Security, in consultation with the Secretary of State and the Director of National Intelligence, shall immediately conduct a review to determine the information needed from any country to adjudicate any visa, admission, or other benefit under the INA (adjudications) in order to determine that the individual seeking the benefit is who the individual claims to be and is not a security or public-safety threat.

(b) The Secretary of Homeland Security, in consultation with the Secretary of State and the Director of National Intelligence, shall submit to the President a report on the results of the review described in subsection (a) of this section, including the Secretary of Homeland Security's determination of the information needed for adjudications and a list of countries that do not provide adequate information, within 30 days of the date of this order. The Secretary of Homeland Security shall provide a copy of the report to the Secretary of State and the Director of National Intelligence.

(c) To temporarily reduce investigative burdens on relevant agencies during the review period described in subsection (a) of this section, to ensure the proper review and

maximum utilization of available resources for the screening of foreign nationals, and to ensure that adequate standards are established to prevent infiltration by foreign terrorists or criminals, pursuant to section 212(f) of the INA, 8 U.S.C. 1182(f), I hereby proclaim 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 I hereby suspend entry into the United States, as immigrants and nonimmigrants, of such persons for 90 days from the date of this order (excluding those foreign nationals traveling on diplomatic visas, North Atlantic Treaty Organization visas, C-2 visas for travel to the United Nations, and G-1, G-2, G-3, and G-4 visas).

(d) Immediately upon receipt of the report described in subsection (b) of this section regarding the information needed for adjudications, the Secretary of State shall request all foreign governments that do not supply such information to start providing such information regarding their nationals within 60 days of notification.

(e) After the 60-day period described in subsection (d) of this section expires, the Secretary of Homeland Security, in consultation with the Secretary of State, shall submit to the President a list of countries recommended for inclusion on a Presidential proclamation that would prohibit the entry of foreign nationals (excluding those foreign nationals traveling on diplomatic visas, North Atlantic Treaty Organization visas, C-2 visas for travel to the United Nations, and G-1, G-2, G-3, and G-4 visas) from countries that do not provide the information requested pursuant to subsection (d) of this section until compliance occurs.

(f) At any point after submitting the list described in subsection (e) of this section, the Secretary of State or the Secretary of Homeland Security may submit to the President the names of any additional countries recommended for similar treatment.

(g) Notwithstanding a suspension pursuant to subsection (c) of this section or pursuant to a Presidential proclamation described in subsection (e) of this section, the Secretaries of State and Homeland Security may, on a case-by-case basis, and when in the national interest, issue visas or other immigration benefits to nationals of countries for which visas and benefits are otherwise blocked.

(h) The Secretaries of State and Homeland Security shall submit to the President a joint report on the progress in implementing this order within 30 days of the date of this order, a second report within 60 days of the date of this order, a third report within 90 days of the date of this order, and a fourth report within 120 days of the date of this order.

Sec. 4. Implementing Uniform Screening Standards for All Immigration Programs. (a) The Secretary of State, the Secretary of Homeland Security, the Director of National Intelligence, and the Director of the Federal Bureau of Investigation shall implement a program, as part of the adjudication process for immigration benefits, to identify individuals seeking to enter the United States on a fraudulent basis with the intent to cause harm, or who are at risk of causing harm subsequent to their admission. This program will include the development of a uniform screening standard and procedure, such as in-person interviews; a database of identity documents proffered by applicants to ensure that duplicate documents are not used by multiple applicants; amended application forms that include questions aimed at identifying fraudulent answers and malicious intent; a mechanism to ensure that the applicant is who the applicant claims to be; a process to evaluate the applicant's likelihood of becoming a positively contributing member of society and the applicant's ability to make contributions to the national interest; and a mechanism to assess whether or not the applicant has the intent to commit criminal or terrorist acts after entering the United States.

(b) The Secretary of Homeland Security, in conjunction with the Secretary of State, the Director of National Intelligence, and the Director of the Federal Bureau of Investigation, shall submit to the President an initial report on the progress of this directive within 60 days of the date of this order, a second report within 100 days of the date of this order, and a third report within 200 days of the date of this order.

Sec. 5. Realignment of the U.S. Refugee Admissions Program for Fiscal Year 2017. (a) The Secretary of State shall suspend the U.S. Refugee Admissions Program (USRAP) for 120 days. During the 120-day period, the Secretary of State, in conjunction with the Secretary of Homeland Security and in consultation with the Director of National Intelligence, shall review the USRAP application and adjudication process to determine what additional procedures should be taken to ensure that those approved for refugee admission do not pose a threat

to the security and welfare of the United States, and shall implement such additional procedures. Refugee applicants who are already in the USRAP process may be admitted upon the initiation and completion of these revised procedures. Upon the date that is 120 days after the date of this order, the Secretary of State shall resume USRAP admissions only for nationals of countries for which the Secretary of State, the Secretary of Homeland Security, and the Director of National Intelligence have jointly determined that such additional procedures are adequate to ensure the security and welfare of the United States.

(b) Upon the resumption of USRAP admissions, the Secretary of State, in consultation with the Secretary of Homeland Security, is further directed to make changes, to the extent permitted by law, to prioritize refugee claims made by individuals on the basis of religious-based persecution, provided that the religion of the individual is a minority religion in the individual's country of nationality. Where necessary and appropriate, the Secretaries of State and Homeland Security shall recommend legislation to the President that would assist with such prioritization.

(c) Pursuant to section 212(f) of the INA, 8 U.S.C. 1182(f), I hereby proclaim that the entry of nationals of Syria as refugees is detrimental to the interests of the United States and thus suspend any such entry until such time as I have determined that sufficient changes have been made to the USRAP to ensure that admission of Syrian refugees is consistent with the national interest.

(d) Pursuant to section 212(f) of the INA, 8 U.S.C. 1182(f), I hereby proclaim that the entry of more than 50,000 refugees in fiscal year 2017 would be detrimental to the interests of the United States, and thus suspend any such entry until such time as I determine that additional admissions would be in the national interest.

(e) Notwithstanding the temporary suspension imposed pursuant to subsection (a) of this section, the Secretaries of State and Homeland Security may jointly determine to admit individuals to the United States as refugees on a case-by-case basis, in their discretion, but only so long as they determine that the admission of such individuals as refugees is in the national interest -- including when the person is a religious minority in his country of nationality facing religious persecution, when admitting the person would enable the United

States to conform its conduct to a preexisting international agreement, or when the person is already in transit and denying admission would cause undue hardship -- and it would not pose a risk to the security or welfare of the United States.

(f) The Secretary of State shall submit to the President an initial report on the progress of the directive in subsection (b) of this section regarding prioritization of claims made by individuals on the basis of religious-based persecution within 100 days of the date of this order and shall submit a second report within 200 days of the date of this order.

(g) It is the policy of the executive branch that, to the extent permitted by law and as practicable, State and local jurisdictions be granted a role in the process of determining the placement or settlement in their jurisdictions of aliens eligible to be admitted to the United States as refugees. To that end, the Secretary of Homeland Security shall examine existing law to determine the extent to which, consistent with applicable law, State and local jurisdictions may have greater involvement in the process of determining the placement or resettlement of refugees in their jurisdictions, and shall devise a proposal to lawfully promote such involvement.

Sec. 6. Rescission of Exercise of Authority Relating to the Terrorism Grounds of Inadmissibility. The Secretaries of State and Homeland Security shall, in consultation with the Attorney General, consider rescinding the exercises of authority in section 212 of the INA, 8 U.S.C. 1182, relating to the terrorism grounds of inadmissibility, as well as any related implementing memoranda.

Sec. 7. Expedited Completion of the Biometric Entry-Exit Tracking System. (a) The Secretary of Homeland Security shall expedite the completion and implementation of a biometric entry-exit tracking system for all travelers to the United States, as recommended by the National Commission on Terrorist Attacks Upon the United States.

(b) The Secretary of Homeland Security shall submit to the President periodic reports on the progress of the directive contained in subsection (a) of this section. The initial report shall be submitted within 100 days of the date of this order, a second report shall be submitted within 200 days of the date of this order, and a third report shall be submitted within 365 days of the date of this order. Further, the Secretary shall submit a report every 180 days thereafter until the system is fully deployed and operational.

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Sec. 8. Visa Interview Security. (a) The Secretary of State shall immediately suspend the Visa Interview Waiver Program and ensure compliance with section 222 of the INA, 8 U.S.C. 1222, which requires that all individuals seeking a nonimmigrant visa undergo an in-person interview, subject to specific statutory exceptions.

(b) To the extent permitted by law and subject to the availability of appropriations, the Secretary of State shall immediately expand the Consular Fellows Program, including by substantially increasing the number of Fellows, lengthening or making permanent the period of service, and making language training at the Foreign Service Institute available to Fellows for assignment to posts outside of their area of core linguistic ability, to ensure that non-immigrant visa-interview wait times are not unduly affected.

Sec. 9. Visa Validity Reciprocity. The Secretary of State shall review all nonimmigrant visa reciprocity agreements to ensure that they are, with respect to each visa classification, truly reciprocal insofar as practicable with respect to validity period and fees, as required by sections 221(c) and 281 of the INA, 8 U.S.C. 1201(c) and 1351, and other treatment. If a country does not treat United States nationals seeking nonimmigrant visas in a reciprocal manner, the Secretary of State shall adjust the visa validity period, fee schedule, or other treatment to match the treatment of United States nationals by the foreign country, to the extent practicable.

Sec. 10. Transparency and Data Collection. (a) To be more transparent with the American people, and to more effectively implement policies and practices that serve the national interest, the Secretary of Homeland Security, in consultation with the Attorney General, shall, consistent with applicable law and national security, collect and make publicly available within 180 days, and every 180 days thereafter:

(i) information regarding the number of foreign nationals in the United States who have been charged with terrorism-related offenses while in the United States; convicted of terrorism-related offenses while in the United States; or removed from the United States based on terrorism-related activity, affiliation, or material support to a terrorism-related organization, or any other national security

reasons since the date of this order or the last reporting period, whichever is later;

(ii) information regarding the number of foreign nationals in the United States who have been radicalized after entry into the United States and engaged in terrorism-related acts, or who have provided material support to terrorism-related organizations in countries that pose a threat to the United States, since the date of this order or the last reporting period, whichever is later; and

(iii) information regarding the number and types of acts of gender-based violence against women, including honor killings, in the United States by foreign nationals, since the date of this order or the last reporting period, whichever is later; and

(iv) any other information relevant to public safety and security as determined by the Secretary of Homeland Security and the Attorney General, including information on the immigration status of foreign nationals charged with major offenses.

(b) The Secretary of State shall, within one year of the date of this order, provide a report on the estimated long-term costs of the USRAP at the Federal, State, and local levels.

Sec. 11. 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 27, 2017.

# # #

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SHAHIN HASSANPOUR,	§	
	§	
Petitioner,	§	
	§	
v.	§	**No. 3:17-cv-270**
	§	
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 CLEATUS P. HUNT, JR., Dallas/Ft. Worth International Airport Port Director, CBP,	§	
	§	
Respondents.	§	

PETITIONER'S EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION;
DEPORTATION FLIGHT SCHEDULED FOR 11:00AM TODAY

Petitioner, by and through counsel, submits this **Emergency Motion for a Temporary Restraining Order and Preliminary Injunction**, pursuant to Federal Rule of Civil Procedure 65(a) and (b). Petitioner tried to file a habeas petition last night, but the ECF site was down. She was able to file a habeas petition at 7:20 this morning. She and others similarly situated immigrant and nonimmigrant visa holders who are detained by Respondents at the Dallas/Ft. Worth International Airport ("DFW") pursuant to the President's January 27, 2017 executive order were coerced into withdrawing their applications for admissions. Although a federal court has enjoined Respondents from removing Petitioner and class members, Petitioner is concerned that Respondents will disregard the nationwide stay on the ground that Petitioner and class

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members involuntarily withdrew their applications for admission and waived their statutory and constitutional rights. Upon information and belief, Petitioner is scheduled to be deported on a flight at 11AM this morning. **She seeks an emergency stay of removal.**

In support of their motion, Petitioner and others similarly situated would show the following:

1. Petitioner Shahin Hassanpour is a 70 year-old Iranian national who landed in the Dallas/Ft. Worth International Airport ("DFW") on or about January 28, 2017. In September 2016, the United States Department of State (DOS) approved Ms. Hassanpour's application for an immigrant visa to come and live in the United States with her United States citizen son, who petitioned for her visa. Prior to the issuance of her visa, the DOS reviewed Ms. Hassanpour's criminal and immigration background and found her eligible for an immigrant visa.

2. On or about January 27, 2017, Ms. Hassanpour departed from Esfahan on Emirates Airlines.

3. On or about January 28, 2017, Ms. Hassanpour landed at DFW Airport.

4. Pursuant to the January 27, 2017 executive order, Respondents are not allowing Ms. Hassanpour to exit DFW Airport.

5. Respondents are not permitting Ms. Hassanpour to meet with her attorneys who are in Dallas or her United States citizen son was at the DFW Airport.

6. Ms. Hassanpour is an elderly woman who must take cancer and heart medication on a regular basis. The long flight, the stress of detention, and the lack of her medication present unnecessary health risks to Ms. Hassanpour.

7. Upon information and belief, Respondents coerced Ms. Hassanpour to withdraw her application for admission. Respondents told Ms. Hassanpour that she would be permanently

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banned from the United States and sent to jail if she did not sign the form withdrawing her admission. Respondents did not translate or interpret the waiver form. Ms. Hassanpour, however, does not speak English, has no knowledge of United States laws, and was denied the opportunity to communicate with her attorneys.

8. Ms. Hassanpour has valid documents to enter the United States. She was previously interviewed and investigated by the State Department. The State Department and the U.S. Citizenship and Immigration Services previously determined that Ms. Hassanpour was not a national security risk. Respondents are detaining Ms. Hassanpour solely because of her national origin and her religion as required by the January 27, 2017 executive order.

9. Upon information and belief, Respondents intend to remove her and others and other similarly situated immigrant and nonimmigrant visa holders from Iran, Iraq, Syria, Yemen, Somalia, Sudan or Libya landed in the United States at the DFW Airport and presented themselves for inspection and admission, notwithstanding the nationwide stay issued in *Darweesh and Alshawi v. Trump et. al.*, Cause No. 17 Civ. 480 (AMD) in the U.S. District Court for the Eastern District of New York on January 28, 2017, relying upon the illegal waivers obtained from class members.

10. Because the executive order is unlawful as applied to Ms. Hassanpour and class members, their continued detention and the denial of admission based solely on the executive order violates their Fifth Amendment procedural and substantive due process, violates the First Amendment Establishment Clause, is ultra vires under the immigration statutes, and violates the Administrative Procedure Act and Religious Freedom Restoration Act. *See* Petitioner's Habeas Petition, ¶¶ 40 57. Further, Ms. Hassanpour's and class members continued unlawful detention is part of a widespread policy, pattern and practice applied to many refugees and arriving

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noncitizens detained after the issuance of the January 27, 2017 executive order. Therefore, on behalf of herself and a class of similarly situated immigrant and nonimmigrant holders, Ms. Hassanpour respectfully applies to this Court for a stay of removal.

11. As indicated by the nationwide stay issued in *Darweesh and Alshawi v. Trump et. al.*, Cause No. 17 Civ. 480 (AMD) in the U.S. District Court for the Eastern District of New York on January 28, 2017, Petitioner has a strong likelihood of success in establishing that the removal of Petitioner and others similarly situated violates their rights to Due Process and Equal Protection guaranteed by the U.S. Constitution.

12. As indicated by the nationwide stay, there is imminent danger that, absent the stay of removal, there will be substantial and irreparable injury to Petitioner and others similarly situated.

13. As indicated by the nationwide stay, the issuance of the stay of removal will not injure the other parties interested in the proceeding.

14. A preliminary injunction is appropriate if the potential harm to the plaintiff outweighs the cost of the injunction, and the injunction "does not disserve the public interest." *Jackson Women's Health Org. Ctr.*, 760 F.3d 448, 452 (5th Cir. 2014). In this case, the potential harm to the Petitioner is clearly outweighed by any harm to the defendants.

Conclusion

15. Petitioner and others similarly situated face imminent removal in a few hours. The United States District Court in *Hameed Khalid Darweesh and Haider Sameer Abdulkhaleq Alshawi v. Donald Trump, et. al.*, Case No. 17 Civ. 480, has determined that Petitioner and class members have a strong likelihood of success in the litigation, that there is imminent danger that, absent a stay of removal, there will be substantial and irreparable injury to Petitioner and class members

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Therefore, , the Court should grant her Motion for a Temporary Preliminary Injunction.

Emergency Hearing

16. Petitioner considers that the facts and law in this matter permit resolution of the Petition without an evidentiary hearing. In the alternative, Petitioner asks for an emergency hearing this morning to have her arguments heard.

Prayer

WHEREFORE, premises considered, Petitioner respectfully ask this court to GRANT her **Motion for a Temporary Preliminary Injunction** and to issue a preliminary injunction ordering Defendants to:

1. Stay her removal which would be contrary to law;
2. Grant any other and further relief that this Court may deem fit and proper.

Petitioner further requests that they be awarded reasonable attorney's fees and costs associated with the litigation of this motion.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SHAHIN HASSANPOUR,	§	
	§	
Petitioner,	§	
	§	
v.	§	**No. 3:17-cv-270**
	§	
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 CLEATUS P. HUNT, JR., Dallas/Ft. Worth International Airport Port Director, CBP,	§	
	§	
Respondents.	§	

ORDER

Pending before the Court is Petitioner's Motion for Temporary Restraining Order and Preliminary Injunction to stay the removal of Petitioner and persons similarly situated who are detained at DFW International Airport pursuant to the President's January 27, 2017.

On January 28, 2017, the United States District Court for the Eastern District of New York issued a nationwide stay in *Hameed Khalid Darweesh and Haider Sameer Abdulkhaleq Alshawi v. Donald Trump, et. al.*, Case No. 17 Civ. 480, that appears to apply to Petitioner and class members detained in the DFW Airport. That Court has determined that Petitioner and class members have a strong likelihood of success in the litigation, that there is imminent danger that, absent a stay of removal, there will be substantial and irreparable injury to Petitioner and class members subject to the January 27, 2017, and that issuance of the stay will not injure the parties.

Out of an abundance of caution, the Court will stay Petitioner's and class members'

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removal in this case pending completion of the proceedings in the Eastern District of New York.

WHEREFORE, IT IS HEREBY ORDERED that the Respondents, their officers, agents, servants, employees, attorneys and all persons acting in concert or participation with them will comply with the nationwide stay issued in *Hameed Khalid Darweesh and Haider Sameer Abdulkhaleq Alshawi v. Donald Trump, et. al.*, Case No. 17 Civ. 480.

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 Northern District of Texas, and further directs the United States Marshals Services to take those actions deemed necessary to enforce the provisions and prohibitions set forth in this Order.

So ordered this day of January, 2017.

UNITED STATES DISTRICT JUDGE

Document ID: 0.7.10904.5221-000006

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SHAHIN HASSANPOUR and A Class of Similarly Situated Persons,	§	
Petitioners,	§	
v.	§	**No. 3:17-cv-270**
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 CLEATUS P. HUNT, JR., Dallas/Ft. Worth International Airport Port Director, CBP,	§	
Respondents.	§	

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

This class habeas petition is filed by Petitioner Shahin Hassanpour and others similarly situated immigrant and nonimmigrant visa holders who are detained by Respondents at the Dallas/Ft. Worth International Airport ("DFW") pursuant to the President's January 27, 2017 executive order and who were coerced into withdrawing their applications for admissions. Although a federal court has enjoined Respondents from removing Petitioner and class members, Petitioner is concerned that Respondents will disregard the nationwide stay on the ground that Petitioner and class members involuntarily withdrew their applications for admission and waived their statutory and constitutional rights. This class petition is filed to safeguard Petitioner's and class members' constitutional and statutory rights.

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Petitioner Shahin Hassanpour is a 70 year-old Iranian national who landed in the Dallas/Ft. Worth International Airport ("DFW") on or about January 28, 2017. In September 2016, the United States Department of State (DOS) approved Ms. Hassanpour's application for an immigrant visa to come and live in the United States. Her United States citizen son had petitioned for her to immigrate to the United States as a permanent resident. Prior to the issuance of her visa, the DOS reviewed Ms. Hassanpour's criminal and immigration background and found her eligible for an immigrant visa.

On or about January 28, 2017, Ms. Hassanpour and other similarly situated immigrant and nonimmigrant visa holders landed in the United States at the DFW Airport and presented themselves for inspection and admission. U.S. Customs and Border Protection (CBP) blocked Ms. Hassanpour and class members from exiting DFW Airport even though they presented valid entry documents. CBP continues to detain Ms. Hassanpour and class members and deny them admission. CBP is holding Ms. Hassanpour and class members at DFW Airport solely pursuant to an executive order issued by President Donald Trump on January 27, 2017.

Because the executive order is unlawful as applied to Ms. Hassanpour and class members, their continued detention and the denial of admission based solely on the executive order violates their Fifth Amendment procedural and substantive due process, 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, Ms. Hassanpour's and class members continued unlawful detention is part of a widespread policy, pattern and practice applied to many refugees and arriving noncitizens detained after the issuance of the January 27, 2017 executive order. Therefore, on behalf of herself and a class of similarly situated immigrant and nonimmigrant holders, Ms. Hassanpour respectfully applies to this Court

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for a writ of habeas corpus to remedy their unlawful detention, and for declaratory and injunctive relief to prevent such harms from recurring.

CUSTODY

1. Ms. Hassanpour is in the physical custody of Respondent Cleatus P. Hunt, Jr., DFW International Airport Port Director, U.S. Customs and Border Protection, the Department of Homeland Security (DHS). At the time of the filing of this petition, Petitioner is detained at the DFW Airport. Ms. Hassanpour is under the direct control of Respondents and their agents.

2. Class members are immigrant and nonimmigrant holders who are from Iran, Iraq, Syria, Yemen, Somalia, Sudan or Libya, who are detained at DFW Airport pursuant to the January 27, 2017 executive order, and who were coerced into withdrawing their applications for admission.

JURISDICTION

3. 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*.

VENUE

4. Venue lies in the United States District Court for the Northern District of Texas, the judicial district in which Respondent Cleatus P. Hunt, Jr. resides and where Petitioner is detained. 28 U.S.C. § 1391(e).

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

PARTIES

6. Petitioner Shahin Hassanpour is a national and citizen of Iran who was granted an immigrant visa so that she can come to the United States as a lawful permanent resident. She is

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detained by Respondents pursuant to President Trump's January 27, 2017 executive order.

7. Class members are immigrant and nonimmigrant holders who are from Iran, Iraq, Syria, Yemen, Somalia, Sudan or Libya and who are detained at DFW Airport pursuant to the January 27, 2017 executive order and who were coerced into withdrawing their applications for admission.

8. Donald Trump is the President of the United States and is charged with enforcing the immigration laws. He is sued in his official capacity.

9. 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.

10. 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.

11. Respondent John Kelly is the Secretary of DHS. Secretary Kelly has immediate custody of Petitioner. He is sued in his official capacity.

12. Respondent Kevin K. McAleenan is the Acting Commissioner of CBP. Acting Commissioner McAleenan has immediate custody of Petitioner. He is sued in his official capacity.

13. Respondent Cleatus P. Hunt, Jr. is the Port Director of the Dallas/Ft. Worth International Airport. He has immediate custody of Ms. Hassanpour. He is sued in his official capacity.

STATEMENT OF FACTS

President Trump's January 27, 2017 Executive Order

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14. 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.

15. 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."

16. 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.

17. Citing the threat of terrorism committed by foreign nationals, the EO directs a variety of changes to the manner and extent to which noncitizens 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.

18. 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.

19. 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

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the United States" of noncitizens from those countries is "suspended" from 90 days from the date of the EO.

Petitioner Hassanpour

20. Petitioner Shahin Hassanpour is a 70 year-old Iranian national who is Muslim.

21. Ms. Hassanpour has a United States citizen son who petitioned for Ms. Hassanpour to immigrate to the United States as a lawful permanent resident.

22. In September 2016, the State Department interviewed Ms. Hassanpour in connection with her application for an immigrant visa. After reviewing her application and investigating her criminal background, the State Department determined that Ms. Hassanpour qualified for an immigrant visa. In issuing Ms. Hassanpour an immigrant visa, the State Department determined that Ms. Hassanpour was not a threat to this country's national security but rather that she was worthy of residing here permanently.

23. On or about January 27, 2017, Ms. Hassanpour departed from Esfahan on Emirates Airlines.

24. On or about January 28, 2017, Ms. Hassanpour landed at DFW Airport.

25. Pursuant to the January 27, 2017 executive order, Respondents are not allowing Ms. Hassanpour to exit DFW Airport.

26. Respondents are not permitting Ms. Hassanpour to meet with her attorneys who are in Dallas. Her United States citizen son was at the DFW Airport ready to meet her.

27. Ms. Hassanpour is an elderly woman who must take cancer and heart medication on a regular basis. The long flight, the stress of detention, and the lack of her medication present unnecessary health risks to Ms. Hassanpour.

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28. Upon information and belief, Respondents coerced Ms. Hassanpour to withdraw her application for admission. Respondents told Ms. Hassanpour that she would be permanently banned from the United States if she did not sign the form withdrawing her admission. Respondents did not translate or interpret the waiver form. Ms. Hassanpour, however, does not speak English, has no knowledge of United States laws, and was denied the opportunity to communicate with her attorneys.

29. Ms. Hassanpour has valid documents to enter the United States. She was previously interviewed and investigated by the State Department. The State Department and the U.S. Citizenship and Immigration Services previously determined that Ms. Hassanpour was not a national security risk. Respondents are detaining Ms. Hassanpour solely because of her national origin and her religion as required by the January 27, 2017 executive order.

30. Upon information and belief, Respondents intend to remove class members notwithstanding the nationwide stay issued in *Darweesh and Alshawi v. Trump et. al.*, Cause No. 17 Civ. 480 (AMD) in the U.S. District Court for the Eastern District of New York on January 28, 2017, relying upon the illegal waivers obtained from class members.

31. Respondents' decisions to detain Ms. Hassanpour are not unlawfuland are capricious and arbitrary. There is no better time for the Court to consider the merits of Ms. Hassanpour's request for release.

Class

32. Class members are immigrant and nonimmigrant visa holders currently detained by Respondents at the DFW Airport.

33. Class members are in the possession of entry documents that were lawfully issued by the State Department and/or the Department of Homeland Security.

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34. Prior to issuing entry documents to class members, the State Department and/or the Department of Homeland Security interviewed and investigated class members. The State Department and/or the Department of Homeland Security determined that class members were admissible and were not a threat to the national security.

35. Upon landing at DFW Airport, Respondents detained class members pursuant to the President's January 27, 2017 executive order. Upon information and belief, Respondents denied class members an opportunity to speak with their lawyers.

36. Upon information and belief, Respondents then proceeded to coerce class members to withdraw their applications for admission.

37. Class members do not speak English fluently, are not lawyers, and are not familiar with United States laws.

38. Upon information and belief, Respondents intend to remove class members notwithstanding the nationwide stay issued in *Darweesh and Alshawi v. Trump et. al.*, Cause No. 17 Civ. 480 (AMD) in the U.S. District Court for the Eastern District of New York on January 28, 2017, relying upon the illegal waivers obtained from class members.

39. Respondents' decisions to detain class members are not legally justifiable and are capricious and arbitrary. There is no better time for the Court to consider the merits of the class members' request for release.

CLAIMS FOR RELIEF

COUNT ONE
CONSTITUTIONAL CLAIM--DUE PROCESS

40. Petitioner alleges and incorporates by reference paragraphs 1 through 39 above.

41. Petitioner's and the class members' detention violates her right to substantive and procedural due process guaranteed by the Fifth Amendment to the U.S. Constitution.

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COUNT TWO
FIRST AMENDMENT--ESTABLISHMENT CLAUSE

42. Petitioner alleges and incorporates by reference paragraphs 1 through 39 above.

43. 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

44. Petitioner alleges and incorporates by reference paragraphs 1 through 39 above.

45. The EO discriminates against Petitioner and the class 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.

46. 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.

47. Respondents have demonstrated an intent to discriminate against Petitioner and the class members 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).

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48. Applying a general law in a fashion that discriminates on the basis of religion in this way violates Petitioner's and class members' right to equal protection under the Fifth Amendment Due Process Clause. Petitioner and the class 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. *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266-7 (1977).

49. 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*.

50. 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 and the class members' equal protection rights.

COUNT FOUR
ADMINISTRATIVE PROCEDURE ACT

51. Petitioner alleges and incorporates by reference paragraphs 1 through 27 above.

52. Respondents detained and mistreated Petitioner and class members solely pursuant to an executive order issued on January 27, 2017, which expressly discriminates against Petitioner and

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the class on the basis of her country of origin and was substantially motivated by animus toward Muslims.

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

54. 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).

55. Respondents' actions in detaining and mistreating Petitioner and class members 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

56. Petitioner alleges and incorporates by reference paragraphs 1 through 27 above.

57. 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 and class members' exercise of religion in a way that is not the least restrictive means of furthering a compelling governmental interest.

PRAYER FOR RELIEF

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

1. Assume jurisdiction over this matter;
2. Issue an order directing Respondents to show cause why the writ should not be

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granted;

3. Issue an order certifying a class of immigrant and nonimmigrant visa holders detained at DFW Airport pursuant to the President's January 27, 2017 executive order and who were coerced into withdrawing their applications for admission and other rights;
4. Issue an injunction ordering Respondents not to detain Petitioner on the basis of the EO;
5. Issue a writ of habeas corpus ordering Respondents to release Ms. Hassanpour;
6. Award Petitioner reasonable costs and attorney's fees; and,
7. Grant any other relief which this Court deems just and proper.

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Respectfully submitted,

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Sejal R. Zota
North Carolina State Bar No. 36535

By: /s/ Donald E. Uloth
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Texas State Bar No. 20374200

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JS 44 (Rev. 08/16)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS
SHAHIN HASSANPOUR AND OTHER SIMILARLY SITUATED

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Donald E. Uloth, 18208 Preston Rd. Suite D-9 # 261, Dallas, TX 75252, (214) 725-0260; Javier N. Maldonado, 8918 Tesoro Dr., Ste. 575, San Antonio, TX 78217, (210) 277-1603

DEFENDANTS
President Donald Trump, et. al.

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ❒ 1 U.S. Government Plaintiff
- ❒ 3 Federal Question *(U.S. Government Not a Party)*
- ☒ 2 U.S. Government Defendant
- ❒ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	❒ 1	❒ 1	Incorporated *or* Principal Place of Business In This State	❒ 4	❒ 4
Citizen of Another State	❒ 2	❒ 2	Incorporated *and* Principal Place of Business In Another State	❒ 5	❒ 5
Citizen or Subject of a Foreign Country	❒ 3	❒ 3	Foreign Nation	❒ 6	❒ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*
Click here for: Nature of Suit Code Descriptions.

CONTRACT
- ❒ 110 Insurance
- ❒ 120 Marine
- ❒ 130 Miller Act
- ❒ 140 Negotiable Instrument
- ❒ 150 Recovery of Overpayment & Enforcement of Judgment
- ❒ 151 Medicare Act
- ❒ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ❒ 153 Recovery of Overpayment of Veteran's Benefits
- ❒ 160 Stockholders' Suits
- ❒ 190 Other Contract
- ❒ 195 Contract Product Liability
- ❒ 196 Franchise

REAL PROPERTY
- ❒ 210 Land Condemnation
- ❒ 220 Foreclosure
- ❒ 230 Rent Lease & Ejectment
- ❒ 240 Torts to Land
- ❒ 245 Tort Product Liability
- ❒ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ❒ 310 Airplane
- ❒ 315 Airplane Product Liability
- ❒ 320 Assault, Libel & Slander
- ❒ 330 Federal Employers' Liability
- ❒ 340 Marine
- ❒ 345 Marine Product Liability
- ❒ 350 Motor Vehicle
- ❒ 355 Motor Vehicle Product Liability
- ❒ 360 Other Personal Injury
- ❒ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ❒ 365 Personal Injury - Product Liability
- ❒ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ❒ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ❒ 370 Other Fraud
- ❒ 371 Truth in Lending
- ❒ 380 Other Personal Property Damage
- ❒ 385 Property Damage Product Liability

CIVIL RIGHTS
- ❒ 440 Other Civil Rights
- ❒ 441 Voting
- ❒ 442 Employment
- ❒ 443 Housing/ Accommodations
- ❒ 445 Amer. w/Disabilities - Employment
- ❒ 446 Amer. w/Disabilities - Other
- ❒ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ❒ 463 Alien Detainee
- ❒ 510 Motions to Vacate Sentence
- ❒ 530 General
- ❒ 535 Death Penalty

Other:
- ❒ 540 Mandamus & Other
- ❒ 550 Civil Rights
- ❒ 555 Prison Condition
- ❒ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ❒ 625 Drug Related Seizure of Property 21 USC 881
- ❒ 690 Other

LABOR
- ❒ 710 Fair Labor Standards Act
- ❒ 720 Labor/Management Relations
- ❒ 740 Railway Labor Act
- ❒ 751 Family and Medical Leave Act
- ❒ 790 Other Labor Litigation
- ❒ 791 Employee Retirement Income Security Act

IMMIGRATION
- ❒ 462 Naturalization Application
- ☒ 465 Other Immigration Actions

BANKRUPTCY
- ❒ 422 Appeal 28 USC 158
- ❒ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ❒ 820 Copyrights
- ❒ 830 Patent
- ❒ 840 Trademark

SOCIAL SECURITY
- ❒ 861 HIA (1395ff)
- ❒ 862 Black Lung (923)
- ❒ 863 DIWC/DIWW (405(g))
- ❒ 864 SSID Title XVI
- ❒ 865 RSI (405(g))

FEDERAL TAX SUITS
- ❒ 870 Taxes (U.S. Plaintiff or Defendant)
- ❒ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ❒ 375 False Claims Act
- ❒ 376 Qui Tam (31 USC 3729(a))
- ❒ 400 State Reapportionment
- ❒ 410 Antitrust
- ❒ 430 Banks and Banking
- ❒ 450 Commerce
- ❒ 460 Deportation
- ❒ 470 Racketeer Influenced and Corrupt Organizations
- ❒ 480 Consumer Credit
- ❒ 490 Cable/Sat TV
- ❒ 850 Securities/Commodities/ Exchange
- ❒ 890 Other Statutory Actions
- ❒ 891 Agricultural Acts
- ❒ 893 Environmental Matters
- ❒ 895 Freedom of Information Act
- ❒ 896 Arbitration
- ❒ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ❒ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

❒ 1 Original Proceeding ❒ 2 Removed from State Court ❒ 3 Remanded from Appellate Court ❒ 4 Reinstated or Reopened ❒ 5 Transferred from Another District *(specify)* ❒ 6 Multidistrict Litigation - Transfer ❒ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
28 U.S.C. Sec. 1331, 1361, 2241, and 2243.
Brief description of cause:
Visa holders detained at DFW are detained pursuant to Jan. 27, 2017 executive order.

VII. REQUESTED IN COMPLAINT:
☒ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.
DEMAND $
CHECK YES only if demanded in complaint:
JURY DEMAND: ❒ Yes ☒ No

VIII. RELATED CASE(S) IF ANY *(See instructions):*
JUDGE _____ DOCKET NUMBER _____

DATE
1/29/2017

SIGNATURE OF ATTORNEY OF RECORD
/s/ Javier N. Maldonado

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

Document ID: 0.7.10904.5221-000007

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SHAHIN HASSANPOUR and A Class of Similarly Situated Persons,	§	
Petitioners,	§	
v.	§	**No. 3:17-cv-270**
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 CLEATUS P. HUNT, JR., Dallas/Ft. Worth Port Director, CBP,	§	
Respondents.	§	

PETITIONER'S CERTIFICATE OF INTERESTED PERSONS

Pursuant to Fed. R. Civ. P. 7.1 and LR 3.1(c), LR 3.2(e), LR 7.4, LR 81.1(a)(4)(D), and LR 81.2, Petitioner Shahin Hassanpour provides the following information:

Petitioner is a natural person.

There are no nongovernmental corporate parties in this case.

The persons, associations of persons, firms, partnerships, corporations, guarantors, insurers, affiliates, parent or subsidiary corporations, or other legal entities that are financially interested in the outcome of the case are:

1. Shahin Hassanpour, Petitioner

2. Class members are immigrant and nonimmigrant holders who are from Iran, Iraq, Syria, Yemen, Somalia, Sudan or Libya and who are detained at DFW Airport

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pursuant to the January 27, 2017 and who were coerced into withdrawing their applications for admission.

3. Donald J. Trump, President of the United States.

4. The U.S. Department of Homeland Security.

5. U.S. Customs and Border Protection.

6. John Kelly, the Secretary of the he U.S. Department of Homeland Security.

7. Kevin K. McAleenan, the Acting Commissioner of U.S. Customs and Border Protection.

8. Cleatus P. Hunt, Jr., the Port Director of the Dallas/Ft. Worth International Airport.

Date: January 29, 2016

Respectfully submitted,

/s/ Javier N. Maldonado

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The People of the State of California, and
The People of the United States of America

IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO

People of the United States of America and the State of California, Plaintiffs, vs. Donald Trump; United States of America, Defendants.	Case Number: 3:17-cv-451 (Fee Exempt: 28 U.S.C. § 1914(b), by Judicial Conference effective 12/2016) COMPLAINT FOR INJUNCTION AND REPEAL OF PRESIDENTIAL EXECUTIVE ORDER DATED JANUARY 27, 2017 SUSPENDING VISAS AND IMMIGRATION BENEFITS WITHOUT CONGRESSIONAL APPROVAL U.S. Const. art. I, § 1; U.S. Const. art. II, § 1, cl. 1

I. FEE EXEMPTION

This action is brought on behalf of the People of the State of California and United States, and exempted from filing fees under 28 U.S.C. § 1914(b):

Effective on: December 1, 2016

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The United States should not be charged fees under this schedule, with the exception of those specifically prescribed in Items 2, 4 and 5, when the information requested is available through remote electronic access.

Reference:

http://www.uscourts.gov/services-forms/fees/district-court-miscellaneous-fee-schedule

I. JURISDICTION

This action arises under the Constitution, laws, or treaties of the United States, conferring Federal Question jurisdiction under 28 U.S.C. § 1331.

VENUE

Defendant is the United States. Venue is proper in any judicial district pursuant to 28 U.S.C. § 1391(e).

PARTIES

1. Plaintiffs are the People of the United States of America and the State of California, by way of the Private Attorney General statutes of the State of California and United States, for this civil action. The action is for the protection of all persons in the United States in their civil rights and for their vindication pursuant to brought pursuant to 42 U.S.C. § 1988.

2. Defendant, Donald Trump, aka Donald John Trump ("Mr. Trump"), is the forty fifth president of the united states, inaugurated eight days ago, on January 20, 2017. He is named as an indispensable party with regard to this action to enjoin enforcement of his executive order issued one day before the filing of this action, on January 27, 2017, purporting to suspend visas and immigration benefits of a seemingly undefined class of persons, apparently based on ethnicity and/or religious beliefs.

3. Defendant, the United States of America, is the United States

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Government, generally, and is named as a defendant for the purpose of enjoining enforcement of the Executive Order of Mr. Trump.

FIRST CAUSE OF ACTION FOR INUNCTION OF EXECUTIVE ORDER DATED JANUARY 27, 2017

4. On January 27, 2017, one day before the filing of this Complaint, Mr. Trump signed an executive order purporting to suspend visas and immigration benefits of a seemingly undefined class of persons, apparently based on ethnicity and/or religious beliefs. The order is captioned:

"EXECUTIVE ORDER PROTECTING THE NATION FROM FOREIGN TERRORIST ENTRY INTO THE UNITED STATES"

A copy of the Executive Order is attached as Exhibit A hereto.

5. The Executive Order purports to suspend the issuance of visas and benefits, with it's stated goal being the prevention of entry of citizens and/or residents of largely unspecified countries, and appears to erroneously reference a statute which does not appear to exist: "section 217(a)(12) of the INA." While there is a "section 217," there does not appear to be a section "217(a)(12)" identifying the countries from which "immigrant and nonimmigrant" persons are to be denied entry to the United States:

> I hereby proclaim 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.Ss.C. 1187(a)(12), would be detrimental to the interests of the United States, and I hereby suspend entry into the United States, as immigrants and nonimmigrants, of such persons for 90 days from the date of this order..."

The People are not able to readily identify which countries the President intended because there does not appear to be a "section 217(a)(12)," and therefore does not appear to be any publication defining the "countries referred" in "section 217(a)(12).

6. The Executive Order violates the separation of powers doctrine without statutory exception, because U.S. Const. art. I, § 1 vests Congress with all legislative powers:

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> U.S. Const. art. I, § 1
>
> All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

The President is vested with the executive power pursuant to U.S. Const. art. II, § 1, cl. 1:

> Section 1. The executive Power shall be vested in a President of the United States of America.

The Judiciary, this Court, is vested with the judicial powers to interpret the laws pursuant to is vested with U.S. Const. art. III, § 1:

> Section 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

No Statutory Exception Exists

There has been no change of any kind so as to warrant departure from the Separation of Powers doctrine and permit Mr. Trump to legislate the Executive Order at issue. There has been on increase of threat of terrorist attacks at all since the event referenced in the second paragraph of Mr. Trump's Executive Order, the "terrorist attacks of September 11, 2001." To the contrary, the threat of terrorist attacks has declined steadily since September 2001, therefore Congress and the previous two presidential administrations never considered enacting such a prohibition of entry of persons to the United States based on their countries of origin and/or religious beliefs. There is no exigent circumstance exception to warrant an executive order, while the legislature and previous two presidents served through the several years following September 11, 2001 and had years to enact legislation barring entry into the United States by the classes of persons identified on Mr. Trump's Executive Order, but clearly determined such legislation would be detrimental to the interests of the People of the United States of America.

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THE EXECUTIVE ORDER WOULD DAMAGE U.S. REPUTATION

Mr. Trump's intent is commendable and appreciated insofar as he identifies persons who inflict "gender-based violence against women, including honor killings," as well as persons "who have been radicalized after entry into the United States and engaged in terrorism-related acts, or who have provided material support to terrorism-related organizations in countries that pose a threat to the United States." However, Mr. Trump's Executive Order is overly broad and misses it's mark. If not stricken, the Executive Order would facially damage the reputation of the United States worldwide, because it discriminates against a very large class of persons based on either their foreign citizenship or residency, or religious beliefs, based on an erroneous beliefs of one individual (Mr. Trump). While the several countries Mr. Trump attempted to identify on his Executive Order are not actually specified, and apparently cannot even be ascertained from the document or it's references, nevertheless a ban on entry to the United States based solely on foreign citizenship or residency, or religion, facially evidences inhumane discrimination.

CONGRESS MAY ENACT THE LEGISLATION IF NECESSARY

The Legislative branch is charged with enactment of the laws. Mr. Trump can therefore tender his Executive Order as a bill to Congress, so that the legislature can decide whether such a law should be enacted for the benefit of the People of the United States of America. However, no statute or authority exists to support the issuance of this particular Executive Order.

SECOND CAUSE OF ACTION TO STRIKE EXECUTIVE ORDER AS UNCONSTITUTIONAL INFRINGEMENT ON ESTABLISHMENT CLAUSE

7. The First Amendment to the United States Constitution is the cornerstone

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of democracy. The first sentence of the First Amendment provides:

"Congress shall make no law respecting an establishment of religion..."

Mr. Trump's Executive Order presents a proposed "law" facially prohibiting entry of persons to the United States based on their adherence to religious beliefs shared in certain countries. The Executive Order therefore is facially unconstitutional and must be stricken as an infringement on the Establishment Clause of the First Amendment.

INJUNCTIVE RELIEF PENDING ADJUDICATION

Plaintiffs respectfully move for an immediate injunction of enforcement of Mr. Trump's Executive Order until it's validity and constitutionality is adjudicated.

Dated: January 28, 2017

s/Andrew W. Shalaby
Andrew W. Shalaby, Attorney for Plaintiffs

Document ID: 0.7.10904.5221-000008

PROOF OF SERVICE

I, Andrew W. Shalaby, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the within entitled action. I am employed at 7525 Leviston Ave, El Cerrito, CA. On January 28, 2017 I served the attached:

COMPLAINT FOR INJUNCTION AND REPEAL OF PRESIDENTIAL EXECUTIVE ORDER DATED JANUARY 27, 2017 SUSPENDING VISAS AND IMMIGRATION BENEFITS WITHOUT CONGRESSIONAL APPROVAL

on the interested parties in said action, by placing a true copy thereof in sealed envelope(s) addressed as follows:

Office of the Attorney General
455 Golden Gate, Suite 11000
San Francisco, CA 94102-7004

and served the named document in the manner indicated below:

BY MAIL: I am familiar with the practices of the U.S. Postal Service, and I caused true and correct copies of the above documents, by following ordinary business practices, to be placed and sealed in envelopes(s) addressed to the addressees, at an office of the U.S. Postal Service in El Cerrito, California, for collection and mailing by first class mail with the United States Postal Service.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed January 28, 2017, at El Cerrito, California.

s/Andrew W. Shalaby

Andrew W. Shalaby

Document ID: 0.7.10904.5221-000008

From: Simon Sandoval-Moshenberg [mailto:simon@justice4all.org]
Sent: Saturday, January 28, 2017 9:27 PM
To: Barghaan, Dennis (USAVAE) <DBarghaan@usa.doj.gov>
Subject: FW: Aziz v. Trump, revised Order

From: John Brinkema (b) (6)
Sent: Saturday, January 28, 2017 9:26 PM
To: Simon Sandoval-Moshenberg <simon@justice4all.org>
Subject: Re: Aziz v. Trump, revised Order

Please confirm by email that you have received the order and be sure to send a copy to AUSA Barghaan.

On 1/28/2017 9:06 PM, Simon Sandoval-Moshenberg wrote:

> Attached hereto.
>
> Cc by e-mail: Dennis Barghaan, USAO EDVA
>
> Respectfully submitted,

---Simon Y. Sandoval-Moshenberg---
Director, Immigrant Advocacy Program
Legal Aid Justice Center
6066 Leesburg Pike #520
Falls Church, VA 22041
(703) 720-5605 / simon@justice4all.org

Document ID: 0.7.10904.5251

(b) (5)

[redacted]

From: Muneer Ahmad [mailto:muneer.ahmad@ylsclinics.org]
Sent: Saturday, January 28, 2017 5:12 PM
To: Evans, Sarah (USANYE) <SEvans@usa.doj.gov>; Sasso, Jennifer (USANYE) <JSasso@usa.doj.gov>; Riley, Susan (USANYE) <SRiley@usa.doj.gov>
Cc: Mike Wishnie <michael.wishnie@yale.edu>; Elora Mukherjee <elora.mukherjee@YLSClinics.org>; Omar Jadwat <OJadwat@aclu.org>; David Hausman <dhausman@aclu.org>; jkornfeld@refugeerights.org; Lee Gelernt <LGELERNT@aclu.org>
Subject: EMERGENCY Motion in Darweesh et al. v. Trump et al., No. 1:17-cv-480 (EDNY)

Dear Susan, Sarah and Jennifer,

Please find attached an emergency motion and memorandum of law in support thereof in the above-referenced case. We are asking the Court to consider the motion as soon as possible.

Sincerely,
Muneer Ahmad

Muneer I. Ahmad
Clinical Professor of Law
Yale Law School
P.O. Box 209090
New Haven, CT 06520-9090
tel. (203) 432-4716
fax (203) 432-1426
email: muneer.ahmad@yale.edu
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From: Lee Gelernt
Date: Saturday, January 28, 2017 at 9:02 AM
To: "sevans@usa.doj.gov"
Cc: "jennifer.sasso@usdoj.gov", Muneer Ahmad, Mike Wishnie, Elora Mukherjee, Omar Jadwat, David Hausman, "jkornfeld@refugeerights.org"
Subject: Fwd: Darweesh et al. v. Trump et al., No. 1:17-cv-480 (EDNY)

Papers

Begin forwarded message:

> **From:** "Wishnie, Michael" <michael.wishnie@yale.edu>
> **To:** "Scott.eeDunn@usdoj.gov" <Scott.Dunn@usdoj.gov>
> **Cc:** "Lee Gelernt" <LGELERNT@aclu.org>, "Karen Tumlin" <tumlin@nilc.org>, "Justin Cox" <cox@nilc.org>, "Omar Jadwat" <OJadwat@aclu.org>, "Cecillia Wang" <Cwang@aclu.org>, "Muneer Ahmad" <muneer.ahmad@ylsclinics.org>, "Elora Mukherjee" <elora.mukherjee@YLSClinics.org>, "Becca Heller" <bheller@refugeerights.org>, "spoellot@refugeerights.org" <spoellot@refugeerights.org>
> **Subject: Darweesh et al. v. Trump**

et al., No. 1:17-cv-480 (EDNY)

Dear Scott,

Attached are courtesy copies of the habeas petition and motion for class certification in the above-captioned case, which we filed this morning. The named petitioners are Iraqi nationals who arrived at JFK Airport yesterday evening and were detained there overnight by CBP, solely pursuant to an executive order issued hours earlier. As of the time of filing, the petitioners were still at JFK in the custody of respondents. I have copied co-counsel on this message. Please contact us as soon as possible, as petitioners may have no choice but to seek judicial intervention over the weekend.

Best,

Mike

Michael J. Wishnie
William O. Douglas Clinical Professor of Law and
Deputy Dean for Experiential Education
Yale Law School
(203) 436-4780
michael.wishnie@ylsclinics.org

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

---------- X

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.

---------- X

DECISION AND ORDER

17 Civ. 480 (AMD)

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

1. My name is Shahin Fallah. I am a registered attorney in Virginia, and am barred in New York, bar #5374426. My office address is 8200 Greensboro Dr. Suite 900, McLean, Virginia.

2. I am an international and immigration attorney and am fluent in Farsi.

3. Because I am able to speak in Farsi, I was able to speak with two individuals who arrived at Dulles Airport from Iran this afternoon. Both individuals are legal permanent residents of the United States.

4. Both individuals recounted nearly identical experiences when attempting to enter the United States this afternoon. As an officer of the court, I swear that the following is accurate to the best of my knowledge. Neither individual was comfortable identifying themselves out of fear of retribution.

5. When these legal permanent residents passed through customs, they did not receive the customary stamp on their materials. Instead, after they collected their luggage, they were diverted to an open area and had their passport and green card confiscated.

6. They reported that approximately 50-60 other green card holders were similarly diverted and held in the same waiting area. They reported that the vast majority of these legal permanent residents appeared to be of middle eastern descent. They reported that the people in this holding area showed signs of distress, including open crying. They reported that they were not allowed to ask questions and were instructed that they were not allowed to speak on their telephones.

7. They reported that when interviewed, they were only asked general questions such as where they were from and where they were going.

8. One reported also being asked questions about how he had obtained the approximately $5000 that he was lawfully brining into the country.

9. After approximately two hours of waiting, these two individuals were released, however the rest are being held without legal counsel and without explanation as to what their legal recourse may be.

I swear the foregoing is true, as recounted to me on this 27th of January, 2017.

Document ID: 0.7.10904.5251-000006

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

January 27, 2017

EXECUTIVE ORDER

- - - - - - -

PROTECTING THE NATION FROM FOREIGN TERRORIST ENTRY INTO THE UNITED STATES

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.*, and section 301 of title 3, United States Code, and to protect the American people from terrorist attacks by foreign nationals admitted to the United States, it is hereby ordered as follows:

Section 1. Purpose. The visa-issuance process plays a crucial role in detecting individuals with terrorist ties and stopping them from entering the United States. Perhaps in no instance was that more apparent than the terrorist attacks of September 11, 2001, when State Department policy prevented consular officers from properly scrutinizing the visa applications of several of the 19 foreign nationals who went on to murder nearly 3,000 Americans. And while the visa-issuance process was reviewed and amended after the September 11 attacks to better detect would-be terrorists from receiving visas, these measures did not stop attacks by foreign nationals who were admitted to the United States.

Numerous foreign-born individuals have been convicted or implicated in terrorism-related crimes since September 11, 2001, including foreign nationals who entered the United States after receiving visitor, student, or employment visas, or who entered through the United States refugee resettlement program. Deteriorating conditions in certain countries due to war, strife, disaster, and civil unrest increase the likelihood that terrorists will use any means possible to enter the United States. The United States must be vigilant during the visa-

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issuance process to ensure that those approved for admission do not intend to harm Americans and that they have no ties to terrorism.

In order to protect Americans, the United States must ensure that those admitted to this country do not bear hostile attitudes toward it and its founding principles. The United States cannot, and should not, admit those who do not support the Constitution, or those who would place violent ideologies over American law. In addition, the United States should not admit those who engage in acts of bigotry or hatred (including "honor" killings, other forms of violence against women, or the persecution of those who practice religions different from their own) or those who would oppress Americans of any race, gender, or sexual orientation.

Sec. 2. Policy. It is the policy of the United States to protect its citizens from foreign nationals who intend to commit terrorist attacks in the United States; and to prevent the admission of foreign nationals who intend to exploit United States immigration laws for malevolent purposes.

Sec. 3. Suspension of Issuance of Visas and Other Immigration Benefits to Nationals of Countries of Particular Concern. (a) The Secretary of Homeland Security, in consultation with the Secretary of State and the Director of National Intelligence, shall immediately conduct a review to determine the information needed from any country to adjudicate any visa, admission, or other benefit under the INA (adjudications) in order to determine that the individual seeking the benefit is who the individual claims to be and is not a security or public-safety threat.

(b) The Secretary of Homeland Security, in consultation with the Secretary of State and the Director of National Intelligence, shall submit to the President a report on the results of the review described in subsection (a) of this section, including the Secretary of Homeland Security's determination of the information needed for adjudications and a list of countries that do not provide adequate information, within 30 days of the date of this order. The Secretary of Homeland Security shall provide a copy of the report to the Secretary of State and the Director of National Intelligence.

(c) To temporarily reduce investigative burdens on relevant agencies during the review period described in subsection (a) of this section, to ensure the proper review and

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maximum utilization of available resources for the screening of foreign nationals, and to ensure that adequate standards are established to prevent infiltration by foreign terrorists or criminals, pursuant to section 212(f) of the INA, 8 U.S.C. 1182(f), I hereby proclaim 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 I hereby suspend entry into the United States, as immigrants and nonimmigrants, of such persons for 90 days from the date of this order (excluding those foreign nationals traveling on diplomatic visas, North Atlantic Treaty Organization visas, C-2 visas for travel to the United Nations, and G-1, G-2, G-3, and G-4 visas).

(d) Immediately upon receipt of the report described in subsection (b) of this section regarding the information needed for adjudications, the Secretary of State shall request all foreign governments that do not supply such information to start providing such information regarding their nationals within 60 days of notification.

(e) After the 60-day period described in subsection (d) of this section expires, the Secretary of Homeland Security, in consultation with the Secretary of State, shall submit to the President a list of countries recommended for inclusion on a Presidential proclamation that would prohibit the entry of foreign nationals (excluding those foreign nationals traveling on diplomatic visas, North Atlantic Treaty Organization visas, C-2 visas for travel to the United Nations, and G-1, G-2, G-3, and G-4 visas) from countries that do not provide the information requested pursuant to subsection (d) of this section until compliance occurs.

(f) At any point after submitting the list described in subsection (e) of this section, the Secretary of State or the Secretary of Homeland Security may submit to the President the names of any additional countries recommended for similar treatment.

(g) Notwithstanding a suspension pursuant to subsection (c) of this section or pursuant to a Presidential proclamation described in subsection (e) of this section, the Secretaries of State and Homeland Security may, on a case-by-case basis, and when in the national interest, issue visas or other immigration benefits to nationals of countries for which visas and benefits are otherwise blocked.

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(h) The Secretaries of State and Homeland Security shall submit to the President a joint report on the progress in implementing this order within 30 days of the date of this order, a second report within 60 days of the date of this order, a third report within 90 days of the date of this order, and a fourth report within 120 days of the date of this order.

Sec. 4. Implementing Uniform Screening Standards for All Immigration Programs. (a) The Secretary of State, the Secretary of Homeland Security, the Director of National Intelligence, and the Director of the Federal Bureau of Investigation shall implement a program, as part of the adjudication process for immigration benefits, to identify individuals seeking to enter the United States on a fraudulent basis with the intent to cause harm, or who are at risk of causing harm subsequent to their admission. This program will include the development of a uniform screening standard and procedure, such as in-person interviews; a database of identity documents proffered by applicants to ensure that duplicate documents are not used by multiple applicants; amended application forms that include questions aimed at identifying fraudulent answers and malicious intent; a mechanism to ensure that the applicant is who the applicant claims to be; a process to evaluate the applicant's likelihood of becoming a positively contributing member of society and the applicant's ability to make contributions to the national interest; and a mechanism to assess whether or not the applicant has the intent to commit criminal or terrorist acts after entering the United States.

(b) The Secretary of Homeland Security, in conjunction with the Secretary of State, the Director of National Intelligence, and the Director of the Federal Bureau of Investigation, shall submit to the President an initial report on the progress of this directive within 60 days of the date of this order, a second report within 100 days of the date of this order, and a third report within 200 days of the date of this order.

Sec. 5. Realignment of the U.S. Refugee Admissions Program for Fiscal Year 2017. (a) The Secretary of State shall suspend the U.S. Refugee Admissions Program (USRAP) for 120 days. During the 120-day period, the Secretary of State, in conjunction with the Secretary of Homeland Security and in consultation with the Director of National Intelligence, shall review the USRAP application and adjudication process to determine what additional procedures should be taken to ensure that those approved for refugee admission do not pose a threat

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to the security and welfare of the United States, and shall implement such additional procedures. Refugee applicants who are already in the USRAP process may be admitted upon the initiation and completion of these revised procedures. Upon the date that is 120 days after the date of this order, the Secretary of State shall resume USRAP admissions only for nationals of countries for which the Secretary of State, the Secretary of Homeland Security, and the Director of National Intelligence have jointly determined that such additional procedures are adequate to ensure the security and welfare of the United States.

(b) Upon the resumption of USRAP admissions, the Secretary of State, in consultation with the Secretary of Homeland Security, is further directed to make changes, to the extent permitted by law, to prioritize refugee claims made by individuals on the basis of religious-based persecution, provided that the religion of the individual is a minority religion in the individual's country of nationality. Where necessary and appropriate, the Secretaries of State and Homeland Security shall recommend legislation to the President that would assist with such prioritization.

(c) Pursuant to section 212(f) of the INA, 8 U.S.C. 1182(f), I hereby proclaim that the entry of nationals of Syria as refugees is detrimental to the interests of the United States and thus suspend any such entry until such time as I have determined that sufficient changes have been made to the USRAP to ensure that admission of Syrian refugees is consistent with the national interest.

(d) Pursuant to section 212(f) of the INA, 8 U.S.C. 1182(f), I hereby proclaim that the entry of more than 50,000 refugees in fiscal year 2017 would be detrimental to the interests of the United States, and thus suspend any such entry until such time as I determine that additional admissions would be in the national interest.

(e) Notwithstanding the temporary suspension imposed pursuant to subsection (a) of this section, the Secretaries of State and Homeland Security may jointly determine to admit individuals to the United States as refugees on a case-by-case basis, in their discretion, but only so long as they determine that the admission of such individuals as refugees is in the national interest -- including when the person is a religious minority in his country of nationality facing religious persecution, when admitting the person would enable the United

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States to conform its conduct to a preexisting international agreement, or when the person is already in transit and denying admission would cause undue hardship -- and it would not pose a risk to the security or welfare of the United States.

(f) The Secretary of State shall submit to the President an initial report on the progress of the directive in subsection (b) of this section regarding prioritization of claims made by individuals on the basis of religious-based persecution within 100 days of the date of this order and shall submit a second report within 200 days of the date of this order.

(g) It is the policy of the executive branch that, to the extent permitted by law and as practicable, State and local jurisdictions be granted a role in the process of determining the placement or settlement in their jurisdictions of aliens eligible to be admitted to the United States as refugees. To that end, the Secretary of Homeland Security shall examine existing law to determine the extent to which, consistent with applicable law, State and local jurisdictions may have greater involvement in the process of determining the placement or resettlement of refugees in their jurisdictions, and shall devise a proposal to lawfully promote such involvement.

Sec. 6. Rescission of Exercise of Authority Relating to the Terrorism Grounds of Inadmissibility. The Secretaries of State and Homeland Security shall, in consultation with the Attorney General, consider rescinding the exercises of authority in section 212 of the INA, 8 U.S.C. 1182, relating to the terrorism grounds of inadmissibility, as well as any related implementing memoranda.

Sec. 7. Expedited Completion of the Biometric Entry-Exit Tracking System. (a) The Secretary of Homeland Security shall expedite the completion and implementation of a biometric entry-exit tracking system for all travelers to the United States, as recommended by the National Commission on Terrorist Attacks Upon the United States.

(b) The Secretary of Homeland Security shall submit to the President periodic reports on the progress of the directive contained in subsection (a) of this section. The initial report shall be submitted within 100 days of the date of this order, a second report shall be submitted within 200 days of the date of this order, and a third report shall be submitted within 365 days of the date of this order. Further, the Secretary shall submit a report every 180 days thereafter until the system is fully deployed and operational.

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Sec. 8. Visa Interview Security. (a) The Secretary of State shall immediately suspend the Visa Interview Waiver Program and ensure compliance with section 222 of the INA, 8 U.S.C. 1222, which requires that all individuals seeking a nonimmigrant visa undergo an in-person interview, subject to specific statutory exceptions.

(b) To the extent permitted by law and subject to the availability of appropriations, the Secretary of State shall immediately expand the Consular Fellows Program, including by substantially increasing the number of Fellows, lengthening or making permanent the period of service, and making language training at the Foreign Service Institute available to Fellows for assignment to posts outside of their area of core linguistic ability, to ensure that non-immigrant visa-interview wait times are not unduly affected.

Sec. 9. Visa Validity Reciprocity. The Secretary of State shall review all nonimmigrant visa reciprocity agreements to ensure that they are, with respect to each visa classification, truly reciprocal insofar as practicable with respect to validity period and fees, as required by sections 221(c) and 281 of the INA, 8 U.S.C. 1201(c) and 1351, and other treatment. If a country does not treat United States nationals seeking nonimmigrant visas in a reciprocal manner, the Secretary of State shall adjust the visa validity period, fee schedule, or other treatment to match the treatment of United States nationals by the foreign country, to the extent practicable.

Sec. 10. Transparency and Data Collection. (a) To be more transparent with the American people, and to more effectively implement policies and practices that serve the national interest, the Secretary of Homeland Security, in consultation with the Attorney General, shall, consistent with applicable law and national security, collect and make publicly available within 180 days, and every 180 days thereafter:

(i) information regarding the number of foreign nationals in the United States who have been charged with terrorism-related offenses while in the United States; convicted of terrorism-related offenses while in the United States; or removed from the United States based on terrorism-related activity, affiliation, or material support to a terrorism-related organization, or any other national security

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reasons since the date of this order or the last reporting period, whichever is later;

(ii) information regarding the number of foreign nationals in the United States who have been radicalized after entry into the United States and engaged in terrorism-related acts, or who have provided material support to terrorism-related organizations in countries that pose a threat to the United States, since the date of this order or the last reporting period, whichever is later; and

(iii) information regarding the number and types of acts of gender-based violence against women, including honor killings, in the United States by foreign nationals, since the date of this order or the last reporting period, whichever is later; and

(iv) any other information relevant to public safety and security as determined by the Secretary of Homeland Security and the Attorney General, including information on the immigration status of foreign nationals charged with major offenses.

(b) The Secretary of State shall, within one year of the date of this order, provide a report on the estimated long-term costs of the USRAP at the Federal, State, and local levels.

Sec. 11. 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.

Document ID: 0.7.10904.5251-000007

DONALD J. TRUMP

THE WHITE HOUSE,
January 27, 2017.

# # #

Document ID: 0.7.10904.5251-000007

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

Tareq Aqel Mohammed Aziz
and
Ammar Aqel Mohammed Aziz,
by their next friend,
Aqel Muhammad Aziz,

and

JOHN DOES 1-60,

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 WAYNE BIONDI, Customs and Border Protection (CBP) Port Director of the Area Port of Washington Dulles,

Respondents.

Case No.

Date: January 28, 2017

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

Document ID: 0.7.10904.5251-000008

INTRODUCTION

1. Petitioners Tareq Aqel Mohammed Aziz and Ammar Aqel Mohammed Aziz are two brothers of Yemeni nationality, who were granted Lawful Permanent Resident ("LPR") status by virtue of their status as immediate relatives of their father, a US citizen. Petitioners landed at Washington-Dulles International Airport ("IAD") on the morning of January 28, 2017, with plans to continue on to Michigan where their father was awaiting them. After conducting standard procedures of administrative processing and security checks, the federal government has deemed both Petitioners to be admissible to the United States as immigrants.

2. Despite these findings and Petitioner's valid entry documents, U.S. Customs and Border Protection ("CBP") blocked Petitioners from exiting IAD and detained Petitioners therein. No magistrate has determined that there is sufficient justification for the continued detention of either Petitioner. Instead, CBP is holding Petitioners at IAD along with approximately 50-60 other LPRs, who are named herein as John Does 1-60 solely pursuant to an executive order issued on January 27, 2017.

3. Because the executive order is unlawful as applied to Petitioners, their continued detention based solely on the executive order violates their Fifth Amendment procedural and substantive due process rights, violates the First Amendment Establishment Clause, is *ultra vires* to the immigration statutes, and violates the Administrative Procedure Act and Religious Freedom Restoration Act. Therefore, Petitioners respectfully apply to this Court for a writ of habeas corpus to remedy their unlawful detention by Respondents, and for declaratory and injunctive relief to prevent such harms from recurring.

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4. Petitioners JOHN DOES 1-60 are approximately 50-60 lawful permanent residents of the United States, most of whom are returning from trips abroad, all of whom are nationals of one of the following seven countries: Lybia, Iraq, Iran, Yemen, Syria, Sudan, Somalia. All are presently being held against their will by CBP officers in the international arrivals area of Dulles Airport. All are being held in an area where other passengers disembarking from international flights can see and hear them; accordingly, there is no reason that their attorneys could not be permitted to meet with them.

5. There are currently at least twelve attorneys waiting outside the international arrivals area at Dulles Airport. They are not being allowed back to see John Does 1-60. Nor are they being allowed to see Petitioners, despite being retained by Petitioners' father to represent the Petitioners. The undersigned attorney Simon Sandoval-Moshenberg called a CBP supervisor, and accurately represented himself to be Petitioners' attorney, but was not given any information about Petitioners.

JURISDICTION AND VENUE

6. Jurisdiction is conferred on this court by 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*.

7. Venue properly lies within the Eastern District of Virginia, Alexandria Division because a substantial part of the events or omissions giving rise to this action occurred in the District. 28 U.S.C. § 1391(b).

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8. No petition for habeas corpus has previously been filed in any court to review Petitioners' cases.

PARTIES

9. Petitioner Tareq Aqel Mohammed Aziz is a 21-year-old citizen and national of Yemen. He was granted lawful permanent resident (LPR) status by the US Embassy in Djibouti, by virtue of being an immediate relative of a US citizen.

10. Petitioner Ammar Aqel Mohammed Aziz, is a 19-year-old citizen and national of Yemen. He was granted lawful permanent resident (LPR) status by the US Embassy in Djibouti, by virtue of being an immediate relative of a US citizen.

11. Aqel Muhammad Aziz is a US citizen. He is a resident of Flint, Michigan.

12. Petitioners JOHN DOES 1-60 are approximately 60 lawful permanent residents of the United States, all nationals of Syria, Lybia, Iran, Iraq, Somalia, Yemen or Sudan, who landed at Dulles Airport in the last 24 hours and are not being allowed to pass through international arrivals. They are being held at international arrivals against their will.

13. 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.

14. 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.

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15. 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.

16. 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.

17. Respondent Wayne Biondi is the Customs and Border Protection (CBP) Port Director of the Area Port of Washington Dulles, which has immediate custody of Petitioners. He is sued in his official capacity.

18. 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

19. On January 20, 2017, Donald Trump was inaugurated as the forty-fifth President of the United States.

20. One week later, on January 27, at about 4:30pm, 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."

21. 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 admission to the United States, particularly (although not exclusively) as refugees. Among other

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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 "suspend[s]" indefinitely their entry to the country; similarly proclaims that "the entry of more than 50,000 refugees in fiscal year 2017 would be detrimental to the interests" of the country.

22. 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.

23. 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.

Petitioners' claim to lawful permanent resident status

24. The Aziz brothers were granted immigrant visas by the U.S. Embassy in Djibouti, by virtue of their status as immediate relatives of their father, who is a US citizen.

25. They departed Addis Ababa, Ethiopia on a flight to Washington Dulles International Airport ("IAD") about two hours before President Trump signed the EO. The flight

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made a stop in Dublin, Ireland, and then landed at IAD at around 8:00am on Saturday, January 28.

26. Upon information and belief, on arriving at IAD, the Aziz brothers were taken by unknown CBP agents at international arrivals, where they were held for the entire day and where they are still held.

27. In the afternoon of January 28, various attorneys retained by the Aziz brothers' father attempted to ascertain the whereabouts of Petitioners and to advocate for their release from CBP custody, but none of the attorneys were given any information or allowed to speak to Petitioners.

28. Petitioners are not being permitted to meet with their attorneys who are present at IAD and have made multiple attempts to meet with them.

29. Upon knowledge and belief, Petitioners remain in the custody of CBP, either at IAD or elsewhere in this District.

30. No grounds of inadmissibility under the Immigration and Nationality Act applies to either Petitioner, nor is there any reason under Title 8 of U.S. Code or Title 8 of the Code of Federal Regulations not to allow Petitioners to enter the United States as lawful permanent residents.

31. 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,

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is in removal proceedings, has committed one of a class of enumerated offenses, or has attempted to enter without inspection.

32. 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 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, 132 S. Ct. 1479, 1484, 182 L. Ed. 2d 473 (2012) (citing *In re Collado-Munoz* and recognizing that the definition supersedes previous statute's definition of entry).

33. 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").

34. As lawful permanent residents of the United States, Petitioners are attempting to return home.

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35. John Does 1-60 are, on information and belief, approximately 50-60 lawful permanent residents of the United States situated similarly to the Aziz brothers. None is being allowed access to counsel, notwithstanding the fact that there are over a dozen barred attorneys on the scene and willing to represent them *pro bono*. All are being denied entry into the United States and all are being told that they will be put on an airplane imminently.

CAUSES OF ACTION

COUNT ONE
FIFTH AMENDMENT – PROCEDURAL DUE PROCESS
DENIAL OF RIGHT TO ENTER UNITED STATES

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

37. 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)).

38. The United States government is obligated by United States law to allow LPRs admission into the United States, unless those LPRs are for some reason inadmissible.

39. Petitioners and John Does 1-60 were unlawfully denied the right to enter the United States as LPRs, without due process, in violation of the due process rights guaranteed by the Fifth and Fourteenth Amendments.

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40. In addition, they are being denied their right to counsel, by not being allowed to meet with attorneys who are present on the scene and willing to represent them *pro bono*.

COUNT TWO
FIRST AMENDMENT – ESTABLISHMENT CLAUSE

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

42. 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
THE IMMIGRATION AND NATIONALITY ACT

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

44. The Immigration and Nationality Act and implementing regulations entitle Petitioners to enter the United States as LPRs. Respondents' actions in seeking to return Petitioners to Yemen, taken pursuant to the EO, deprive Petitioners of their statutory and regulatory rights.

COUNT FOUR
FIFTH AMENDMENT – EQUAL PROTECTION

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

46. 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.

47. 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).

48. Respondents have demonstrated an intent to discriminate against Plaintiffs 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).

49. Applying a general law in a fashion that discriminate on the basis of religion in this way violates Petitioner's rights to equal protection 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). Petitioner satisfies 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

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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.*

50. 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.*, sources cited, *supra* ¶ 48, *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 Petitioners. *See* sources cited, *supra* ¶ 48.

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

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COUNT FIVE
ADMINISTRATIVE PROCEDURE ACT

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

53. 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 Four.

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

55. 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).

56. The INA and implementing regulations entitle Petitioners to enter the United States as LPRs.

57. 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 SIX
RELIGIOUS FREEDOM RESTORATION ACT

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

59. 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 Petitioners' exercise of religion in a way that is not the least restrictive means of furthering a compelling governmental interest.

PRAYER FOR RELIEF

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

(1) Issue a Writ of Habeas Corpus requiring Respondents to release Petitioners forthwith;

(2) Issue an injunction ordering Respondents not to detain any Petitioners 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.

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Respectfully submitted,

//s// Date: 1/28/2017

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UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

HAMEED KHALID DARWEESH and HAIDER SAMEER ABDULKHALEQ ALSHAWI,

on behalf of themselves and others similarly situated,

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 JAMES T. MADDEN, New York Field Director, CBP,

Respondents.

Case No.

Date: January 28, 2017

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

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INTRODUCTION

Petitioners Hameed Khalid Darweesh, an Iraqi husband and father of three, and Haider Sameer Abdulkhaleq Alshawi,[1] an Iraqi husband and father, landed at John F. Kennedy International Airport ("JFK Airport") on the evening of January 27, 2017. Petitioner Darweesh was granted a Special Immigrant Visa ("SIV") on January 20, 2017 as a result of his service to the United States as an interpreter, engineer and contractor. Petitioner Alshawi was granted a Follow to Join Visa on January 11, 2017 to rejoin his wife and son, who were granted refugee status due to their family's association with the United States military. After conducting standard procedures of administrative processing and security checks, the federal government has deemed both Petitioners not to pose threats to the United States.

Despite these findings and Petitioners' valid entry documents, U.S. Customs and Border Protection ("CBP") blocked both Petitioners from exiting JFK Airport and detained Petitioners therein. No magistrate has determined that there is sufficient justification for the continued detention of either Petitioner. Instead, CBP is holding Petitioners at JFK Airport solely pursuant to an executive order issued on January 27, 2017.

Because the executive order is unlawful as applied to Petitioners, their continued detention based solely on the executive order violates their Fifth Amendment procedural and substantive due process rights, and is ultra vires the immigration statutes. Further, Petitioners' continued unlawful detention is part of a widespread pattern applied to many refugees and arriving aliens detained after the issuance of the January 27, 2017 executive order. Therefore, on behalf of themselves and

[1] There are multiple English spellings of Mr. Alshawi's name.

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all others similarly situated, Petitioners respectfully apply to this Court for a writ of habeas corpus to remedy their unlawful detention by Respondents, and for declaratory and injunctive relief to prevent such harms from recurring.

JURISDICTION AND VENUE

1. Jurisdiction is conferred on this court by 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 Eastern District of New York 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 either of Petitioners' cases.

PARTIES

4. Hameed Khalid Darweesh, named Petitioner, is a citizen of Iraq and recipient of an Iraqi Special Immigrant Visa (SIV). As an interpreter, electrical engineer and contractor, Mr. Darweesh performed valuable work on behalf of the U.S. government in Iraq from roughly 2003 to 2013. Despite being issued a valid visa on January 20, 2017 to relocate to the United States, Mr. Darweesh is presently detained at JFK Airport. As of the filing of this complaint, the sole basis for Defendants' continued custody of Mr. Darweesh is the January 27, 2017 executive order issued by President Donald J. Trump.

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5. Haider Sameer Abdulkhaleq Alshawi, named Petitioner, is a citizen of Iraq and recipient of a Follow to Join (FTJ) Visa. His wife and child are lawful permanent residents residing in Houston, Texas. Despite being issued valid travel documentation on January 11, 2017, to relocate to the United States, Mr. Alshawi is presently detained at JFK Airport. As of the filing of this complaint, the sole basis for Defendants' continued custody of Mr. Alshawi is the January 27, 2017 executive order issued by President Donald J. Trump.

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.

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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.

13. One week later, on January 27, 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. 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 admission to the United States, particularly (although not exclusively) as refugees. 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 "suspend[s]" indefinitely their entry to the country; similarly proclaims that "the entry of more than 50,000 refugees in fiscal year 2017 would be detrimental to the interests" of the country.

15. 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.

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16. 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 Hameed Khalid Darweesh

17. Hameed Khalid Darweesh is a 53-year-old citizen of Iraq, married with three children (twenty years, fifteen years, and seven years of age).

18. Mr. Darweesh was trained and worked as an electrical engineer in Iraq. Between March 20, 2003 and September 30, 2013, he was contracted by the U.S. government to work in a variety of positions that placed him in substantial risk of being targeted, attacked and killed by anti-American militias and insurgents.

19. Mr. Darweesh's services included: working as an interpreter for the U.S. Army 101st Airborne in Baghdad and Mosul from April 1, 2003 to January 15, 2004; working as an interpreter for the 91st Engineering Unit at the Baghdad Airport from January 20, 2004 to August 4, 2004; working as a Project Engineer for the U.S. Government Projects Contracting Office Oil sector of North Iraq from December 5, 2005 to December 1, 2006; and, working for Vessar contractors of the U.S. government from 2006 to 2011.

20. Mr. Darweesh was directly targeted twice for his association with the U.S. Armed Forces. While working at the Baghdad Airport between 2004 and 2005, the Baghdad Police entered his house, claiming they were searching for a terrorist. The Baghdad Police are widely known to be closely affiliated with anti-American militias. Shortly after this incident, two of Mr.

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Darweesh's colleagues were killed as soon as they arrived at work. As a result of these attacks, Mr. Darweesh feared for his safety and decided to leave Baghdad for Kirkuk.

21. In the second instance, in July 2009, Mr. Darweesh was stopped at a market in Kirkuk where he was informed by a local shopkeeper that men were driving around in a BMW asking for him by name and the location of his house. These men returned a second time the following week, and Mr. Darweesh had strong reasons to suspect that the men searching for him were terrorists. As a result, Mr. Darweesh and his family were forced to flee to a different area of Iraq, Erbil.

22. Based on these threats and his over ten years of service to the U.S. government, Mr. Darweesh applied for an Iraqi Special Immigrant Visa (SIV) status on or around October 1, 2014.

23. Congress created the Iraqi and Afghan Special Immigrant Visa (SIV) programs to provide safety and refuge in the United States for Iraqis and Afghans who face or have faced serious threats on account of their faithful and valuable service to the United States. The programs were established pursuant to the Refugee Crisis in Iraq Act of 2007, 8 U.S.C. § 1157 note at 1241-49 and the Afghan Allies Protection Act of 2008, 8 U.S.C. § 1101 note at 601-02.

24. The first step in pursuing a SIV is obtaining Chief of Mission (COM) Approval from the Embassy. The Chief of Mission determines whether the applicant has "provided faithful and valuable service to the United States" and "has experienced or is experiencing a serious threat" as a "consequence" of that service.

25. After obtaining COM Approval, a SIV Applicant files the Form I-360 petition to USCIS to apply for an SIV. Once the petition is approved, the applicant submits a DS-260 visa

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application, along with accompanying documents, to the National Visa Center. After the DS-260 is processed, the applicant undergoes an interview at a U.S. consulate or embassy.

26. After the interview, SIV applications go into administrative processing during which the U.S. government conducts various security checks as well as a medical examination. Once an applicant is cleared, they are issued a SIV to travel to the United States.

27. Several weeks after the applicant enters the United States, the applicant receives a green card in the mail and can naturalize five years later.

28. Mr. Darweesh received COM Approval for the visa on January 26, 2015, in a signed statement from Lena Levitt, Refugee Coordinator of the Designee of the Chief of Mission, noting that Mr. Darweesh had provided "faithful and valuable service to the United States Government."

29. Despite receiving COM approval in January 2015, it took over two years for Mr. Darweesh's visa and visas for his family to be processed. After petitioning for a SIV through the U.S. Citizenship and Immigration Services, which was approved conditionally on March 25, 2015, Mr. Darweesh appeared for an in-person interview at the U.S. Embassy in Baghdad on April 12, 2016 and went through administrative processing, including security background checks as well as medical exams.

30. Five Special Immigrant Visas were issued to Mr. Darweesh and his family on January 20, 2017, and they received them by DHL on January 25, 2017. Because of the sensitive and dangerous nature of Mr. Darweesh's situation, the family immediately boarded a flight from Erbil to New York City, via Istanbul, and arrived in the United States on January 27, 2017, around 6:00 PM EST.

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31. Mr. Darweesh and his family were expecting to travel on to Charlotte, North Carolina, where they were to receive refugee benefits. However, after de-planing in John F. Kennedy Airport in Queens, New York, Mr. Darweesh was held by U.S. Customs and Border Protection (CBP) and remains in their custody.

32. Mr. Darweeh's attorney was present at the Arrivals section of Terminal 1 but did not enter the CBP area. Mr. Darweesh and his family waited to be processed by CBP for about an hour. Approximately one hour later, Mr. Darweesh himself was moved into "secondary screening." The family waited for over an hour before a CBP officer and Mr. Darweesh emerged to return passports for every member of Mr. Darweesh's family except for Mr. Darweesh himself. Mr. Darweesh was then taken back into secondary screening.

33. At approximately 11:30pm, two CBP officers, upon information and belief, Officer Scott Maurel and Officer Ray Sinacola, requested that the family return to the CBP-controlled security zone for additional questioning of Mr. Darweesh's wife. CBP refused to conduct the questioning of Mrs. Darweesh in the Arrivals area despite requests of counsel. When asked by counsel, the officers confirmed that they were making a request, not giving an order at that time. Through counsel, the family declined the request and left the airport.

34. Mr. Darweesh is not being permitted to meet with his attorneys who are present at JFK and have made multiple attempts to meet with him.

35. When Mr. Darweesh's attorneys approached CBP requesting to speak with Mr. Darweesh, CBP indicated that they were not the ones to talk to about seeing their client. When the attorneys asked "Who is the person to talk to?" the CBP agents responded, "Mr. President. Call Mr. Trump."

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36. Upon knowledge and belief, Mr. Darweesh remains in the custody of CBP at JFK Airport.

37. Upon knowledge and belief, Mr. Darweesh is not being permitted to apply for asylum or other forms of protection from removal.

38. Upon knowledge and belief, Mr. Darweesh is at imminent risk of being returned to Iraq against his will, and despite the grave danger he faces there.

Petitioner Haider Sameer Abdulkhaleq Alshawi

39. Haider Sameer Abdulkhaleq Alshawi is an Iraqi national born on April 29, 1983 in Baghdad, Iraq. He studied accounting at Baghdad University, graduating in 2006.

40. Mr. Alshawi possesses the requisite documentation to enter the U.S.: an immigrant visa in his passport.

41. Upon information and belief, Mr. Alshawi was deemed admissible for a Follow to Join (FTJ) visa category F2A (joining spouse and child) awarded by the U.S. Department of State on January 11, 2017. *See generally* 8 U.S.C. § 1157(c)(2)(A); 8 C.F.R. § 207.7(a) (spouse or child of refugee "shall be granted refugee status if accompanying or following-to-join the principal alien"). Upon information and belief, the visa was authorized by USCIS and the State Department, documenting its approval of Mr. Alshawi's admissibility to the United States as an FTJ Visa recipient. Upon information and belief, The U.S. Embassy in Stockholm also determined that Mr. Alshawi does not pose a security threat to the United States, and, as a result, is admissible to the United States.

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42. The FTJ visa was granted to reunite Mr. Alshawi with his wife, Duniyya Alshawi, and their seven-year-old son in the United States. Mr. Alshawi and his wife have been married since 2008.

43. Ms. Alshawi worked for Falcon Security Group, a U.S. contractor, from 2006 to 2007 as an accountant. Upon information and belief, her brother also worked for Falcon Security Group in Human Resources. Mr. Alshawi heard through neighbors in the family's community in Baghdad that, due to the family's association with the U.S. military, insurgents thought that they were collaborators.

44. In 2010, insurgents attempted to kidnap Ms. Alshawi's brother. A month later, an IED placed on Mr. Alshawi's sister-in-law's car detonated, killing her husband and severely injuring her and her daughter. Fearing for their safety, Mr. Alshawi and his wife moved from Baghdad to Erbil, Iraq.

45. Ms. Alshawi and her son applied for refugee status in January 2011. Upon information and belief, in January of 2014 Ms. Alshawi and her son were approved to travel to Houston through the Priority 2-Direct Access Program (P2-DAP). Upon information and belief, Ms. Alshawi and her son have since adjusted their statuses to that of lawful permanent residents and now live in Houston, Texas. Ms. Alshawi subsequently filed for a FTJ visa for her husband. On October 9, 2014, USCIS approved Ms. Alshawi's I-730 petition for Mr. Alshawi's entry. On January 11, 2017, Mr. Alshawi obtained a U.S. Visa Foil Type ZZ (Visa 93) with a notation in his passport that the foil was prepared at DHS request.

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46. Mr. Alshawi's FTJ visa grants him permission to enter the United States. Upon information and belief, pursuant to this visa Mr. Alshawi traveled from Stockholm, Sweden on January 27, 2017 (local time) to immigrate to the United States.

47. Additionally, Ms. Alshawi filed an I-130 application with USCIS to petition for Mr. Alshawi to enter as an alien relative. Mr. Alshawi has a priority date of December 18, 2015. Currently, the visa bulletin for February indicates that visas are being processed with final action dates up to April 15, 2015. Mr. Alshawi thus soon will be eligible for visa processing on this I-130 application in addition to his existing FTJ Visa.

48. Upon information and belief, Mr. Alshawi arrived in at John F. Kennedy airport in New York City on January 27, 2017 at approximately 8:22 PM EST on Norwegian Air flight DY 7005.

49. Upon arrival at the gate, Mr. Alshawi was blocked on the aircraft by CBP. A Norwegian Airline attendant confirmed that he was being held by CBP.

50. Mr. Alshawi is not being permitted to meet with his attorneys who are present at JFK and have made multiple attempts to meet with him.

51. When Mr. Alshawi's attorneys approached CBP requesting to speak with Mr. Alshawi, CBP indicated that they were not the ones to talk to about seeing their client. When the attorneys asked "Who is the person to talk to?" the CBP agents responded, "Mr. President. Call Mr. Trump."

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52. Upon information and belief, Mr. Alshawi remains in the custody of CBP at JFK Airport.

53. Upon information and belief, Mr. Alshawi is not being permitted to apply for asylum or other forms of protection from removal.

54. Upon information and belief, Mr. Alshawi is at imminent risk of being returned to Iraq against his will, despite the grave danger he faces there.

REPRESENTATIVE HABEAS ACTION ALLEGATIONS

55. In addition to Petitioners Darweesh and Alshawi, there are numerous other individuals detained nationwide who are either refugees admitted via USRAP or visa holders from Iraq, Syria, Iran, Sudan, Libya, Somalia, and Yemen. Each of these similarly situated individuals has been detained and questioned by CBP officials, denied entry to the United States, and subject to the threat of return to the country from which their travel originated, regardless of their presentation of valid entry documents, their status in the prior country, and possible claims qualifying them for protection under 8 USC 1101(a)(42) and 8 U.S.C. § 1225(b)(1)(A)(ii).

56. Each of these similarly situated individuals is entitled to bring a petition for a writ of habeas corpus or, in the alternative a complaint for declaratory and injunctive relief, to prohibit the policy, pattern, and practice of Respondents detaining class members and prohibiting class members from entering the United States when they arrive at U.S. borders with valid entry documents. As set out in further detail in the concurrently filed Motion for Class Certification, these similarly situated individuals satisfy the numerosity, typicality, commonality, and

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adequacy of representation requirements established by *United States ex rel. Sero v. Preiser*, 506 F.2d 1115, 1125-26 (2d Cir. 1974) and Fed. R. Civ. P. 23, and respectfully move this Court for an order certifying a representative class of Petitioners consisting of all 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, but who have been or will be denied entry to the United States on the basis of the January 27, 2017 Executive Order.

CAUSES OF ACTION

COUNT ONE
FIFTH AMENDMENT – PROCEDURAL DUE PROCESS
DENIAL OF RIGHT TO APPLY FOR ASYLUM

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

58. 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.

59. The United States government is obligated by United States and international law to hear the asylum claims of noncitizens presenting themselves at United States borders and ports of entry. The Immigration and Nationality Act provides that "[a]ny alien who is physically present in the United States or who arrives in the United States. . . irrespective of such alien's status, may

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apply for asylum in accordance with this section or, where applicable, section 235(b)." 8 U.S.C. § 1158(a)(1); *see also id.* § 1225(b)(1)(A)(ii).

60. Consistent with these United States statutory and international law obligations, individuals arriving at United States ports of entry must afforded an opportunity to apply for asylum or other forms of humanitarian protection and be promptly received and processed by United States authorities.

61. Having presented themselves at a United States port of entry, Petitioners are entitled to apply for asylum and to be received and processed by United States authorities.

62. Respondents' actions in denying Petitioners the opportunity to apply for asylum, taken pursuant to the EO, violate the procedural due process rights guaranteed by the Fourteenth Amendment.

COUNT TWO
FIFTH AMENDMENT – PROCEDURAL DUE PROCESS
DENIAL OF RIGHT TO WITHHOLDING/CAT PROTECTION

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

64. Under United States law as well as human rights conventions, the United States may not return ("*refoul*") a noncitizen to a country where she may face torture or persecution. *See* 8 U.S.C. § 1231(b); United Nations Convention Against Torture ("CAT"), implemented in the Foreign Affairs Reform and RestrucTturing Act of 1998 ("FARRA"), Pub. L. No. 105-277, div. G, Title XXII, § 2242, 112 Stat. 2681, 2681-822 (1998) (codified as Note to 8 U.S.C. § 1231).

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65. Respondents' actions in seeking to return Petitioners to Iraq, taken pursuant to the EO, deprive Petitioners of their rights under 8 U.S.C. § 1231(b) and the Convention Against Torture without due process of law.

COUNT THREE

THE IMMIGRATION AND NATIONALITY ACT, THE CONVENTION AGAINST TORTURE, THE FOREIGN AFFAIRS REFORM AND RESTRUCTURING ACT OF 1998, IMPLEMENTING REGULATIONS

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

67. The Immigration and Nationality Act 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 Petitioners to an opportunity to apply for asylum, withholding of removal, and CAT relief. These provisions also entitle Petitioners to a grant of withholding of removal and CAT relief upon a showing that they meet the applicable legal standards. Respondents' actions in seeking to return Petitioners to Iraq, taken pursuant to the EO, deprive Petitioners of their statutory and regulatory rights.

COUNT FOUR
FIFTH AMENDMENT – EQUAL PROTECTION

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

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

70. 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.

COUNT FIVE
ADMINISTRATIVE PROCEDURE ACT

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

72. 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).

73. Respondents' detention and mistreatment of Petitioners and the members of the proposed class pursuant to the January 27 EO, as set forth above, is not authorized by the INA.

74. Respondents' actions in detaining and mistreating Petitioners and other members of the proposed class as set forth above were arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; contrary to constitutional right, power, privilege, or immunity; in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; and without observance of procedure required by law, in violation of the Administrative Procedure Act, 5 U.S.C. §§ 706(2)(A)-(D).

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PRAYER FOR RELIEF

WHEREFORE, Petitioners and other members of the proposed class pray that this Court grant the following relief:

(1) Issue a Writ of Habeas Corpus requiring Respondents to release Petitioners and other members of the proposed class forthwith;

(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 and other members of the proposed class is and will be unauthorized by statute and contrary to law;

(4) Award Petitioners and other members of the proposed class 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
Brooklyn, New York

Respectfully submitted,

/s/ Michael J. Wishnie
Michael J. Wishnie (MW 1952)
Elora Mukherjee
Amit Jain, Law Student Intern
Natalia Nazarewicz, Law Student Intern
My Khanh Ngo, Law Student Intern
Yusuf Saei, Law Student Intern

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UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

Tareq Aqel Mohammed Aziz
and
Ammar Aqel Mohammed Aziz,
by their next friend,
Aqel Muhammad Aziz,
and
John Does 1-60,

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 WAYNE BIONDI, Customs and Border Protection (CBP) Port Director of the Area Port of Washington Dulles,

Respondents.

Case No.

Date: January 28, 2017

Document ID: 0.7.10904.5251-000010

[PROPOSED] TEMPORARY RESTRAINING ORDER

Pursuant to Federal Rule of Civil Procedure 65, the Court orders that:

a) respondents shall permit lawyers access to all legal permanent residents being detained at Dulles International Airport;

b) respondents are forbidden from removing petitioners lawful permanent residents at Dulles International Airport for a period of 7 days from the issuance of this Order.

The Honorable Leonie M. Brinkema
U.S. District Court for the Eastern District of Virginia

Dates: January 28, 2017

Document ID: 0.7.10904.5251-000010

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

Tareq Aqel Mohammed Aziz
and
Ammar Aqel Mohammed Aziz,
by their next friend,
Aqel Muhammad Aziz,
and
John Does 1-60,

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 WAYNE BIONDI, Customs and Border Protection (CBP) Port Director of the Area Port of Washington Dulles,

Respondents.

Case No.

Date: January 28, 2017

PETITIONERS' EMERGENCY APPLICATION FOR A TEMPORARY RESTRAINING ORDER

Document ID: 0.7.10904.5251-000011

INTRODUCTION

Petitioners are 50 to 60 Lawful Permanent Residents ("LPRs") currently detained at Dulles Airport. Respondents have detained these individuals or otherwise barred them from exiting the airport or continuing their transit into the United States. Respondents have denied these individuals access to lawyers. Upon information and belief, respondents imminently intend to remove these individuals from the United States.

Pursuant to Fed. R. Civ. P. 65, petitioners respectfully request that this Court issue a temporary restraining order that (a) orders respondents to permit undersigned counsel or other lawyers access to petitioners, and (b) forbids respondents from removing petitioners from the United States for a period of 7 days.

BACKGROUND

1. Petitioners Tareq Aqel Mohammed Aziz (Tareq) and Ammar Aqel Mohammed Aziz (Ammar) are two brothers of Yemeni nationality, who were granted Lawful Permanent Resident ("LPR") status by virtue of their status as immediate relatives of their father, a US citizen.

2. They landed at Washington-Dulles International Airport ("IAD") on the morning of January 28, 2017, with plans to continue on to Michigan where their father was awaiting them.

3. After conducting standard procedures of administrative processing and security checks, the federal government has deemed both Aziz brothers to be admissible to the United States as immigrants.

4. Despite these findings and Petitioner's valid entry documents, U.S. Customs and Border Protection ("CBP") blocked them from exiting IAD and detained them therein. No

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magistrate has determined that there is sufficient justification for the continued detention of either of the Aziz brothers. Instead, CBP is holding them at IAD solely pursuant to an executive order issued on January 27, 2017.

5. Lawyers have been denied access to Tareq and Ammar Aziz.

6. Upon information and belief, respondents intend to imminently remove Tareq Aziz and Ammar Aziz from the United States absent injunctive relief from this Court.

7. Petitioners JOHN DOES 1-60 are approximately 50-60 lawful permanent residents of the United States, most of whom are returning from trips abroad, all of whom are nationals of one of the following seven countries: Lybia, Iraq, Iran, Yemen, Syria, Sudan, Somalia. All are in the very same situation as the Aziz brothers. All are presently being held against their will by CBP officers in the international arrivals area of Dulles Airport. All are being held in an area where other passengers disembarking from international flights can see and hear them; accordingly, there is no reason that their attorneys could not be permitted to meet with them.

8. Respondents are also precluding these petitioners from access to lawyers.

9. Upon information and belief, respondents intend to imminently remove these individuals from the United States.

10. On January 28, at approximately 8:30pm, petitioners emailed the Chief of the Civil Division for the U.S. Attorney's Office, Eastern District of Virginia, to provide notice of this filing.

ARGUMENT

11. Petitioners will suffer irreparable harm if the requested temporary restraining order does not issue.

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12. First, absent access to legal counsel, petitioners cannot meaningfully understand they legal rights and obligations and therefore they cannot make determinations about what legal proceedings to pursue.

13. Second, if removed from the United States, petitioners are uncertain when or whether they will be permitted to return to the United States. Similarly, if removed from the United States, petitioners may lose material legal rights. Respondents may later argue, for example, that there are legal distinctions to be drawn between individuals within the United States and those outside the United States.

14. Third, the countries to which respondents would remove petitioners are unknown. Moreover, because lawyers have been denied access, the particular circumstances of each individual petitioner is unknown. There therefore exists the risk that petitioners have credible fears regarding a removal from the United States, should any petitioner be sent to a country where he or she has previously been the subject to or threatened with persecution.

15. Fourth, because petitioners have lawful permanent residence status, they are entitled to admission into the United States. Absent this Court's grant of temporary relief, the rights of these individuals to enter the United States will be irreparably denied.

16. Fifth, many petitioners have family members within the United States. The rights of these individuals to be unified with petitioners will be denied unless this Court grants the temporary relief requested.

17. For reasons explained more fully in the accompanying petition for habeas corpus, petitioners have a substantial likelihood of prevailing on the merits. All petitioners have lawful permanent residence status which entitles them to admission into the United States. No grounds of inadmissibility under the Immigration and Nationality Act apply to any petitioner. Nor is there

Document ID: 0.7.10904.5251-000011

any reason under Title 8 of U.S. Code or Title 8 of the Code of Federal Regulations to prohibit any petitioner from entering the United States as lawful permanent residents.

PRAYER FOR RELIEF

Petitioners pray that this Court grant the following relief pursuant to Fed. R. Civ. P. 65:

Issue a temporary restraining order that (a) compels respondents to permit lawyers to meet with the individuals currently detained at Dulles airport and (b) forbids respondents from removing petitioners from the United States for a period of 7 days.

Respectfully submitted,

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UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

Tareq Aqel Mohammed Aziz
and
Ammar Aqel Mohammed Aziz,
by their next friend,
Aqel Muhammad Aziz,
and
John Does 1-60,

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 WAYNE BIONDI, Customs and Border Protection (CBP) Port Director of the Area Port of Washington Dulles,

Respondents.

Case No.

Date: January 28, 2017

PETITIONERS' EMERGENCY APPLICATION FOR A TEMPORARY RESTRAINING ORDER

Document ID: 0.7.10904.5251-000012

INTRODUCTION

Petitioners are 50 to 60 Lawful Permanent Residents ("LPRs") currently detained at Dulles Airport. Respondents have detained these individuals or otherwise barred them from exiting the airport or continuing their transit into the United States. Respondents have denied these individuals access to lawyers. Upon information and belief, respondents imminently intend to remove these individuals from the United States.

Pursuant to Fed. R. Civ. P. 65, petitioners respectfully request that this Court issue a temporary restraining order that (a) orders respondents to permit undersigned counsel or other lawyers access to petitioners, and (b) forbids respondents from removing petitioners from the United States for a period of 7 days.

BACKGROUND

1. Petitioners Tareq Aqel Mohammed Aziz (Tareq) and Ammar Aqel Mohammed Aziz (Ammar) are two brothers of Yemeni nationality, who were granted Lawful Permanent Resident ("LPR") status by virtue of their status as immediate relatives of their father, a US citizen.

2. They landed at Washington-Dulles International Airport ("IAD") on the morning of January 28, 2017, with plans to continue on to Michigan where their father was awaiting them.

3. After conducting standard procedures of administrative processing and security checks, the federal government has deemed both Aziz brothers to be admissible to the United States as immigrants.

4. Despite these findings and Petitioner's valid entry documents, U.S. Customs and Border Protection ("CBP") blocked them from exiting IAD and detained them therein. No

Document ID: 0.7.10904.5251-000012

magistrate has determined that there is sufficient justification for the continued detention of either of the Aziz brothers. Instead, CBP is holding them at IAD solely pursuant to an executive order issued on January 27, 2017.

5. Lawyers have been denied access to Tareq and Ammar Aziz.

6. Upon information and belief, respondents intend to imminently remove Tareq Aziz and Ammar Aziz from the United States absent injunctive relief from this Court.

7. Petitioners JOHN DOES 1-60 are approximately 50-60 lawful permanent residents of the United States, most of whom are returning from trips abroad, all of whom are nationals of one of the following seven countries: Lybia, Iraq, Iran, Yemen, Syria, Sudan, Somalia. All are in the very same situation as the Aziz brothers. All are presently being held against their will by CBP officers in the international arrivals area of Dulles Airport. All are being held in an area where other passengers disembarking from international flights can see and hear them; accordingly, there is no reason that their attorneys could not be permitted to meet with them.

8. Respondents are also precluding these petitioners from access to lawyers.

9. Upon information and belief, respondents intend to imminently remove these individuals from the United States.

10. On January 28, at approximately 8:30pm, petitioners emailed the Chief of the Civil Division for the U.S. Attorney's Office, Eastern District of Virginia, to provide notice of this filing.

ARGUMENT

11. Petitioners will suffer irreparable harm if the requested temporary restraining order does not issue.

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12. First, absent access to legal counsel, petitioners cannot meaningfully understand they legal rights and obligations and therefore they cannot make determinations about what legal proceedings to pursue.

13. Second, if removed from the United States, petitioners are uncertain when or whether they will be permitted to return to the United States. Similarly, if removed from the United States, petitioners may lose material legal rights. Respondents may later argue, for example, that there are legal distinctions to be drawn between individuals within the United States and those outside the United States.

14. Third, the countries to which respondents would remove petitioners are unknown. Moreover, because lawyers have been denied access, the particular circumstances of each individual petitioner is unknown. There therefore exists the risk that petitioners have credible fears regarding a removal from the United States, should any petitioner be sent to a country where he or she has previously been the subject to or threatened with persecution.

15. Fourth, because petitioners have lawful permanent residence status, they are entitled to admission into the United States. Absent this Court's grant of temporary relief, the rights of these individuals to enter the United States will be irreparably denied.

16. Fifth, many petitioners have family members within the United States. The rights of these individuals to be unified with petitioners will be denied unless this Court grants the temporary relief requested.

17. For reasons explained more fully in the accompanying petition for habeas corpus, petitioners have a substantial likelihood of prevailing on the merits. All petitioners have lawful permanent residence status which entitles them to admission into the United States. No grounds of inadmissibility under the Immigration and Nationality Act apply to any petitioner. Nor is there

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any reason under Title 8 of U.S. Code or Title 8 of the Code of Federal Regulations to prohibit any petitioner from entering the United States as lawful permanent residents.

PRAYER FOR RELIEF

Petitioners pray that this Court grant the following relief pursuant to Fed. R. Civ. P. 65:

Issue a temporary restraining order that (a) compels respondents to permit lawyers to meet with the individuals currently detained at Dulles airport and (b) forbids respondents from removing petitioners from the United States for a period of 7 days.

Respectfully submitted,

Simon Sandoval-Moshenberg (VA 77110)
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Document ID: 0.7.10904.5251-000012

(b) (5)

[redacted]

From: Muneer Ahmad [mailto:muneer.ahmad@ylsclinics.org]
Sent: Saturday, January 28, 2017 5:12 PM
To: Evans, Sarah (USANYE) <SEvans@usa.doj.gov>; Sasso, Jennifer (USANYE) <JSasso@usa.doj.gov>; Riley, Susan (USANYE) <SRiley@usa.doj.gov>
Cc: Mike Wishnie <michael.wishnie@yale.edu>; Elora Mukherjee <elora.mukherjee@YLSClinics.org>; Omar Jadwat <OJadwat@aclu.org>; David Hausman <dhausman@aclu.org>; jkornfeld@refugeerights.org; Lee Gelernt <LGELERNT@aclu.org>
Subject: EMERGENCY Motion in Darweesh et al. v. Trump et al., No. 1:17-cv-480 (EDNY)

Dear Susan, Sarah and Jennifer,

Please find attached an emergency motion and memorandum of law in support thereof in the above-referenced case. We are asking the Court to consider the motion as soon as possible.

Sincerely,
Muneer Ahmad

Muneer I. Ahmad
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P.O. Box 209090
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PRIVILEGED AND CONFIDENTIAL
This e-mail message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure. If you are not the intended recipient, please do not disseminate, distribute or copy this communication, by e-mail or otherwise. Instead, please notify me immediately by return e-mail (including the original message in your reply) and by telephone and then delete and discard all copies of the e-mail.

From: Lee Gelernt
Date: Saturday, January 28, 2017 at 9:02 AM
To: "sevans@usa.doj.gov"
Cc: "jennifer.sasso@usdoj.gov", Muneer Ahmad, Mike Wishnie, Elora Mukherjee, Omar Jadwat, David Hausman, "jkornfeld@refugeerights.org"
Subject: Fwd: Darweesh et al. v. Trump et al., No. 1:17-cv-480 (EDNY)

Papers

Begin forwarded message:

> **From:** "Wishnie, Michael" <michael.wishnie@yale.edu>
> **To:** "Scott.eeDunn@usdoj.gov" <Scott.Dunn@usdoj.gov>
> **Cc:** "Lee Gelernt" <LGELERNT@aclu.org>, "Karen Tumlin" <tumlin@nilc.org>, "Justin Cox" <cox@nilc.org>, "Omar Jadwat" <OJadwat@aclu.org>, "Cecillia Wang" <Cwang@aclu.org>, "Muneer Ahmad" <muneer.ahmad@ylsclinics.org>, "Elora Mukherjee" <elora.mukherjee@YLSClinics.org>, "Becca Heller" <bheller@refugeerights.org>, "spoellot@refugeerights.org" <spoellot@refugeerights.org>
> **Subject: Darweesh et al. v. Trump et al., No. 1:17-cv-480 (EDNY)**
>
> Dear Scott,
>
> Attached are courtesy copies of the habeas petition and motion for class certification in the above-captioned case, which we filed this morning. The named petitioners are Iraqi nationals who arrived at JFK Airport yesterday evening and were detained there overnight by CBP, solely pursuant to an executive order issued hours earlier. As of the time of filing, the petitioners were still at JFK in the custody of respondents. I have copied co-counsel on this message. Please contact us as soon as possible, as petitioners may have no choice but to seek judicial intervention over the weekend.
>
> Best,
>
> Mike
>
> Michael J. Wishnie
> William O. Douglas Clinical Professor of Law and
> Deputy Dean for Experiential Education
> Yale Law School

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Document ID: 0.7.10904.5253

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

HAMEED KHALID DARWEESH and HAIDER SAMEER ABDULKHALEQ ALSHAWI,

on behalf of themselves and others similarly situated,

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; JAMES T. MADDEN, New York Field Director, CBP,

Respondents.

Emergency Motion for Stay of Removal

Case No. 1:17-cv-00480

Date: January 28, 2017

PETITIONERS' EMERGENCY MOTION FOR STAY OF REMOVAL

Pursuant to Federal Rule of Civil Procedure 7(b)(1) and Local Rule 7.1, Petitioners Hameed Khalid Darweesh, Haider Sameer Abdulkhaleq Alshawi, and class members file this ***emergency motion*** respectfully requesting that the Court immediately stay their removal from the United States during the pendency of their habeas petition. In early January 2017, Petitioners were both granted valid entry documents from the federal government to enter the United States. However, on the evening of January 27, 2017, U.S. Customs and Border Protection ("CBP") blocked both Petitioners from exiting John F. Kennedy International Airport ("JFK Airport") and detained Petitioners therein solely pursuant to an executive order issued on January 27, 2017 by

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President Donald J. Trump. Petitioners filed a habeas petition and motion for class certification in the early morning on January 28, 2017, arguing that their continued detention violates their Fifth Amendment procedural and substantive due process rights, is ultra vires under the immigration statutes, and violates the Administrative Procedure Act. Petitioner Darweesh was released from CBP custody subsequent to the filing of the habeas petition in this case, but, on information and belief, CBP continues to hold Petitioner Alshawi and other members of the proposed class, including dozens and dozens other individuals currently detained at JFK Airport. Further, Respondents' continued detention of members of the proposed class is part of a widespread policy, pattern, and practice applied to many refugees, arriving aliens and other individuals from Iraq, Syria, Iran, Sudan, Libya, Somalia, and Yemen legally authorized to enter the United States, but who have been or will be detained at ports of entry and denied entry to the United States on the basis of the January 27 Executive Order.

Therefore, on behalf of themselves and all others similarly situated putative class members, Petitioners respectfully move this Court to immediately grant a class-wide stay of removal during the pendency of this habeas petition for the reasons stated in the attached Memorandum of Law.

DATED: January 28, 2017
New Haven, Connecticut

Respectfully submitted,

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Muneer I. Ahmad†
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Counsel for Petitioners

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CERTIFICATE OF SERVICE

I, Michael Wishnie, hereby certify that on January 28, 2017 the foregoing motion for a stay of removal and accompanying documents were filed through the CM/ECF system and will be sent by FedEx to the parties at the addresses below.

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UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

HAMEED KHALID DARWEESH and HAIDER SAMEER ABDULKHALEQ ALSHAWI,

on behalf of themselves and others similarly situated,

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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.

Memorandum of Law In Support Of EMERGENCY Motion for Stay of Removal

Case No. 1:17-cv-00480

Date: January 28, 2017

PETITIONERS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR EMERGENCY STAY OF REMOVAL

Document ID: 0.7.10904.5253-000002

INTRODUCTION

Pursuant to Federal Rule of Civil Procedure 7(b)(1) and Local Rule 7.1, Petitioners Hameed Khalid Darweesh and Haider Sameer Abdulkhaleq Alshawi move this Court to stay their removal during the pendency of their habeas petition. In early January 2017, Petitioners were both granted valid entry documents from the federal government to enter the United States. However, on the evening of January 27, 2017, U.S. Customs and Border Protection ("CBP") blocked both Petitioners from exiting John F. Kennedy International Airport ("JFK Airport") and detained them therein. CBP's detention of Petitioners was solely pursuant to an executive order issued on January 27, 2017 by President Donald J. Trump. Petitioners filed a habeas petition in the early morning on January 28, 2017, arguing that their continued detention violates their Fifth Amendment procedural and substantive due process rights, is ultra vires the immigration statutes, and violates the Administrative Procedure Act. Petitioner Darweesh was released from CBP custody subsequent to the filing of the complaint in this case, but, on information and belief, CBP continues to hold Petitioner Alshawi and dozens if not hundreds of other members of the proposed class at JFK and other airports around the country. Further, Defendants' continued unlawful detention of Petitioner Alshawi and members of the proposed class is part of a widespread pattern of unlawful detention of refugees, arriving aliens and other individuals from Iraq, Syria, Iran, Sudan, Libya, Somalia, and Yemen legally authorized to enter the United States, but who have been or will be denied entry to the United States on the basis of the executive order. If removed, Petitioners face irreparable injury, including persecution and possible death in their home countries; issuance of stay of removal would not injure the government and is in the public interest.

Counsel for Petitioners have contacted government attorneys for Respondents to request

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that the government voluntarily agree to a temporary stay of removal, but the government has not responded and has not agreed to a temporary stay for the Petitioners or members of the class they propose to represent. Accordingly, Petitioners have no choice but to seek assistance from this Court to prevent the imminent repatriation of dozens and dozens of refugees, visa-holders, and other individuals from nations subject to the January 27 executive order. On behalf of themselves and all others similarly situated, Petitioners respectfully move this Court to grant a class-wide emergency stay of removal during the pendency of this habeas petition.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

On January 27, 2017, one week after being inaugurated as the forty-fifth President of the United States, Donald Trump signed an executive order entitled "Protecting the Nation from Foreign Terrorist Entry into the United States" ("EO"). 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 admission to the United States, particularly (although not exclusively) as refugees. Among other things, the EO imposes a 120-day moratorium on the refugee resettlement program as a whole; indefinitely suspends the entry of Syrian nationals; and suspends entry of all immigrants and nonimmigrants referred to in section 217(a)(12) of the INA, 8 U.S.C. 1187(a)(12), for 90 days. Nationals from seven countries, Iraq, Iran, Libya, Somalia, Sudan, Syria, and Yemen, are covered under this EO. *See* "Protecting the Nation from Foreign Terrorist Entry into the United States." *See* ECF No. 1, Ex. A ("January 27 EO" or "the EO").

Petitioner Hameed Khalid Darweesh is a 53-year-old citizen of Iraq and recipient of an Iraqi Special Immigrant Visa ("SIV"). As an interpreter, electrical engineer and contractor, Mr. Darweesh performed valuable work on behalf of the U.S. government in Iraq for over a decade. From March 2003 to September 2013, Mr. Darweesh was contracted by the U.S. government to

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work in a variety of positions that placed him at substantial risk of being targeted, attacked and killed by anti-American militias and insurgents. Based on direct threats to his life and his over ten years of service, Mr. Darweesh was approved for and was issued an SIV on January 20, 2017 to relocate to the United States. The SIV programs were created by Congress precisely to provide safety and refuge in the United States for Iraqis and Afghans who face or have faced serious threats on account of their faithful and valuable service to the United States. *See generally* Refugee Crisis in Iraq Act of 2007, 8 U.S.C. § 1157 note at 1241-49 and the Afghan Allies Protection Act of 2008, 8 U.S.C. § 1101 note at 601-02.

Mr. Darweesh and his family, a wife and three children, received their SIV documentation on January 25, 2017. Because of the sensitive and dangerous nature of Mr. Darweesh's situation, the family immediately boarded a flight from Erbil, Iraq to New York City, via Istanbul, and arriving in the United States in the early evening of January 27, 2017. While CBP eventually processed his family and released them with their passports, CBP continued to hold Mr. Darweesh for additional screening, not permitting him to contact either his family or attorneys who were present at JFK and made multiple attempts to meet with him. Sometime around noon on January 28, 2017, CBP released Mr. Darweesh from custody, although the terms of his release remain unknown.

Petitioner Sameer Abdulkhaleq Alshawi is a 33-year-old citizen of Iraq and recipient of a Follow to Join ("FTJ") visa category F2A. Mr. Alshawi was awarded with the visa by the U.S. Department of State on January 11, 2017 to join his wife, Duniyya Alshawi, and seven-year-old son, both lawful permanent residents residing in Houston, Texas. *See generally* 8 U.S.C. § 1157(c)(2)(A); 8 C.F.R. § 207.7(a) (spouse or child of refugee "shall be granted refugee status if accompanying or following-to-join the principal alien"). From 2006 to 2007, Ms. Alshawi

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worked as an accountant for Falcon Security Group, a U.S. contractor, along with her brother in human resources. In 2010, insurgents in Iraq targeted the family based on their association with the U.S. military, attempting to kidnap Ms. Alshawi's brother and detonating an IED on Mr. Alshawi's sister-in-law's car, killing her husband and severely injuring her and her daughter. Fearing for their safety, the family relocated to Erbil, Iraq, and Ms. Alshawi and her son applied for refugee status in January 2011.

Upon information and belief, Ms. Alshawi and her son were approved to travel to Houston through the Priority 2-Direct Access Program (P2-DAP) in January 2014, and they have since adjusted their statuses to that of lawful permanent residents. Ms. Alshawi subsequently filed for a FTJ visa for her husband, which was approved by U.S. Citizenship and Immigration Services (USCIS) on October 9, 2014. Mr. Alshawi obtained a U.S. Visa Foil Type ZZ (Visa 93) on January 11, 2017, with a notation in his passport that the foil was prepared at Department of Homeland Security (DHS) request. Despite this visa, Mr. Alshawi was detained by CBP once he arrived at JFK Airport the evening of January 27, 2017, and was permitted to meet with his attorneys who were present at the airport and made multiple attempts to meet with him. Upon information and belief, Mr. Alshawi remains in the custody of CBP at JFK Airport, is not being permitted to apply for asylum or other forms of protection from removal, and is in imminent risk of being returned to Iraq against his will despite the grave danger he faces there.

In addition to Petitioners Darweesh and Alshawi, upon information and belief, there are numerous others individuals detained at JFK Airport and nationwide who are either refugees or visa holders, including lawful permanent residents and dual citizens, from Iraq, Syria, Iran, Sudan, Libya, Somalia, and Yemen. Each of these similarly situated individuals has been detained and questioned by CBP officials, denied entry to the United States, and subject to the

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threat of return to the country form which their travel originated, regardless of their presentation of valid entry documents, their status in the prior country, and possible claims qualifying them for protections under 8 U.S.C. § 1101(a)(42) and 8 U.S.C. § 1225(b)(1)(A)(ii). The illegal detention is based solely pursuant to the President's January 27th EO.

In the morning of January 28, 2017, Petitioners filed a habeas petition arguing that the January 27th EO is unlawful as applied to Petitioners and that their continued detention based solely on the executive order violates their Fifth Amendment procedural and substantive due process rights, is ultra vires the immigration statutes, and violates the Administrative Procedure Act. ECF No. 1. Further, Petitioners filed a Motion for Class Certification or Representative Habeas Action, seeking declaratory and injunctive relief to prohibit the policy, pattern, and practice of Respondents detaining class members and prohibiting class members from entering the United States solely on the basis of the EO despite their valid entry documents. ECF No. 4.

ARGUMENT

Adjudication of a motion for stay of removal requires that the Court consider four factors: (1) whether the stay applicant demonstrates a strong likelihood of success on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies. *Nken v. Holder*, 556 U.S. 418, 434 (2009). With regard to the first factor, this Court has held that *Nken* "did not suggest that this factor requires a showing that the movant is 'more likely than not' to succeed on the merits." *Citigroup Global Mkts., Inc. v. VCG Special Opportunities Master Fund Ltd.*, 598 F.3d 30, 37 (2d Cir. 2010). Rather, this ruling codified an earlier holding that a noncitizen may obtain a stay from this Court without demonstrating that the likelihood of ultimate success is greater than 50 percent. *See Mohammed v. Reno*, 309 F.3d 95,

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102 (2d Cir. 2002).

In Petitioners' case, all four factors counsel in favor of the granting of a stay.

I. Petitioner is Likely to Succeed on the Merits

Petitioners' habeas petition alleges five counts against Respondents: (1) Respondents' actions in denying Petitioners the opportunity to apply for asylum, taken pursuant to the EO, violate the procedural due process rights guaranteed by the Fourteenth Amendment; (2) Respondents' actions in seeking to return Petitioners to the countries they fled, taken pursuant to the EO, deprive Petitioners of their rights under 8 U.S.C. § 1231(b) and the Convention Against Torture without due process of law; (3) Respondents' actions in seeking to return Petitioners, taken pursuant to the EO, deprive Petitioners of their statutory and regulatory rights; (4) Respondents' actions taken pursuant to the EO violate the equal protection component of the Due Process Clause of the Fifth Amendment; and, (5) Respondents' actions in detaining and mistreating Petitioners and members of the proposed class were arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law, in violation of the Administrative Procedure Act.

A. Counts One and Two – Procedural Due Process Claims

First, CBP acting pursuant to the EO, unlawfully denied their liberty interests under the due process clause of the Fifth Amendment. Petitioners Darweesh and Alshawi are physically present in the United States with valid entry documents, and have been denied the ability to apply for asylum or withholding protections under the Convention Against Torture.

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)

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(quoting *Marincas v. Lewis,* 92 F.3d 195, 203 (3d Cir.1996)). *See also Clark v. Martinez*, 543 U.S. 371 (2005) (demonstrating that immigrants who have not yet been admitted are not categorically excluded from these protections). The Immigration and Nationality Act provides that "[a]ny alien who is physically present in the United States or who arrives in the United States. . . irrespective of such alien's status, may apply for asylum in accordance with this section or, where applicable, section 235(b)." 8 U.S.C. § 1158(a)(1). In particular Congress has given asylum seekers the right to present evidence to an Immigration Judge, 8 U.S.C. § 1229a(b)(4)(B), the right to move to reconsider any decision that the applicant is removable, 8 U.S.C. § 1229a(c)(5), and most importantly for the purposes of this appeal, the right to judicial review by a court of appeals of final agency orders denying asylum on the merits and directing removal, 8 U.S.C. § 1252(a)(2)(B)(ii). Under United States law as well as human rights conventions, the United States may not return ("*refoul*") a noncitizen to a country where she may face torture or persecution. *See* 8 U.S.C. § 1231(b); 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 as Note to 8 U.S.C. § 1231). Petitioners' ability to apply for asylum and withholding under CAT is therefore required by the due process clause, before they may be subject to removal. The EO, however, categorical prohibition on evaluating asylum and CAT claims deprives petitioners of any legal process.

In *Landon v. Plasencia* the Supreme Court held that in evaluating immigrants' procedural due process rights when seeking admission to the United States that "the 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

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safeguards." *Landon v. Plasencia*, 459 U.S. 21, 34 (1982). Petitioners' interests in this case are weighty: they both stand to lose the right to live and work in "this land of freedom." *Id*.; *see also Bridges v. Wixon*, 326 U.S. 135, 154, (1945) (noting that individuals have a liberty interest in proper procedures being applied in deportation proceedings). Both Petitioners Darweesh and Alshawi also have considered interests in avoiding deprivation of life and torture if forced to return to Iraq, and have strong connections to the United States including Lawful Permanent Resident immediate family members. *Landon,* 459 U.S at 34 (recognizing family and personal connections within the United States as an individual interest). Mr. Darweesh has reason to believe he will be tortured on killed by terrorists currently searching for him and his family in Iraq. ECF No. 1, ¶ 21; Mr. Alshawi similarly has had family members who were targets of kidnapping and fears for his life. ECF No. 1, ¶ 44. Additionally, because Petitioners have already been through substantial procedural screenings and approved for admission (through SIV and Follow to Join (FTJ) visa category F2A screenings), the government's interest "in efficient administration of the immigration laws" has already been satisfied. *Landon v. Plasencia*, 459 U.S. at 34. The liberty interests of petitioners and extreme risks of injury that will result from arbitrary deprivation of Petitioners' rights are therefore substantial and well-recognized by existing precedent, and their denial of admission without the ability to apply for asylum or withholding under CAT offends due process clause of the Fifth Amendment.

B. Count Three – *Accardi* Claim

Respondents' actions in seeking to return Petitioners to Iraq, taken pursuant to the EO, deprive Petitioners of their statutory and regulatory rights in violation of *Accardi v. Shaughnessy*, 347 U.S. 260 (1954), which stands for the principle that agencies must comply with their own regulations. *See Montilla v. I.N.S.*, 926 F.2d 162 (2d Cir. 1991) (holding that remand was

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required where immigration judge failed to comply with regulations that existed for alien's benefit, regardless of whether error resulted in prejudice); *see also Vitarelli v. Seaton*, 359 U.S. 535 (1959) (reinstating Interior Department employee after removal in violation of Department regulations). The Supreme Court has explained that this principle is grounded in the Fifth Amendment's guarantee of due process, as well as administrative common law and the nature of legislative rulemaking. In the Second Circuit, *Accardi* relief is available when the agency failure to follow regulations prejudiced the outcome, was so egregious as to shock the conscience, or deprived our plaintiffs of fundamental rights. *Rajah v. Mukasey*, 544 F.3d 427, 447 (2d Cir. 2008).

The Immigration and Nationality Act 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 Petitioners to an opportunity to apply for asylum, withholding of removal, and CAT relief. These provisions also entitle Petitioners to a grant of withholding of removal and CAT relief upon a showing that they meet the applicable legal standards.

Respondents' actions in seeking to return Petitioners to Iraq, taken pursuant to the EO, deprive Petitioners of their statutory and regulatory rights under the above provision. This error was clearly prejudicial in that Petitioners and members of the proposed class were offered no opportunity to apply for the above relief. In particular, DHS's failure to follow its own regulations in affording Petitioners and members of the proposed class an opportunity to apply

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for asylum and other forms of humanitarian relief constitute an *Accardi* violation and should be set aside.

C. Count Four – Equal Protection

Petitioners claim a violation of the equal protection component of the Due Process Clause of the Fifth Amendment, on the ground that the EO constitutes intentional discrimination by the federal government on the basis of religion and national origin. As the Second Circuit has explained, intentional discrimination by a government actor can be demonstrated in multiple ways:

> First, a law or policy is discriminatory on its face if it expressly classifies persons on the basis of race or gender. *See Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 213, 227-29 (1995). In addition, a law which is facially neutral violates equal protection if it is applied in a discriminatory fashion. *See Yick Wo v. Hopkins*, 118 U.S. 356, 373-74 (1886). Lastly, a facially neutral statute violates equal protection if it was motivated by discriminatory animus and its application results in a discriminatory effect. *See Village of Arlington Heights v. Metro. Housing Dev. Corp*., 429 U.S. 252, 264-65 (1977).

Hayden v. County of Nassau, 180 F.3d 42, 48 (2d Cir. 1999).

Discrimination on the basis of religion is a violation of equal protection. *See City of New Orleans v. Dukes,* 427 U.S. 297, 303 (1976) (citing religion as an "inherently suspect distinction"); *see also Bd. of Educ. of Kiryas Joel Vill. Sch. Dist. v. Grumet*, 512 U.S. 687, 715 (1994) (O'Connor, J., concurring); *McDaniel v. Paty*, 435 U.S. 618, 644 (1978) ("In my view, the Religion Clauses the Free Exercise Clause, the Establishment Clause, the Religious Test Clause, Art. VI, cl. 3, and the Equal Protection Clause as applied to religion all speak with one voice on this point: Absent the most unusual circumstances, one's religion ought not affect one's legal rights or duties or benefits."). Similarly, "national origin . . . [is] so seldom relevant to the achievement of any legitimate state interest that laws grounded in such considerations are deemed to reflect prejudice and antipathy." *City of Cleburne, Tex. v. Cleburne Living Ctr*., 473

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U.S. 432, 440 (1985). Therefore, a government action based on animus against, and that has a discriminatory effect on, Muslims or individuals from the countries in question violates the equal protection component of the Due Process Clause.

Petitioners allege that their rights under the equal protection component of the Due Process Clause will be violated by government action that will be applied in a discriminatory fashion. Applying a general law in a fashion that discriminates on the basis of a suspect classification violates the Due Process Clause. *See Hayden v. County of Nassau*, 180 F.3d 42, 48 (2d Cir. 1999); *Yick Wo v. Hopkins*, 118 U.S. 356, 373-74 (1886). President Trump made it clear while signing the EO that it will be applied particularly against Muslims and that Christians will be given preference. *See* Michael D. Shear & Helene Cooper, *Trump Bars Refugees and Citizens of 7 Muslim Countries,* N.Y. Times (Jan. 27, 2017), https://www.nytimes.com/2017/01/27/us /politics/trump-syrian-refugees.html ("[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), https://www.washingtonpost.com/world/national-security/trump-approves-extreme-vetting-of-refugees-promises-priority-for-christians/2017/01/27/007021a2-e4c7-11e6-a547-5fb9411d332c story.html?utm term .c30584b100c2. It is clear from the President's public statements that the EO will be applied in a manner that disfavors individuals of one religious group, Islam, and favors individuals of other religious groups. This differential application will violate the equal protection component of the Due Process Clause.

Petitioners allege that their rights under the equal protection component of the Due Process Clause were violated by government action motivated by forbidden discriminatory animus against individuals from certain countries and Muslims and with a discriminatory effect

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against individuals from certain countries and Muslims. *See Jana-Rock Const., Inc. v. N.Y. State Dep't of Econ. Dev*., 438 F.3d 195, 204 (2d Cir. 2006) ("Government action . . . violates principles of equal protection 'if it was motivated by discriminatory animus and its application results in a discriminatory effect.'"); *see also Hunter v. Underwood*, 471 U.S. 222 (1985); *Mhany Mgmt., Inc. v. Cty. of Nassau*, 819 F.3d 581, 605-13 (2d Cir. 2016). "When there is a proof that a discriminatory purpose has been a motivating factor in the decision, . . . judicial deference is no longer justified." *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265 66 (1977). Petitioners challenging such facially neutral laws on equal protection grounds bear the burden of making out a "prima facie case of discriminatory purpose." To establish a prima facie case of discriminatory purpose, the Second Circuit has applied "the familiar *Arlington Heights* factors." *Mhany Mgmt., Inc. v. Cty. of Nassau*, 819 F.3d at 606 (citing *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252 at 266-7). The *Arlington Heights* test looks to 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. Substantive departures may also be relevant "if the factors usually considered important by the decisionmaker strongly favor a decision contrary to the one reached." *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. at 266-7.

In this case, the *Arlington Heights* factors are clearly met. The impact of the EO will clearly fall disproportionately on Muslims and individuals from the countries cited in the EO. As an initial matter, when asked about his proposed ban on Muslims in a July 2016 interview with NBC's Meet the Press, the then Republican presidential nominee explained, "I'm looking now at territory. People were so upset when I used the word 'Muslim': 'Oh, you can't use the word

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"Muslim."' Remember this. And I'm okay with that, because I'm talking territory instead of Muslim." *See* Jenna Johnson, Donald Trump Is Expanding His Muslim Ban, Not Rolling It Back, Washington Post (July 24, 2016), https://www.washingtonpost.com/news/post-politics/wp/2016/07/24/donald-trump-is-expanding-his-muslim-ban-not-rolling-it-back/?utm term .139272f67dd2. Consistent with this statement, the countries targeted by the EO are all majority Muslim.

When signing the EO, furthermore, President Trump publicly promised that under the EO, preference will be given to Christians from the "countries of concern." *See* Michael D. Shear & Helene Cooper, *Trump Bars Refugees and Citizens of 7 Muslim Countries,* N.Y. Times (Jan. 27, 2017), https://www.nytimes.com/2017/01/27/us/politics/trump-syrian-refugees.html ("[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), https://www.washingtonpost.com/world/national-security/trump-approves-extreme-vetting-of-refugees-promises-priority-for-christians/2017/01/27/007021a2-e4c7-11e6-a547-5fb9411d332c story.html?utm term .c30584b100c2. It is clear from the President's public statements that the EO is intended not only to target Muslim-majority countries, but also to have a disparate impact between Muslims and Christians from the same countries.

The historical background of this decision reveals a long line of public statements by President Trump indicating animus towards Muslims. *See* Theodore Schleifer, *Donald Trump: 'I think Islam hates us'*, CNN (Mar. 10, 2016), http://www.cnn.com/2016/03/09/politics/donald-trump-islam-hates-us. The sequence of events leading up to this decision reveals that President Trump has long publicly stated that he plans to ban Muslims from entering the United States.

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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), https://www.washingtonpost .com/news/post-politics/wp/2016/12/21/trump-on-the-future-of-proposed-muslim-ban-registry-you-know-my-plans/?utm term .a22a50598ea3.

The EO also represents a substantive departure from previous policy. The named petitioners or their families provided important assistance to the United States military, because of which they were offered entry to the country. Detaining individuals who provided valuable support to our military, at risk of their lives, is not justified by the factor given by the decisionmaker in favor of the decision: America's national security. As Major General Paul D. Eaton testified before Congress, this would endanger, not protect our national security: "We have a moral obligation to assist those who have allied themselves in our mission in Iraq. Failure to keep the faith with those who have thrown their lot in with us will hurt us; will certainly hurt us in future counterinsurgency efforts." *Iraqi Volunteers, Iraqi Refugees: What is America's Obligation?: Hearing before the Subcomm. on The Middle East and South Asia of the H. Comm. on Foreign Affairs*, 110th Cong. 34 (2007) (Statement of Major General Paul D. Eaton USA, Ret.).

Given the disparate impact of the EO, a historical background of public statements of animus against Muslims, the specific sequence of promises by President Trump that he would "ban" Muslims, and the substantive departure from prior policy on the basis of factors that

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strongly favor a decision other than the one reached, the *Arlington Heights* factors are clearly met. *See Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. at 266-7. Petitioners have therefore asserted a prima facie claim of discriminatory purpose and of discriminatory impact. It is the government's burden to rebut the resulting "presumption of unconstitutional action." *Washington v. Davis,* 426 U.S. 229, 241 (1976).

D. Count Five – Administrative Procedure Act

Finally, Defendants' actions in detaining and mistreating Petitioners and other members of the proposed class were arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; contrary to constitutional right, power, privilege, or immunity; in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; and without observance of procedure required by law, in violation of the Administrative Procedure Act (APA), 5 U.S.C. §§ 706(2)(A)-(D).

The scope of this Court's review is delineated by 5 U.S.C. § 706, which provides that the "reviewing court *shall* . . . hold unlawful and set aside agency action . . . found to be "(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege, or immunity; (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; . . . [or] (D) without observance of procedure required by law . . . ." 5 U.S.C. § 706(2) (emphasis added). The APA provides further that, "[t]o the extent necessary to decision and when presented, the reviewing court *shall* decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action." *Id.* § 706 (emphasis added). Under the APA, this Court reviews errors of *de novo*. *Andrew Lange, Inc. v. F.A.A.*, 208 F.3d 389, 391 (2d Cir. 2000).

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Respondents detained and mistreated Petitioners and other members of the proposed class solely pursuant to the January 27th EO, which expressly discriminates against Petitioners on the basis of their country of origin and was substantially motivated by animus toward Muslims, in violation of the equal protection component of the Due Process Clause of the Fifth Amendment. *See supra* Part I-C. The EO exhibits hostility to a specific religious faith, Islam, and gives preference to other religious faiths, principally Christianity. Respondents' actions were therefore "contrary to constitutional right, power, privilege, or immunity, in violation of § 706(2)(B).

Further, 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). This section establishes a non-discrimination principle that extends to the agency's processing of applicants for entry at the border. Were this not so, this section would have no practical effect, since CBP could simply deny entry to individuals based on the above prohibited characteristics to individuals whom DHS had otherwise duly issued a visa. Respondents' detention and mistreatment of Petitioners and other members of the proposed class, despite their possession of valid entry documents, is therefore contrary to the INA and in violation of 5 U.S.C. § 706(2)(C).

As set forth in Parts I-A, *supra*, Respondents' actions also violated procedural requirements of the Fifth Amendment and the Immigration and Nationality Act by seeking to return Petitioners and members of the proposed class to their home countries without the opportunity to present claims for asylum or other forms of humanitarian protection. Individuals arriving at United States ports of entry must afforded an opportunity to apply for asylum or other forms of humanitarian protection and be promptly received and processed by United States authorities. 8 U.S.C. § 1158(a)(1); *see also id.* § 1225(b)(1)(A)(ii). The Immigration and Nationality Act and implementing regulations, including 8 U.S.C. § 1225(b)(1) (expedited

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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 Petitioners to an opportunity to apply for asylum, withholding of removal, and CAT relief. Petitioners' actions, in violating the procedural requirements of the Due Process Clause of the Fifth Amendment and these various statutory provisions, also violate § 706(2)(D) of the APA, which prohibits agency action taken "without observance of procedure required by law."

For all of the reasons set forth in this section, Petitioners' challenged actions were "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). In addition, Respondents' actions were arbitrary and capricious for their failure to consider "all relevant issues and factors." *Long Island Head Start Child Dev. Servs. v. N.L.R.B.*, 460 F.3d 254 (2d Cir. 2006) (citing *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 48-49 (1983)). Under *State Farm*, for an agency action to survive arbitrary-and-capricious review, it "must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made." *State Farm*, 463 U.S. at 43 (internal quotation omitted). This "hard look" standard exceeds the "rational basis" standard applied under the Due Process Clause. *Id.* at 43 n.9. Here, the Government has failed to consider many relevant issues and factors, including evidence regarding the low risk to U.S. citizens posed by refugees, the relative risk presented by those arriving on different visa categories.

II. Without a Stay of Removal, Petitioners Face Irreparable Harm

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Along with the likelihood of success on the merits, the irreparable injury inquiry is one of "the most critical" factors in adjudicating stay applications. *Nken*, 556 U.S. at 433. Without a stay of removal, Petitioners and class members will suffer irreparable harm for three main reasons: (1) near certain return to their country of origin, where they may face threats of persecution, death, and torture, (2) inability to effectively communicate with legal counsel from outside the United States; and, (3) the harm that would be inflicted on Petitioners' and class members' families, who are lawfully present in the United States.

Mr. Darweesh and Mr. Alshawi, as well as members of the proposed class, likely face serious bodily harm, persecution, and death absent a stay of removal. Both Mr. Darweesh and Mr. Alshawi either worked for the United States government and its contractors in Iraq, or have ties to immediate family members that did so. *See* ECF No. 1, ¶¶ 4, 18-20, 43. Due to this association, Mr. Darweesh faced repeated threats from militant groups within Iraq, leading him to apply for a Special Immigrant Visa to leave Iraq and come to the United States. *Id.* ¶¶ 20-22. Similarly, Mr. Alshawi's wife worked for a U.S. contractor, the Falcon Security Group in Iraq. *Id.* ¶ 43. Due to this association, local insurgents targeted Mr. Alshawi's family, killing his sister-in-law's husband and inflicting serious bodily harm on his sister-in-law and niece. *Id.* ¶ 44. As a result, Mr. Alshawi's wife applied for refugee status, and, after arriving in the United States, filed a "Follow to Join" visa for Mr. Alshawi.

Nevertheless, despite the fact that Petitioners and class members have lawful entry documents, *see id.* ¶¶ 30, 46, Respondents will likely return them to the country from which their travel originated or their country of origin, placing their lives in imminent danger. *See* EO Sec. 3(c); 8 U.S.C. § 1231(b)(1)(A) (arriving aliens denied entry "shall be removed to the country in which the alien boarded the vessel or aircraft on which the alien arrived in the United States").

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Congress itself has expressed grave concern for the plight that individuals in Petitioners' position face. *See* H.R. 110-158 at 2 (2007) ("The[] work [of Iraqi and Afghani translators] for the United States government often makes them targets of death squads, militias, and al-Qaeda. Many translators and interpreters are forced into hiding and are unable to escape this threat."); *The Plight of Refugees*, *Hearing Before the S. Judiciary Comm.*, 110 Cong. Rec. 2 (2007) (statement of Sen. Ted Kennedy) (noting severe danger many refugees face).

Other members of the proposed class, which according to statements by CBP officials, include at least "dozens and dozens" of additional individuals detained at JFK Airport (not to mention an unknown number of additional persons detained at other airports across the nation), also face a strong likelihood of serious bodily, persecution, and death due to enforcement of the EO. Many putative class members have been previously screened by the U.S. Refugee Admissions Program to determine whether they have "well-founded fear of persecution", *see* 8 U.S.C. § 1101(42), and issued a visa for entry to the United States as a form of humanitarian protection. Members of the proposed class are fleeing the world's most war-torn and violent countries, which have prompted a massive exodus as innocent victims like class member flee to safety in recent years. *See, e.g.*, 162 Cong. Rec. S4354 (2016) (Statement of Sen. Leahy) ("Over the past 5 years, the world has witnessed millions of Syrians desperately fleeing the terror inflicted by ISIS and Bashar Al-Assad's regime …. As a humanitarian leader among nations, the United States must play a significant role in efforts to resettle those displaced by this devastating conflict."); Anne Barnard, *Death Toll From War in Syria Now 470,000, Group Finds,* N.Y. Times (Feb. 11, 2016), https://www.nytimes.com/2016/02/12/world/middleeast/death-toll-from-war-in-syria-now-470000-group-finds.html; Chris Hughes*, Half a Million Refugees gather in Libya to Attempt Perilous Crossing to Europe,* The Guardian (June 6, 2015), https://www.the

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guardian.com/world/2015/jun/06/cameron-merkel-at-odds-resettle-refugees-europe-migration. Thus, denial of entry to United States despite preapproved and lawful entry documents places Petitioners and class members in grave danger, given that they lack legal status anywhere other than the United States and their country of origin. *See* ECF No. 1, ¶¶ 30, 46 (describing Petitioners' entry documents).

Second, Petitioners and other class members will face extreme difficulty in pursuing their claims to lawful entry to the United States if removed from the United States. Respondents have detained Petitioners and other members of the proposed class and are holding or have held them in temporary detention facilities. ECF No. 1, ¶¶ 4-5. If Respondents continue to detain members of the proposed class and permit access to them, counsel and Petitioners will be able to communicate, gather facts, and ensure that Petitioners are adequately represented in their removal claims. In contrast, removal will significantly hinder counsel's ability to contact their clients, provide for interpretation, and identify other class members that detained pursuant to the January 27 EO.

While all class members' removal or forced departure from the United States should be stayed, stays of removal are especially justified in Petitioners' cases given their status as class representatives. *See* ECF No. 4, ¶¶ 28-38. Petitioners have submitted a motion to certify a class in which they serve as representatives, *see* ECF No. 4, and thus removing them would severely impede their ability to adequately represent the class. *See United States ex. rel. Sero v. Preiser*, 506 F2d 1115, 1125-26 (2d Cir. 1974) (outlining standards for representative habeas class actions).

Finally, Petitioners' and putative class members' U.S. citizen, Lawful Permanent Resident, and immigrant family members present in the United States will face certain

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irreparable harm if Respondents forced Petitioners' departure. Indeed, Respondents have prevented Petitioners from reuniting with family members, who were either already present in the United States or released upon departing the plane in JFK. *See* ECF No. 1, ¶¶ 32-33, 41-42. The forced separation has already provoked fear and emotional trauma among Petitioners' family members, as they face the strong possibility that they may not see their husband or father again. *See* Michael D. Shear & Nicholas Kulish, *Trump's Order Blocks Immigrants at Airports, Stoking Fear Around Globe*, N.Y. Times (Jan. 28, 2017), https://www.nytimes.com/2017/01/28/us /refugees-detained-at-us-airports-prompting-legal-challenges-to-trumps-immigration-order.html (describing the reactions of Mr. Alshawi's family to his continued detention in JFK and the possibility that he may be removed). Should Respondents remove Petitioners and other class members, they and their family members will likely face years, if not a lifetime of separation or may never see each again, should class members be forced to return to the danger in their countries of origin. Thus, Petitioners and class members face a clear and strong threat of irreparable injury, and this factor weighs strongly in favor of granting the motion to stay.

III. The Issuance of a Stay Will Not Substantially Injure the Government, and the Public Interest Lies in Granting Petitioner's Request for a Stay of Removal

The Court in *Nken* found that the last two stay factors, injury to other parties in the litigation and the public interest, merge in immigration cases because Respondent is both the opposing litigant and the public interest representative. *Nken*, 556 U.S. at 435. The Court also noted that the interest of Respondent and the public in the "prompt execution of removal orders" is heightened where "the alien is particularly dangerous" or "has substantially prolonged his stay by abusing the process provided to him." *Nken*, 556 U.S. at 436 (citations omitted). Here, neither of these factors nor any other factors exist to suggest that the Respondent or the public have any interest in Petitioners' removal beyond the general interest noted in *Nken*. Furthermore,

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the *Nken* Court recognized the "public interest in preventing aliens from being wrongfully removed, particularly to countries where they are likely to face substantial harm." *See Nken*, 556 U.S. at 436. The Petitioners in this case would both face substantial harm if removed, as would their families, shifting the balance of hardship in favor of staying their removal.

Mr. Darweesh is not a danger or a threat to the United States, and he faces substantial harm if removed. He faithfully served the U.S. government for over ten years, for which he was granted a Special Immigrant Visa (SIV) after facing serious threats on account of his service. Before he was approved for the SIV, he passed through an interview at the U.S. Embassy in Baghdad, security background checks, and a medical examination. *See* Complaint, ¶¶ 28-29, ECF No. 1.

From March 20, 2003 to September 30, 2013, Mr. Darweesh worked as an interpreter for the U.S. Army 101st Airborne and the 91st Engineering Unit at the Baghdad Airport, among other U.S. contracting roles. *Id.* ¶¶ 18-19. As a result of Mr. Darweesh's association with the U.S. Armed Forces, he was targeted by both the Baghdad police and men he had strong reasons to believe were terrorists. *Id.* ¶¶ 20-21. Because of those threats and his service to the U.S. government, Mr. Darweesh applied for and received an Iraqi Special Immigrant Visa, a program specifically created to provide protection to Iraqis and Afghans who face or have faced serious threats on account of their service to the United States. *Id.* ¶¶ 22-23.

In addition, this Court should consider the harm that Mr. Darweesh's wrongful removal would cause his family members. Mr. Darweesh is married and has three children, the youngest of whom is seven years old. His wife and children also received SIVs and were able to make it through passport control and customs, where they were separated from their husband and father. Nicholas Kulish and Manny Fernandez, *Refugees Detained at U.S. Airports; Trump Immigration*

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Order is Challenged (Jan. 28, 2017). Because Mr. Darweesh is neither particularly dangerous nor did he "substantially prolong his stay by abusing the process provided to him," the public interest in preventing his wrongful removal outweighs the government's general interest in prompt removal, especially in light of the substantial harm he faces and the harm his wife and children would suffer if he were removed.

Mr. Alshawi likewise does not pose a danger or threat to the United States and would face substantial harm if removed. Before granting his Follow to Join (FTJ) visa category F2A, the U.S. Embassy in Stockholm determined that Mr. Alshawi is not a security threat to the United States. *Id.* ¶ 41. He is attempting to join his wife, Duniyya Alshawi, and their seven-year-old son in Houston, Texas, where they have been living for 3 years. *Id.* ¶¶ 42, 45; *see also* Michael D. Shear & Nicholas Kulish, *Trump's Order Blocks Immigrants at Airports, Stoking Fear Around Globe*, N.Y. Times (Jan. 28, 2017), https://www.nytimes.com/2017/01/28/us /refugees-detained-at-us-airports-prompting-legal-challenges-to-trumps-immigration-order.html. Ms. Alshawi worked for a U.S. contractor from 2006-2007, as did her brother. *See* ECF No. 1, ¶ 43. As a result of their connection to the U.S. military, insurgents believed they were collaborators. *Id.* Then, "[i]n 2010, insurgents attempted to kidnap Ms. Alshawi's brother. A month later, an IED placed on Mr. Alshawi's sister-in-law's car detonated, killing her husband and severly injuring her and her daughter." *Id.* ¶ 44. After those incidents of violence, Mr. and Ms. Alshawi moved from Baghdad to Erbil, Iraq out of fear for their safety. *Id.*

Mr. Alshawi's wrongful removal would not only result in a serious risk of substantial harm to him, but would also cause harm to his wife and seven-year-old son. Ms. Alshawi and their son applied for refugee status in January 2011 and were approved to travel to Houston through the Priority 2-Direct Access Program (P2-DAP) in January 2014. *Id.* ¶ 45. They have

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since adjusted status to become lawful permanent residents. *Id.* Ms. Alshawi filed for an FTJ visa for her husband, and Mr. Alshawi obtained a U.S. Foil Type ZZ (Visa 92) on January 11, 2017, prepared at the request of the Department of Homeland Security (DHS). *Id.* Mr. Alshawi and his family face substantial harm if he were to be removed; thus, the balance of hardships weighs in favor of staying his removal.

Respondent cannot make any particularized showing that granting Petitioners a stay of removal would substantially injure its interests or conflict with the public interest in preventing a wrongful removal, such that the third and fourth *Nken* factors would outweigh the hardship Petitioners would face if removed.

CONCLUSION

For the reasons stated above, this Court should grant Petitioners' motion for a stay of removal.

DATED: January 28, 2017
New Haven, Connecticut

Respectfully submitted,

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**Application for admission forthcoming.
* Motion for law student appearance forthcoming.
† Motion for admission *pro hac vice* forthcoming.
†† For identification purposes only. This motion has been prepared by a clinic operated by Yale Law School, but does not purport to present the school's institutional views, if any.

Counsel for Petitioners

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

---------- X

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.

---------- X

DECISION AND ORDER

17 Civ. 480 (AMD)

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.

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SO ORDERED.

Ann M. Donnelly
United States District Judge

Dated: Brooklyn, New York
January 28, 2017

Yates, Sally (ODAG)

From: Yates, Sally (ODAG)
Sent: Saturday, January 21, 2017 10:00 AM
To: Axelrod, Matthew (ODAG)
Subject: Re: Civil Rights followup

No rush at all. Have fun (b) (6) .

On Jan 21, 2017, at 9:41 AM, Axelrod, Matthew (ODAG) <maaxelrod@jmd.usdoj.gov> wrote:

> Sure thing. (b) (6) Will call later.
>
> On Jan 21, 2017, at 9:11 AM, Yates, Sally (ODAG) <sayates@jmd.usdoj.gov> wrote:
>
> > Thanks. Let's talk about this when you get a chance-- obviously not urgent.
> >
> > On Jan 21, 2017, at 6:55 AM, Axelrod, Matthew (ODAG) <maaxelrod@jmd.usdoj.gov> wrote:
> >
> > Begin forwarded message:
> >
> > **From:** "Crowell, James (USAMD)" <James.A.Crowell@usdoj.gov>
> > **Date:** January 20, 2017 at 11:24:47 PM EST
> > **To:** "Axelrod, Matthew (ODAG)" <maaxelrod@jmd.usdoj.gov>
> > **Subject: Civil Rights followup**
> >
> > I spoke to incoming civil rights folks just now. (b) (5) Let me know if you hear anything else come up that you or AG Yates need me to run to ground. Thanks.
> >
> > Sent from my iPhone

Axelrod, Matthew (ODAG)

From: Axelrod, Matthew (ODAG)
Sent: Saturday, January 21, 2017 3:06 PM
To: Yates, Sally (ODAG)
Subject: AG Holder

According to something I just read on POLITICO, it's his 66th birthday today.

Axelrod, Matthew (ODAG)

From: Axelrod, Matthew (ODAG)
Sent: Sunday, January 22, 2017 5:51 PM
To: Yates, Sally (ODAG)
Subject: Fwd: Issues

FYI. He also called and left me a VM. I just tried him back but didn't get him. Will call you after I speak to him.

Begin forwarded message:

> **From:** "Crowell, James (USAMD)" <James.A.Crowell@usdoj.gov>
> **Date:** January 22, 2017 at 4:44:01 PM EST
> **To:** "Axelrod, Matthew (ODAG)" <maaxelrod@jmd.usdoj.gov>
> **Subject: Issues**
>
> (b) (5) [redacted]
>
> Sent from my iPhone

Axelrod, Matthew (ODAG)

From:	Axelrod, Matthew (ODAG)
Sent:	Monday, January 23, 2017 7:18 PM
To:	Yates, Sally (ODAG)
Subject:	Fwd: E-introduction to Jim Crowell, Acting PADAG, and Rachel Parker, Chief of Staff in OASG

Begin forwarded message:

(b)(6) - Email Addresses (Names are not redacted)

From: "Crowell, James (ODAG)" <jcrowell@jmd.usdoj.gov>
Date: January 23, 2017 at 7:07:11 PM EST
To: "Francisco, Noel (OSG)" [redacted], "Brandon, Thomas E. (ATF)" [redacted] "Ratliff, Gerri L. (CRS)" [redacted], "Rosenberg, Chuck (DEA)" [redacted], "McCord, Mary (NSD)" [redacted] "Harlow, David (USMS)" [redacted], "Carr, Peter (OPA)" <pcarr@jmd.usdoj.gov>, "Winn, Peter A. (OPCL)" [redacted], "Vanek, Shaina (BOP)" [redacted] "Mulrow, Jeri (OJP)" <Jeri.Mulrow@ojp.usdoj.gov>, "Spivak, Howard (OJP)" <Howard.Spivak@ojp.usdoj.gov>, "Jweied, Maha (A2J)" [redacted], "Washington, Russell (COPS)" [redacted], "Garry, Eileen" [redacted], "Roberts, Marilyn" [redacted] "Trautman, Tracey" <Tracey.Trautman@ojp.usdoj.gov>, "Burton, Faith (OLA)" <fburton@jmd.usdoj.gov>, "Gannon, Curtis (OSG)" [redacted], "Newman, Ryan (OLP)" <RNewman@jmd.usdoj.gov>, "Snyder, Brent" [redacted], "Branda, Joyce (CIV)" [redacted], "Friel, Gregory B (CRT)" [redacted] "Wheeler, Tom (CRT)" [redacted], "Blanco, Kenneth" [redacted], "Wood, Jeffrey (ENRD)" [redacted] "Hubbert, David A. (TAX)" [redacted], "Henneberg, Maureen" [redacted], "Neufville, Nadine (OVW)" [redacted], "Kane, Thomas (BOP)" [redacted], "Wilkinson, Monty (USAEO)" [redacted], "Horowitz, Michael E.(OIG)" [redacted] "Ashton, Robin (OPR)" [redacted], "Ohr, Bruce (ODAG)" [redacted] "Osuna, Juan (EOIR)" [redacted] "Toulou, Tracy (OTJ)" [redacted], "White, Clifford (USTP)" [redacted], "Pustay, Melanie A (OIP)" [redacted]j.gov>, "Ludwig, Stacy (PRAO)" [redacted] "Kupers, [redacted]

(b)(6) - Email Addresses
(Names are not redacted)

Lawrence B. (OPA) (TFT) [redacted] Smoot, Patricia W (USPC)
[redacted] "LaFrancois, Jeremy R (FCSC)"
[redacted], "Bowdich, David L. (DO) (FBI)"
[redacted]>, "Lofthus, Lee J (JMD)" <llofthus@jmd.usdoj.gov>, "Parker, Rachel (ASG)" <racparker@jmd.usdoj.gov>, "Terwilliger, Zachary (ODAG)" <zterwilliger@jmd.usdoj.gov>, "Axelrod, Matthew (ODAG)" <maaxelrod@jmd.usdoj.gov>, "Wayne.H.Salzgabe[redacted], "Brandon, Thomas E. (ATF)"
[redacted]"Vanek, Shaina (BOP)"
[redacted], "Kane, Thomas (BOP)"
[redacted], "Terwilliger, Zachary (ODAG)" <zterwilliger@jmd.usdoj.gov>
Subject: RE: E-introduction to Jim Crowell, Acting PADAG, and Rachel Parker, Chief of Staff in OASG

Matt:

Thank you for what has been an incredibly warm welcome. As a career DOJ prosecutor, I cannot emphasize enough the respect that I have for this institution and its public servants. I am incredibly humbled to be working with each of you as we await the arrival of the next Senate confirmed leadership of this historic institution.

I am particularly grateful to Acting Attorney General Sally Q. Yates and Matt Axelrod for their willingness to help shepherd us through this transition period.

Component Heads:

During the transition period, it is critical that we have a timely and complete flow of communication from your components to the Office of Deputy Attorney General. While ordinarily requests for information would flow through your ODAG POCs, given the fluidity of staff and portfolio assignments, we need your help in getting some timely information from primarily the litigating components to Matt and me. If this is relevant to any other component, that would be helpful too. In that vein, Matt and I are asking you to please assist with the following two items.

First, by noon tomorrow, can you please send Matt and me an email that details any sensitive or high-profile matters or issues that fall into one or more of the following categories and could occur in the next 24-48 hours:

- Likely to generate significant press attention;
- Sensitive litigation that requires immediate filing, responsive briefing, or where we expect an imminent ruling, etc.; and
- Matters or cases where we need additional time to evaluate and consider the merits of a particular position given the change in Administration and might consider requesting a stay to do so.

Second, by close of business on Wednesday, could you please send Matt and me an email detailing the same type of information as requested above, but for the period of the next 14 days.

Thank you very much. This will greatly assist us as we ensure clear communication lines between the Office of the Deputy Attorney General and Acting Attorney General Yates and her staff.

In addition, over the next several weeks, when unexpected and/or urgent matters crop up, both affirmative and reactive, please ensure that there is proper coordination by alerting your ODAG POC, so we can collaborate and respond accordingly. We expect to push out an updated ODAG POC portfolio list tom.

I am really looking forward to working with you over the next weeks. If you have any questions or need anything at all, please reach out to me, Matt, Rachel, or your ODAG POC.

Thank you very much.

Best,

Jim

James A. Crowell IV
Acting Principal Associate Deputy Attorney General
Office of the Deputy Attorney General
U.S. Department of Justice
Cell: (b) (6) [redacted]

(b)(6) - Email Addresses (Names are not redacted)

From: "Axelrod, Matthew (ODAG)" <Matthew.Axelrod@usdoj.gov>
Date: January 23, 2017 at 8:47:43 AM EST
To: "Francisco, Noel (OSG)" <Noel.Francisco@usdoj.gov>, "Brandon, Thomas E. (ATF)" [redacted] "Ratliff, Gerri L. (CRS)" [redacted] "Rosenberg, Chuck (DEA)" <[redacted] "McCord, Mary (NSD)" <[redacted] "Harlow, David (USMS)" [redacted]>, "Carr, Peter (OPA)" <Peter.Carr@usdoj.gov>, "Winn, Peter A. (OPCL)" [redacted]>, "Vanek, Shaina (BOP)" <Shaina.Vanek@usdoj.gov>, "Mulrow, Jeri (OJP)" <Jeri.Mulrow@usdoj.gov>, "Spivak, Howard (OJP)" [redacted], "Jweied, Maha (A2J)" [redacted], "Washington, Russell (COPS)" [redacted], "Garry, Eileen" <[redacted] "Roberts, Marilyn" [redacted] "Trautman, Tracey" [redacted], "Burton, Faith (OLA)" <Faith.Burton@usdoj.gov>, "Gannon, Curtis E. (OLC)" <[redacted] "Newman, Ryan (OLP)" [redacted], "Snyder, Brent" <[redacted] "Branda, Joyce (CIV)" [redacted], "Friel, Gregory B (CRT)" [redacted], "Blanco, Kenneth" [redacted] "Wood, Jeffrey (ENRD)" [redacted] "Hubbert, David A. (TAX)" [redacted], "Henneberg, Maureen" [redacted] "Neufville, Nadine (OVW)" [redacted] "Kane, Thomas (BOP)" <[redacted] Wilkinson, Monty (USAEO)" [redacted] "Horowitz, Michael E.(OIG)" [redacted]>, "Ashton, Robin (OPR)" <Robin.Ashton@usdoj.gov>, "Ohr, Bruce (ODAG)"

(b)(6) - Email Addresses
(Names are not redacted

[redacted] "Osuna, Juan (EOIR)"
[redacted], "Toulou, Tracy (OTJ)"
[redacted], "White, Clifford (USTP)"
[redacted] "Pustay, Melanie A (OIP)"
<Melanie.A.Pustay@usdoj.gov>, "Ludwig, Stacy (PRAO)"
[redacted] "Kupers, Lawrence B. (OPATTY)"
[redacted] "Smoot, Patricia W (USPC)"
[redacted], "LaFrancois, Jeremy R (FCSC)"
[redacted]>, "Bowdich, David L. (DO) (FBI)"
[redacted], "Wayne.H.Salzgabe[redacted]
[redacted]

Cc: "Crowell, James (USAMD)" <James.A.Crowell@usdoj.gov>, "Lofthus, Lee J (JMD)" <Lee.J.Lofthus@usdoj.gov>, "Parker, Rachel (ASG)" <Rachel.Parker@usdoj.gov>

Subject: E-introduction to Jim Crowell, Acting PADAG, and Rachel Parker, Chief of Staff in OASG

Acting component heads,

Greetings. And to those of you who are new to the Department, welcome to the DOJ family.

I wanted to e-introduce you to Jim, Crowell, the new Acting Principal Associate Deputy Attorney General, and Rachel Parker, the new Chief of Staff in the Office of the Associate Attorney General. Jim is a longtime Department prosecutor, was most recently the Criminal Chief in the U.S. Attorney's Office for the District of Maryland, and has also previously worked as a Trial Attorney in the Criminal Division's Public Integrity Section. Rachel is also a Department veteran, having previously worked in OLA. It's great to have them both back at Main Justice. Jim will chime in later today with additional information for all of you, including providing you with interim points of contact (POCs) in ODAG for issues that Department leadership needs to be kept aware of. As always, if you have any questions or need anything at all, feel free to reach out to Jim, Rachel, me or your ODAG or POC.

Best,
Matt

Matthew S. Axelrod
Office of the Deputy Attorney General
U.S. Department of Justice
Desk: (202) 514-2105
(b) (6) [redacted]

Axelrod, Matthew (ODAG)

From: Axelrod, Matthew (ODAG)
Sent: Tuesday, January 24, 2017 9:47 AM
To: Yates, Sally (ODAG)
Subject: Fwd: Arizona/PIN matter

FYI.

Begin forwarded message:

From: "Lan, Iris (ODAG)" <irlan@jmd.usdoj.gov>
Date: January 24, 2017 at 9:19:13 AM EST
To: "Crowell, James (ODAG)" <jcrowell@jmd.usdoj.gov>, "Terwilliger, Zachary (ODAG)" <zterwilliger@jmd.usdoj.gov>
Cc: "Axelrod, Matthew (ODAG)" <maaxelrod@jmd.usdoj.gov>
Subject: Arizona/PIN matter

FYI, heads up. (b) (5) [redacted]

Gamble, Nathaniel (ODAG)

From:	Gamble, Nathaniel (ODAG)
Sent:	Tuesday, January 24, 2017 11:24 AM
To:	Yates, Sally (ODAG); Axelrod, Matthew (ODAG)
Subject:	FW: Request for Call with General Yates

Please let me know if I should schedule?

Thanks in advance,

From: Jack Krumholtz (b) (6)
Sent: Tuesday, January 24, 2017 11:21 AM
To: nathaniel.gamble@usdoj.gov
Subject: Request for Call with General Yates

Nathaniel – per our conversation earlier this morning, I'm reaching out on behalf of Krysta Harden, the former Deputy Secretary of Agriculture in the Obama Administration and now Senior Vice President for Public Policy and Chief Sustainability Officer at DuPont. Krysta is hoping to schedule a brief call with the Acting Attorney General to seek her guidance on a transition-related question. Would General Yates be available for a brief call with Krysta sometime over the next few days?

Many thanks,

Jack Krumholtz

JACK KRUMHOLTZ
Managing Director
(b) (6)
w. gpg.com

Yates, Sally (ODAG)

From: Yates, Sally (ODAG)
Sent: Tuesday, January 24, 2017 11:26 AM
To: Axelrod, Matthew (ODAG)
Subject: do you need me? off phone now

Gamble, Nathaniel (ODAG)

From: Gamble, Nathaniel (ODAG)

Sent: Tuesday, January 24, 2017 4:13 PM

To: Watson, Theresa (OAG); Schedule, AG (SMO); (b) (6), (b) (7)(C), (b) (7)(E) Rybicki, James E. (DO) (FBI) (b) (6), (b) (7)(C), (b) (7)(E) Washington, Tracy T (OAG); Yates, Sally (ODAG); Bennett, Catherine T (OAG); (b) (6), (b) (7)(C), (b) (7)(E) Gauhar, Tashina (ODAG); (b) (6), (b) (7)(C), (b) (7)(E) McCord, Mary (NSD); Meadows, Bessie L (OAG); (b) (6), (b) (7)(C), (b) (7)(E) Williams, Toni (OAG); Gamble, Nathaniel (ODAG); (b) (6), (b) (7)(C), (b) (7) Axelrod, Matthew (ODAG); (b) (6), (b) (7)(C), (b) (7)(E) McCord, Mary (NSD); (b) (6), (b) (7)(C) Iftimie, Alex (OAG); Jackson, Wykema C. (OAG); Crowell, James (ODAG); Brinkley, Winnie (ODAG)

Subject: FBI/SIOC Morning Briefing will be at 9:00am on Wednesday, January 25, 2017:

Yates, Sally (ODAG)

From:	Yates, Sally (ODAG)
Sent:	Tuesday, January 24, 2017 6:11 PM
To:	Rodgers, Janice (JMD); Felter, Monica (JMD); Shaw, Cynthia K. (JMD); Axelrod, Matthew (ODAG); Marketos, Peter (ODAG)
Subject:	Ethics De-Brief for DAG

POC: Nathaniel Gamble

Document ID: 0.7.10904.6554

Yates, Sally (ODAG)

From: Yates, Sally (ODAG)
Sent: Tuesday, January 24, 2017 8:02 PM
To: Gamble, Nathaniel (ODAG)
Subject: Re: Would you like to keep the Portrait for Tomorrow?

It's fine with me, or I can move it if it's better for Amy.

On Jan 24, 2017, at 7:45 PM, Gamble, Nathaniel (ODAG) <nagamble@jmd.usdoj.gov> wrote:

Axelrod, Matthew (ODAG)

From:	Axelrod, Matthew (ODAG)
Sent:	Tuesday, January 24, 2017 10:26 PM
To:	Yates, Sally (ODAG)
Subject:	Fwd: Civil Rights Group Rebukes Trump Justice Dept. Over Case Delays - NYTimes.com

Begin forwarded message:

From: "Crowell, James (ODAG)" <jcrowell@jmd.usdoj.gov>
Date: January 24, 2017 at 10:06:29 PM EST
To: "peter.carr@usdoj.gov" <peter.carr@usdoj.gov>, "Parker, Rachel (ASG)" <racparker@jmd.usdoj.gov>, "Terwilliger, Zachary (ODAG)" <zterwilliger@jmd.usdoj.gov>, "Axelrod, Matthew (ODAG)" <maaxelrod@jmd.usdoj.gov>
Subject: Civil Rights Group Rebukes Trump Justice Dept. Over Case Delays - NYTimes.com

https://mobile.nytimes.com/2017/01/24/us/politics/civil-rights-trump-administration-sessions.html?referer=https://www.google.com/

Axelrod, Matthew (ODAG)

From:	Axelrod, Matthew (ODAG)
Sent:	Wednesday, January 25, 2017 8:36 AM
To:	Yates, Sally (ODAG)
Subject:	Would you mind picking us up?

Scott's badge still isn't working at FBI so will need to ride with you.

Matthew S. Axelrod
Office of the Deputy Attorney General
U.S. Department of Justice
Desk: (202) 514-2105
(b) (6)

Yates, Sally (ODAG)

From: Yates, Sally (ODAG)
Sent: Wednesday, January 25, 2017 1:24 PM
To: Axelrod, Matthew (ODAG)
Subject: I'm back.

Gauhar, Tashina (ODAG)

From:	Gauhar, Tashina (ODAG)
Sent:	Wednesday, January 25, 2017 7:00 PM
To:	Yates, Sally (ODAG)
Cc:	Axelrod, Matthew (ODAG)
Subject:	FW: FISC - Misc 13-08 - For Service on all parties
Attachments:	Misc 13-08 Opinion and Order.pdf

FYI only – (b) (5) [redacted]

[redacted]

[redacted]

Thanks,
Tash

Filed
United States Foreign
Intelligence Surveillance Court

JAN 25 2017

LeeAnn Flynn Hall, Clerk of Court

UNITED STATES

FOREIGN INTELLIGENCE SURVEILLANCE COURT

WASHINGTON, D.C.

IN RE OPINIONS & ORDERS OF THIS COURT ADDRESSING BULK COLLECTION OF DATA UNDER THE FOREIGN INTELLIGENCE SURVEILLANCE ACT.	Docket No. Misc. 13-08

OPINION

Pending before the Court is the MOTION OF THE AMERICAN CIVIL LIBERTIES UNION, THE AMERICAN CIVIL LIBERTIES UNION OF THE NATION'S CAPITAL, AND THE MEDIA FREEDOM AND INFORMATION ACCESS CLINIC FOR THE RELEASE OF COURT RECORDS,[1] which, as is evident from the motion's title, was filed jointly by the American Civil Liberties Union ("ACLU"), the American Civil Liberties Union of the Nation's Capital ("ACLU-NC"), and the Media Freedom and Information Access Clinic ("MFIAC") (collectively "the Movants"). The Movants ask the Court to "unseal its opinions addressing the legal basis for the 'bulk collection' of data" on the asserted ground that "these opinions are subject to the public's First Amendment right of access, and no proper basis exists to keep the legal discussion in these opinions secret." Mot. for Release of Ct. Records 1. As will be explained, however, the four opinions the Movants seek were never under seal and were declassified by the Executive Branch and made public with redactions in 2014. Consequently, although characterized as a request for the release of certain

[1] Hereinafter, this motion will be referred to as the "Motion for the Release of Court Records" and cited as "Mot. for Release of Ct. Records." Documents submitted by the parties are available on the Court's public website at http://www.fisc.uscourts.gov/public-filings.

Document ID: 0.7.10904.5475-000001

of this Court's judicial opinions, what the Movants actually seek is access to the redacted material that remains classified pursuant to the Executive Branch's independent classification authority.

As explained in Parts I and II of the following Discussion, this Court has jurisdiction over the Motion for Release of Court Records only if it presents a case or controversy under Article III of the Constitution, which in turn requires among other things that the Movants assert an injury to a legally protected interest. The Movants claim that withholding the opinions in question contravenes a qualified right of access to those opinions under the First Amendment. If, contrary to the Movants' interpretation of the law, the First Amendment does not afford a qualified right of access to those opinions, they have failed to claim an injury to a legally protected interest. For reasons explained in Part III of the Discussion, the First Amendment does not apply pursuant to controlling Supreme Court precedent so there is no qualified right of access to those opinions. Accordingly, the Court holds that the Movants lack standing under Article III and the Court therefore must dismiss the Motion for Release of Court Records for lack of jurisdiction.

By no means does this result mean that the opinions at issue, or others like them, will never see the light of day. First, the opinions at issue have already been publicly released, subject to Executive Branch declassification review and redactions that withhold portions of those opinions found to contain information that remains classified. Members of the public seeking release of other opinions (or further release of redacted text in the opinions at issue in this matter) may submit requests under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and seek review of the Executive Branch's responses to those requests in a federal district court. Finally, as noted *infra* Part V, Congress has charged Executive Branch officials—not this

Document ID: 0.7.10904.5475-000001

Court—with releasing certain significant Court opinions to the public, subject to declassification review. Those statutory mechanisms for public release are unaffected by the determination that the Court lacks jurisdiction over the instant motion.

BACKGROUND AND PROCEDURAL POSTURE

The Movants filed the pending motion in the wake of unauthorized but widely-publicized disclosures about National Security Agency ("NSA") programs involving the bulk collection of data under the Foreign Intelligence Surveillance Act of 1978, codified as amended at 50 U.S.C. §§ 1801-1885c (West 2015) ("FISA"). The motion urges the Court to unseal its judicial opinions addressing the legality of bulk data collection on the ground that the First Amendment to the United States Constitution guarantees that the public shall have a qualified right of access to judicial opinions. Mot. for Release of Ct. Records 1, 2, 12-21. The Movants contend that this right of access applies even when national security interests are at stake. *Id.* at 17. According to the Movants, the right of access can be overcome only if the United States of America (the "Government") satisfies a "strict" test requiring evidence of a substantial probability of harm to a compelling interest and no alternative means to protect that interest. *Id.* at 3, 21-24, 25, 28. Even if the Government demonstrates a substantial probability of harm to a compelling interest, the Movants maintain that "[a]ny limits on the public's right of access must . . . be narrowly tailored and demonstrably effective in avoiding that harm." *Id.* at 3. The Movants therefore insist that the First Amendment obligates the Court to review independently any portions of the Court's judicial opinions that are being withheld from public disclosure via redaction and assess whether the redaction is sufficiently narrowly tailored to protect only a compelling interest and nothing more. *Id.* at 23.

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To conduct this independent review, the Movants suggest that the Court should first invoke Rule 62 of the United States Foreign Intelligence Surveillance Court ("FISC") Rules of Procedure and order the Government to perform a classification review of all judicial opinions addressing the legality of bulk data collection.[2] *Id.* at 24. If the ordered classification review results in the Government withholding any contents of the Court's opinions by redaction, the Movants assert that the Court should schedule the filing of legal briefs to allow the Government to set forth the rationale for "its sealing request" and to accommodate the Movants' presentation of countervailing arguments regarding "any sealing they believe to be unjustified," *id.*, after which the Court should "test any sealing proposed by the government against the standard required by the First Amendment," *id.* at 27. *See also* Movants' Reply in Supp. of Their Mot. for Release of Ct. Records 2, 4. The Movants further request that the Court exercise its discretion to order a classification review pursuant to FISC Rule 62 even if the Court ultimately concludes that a First Amendment right of access does not apply in this matter. *Id.* at 27.

The Government opposes the Movants' motion principally because the four opinions that address the legal bases for bulk collection were made public in 2014 after classification reviews conducted by the Executive Branch. Gov't's Opp'n Br. 1-2. Two opinions were published by the Court:

- Memorandum, *In re Application of the Federal Bureau of Investigation for an Order Requiring the Production of Tangible Things From [Redacted]*, Docket No. BR 13-158 (Oct. 11, 2013) (McLaughlin, J.), *available at* http://www.fisc.uscourts.gov/sites/default/files/BR%2013-158%20Memorandum-1.pdf; and

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[2] Rule 62 provides in relevant part that, after consultation with other judges of the court, the Presiding Judge of the FISC may direct that an opinion be published and may order the Executive Branch to review such opinion and "redact it as necessary to ensure that properly classified information is appropriately protected pursuant to Executive Order 13526 (or its successor)." FISC Rule 62(a).

Document ID: 0.7.10904.5475-000001

- Amended Memorandum Opinion, *In re Application of the Federal Bureau of Investigation for an Order Requiring the Production of Tangible Things From [Redacted]*, Docket No. BR 13-109 (Aug. 29, 2013) (Eagan, J.), *available at* http://www.fisc.uscourts.gov/sites/default/files/BR%2013-109%20Order-1.pdf.

Gov't's Opp'n Br. 2. The other two opinions were released by the Executive Branch:

- Opinion and Order, [Redacted], Docket No. PR/TT [Redacted] (Kollar-Kotelly, J.), *available at* https://www.dni.gov/files/documents/1118/CLEANEDPRTT%201.pdf; and

- Memorandum Opinion, [Redacted], Docket No. PR/TT [Redacted] (Bates, J.), *available at* https://www.dni.gov/files/documents/1118/CLEANEDPRTT%202.pdf.

Id. The Government submits that, because the Executive Branch already conducted thorough classification reviews of all four opinions before their publication and release, there is no reason for the Court to order the Government to repeat that process.[3] *Id.* The Government further argues that the motion should be dismissed for lack of the Movants' standing to advance FISC Rule 62 as a vehicle for publication because that rule permits only a "party" to move for publication of the Court's opinions. *Id.* at 3. In support, the Government cites the Court's decision in *In re Orders of This Court Interpreting Section 215 of the PATRIOT Act*, No. Misc. 13-02, 2013 WL 5460064 (FISA Ct. Sept. 13, 2013), for the proposition that the term "party" in Rule 62 refers to a "party" to the proceeding that resulted in the opinion. Gov't's Opp'n Br. 3. The Government points out that the Movants were not such "parties" to any of the proceedings that begot the four opinions discussing the legality of bulk collection. *Id.* Finally, the Government contends that the Court should decline to exercise its own discretion to require the Executive Branch to conduct another classification review of the relevant opinions under Rule 62—or to permit the Movants to challenge the redaction of classified material—because FOIA

[3] The Movants argue that the Executive Branch's classification reviews were insufficient and resulted in the four declassified opinions being "redacted to shreds." Movants' Reply In Supp. of Their Mot. for Release of Ct. Records 8.

Document ID: 0.7.10904.5475-000001

supplies the proper legal mechanism to seek access to classified material withheld by the Executive Branch. *Id.* at 3-4. According to the Government, the FISC is not empowered to review independently and/or override Executive Branch classification decisions, *id.* at 4-6, nor should the FISC serve as an alternate forum to duplicate the judicial review afforded by FOIA, *id.* at 3-4.

DISCUSSION

Before proceeding to consider the merits of the pending motion the Court must first establish with certainty that it has jurisdiction. Because the FISC is an Article III court,[4] it cannot exercise the judicial power to resolve the Movants' motion unless there is an actual "case or controversy" in which the Movants have standing. *See Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (May 16, 2016) (discussing the constitutional limits on the exercise of judicial power). "No principle is more fundamental to the judiciary's proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies" as set forth in Article III of the Constitution. *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 37 (1976). By framing the exercise of judicial power in terms of "cases or controversies," Article III recognizes:

> [T]wo complementary but somewhat different limitations. In part those words limit the business of federal courts to questions presented in an adversary context and in a form historically viewed as capable of resolution through the judicial process. And in part those words define the role assigned to the judiciary in a tripartite allocation of power to assure that the federal courts will not intrude into areas committed to the other branches of government.

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[4] *See In re Sealed Case*, 310 F.3d 717, 731 (FISA Ct. Rev. 2002) (per curiam) (indicating that "the constitutional bounds that restrict an Article III court" apply to the FISC); *In re Kevork*, 634 F. Supp. 1002, 1014 (C.D. Cal. 1985) (rejecting the assertion that the FISC "is not a proper Article III court"), *aff'd*, 788 F.2d 566 (9th Cir. 1986).

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Flast v. Cohen, 392 U.S. 83, 95 (1968). As will be discussed, the separation-of-powers concern poses particular unease in this case.

"From Article III's limitation of the judicial power to resolving 'Cases' and 'Controversies,' and the separation-of-powers principles underlying that limitation, [the Supreme Court has] deduced a set of requirements that together make up the 'irreducible constitutional minimum of standing.'" *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 134 S. Ct. 1377, 1386 (2014) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). This doctrine of standing is an "essential and unchanging part of the case-or-controversy requirement of Article III . . . ." *Lujan*, 504 U.S. at 560. "In fact, standing is perhaps the most important jurisdictional doctrine, and, as with any jurisdictional requisite, we are powerless to hear a case when it is lacking." *Bochese v. Town of Ponce Inlet*, 405 F.3d 964, 974 (11th Cir. 2005) (internal citations and quotation marks omitted). As the Supreme Court has observed:

> In essence the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues. This inquiry involves both constitutional limitations on federal-court jurisdiction and prudential limitations on its exercise. In both dimensions it is founded in concern about the proper—and properly limited—role of the courts in a democratic society.
>
> In its constitutional dimension, standing imports justiciability: whether the plaintiff has made out a "case or controversy" between himself and the defendant within the meaning of Art. III. This is the threshold question in every federal case, determining the power of the court to entertain the suit.

Warth v. Seldin, 422 U.S. 490, 498 (1975) (internal quotation marks and citations omitted).

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I.

Accordingly, at the outset, the Court is obligated to ensure that it can properly entertain the Movants' motion because they have met their burden of establishing standing sufficient to satisfy the Article III requirement of a case or controversy. *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 342 (2006). To do so, the Movants "must clearly and specifically set forth facts sufficient to satisfy . . . Art. III standing requirements. A federal court is powerless to create its own jurisdiction by embellishing otherwise deficient allegations of standing." *Whitmore v. Arkansas*, 495 U.S. 149, 155-56 (1990). Moreover, because "standing is not dispensed in gross," *Lewis v. Casey*, 518 U.S. 343, 358 n.6 (1996), the Movants "must demonstrate standing for each claim [they] seek[] to press" as well as "'for each form of relief sought,'" *DaimlerChrysler*, 547 U.S. at 352 (quoting *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 185 (2000)). Ultimately, "[i]f a dispute is not a proper case or controversy, the courts have no business deciding it, or expounding the law in the course of doing so." *DaimlerChrysler*, 547 U.S. at 341. Absent standing, the Court's exercise of judicial power "would be gratuitous and thus inconsistent with the Art. III limitation." *Simon*, 426 U.S. at 38.

Anticipating that standing might be an issue, the Movants commenced their legal arguments by first claiming that they established standing by virtue of the fact that they were denied access to judicial opinions. Mot. for Release of Ct. Records 10. The Movants assert that "[d]enial of access to court opinions alone constitutes an injury sufficient to satisfy Article III." *Id.* By footnote, the Movants also question in part the decision in *In re Orders of This Court Interpreting Section 215 of the PATRIOT Act*, 2013 WL 5460064, to the extent that it held that a party claiming the denial of public access to judicial opinions must further show either (1) that the lack of public access impeded the party's own activities in a concrete and particular way or

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(2) that access would afford concrete and particular assistance to the party in the conduct of its own activities, although the Movants alternatively argue that "even if those showings are necessary to establish standing, [they] satisfy the additional requirements." *Id.* at 11 n.27.

It appears that *In re Orders of This Court Interpreting Section 215 of the PATRIOT Act* was the first and only occasion on which a FISC Judge expressly addressed the question of a third party's standing for the purpose of asserting a First Amendment right to access this Court's judicial opinions.[5] That was a case championed by these same Movants on the same ground that the First Amendment guarantees a qualified right of public access to judicial opinions, although in that case the Movants sought access to opinions analyzing Section 215 of the USA PATRIOT Act (as codified at 50 U.S.C. § 1861). *In re Orders of This Court Interpreting Section 215 of the PATRIOT Act*, 2013 WL 5460064, at *1. There, the parties neglected to address standing so the Court was obliged to consider it sua sponte based on the existing record, *id.*, after impliedly taking judicial notice of public matters, *id.* at *4 (stating that "[t]he Court ordinarily would not look beyond information presented by the parties to find that a claimant has Article III standing" but "[i]n this case . . . the ACLU's active participation in the legislative and public debates about the proper scope of Section 215 and the advisability of amending that provision is obvious from the public record and not reasonably in dispute"). The Court found that the ACLU and the ACLU-NC had standing but MFIAC did not, *id.* at *4, albeit the Court later reinstated MFIAC as a party upon granting MFIAC's motion seeking reconsideration of its standing on the strength of

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[5] *In re Motion for Release of Court Records*, 526 F. Supp. 2d 484 (FISA Ct. 2007), also involved a motion filed by the ACLU seeking the release of court documents. In that case, part of which is discussed at length *infra* Part IV, the ACLU's standing was not addressed and the cited basis for the exercise of jurisdiction was the Court's inherent supervisory power over its own records and files. *Id.* at 486-87 (citing *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978)).

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additional information regarding MFIAC's activities, Opinion & Order Granting Mot. for Recons., *In re Orders of This Court Interpreting Section 215 of the PATRIOT Act*, No. Misc. 13-02 (Aug. 7, 2014), *available at* http://www.fisc.uscourts.gov/sites/default/files/Misc%2013-02%20Order-6_0.pdf. The Court never reached the question of whether the First Amendment applied, however, and, instead, dismissed for comity the Movants' motion to the extent it sought opinions that were the subject of ongoing FOIA litigation in another federal jurisdiction. *In re Orders of This Court Interpreting Section 215 of the PATRIOT Act*, 2013 WL 5460064, at *6-7. The Court then exercised its own discretion to initiate declassification review proceedings for a single opinion pursuant to Rule 62. *Id.* at *8.

Recognizing that the decision in *In re Orders of This Court Interpreting Section 215 of the PATRIOT Act* involved the same Movants asserting, in essence, the same type of legal claim, the question of standing nevertheless must be independently examined in this case because "[t]his court, as a matter of constitutional duty, must assure itself of its jurisdiction to act in every case." *CTS Corp. v. EPA*, 759 F.3d 52, 57 (D.C. Cir. 2014). Significantly, the decision in *In re Orders of This Court Interpreting Section 215 of the PATRIOT Act* is distinguishable because it did not reach the question of whether the First Amendment applied and, if not, whether the Movants could establish standing in the absence of an interest protected by the First Amendment. This case also is in a unique posture because the Movants seek access to judicial documents that already have been made public and declassified by the Executive Branch, unlike the documents sought in *In re Orders of This Court Interpreting Section 215 of the PATRIOT Act.* An independent assessment of standing also is warranted in light of Article III's necessary function to circumscribe the Federal Judiciary's exercise of power, *Spokeo*, 136 S. Ct. at 1547, and given

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the "highly case-specific" nature of jurisdictional standing inquiries, *Baur v. Veneman*, 352 F.3d 625, 637 (2d Cir. 2003).

Embarking on an analysis of standing in this matter, the Court is mindful that, because "[s]tanding is an aspect of justiciability," "the problem of standing is surrounded by the same complexities and vagaries that inhere in justiciability." *Flast*, 392 U.S. at 98. Indeed, "[s]tanding has been called one of 'the most amorphous (concepts) in the entire domain of public law.'" *Id.* at 99 (quoting *Hearings on S. 2097 Before the Subcomm. on Constitutional Rights of the S. Judiciary Comm.*, 89th Cong. 498 (2d Sess. 1966) (statement of Prof. Paul A. Freund)). The United States Court of Appeals for the Second Circuit has referred to standing as a "labyrinthine doctrine," *Fin. Insts. Ret. Fund v. Office of Thrift Supervision*, 964 F.2d 142, 146 (2d Cir. 1992), and even the Supreme Court has admitted that "'the concept of Art. III standing' has not been defined with complete consistency in all of the various cases decided by this Court which have discussed it," *Whitmore*, 495 U.S. at 155 (quoting *Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc.*, 454 U.S. 464, 475 (1982)).

Despite its nebulousness, there are several fundamental guideposts that offer direction and a general framework to evaluate standing in any given case. To begin with, while it has long been the rule that standing "in no way depends on the merits of the plaintiff's contention that particular conduct is illegal," it nonetheless "often turns on the nature and source of the claim asserted." *Warth*, 422 U.S. at 500. Supreme Court precedent "makes clear that Art. III standing requires an injury with a nexus to the substantive character of the statute or regulation at issue[.]" *Diamond v. Charles*, 476 U.S. 54, 70 (1986) (citing *Valley Forge Christian Coll.*, 454 U.S. at 472). Thus, "standing is gauged by the specific common-law, statutory or constitutional claims that a party presents." *Int'l Primate Prot. League v. Adm'rs of Tulane Educ. Fund*, 500 U.S. 72,

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77 (1991). "In essence, the standing question is determined by 'whether the constitutional or statutory provision on which the claim rests properly can be understood as granting persons in the plaintiff's position a right to judicial relief.'" *E.M. v. New York City Dep't of Educ.*, 758 F.3d 442, 450 (2d Cir. 2014) (quoting *Warth*, 422 U.S. at 500). "[A]lthough standing is an anterior question of jurisdiction, the grist and elements of [the Court's] jurisdictional analysis require a peek at the substance of [the Movants'] arguments." *Transp. Workers Union of Am., AFL-CIO v. Transp. Sec. Admin.*, 492 F.3d 471, 474-75 (D.C. Cir. 2007).

It also is well established that the doctrine of standing consists of three elements, the first of which requires the Movants to show that they suffered an "injury in fact." *Lujan*, 504 U.S. at 560. The second element requires that the injury in fact be "fairly traceable" to the defending party's challenged conduct and the third element requires that there be a likelihood (versus mere speculation) that the injury will be redressed by a favorable judicial decision. *Id.*

II.

Recently, the Supreme Court emphasized that "injury in fact" is the "'[f]irst and foremost' of standing's three elements." *Spokeo*, 136 S. Ct. at 1547 (quoting *Steel Co. v. Citizens for Better Env't*, 523 U.S. 83, 103 (1998)). Importantly for the purpose of resolving the pending motion, the Supreme Court has "stressed that the alleged injury must be legally and judicially cognizable." *Raines v. Byrd*, 521 U.S. 811, 819 (1997). "This requires, among other things, that the plaintiff have suffered an invasion of a *legally protected interest* which is . . . concrete and particularized, and that the dispute is traditionally thought to be capable of resolution through the judicial process[.]" *Id.* (internal quotation marks and citations omitted, emphasis added). "[A]n injury refers to the invasion of some 'legally protected interest' arising

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from constitutional, statutory, or common law." *Pender v. Bank of Am. Corp.*, 788 F.3d 354, 366 (4th Cir. 2015) (quoting *Lujan*, 504 U.S. at 578).

The meaning of the phrase "legally protected interest" has been a source of perplexity in the case law as a result, at least in part, of the Supreme Court's pronouncement that a party can have standing even if he loses on the merits. *See Warth*, 422 U.S. at 500 (stating that "standing in no way depends on the merits of the plaintiff's contention that particular conduct is illegal"); *In re Special Grand Jury 89-2*, 450 F.3d 1159, 1172 (10th Cir. 2006) ("The term *legally protected interest* has generated some confusion because the Court has made clear that a plaintiff can have standing despite losing on the merits . . . ." (emphasis in original)); *Judicial Watch, Inc. v. U.S. Senate*, 432 F.3d 359, 363 (D.C. Cir. 2005) (Williams, J., concurring) (expressing "puzzlement" over the Supreme Court's use of the phrase "legally protected" as a "modifier" and examining the discordant state of the case law's treatment of the phrase); *United States v. Richardson*, 418 U.S. 166, 180-81 (1974) (Powell, J., concurring) (questioning the Supreme Court's approach in *Flast*, 392 U.S. at 99-101, on the ground that "[t]he opinion purports to separate the question of standing from the merits . . . yet it abruptly returns to the substantive issues raised by a plaintiff for the purpose of determining whether there is a logical nexus between the status asserted and the claim sought to be adjudicated" (internal quotation marks omitted)); *Ass'n of Pub. Agency Customers v. Bonneville Power Admin.*, 733 F.3d 939, 951 n.23 (9th Cir. 2013) ("The exact requirements for a 'legally protected interest' are far from clear."). The confusion is compounded by the fact that the Supreme Court has occasionally resorted to using the phrase "judicially cognizable interest" rather than, or interchangeably with, the phrase "legally protected interest." *Judicial Watch*, 432 F.3d at 364 (Williams, J., concurring) ("[T]he [Supreme] Court appears to use the 'legally protected' and 'judicially cognizable' language

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interchangeably."); *ABF Freight Sys., Inc. v. Int'l Bhd. of Teamsters*, 645 F.3d 954, 959 (8th Cir. 2011) (citing *Lujan* for the proposition that "[a] 'legally protected interest' requires only a 'judicially cognizable interest'"); *Lujan*, 504 U.S. at 561-63, 575, 578 (initially stating that a plaintiff must have suffered "an invasion of a legally protected interest" to satisfy Article III but then reverting to use of the term "cognizable" to characterize the viability of that interest to establish standing); *Bennett v. Spear*, 520 U.S. 154, 167 (1997) (stating that "standing requires: (1) that the plaintiff have suffered an 'injury in fact'—an invasion of a judicially cognizable interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical"); *Warth*, 422 U.S. at 514 (referring to a "judicially cognizable injury" in the context of discussing the legality of Congress expanding by statute the interests that may establish standing). Adding to the uncertainty, in some cases the Supreme Court makes no mention whatsoever of the requirement that an injury entail the invasion of either a "legally protected" or "judicially cognizable" interest. *Clapper v. Amnesty Int'l USA*, 133 S. Ct. 1138, 1147 (2013) ("To establish Article III standing, an injury must be 'concrete, particularized, and actual or imminent; fairly traceable to the challenged action; and redressable by a favorable ruling.'" (quoting *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 149 (2010)); *Massachusetts v. EPA*, 549 U.S. 497, 517 (2007) ("To ensure the proper adversarial presentation, *Lujan* holds that a litigant must demonstrate that it has suffered a concrete and particularized injury that is either actual or imminent, that the injury is fairly traceable to the defendant, and that it is likely that a favorable decision will redress that injury.").

Deciphering the meaning of the phrase "legally protected interest" also is muddled by the varying approaches courts use to identify the relevant "interest" at stake. In at least one case the United States Court of Appeals for the Fourth Circuit suggested that the interest at issue could be

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considered subjectively from the perspective of the party asserting standing. *Doe v. Pub. Citizen*, 749 F.3d 246, 262 (4th Cir. 2014) (intimating that litigants need only assert an interest that "in their view" was protected by the common law or the Constitution). Other courts focus objectively on whether the Constitution, a statute or the common law actually recognizes the asserted interest. *See, e.g., Sargeant v. Dixon*, 130 F.3d 1067, 1069 (D.C. Cir. 1997) (stating that "[a] legally cognizable interest means an interest recognized at common law or specifically recognized as such by the Congress").

Still other courts have examined whether the type or form of the injury is traditionally deemed to be a legal harm, such as an economic injury or an invasion of property rights, although such an inquiry can blend into the question of whether the injury is concrete and particularized. *See, e.g., Danvers Motor Co., Inc. v. Ford Motor Co.*, 432 F.3d 286, 293 (3d Cir. 2005) (stating that "[m]onetary harm is a classic form of injury-in-fact" that "is often assumed without discussion" and an invasion of property rights, "whether it sounds in tort . . . or contract . . . undoubtedly 'affect[s] the plaintiff in a personal and individual way'" (quoting *Lujan*, 504 U.S. at 560 n.1)). At least one court has found standing by analogizing to interests that were never advanced by the party asserting standing.[6] *See In re Special Grand Jury 89-2*, 450 F.3d at

[6] It is unclear how this approach can be reconciled with the Supreme Court's admonitions that standing "is gauged by the specific common-law, statutory or constitutional claims *that a party presents*," *Int'l Primate Prot. League*, 500 U.S. at 77 (emphasis added), and a "federal court is powerless to create its own jurisdiction by embellishing otherwise deficient allegations of standing," *Whitmore*, 495 U.S. at 155-56. The Tenth Circuit opined that the Supreme Court's decision in *Bennett*, 520 U.S. at 167, presented a "new locution" according to which the substitution of the phrase "judicially cognizable interest" for "legally protected interest" signaled that the Supreme Court had abandoned *Lujan's* requirement of a "legally protected interest" in favor of a formulation that provides that "an interest can support standing even if it is not protected by law (at least, not protected in the particular case at issue) so long as it is the sort of interest that courts think to be of sufficient moment to justify judicial intervention." *In re Special Grand Jury 89-2*, 450 F.3d at 1172. The question of whether the Supreme Court intended to abandon the requirement for a "legally protected interest" seems to have been

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1172-1173 (characterizing former grand jurors' requests to lift the secrecy obligation imposed by Rule 6(e) of the Federal Rules of Criminal Procedure as an interest in "stating what they know" that mirrors the First Amendment claims of litigants challenging speech restrictions and commenting that "there is no requirement that the legal basis for the interest of a plaintiff that is 'injured in fact' be the same as, or even related to, the legal basis for the plaintiff's claim, at least outside the taxpayer-standing context").

Although no universal definition of the phrase "legally protected interest" has been developed by the case law,[7] the Supreme Court and a majority of federal jurisdictions have concluded that an interest is not "legally protected" or cognizable for the purpose of establishing standing when its asserted legal source—whether constitutional, statutory, common law or

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resolved in the negative by the Supreme Court's decision in *Raines*, which was decided shortly after *Bennett* and was joined by Justice Antonin Scalia, the author of the Court's unanimous decision in *Bennett*. In *Raines*, as stated *supra*, the Supreme Court "stressed that the alleged injury must be legally and judicially cognizable" and went on to state that "[t]his requires, among other things, that the plaintiff have suffered 'an invasion of a legally protected interest which is . . . concrete and particularized.'" 521 U.S. at 819 (quoting *Lujan*, 504 U.S. at 560). The Supreme Court's recent decision in *Spokeo* also employs the locution requiring that, "[t]o establish injury in fact, a plaintiff must show that he or she suffered '*an invasion of a legally protected interest*' that is 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.'" 136 S. Ct. at 1548 (quoting *Lujan*, 504 U.S. at 560) (emphasis added).

[7] The bewildering state of the law might explain in part why one commentator has referred to the "injury in fact" requirement as "a singularly unhelpful, even incoherent, addition to the law of standing," William A. Fletcher, *The Structure of Standing*, 98 Yale L.J. 221, 231 (1988), and another has taken what the United States Court of Appeals for the Tenth Circuit described as the "somewhat cynical view" that "'[t]he only conclusion [regarding what injuries are sufficient for standing] is that in addition to injuries to common law, constitutional, and statutory rights, a plaintiff has standing if he or she asserts an injury that the Court deems sufficient for standing purposes.'" *In re Special Grand Jury 89-2*, 450 F.3d at 1172 (second alteration in original) (quoting Erwin Chemerinsky, *Federal Jurisdiction* § 2.3.2 at 74 (4th ed.2003)).

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otherwise—does not apply or does not exist. The United States Court of Appeals for the District of Columbia Circuit (the "D.C. Circuit")[8] has offered the following explanation:

> Whether a plaintiff has a legally protected interest (and thus standing) does not depend on whether he can demonstrate that he will succeed on the merits. Otherwise, every unsuccessful plaintiff will have lacked standing in the first place. Thus, for example, one can have a legal interest in receiving government benefits and consequently standing to sue because of a refusal to grant them even though the court eventually rejects the claim. *See generally Public Citizen v. United States Dep't of Justice*, 491 U.S. 440, 109 S. Ct. 2558, 105 L.Ed.2d 377 (1989) (plaintiffs had standing to bring suit under [Federal Advisory Committee Act ("FACA"), 5 U.S.C. App. §§ 1-15] although claim failed). Indeed, in *Lujan* the Court characterized the "legally protected interest" element of an injury in fact simply as a "cognizable interest" and, without addressing whether the claimants had a statutory right to use or observe an animal species, concluded that the desire to do so "undeniably" was a cognizable interest. *Lujan*, 504 U.S. at 562–63, 112 S. Ct. at 2137–38.
>
> On the other hand, if the plaintiff's claim has no foundation in law, he has no legally protected interest and thus no standing to sue. *See, e.g., Arjay Assocs. v. Bush*, 891 F.2d 894, 898 (Fed. Cir. 1989) ("We hold that appellants lack standing because the injury they assert is to a nonexistent right . . . ."); *ACLU v. FCC*, 523 F.2d 1344, 1348 (9th Cir. 1975) ("If ACLU's claim is meritorious, standing exists; if not, standing not only fails but also ceases to be relevant."); *United Jewish Org. of Williamsburgh v. Wilson*, 510 F.2d 512, 521 (2d Cir. 1975) ("Whether our decision on this point is cast on the merits or as a matter of standing is probably immaterial."), *aff'd*, 430 U.S. 144, 97 S. Ct. 996, 51 L.Ed.2d 229 (1977).

Claybrook v. Slater, 111 F.3d 904, 907 (D.C. Cir. 1997). Furthermore, although the question of whether a litigant's interest is "legally protected" does not depend on the merits of the claim, it nevertheless is the case that "there are instances in which courts have examined the merits of the underlying claim and concluded that the plaintiffs lacked a legally protected interest and therefore lacked standing." *Skull Valley Band of Goshute Indians v. Nielson*, 376 F.3d 1223, 1236 (10th Cir. 2004) (citing *Skull Valley Band of Goshute Indians v. Leavitt*, 215 F. Supp. 2d 1232, 1240–41 (D. Utah 2002) (discussing cases), *Claybrook*, 111 F.3d at 907, and *Arjay Assocs.*

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[8] For brevity and convenience, this opinion hereinafter will omit the phrase "United States Court of Appeals for the" from the identification of federal circuit courts of appeal.

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Inc. v. Bush, 891 F.2d 894, 898 (Fed. Cir. 1989)). *Accord Martin v. S.E.C.*, 734 F.3d 169, 173 (2d Cir. 2013) (per curiam) (declining to reach the merits of a litigant's claims when standing was lacking "except to the extent that the merits overlap with the jurisdictional question").

In *McConnell v. FEC*, 540 U.S. 93 (2003), *overruled in part on other grounds, Citizens United v. FEC*, 558 U.S. 310 (2010), the Supreme Court concluded that a group of litigants lacked Article III standing because their claims could not be deemed "legally cognizable" when the Court had never previously recognized the broadly-asserted interest and that interest was premised on a mistaken interpretation of inapplicable legal precedent. The litigants in *McConnell* consisted in part of a group of voters, organizations representing voters, and candidates who collectively challenged, among other things, the constitutionality of a particular section of the Bipartisan Campaign Reform Act of 2002 ("BCRA") that amended the Federal Election Campaign Act of 1971 ("FECA") by "increas[ing] and index[ing] for inflation certain FECA contribution limits." 540 U.S. at 226. As relevant here, the litigant group argued that, as a result of the amendments, they suffered an injury they identified as the deprivation of an "equal ability to participate in the election process based on their economic status." *Id.* at 227. The group asserted that this injury was legally cognizable according to voting-rights case law that they viewed as prohibiting "electoral discrimination based on economic status . . . and upholding the right to an equally meaningful vote." *Id.* (internal quotation marks omitted). The Supreme Court, however, disclaimed the notion that it had ever "recognized a legal right comparable to the broad and diffuse injury asserted by the . . . plaintiffs." *Id.* In addition, the group's "reliance on this Court's voting rights cases [was] misplaced" because those cases required only "nondiscriminatory access to the ballot and a single, equal vote for each voter" whereas the group had not claimed that they were denied such equal access or the right to vote. *Id.* The

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Court further stated that it had previously "noted that '[p]olitical 'free trade' does not necessarily require that all who participate in the political marketplace do so with exactly equal resources,'" so the group's "claim of injury . . . is, therefore, not to a legally cognizable right." *Id.* (quoting *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 257 (1986)).

In *Bond v. Utreras*, 585 F.3d 1061, 1065-66 (7th Cir. 2009), the Seventh Circuit reviewed a district court order lifting a protective order and permitting a journalist to intervene in a civil rights case involving allegations that Chicago police officers mentally and physically abused a plaintiff while performing their official duties. The journalist sought to "unseal" police department records relating to citizen complaints against Chicago police officers that the city had produced during pretrial discovery but never filed with the court. *Id.* at 1066. The journalist claimed that no good cause existed to continue the protective order under Rule 26(c) of the Federal Rules of Civil Procedure. *Id.* at 1065. Several months after dismissing the underlying lawsuit, which had settled, *id.*, the district court "reevaluated whether 'good cause' existed to keep the documents confidential, and in so doing applied a 'presumption' of public access to discovery materials," *id.* at 1067. On balance, the district court concluded that the city's interest in keeping the records confidential was outweighed by the public's interest in information about police misconduct; as a result, the court granted the journalist's request to intervene and lifted the protective order. *Id.* On appeal by the city, the Seventh Circuit characterized as a "mistake" the district court's failure to consider whether the journalist had standing in view of the fact that the underlying lawsuit had been dismissed. *Id.* at 1068. The Seventh Circuit held that a third party seeking permissive intervention to challenge a protective order after a case has been dismissed "must meet the standing requirements of Article III in addition to Rule 24(b)'s requirements for permissive intervention." *Id.* at 1072. Discussing Article III's standing requirements, *id.* at

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1072-73, the Seventh Circuit noted that, "while a litigant need not definitely 'establish that a right of his has been infringed,' he 'must have a colorable *claim* to such a right' to satisfy Article III," *id.* at 1073 (emphasis in original) (quoting *Aurora Loan Servs., Inc. v. Craddieth*, 442 F.3d 1018, 1024 (7th Cir. 2006)). Because the district court's decision to lift the protective order was premised on a presumptive right of access to discovery materials, *id.* at 1067, the Seventh Circuit analyzed the legal basis of such a presumptive right and concluded that, while "most documents filed in court are presumptively open to the public," *id.* at 1073, it nevertheless is the case that "[g]enerally speaking, the public has no constitutional, statutory (rule-based), or common-law right of access to *unfiled* discovery," *id.* at 1073 (emphasis in original). The Seventh Circuit also found no support for the notion that Rule 26(c) "creates a freestanding public right of access to unfiled discovery." *Id.* at 1076. It then proceeded to consider and reject whether, alternatively, the First Amendment supplied such a right. *Id.* at 1077-78. Lacking any legal basis to assert a right to unfiled discovery, the Seventh Circuit held that the journalist "has no injury to a legally protected interest and therefore no standing to support intervention." *Id.* at 1078.

Griswold v. Driscoll, 616 F.3d 53 (1st Cir. 2010), is another instructive case. The First Circuit held that litigants lacked a legally protected interest because the source of the interest, the First Amendment, did not apply. In *Griswold*, students, parents, teachers, and the Assembly of Turkish American Associations ("ATAA") collectively challenged a decision by the Commissioner of Elementary and Secondary Education of Massachusetts to revise a statutorily-mandated advisory curriculum guide. 616 F.3d at 54-56. The Commissioner's initial revisions were motivated by political pressure to assuage a Turkish cultural organization that objected to the curriculum guide's references to the Armenian genocide as biased for failing to acknowledge an opposing contra-genocide perspective. *Id.* at 54-55. After the revised curriculum guide was

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submitted to legislative officials, the Commissioner again modified it – at the request of Armenian descendants – by removing references to all pro-Turkish websites (including websites that presented the contra-genocide perspective) except the Turkish Embassy's website. *Id.* at 55. The plaintiffs sued claiming that the revisions to the curriculum guide were made in violation of their rights under the First Amendment to "inquire, teach and learn free from viewpoint discrimination . . . and to speak." *Id.* at 56. In an opinion notable for its authorship by U.S. Supreme Court Associate Justice David Souter (Ret.), sitting by designation, the First Circuit affirmed the dismissal of the ATAA's First Amendment claim as time barred and then considered whether the remaining plaintiffs had standing to assert a First Amendment right. *Id.* Remarking that "we see this as a case in which the dispositive questions of standing and statement of cognizable claim are difficult to disentangle," the First Circuit found it "prudent to dispose of both standing and merits issues together." *Id.* The First Circuit then evaluated whether the challenged advisory curriculum guide was analogous to a virtual school library—in which case the revisions to the guide would be subject to First Amendment review pursuant to the plurality decision in *Board of Education, Island Trees Union Free School District No. 26 v. Pico*, 457 U.S. 853 (1982)—or whether the guide was more properly characterized as an element of curriculum over which the State Board of Education may exercise discretion. *Id.* at 56-60. The First Circuit ultimately regarded the complaint as pleading "a curriculum guide claim that should be treated like one about a library, in which case pleading cognizable injury and stating a cognizable claim resist distinction." *Id.* at 56. Declining to extend "the *Pico* plurality's notion of non-interference with school libraries as a constitutional basis for limiting the discretion of state authorities to set curriculum," the First Circuit found that the guide was an element of curriculum, *id.* at 59, so that "revisions to the Guide after its submission to legislative officials,

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even if made in response to political pressure, did not implicate the First Amendment," *id.* at 60. The First Circuit therefore affirmed the lower court's judgment that the First Amendment did not apply to the challenged curriculum guide and, as a result, the plaintiffs had failed to establish either a cognizable injury or a cognizable claim. *Id.* at 56, 60.

The D.C. Circuit's decision in *Claybrook*, cited *supra*, also lends authority to the proposition that a party lacks standing when the statutory, constitutional, common law or other source of the asserted legal interest does not apply or does not exist. *Claybrook* involved a lawsuit filed by Joan Claybrook, a co-chair of Citizens for Reliable and Safe Highways ("CRASH"), who sued the Administrator of the Federal Highway Administration ("FHWA") for failing to prevent an agency advisory committee from passing a resolution that criticized CRASH's fund-raising literature. 111 F.3d at 905, 906. Claybrook claimed that the Administrator violated the Federal Advisory Committee Act ("FACA"), 5 U.S.C. App. §§ 1-15, by permitting the advisory committee to vote on and pass the challenged resolution, which Claybrook claimed was not on the committee's agenda and not within the committee's authority. *Id.* at 906. The Administrator countered by arguing that Claybrook lacked standing "because the legal duty she claims he violated does not exist." *Id.* at 907. Upon analysis of the relevant provisions of FACA, 5 U.S.C. App. §§ 9(c)(B), 10(a)(1), 10(a)(2), 10(e), 10(f), the D.C. Circuit agreed that the Act did not impose the asserted legal duty that served as a basis for Claybrook's claimed injury, the agency otherwise complied with the Act, and the decision to adjourn the advisory committee meeting was committed to the agency's discretion pursuant to 5 U.S.C. § 701(a)(2). *Id.* at 907-909. Because FACA offered no recourse to Claybrook, the D.C. Circuit held that "[i]n sum, we are left with no law to apply to Claybrook's claim and consequently Claybrook lacks standing." *Id.* at 909.

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The Ninth Circuit reached a similar result in *Fleck & Assocs., Inc. v. Phoenix, an Arizona Mun. Corp.*, 471 F.3d 1100 (9th Cir. 2006). The appellant in *Fleck & Assocs.* was a "for-profit corporation that operate[d] . . . a gay men's social club in Phoenix, Arizona" where "[s]exual activities [took] place in the dressing rooms and in other areas of the club." 471 F.3d at 1102. Pursuant to a Phoenix ordinance banning the operation of live sex act businesses, a social club operated by the appellant was subjected to a police search during which two employees were questioned and detained. *Id.* at 1102-1103. The appellant was also "threatened with similar actions." *Id.* at 1103. The appellant sued the city seeking both injunctive and declaratory relief on the ground that the ordinance violated its constitutional privacy rights. *Id.* at 1102. The district court interpreted the appellant's complaint to raise one claim based on the invasion of its customers' privacy rights and a second claim based on the invasion of the appellant's rights as a corporation. *Id.* at 1103. With respect to the claim based on the customers' privacy rights, the district court found that the appellant lacked standing to pursue that claim and, alternatively, the appellants' customers had no privacy rights in the social club so dismissal was further warranted for failure to state a claim for relief. *Id.* The district court held, however, that the appellant had standing to assert its own privacy rights as a corporation, albeit "[t]he court did not . . . identify what those corporate rights might have been" and "immediately proceeded to hold that [the appellant] lacked any cognizable privacy rights and dismissed for failure to state a claim." *Id.* On appeal, the Ninth Circuit agreed with the district court that the appellant lacked associational standing[9] to assert its customers' rights but held that the district court erred by addressing the merits of the customers' privacy rights in the social club when the court lacked subject matter

[9] "Under the doctrine of 'associational' or 'representational' standing an organization may bring suit on behalf of its members whether or not the organization itself has suffered an injury from the challenged action." *Id.* at 1105.

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jurisdiction. *Id.* at 1103, 1105, 1106. Discussing the appellant's claim of "traditional" Article III standing based on its asserted privacy rights as a corporation, the Ninth Circuit noted that the appellant "squarely identifie[d] the source of its supposed right as the liberty guarantee described in *Lawrence v. Texas*, 539 U.S. 558, 123 S. Ct. 2472, 156 L. Ed. 2d 508 (2003)." *Id.* at 1104. The Ninth Circuit determined, however, that no corporate right to privacy emanated from that case, *id.* at 1105, 1106, and, as a result, "[b]ecause the right to privacy described in *Lawrence* is purely personal and unavailable to a corporation, [the appellant corporation] failed to allege an injury in fact sufficient to make out a case or controversy under Article III," *id.* at 1105.

In *Muntaqim v. Coombe*, 449 F.3d 371 (2d Cir. 2006) (en banc) (per curiam), the Second Circuit considered a prisoner's complaint challenging New York Election Law section 5–106 on the ground that it denied felons the right to vote in violation of section 2 of the Voting Rights Act "because it 'result[ed] in a denial or abridgement of the right . . . to vote on account of race.'" 449 F.3d at 374 (quoting 42 U.S.C. § 1973(a), transferred to 52 U.S.C. § 10301). Because the prisoner was a resident of California before he was incarcerated, *id.* at 374, and the Second Circuit concluded that "under New York law, [his] involuntary presence in a New York prison [did] not confer residency for purposes of registration and voting," *id.* at 376, the court found that "his inability to vote in New York arises from the fact that he was a resident of California, not because he was a convicted felon subject to the application of New York Election Law section 5–106," *id.* As a result, the Second Circuit held that that the prisoner "suffered no 'invasion of a legally protected interest.'" *Id.* (quoting *Lujan*, 504 U.S. at 560).

Other federal circuits similarly have concluded that, when the source of the legal interest asserted by a litigant does not apply or does not exist, the litigant has not established a colorable claim to a right that is "legally protected" or "cognizable" for the purpose of establishing an

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injury in fact that satisfies Article III's standing requirement. *See, e.g., 24th Senatorial Dist. Republican Comm. v. Alcorn*, 820 F.3d 624, 633 (4th Cir. 2016) (finding that "[b]ecause neither Virginia law nor the Plan [of Organization that governs the Republican Party of Virginia] gives [the litigant] 'a legally protected interest' in determining the nomination method in the first place, he fails to make out 'an *invasion* of a legally protected interest,' i.e. actual injury, in this case" (quoting *Lujan*, 504 U.S. at 560) (emphasis in original)); *Spirit Lake Tribe of Indians ex rel. Comm. of Understanding and Respect v. Nat'l Collegiate Athletic Ass'n*, 715 F.3d 1089, 1092 (8th Cir. 2013) (noting that injury resulting from a college ceasing to use a Native American name, "even if . . . sufficiently concrete and particularized . . . does not result from the invasion of a legally protected interest"); *White v. United States*, 601 F.3d 545, 555 (6th Cir. 2010) (stating that the plaintiffs "must demonstrate an injury-in-fact to a legally protected interest" but failed to do so because "none of the purported 'constitutional' injuries actually implicates the Constitution"); *Pichler v. UNITE*, 542 F.3d 380, 390-92 (3d Cir. 2008) (affirming dismissal on the ground that litigants failed to establish an injury to a "legally protected interest" because the Driver's Privacy Protection Act of 1994, 18 U.S.C. §§ 2721–2725, was interpreted to apply only to an individual whose personal information was contained in a motor vehicle record and not to spouses who might share that same personal information but were not the subject of the motor vehicle record); *Bochese*, 405 F.3d at 984 (litigant was not an intended beneficiary of a contract amendment so he "had no 'legally cognizable interest' in that agreement and therefore lack[ed] standing to challenge its rescission"); *Aiken v. Hackett*, 281 F.3d 516, 519-20 (6th Cir. 2002) (appellants who claimed they were denied a benefit in violation of the Equal Protection Clause but did not allege that they would have received the benefit under a race-neutral policy lacked standing because they "failed to allege the invasion of a right that the law

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protects"); *Arjay Assocs.*, 891 F.2d at 898 (stating that "[b]ecause appellants have no right to conduct foreign commerce in products excluded by Congress, they have in this case no right capable of judicial enforcement and have thus suffered no injury capable of judicial redress").

III.

Several considerations favor the above-described understanding of the injury in fact requirement, the first of which is its inherent logic. For an interest to be deemed "legally" protected or cognizable it must have some foundation in the law. *Claybrook*, 111 F.3d at 907 (stating, as quoted above, that "if the plaintiff's claim has no foundation in the law, he has no legally protected interest"). Thus, if the interest underlying a litigant's claimed injury is premised on a law that does not apply or does not exist, it directly follows that the litigant does not possess an interest that is "legally protected." *Cf. Pender*, 788 F.3d at 366 (indicating that a legally protected interest "aris[es] from constitutional, statutory, or common law" (citing *Lujan*, 504 U.S. at 578)).

Another consideration is the degree to which the approach taken by the majority of jurisdictions remains faithful to the proper role of standing as an element of Article III's constitutional limit on the exercise of judicial power. As the Supreme Court has said, "the Constitution extends the 'judicial Power' of the United States only to 'Cases' and 'Controversies'" and the Court "ha[s] always taken this to mean cases and controversies of the sort traditionally amenable to, and resolved by, the judicial process." *Steel Co.*, 523 U.S. at 102. "Such a meaning is fairly implied by the text, since otherwise the purported restriction upon the judicial power would scarcely be a restriction at all." *Id.* Declining to exercise jurisdiction to entertain a litigant's claim for which no law can be properly invoked and, as a result, no legally protected interest can be said to have been wrongfully invaded, comports with standing's role as a limitation on judicial power. A contrary approach to standing would effect an expansion of

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judicial power without due regard for the autonomy of co-equal branches of government or the way in which the exercise of judicial power "can so profoundly affect the lives, liberty, and property of those to whom it extends," *Valley Forge Christian Coll.*, 454 U.S at 473.[10]

Most importantly, this matter poses separation-of-powers concerns. The Supreme Court has observed that the "standing inquiry has been especially rigorous when reaching the merits of the dispute would force us to decide whether an action taken by one of the other two branches of the Federal Government was unconstitutional." *Raines*, 521 U.S. at 819-20. The Movants bring a constitutional claim that implicates the authorities of co-equal branches of the government. First, the decisions the Movants seek have been classified by the Executive Branch in accordance with its constitutional authorities and the portions of the opinions that the Executive Branch has declassified have already been released. The Supreme Court has stressed that "[t]he President, after all, is the 'Commander in Chief of the Army and Navy of the United States'" and "[h]is authority to classify and control access to information bearing on national security . . . flows primarily from this constitutional investment of power in the President and exists quite apart from any explicit congressional grant." *Dep't of the Navy v. Egan*, 484 U.S. 518, 527 (1988). Accordingly, "[f]or 'reasons . . . too obvious to call for enlarged discussion,' *CIA v. Sims*, 471 U.S. 159, 170, 105 S.Ct. 1881, 1888, 85 L.Ed.2d 173 (1985), the protection of classified information must be committed to the broad discretion of the agency responsible, and this must include broad discretion to determine who may have access to it." *Egan*, 484 U.S. at 529.

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[10] Some might object that litigants should have an opportunity to develop the facts before a court assesses the scope or applicability of an asserted right. *E.g.*, *Judicial Watch*, 432 F.3d at 363 (Williams, J., concurring) (stating that "the use of the phrase 'legally protected' to require showing of a substantive right would thwart a major function of standing doctrine—to avoid premature judicial involvement in resolution of issues on the merits"). This case does not implicate those concerns. No amount of factual development would alter the outcome of the question of whether the First Amendment applies and affords a qualified right of access to classified, ex parte FISA proceedings.

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"[U]nless Congress specifically has provided otherwise, courts traditionally have been reluctant to intrude upon the authority of the Executive in military and national security affairs." *Id.* In this case, the Movants seek access to information contained in this Court's opinions that the Executive Branch has determined is classified national security information.

Second, in the exercise of its constitutional authorities to make laws, *see United States v. Kebodeaux*, 133 S. Ct. 2496, 2502 (2013) (discussing Congress's broad authority to make laws pursuant to the Constitution's Necessary and Proper Clause), Congress has directed by statute that "[t]he record of proceedings under [FISA], including applications made and orders granted, shall be maintained under security measures established by the Chief Justice in consultation with the Attorney General and the Director of National Intelligence," 50 U.S.C. § 1803(c). While Congress has also established means by which certain opinions of this Court are to be subject to a declassification review and made public, it has made Executive Branch officials acting independently of the Court responsible for these actions. *See infra* Part V.

To be clear, the classified material the Movants' seek is not subject to sealing orders entered by this Court. *See* Movants' Reply In Supp. of Their Mot. for Release of Ct. Records 16 (requesting that the Court "unseal" the judicial opinions and release them "with only those redactions essential to protect information that the Court determines, after independent review, to warrant continued sealing"). No such orders were imposed in the cases in which the sought-after judicial opinions were issued; consequently, no question about the propriety of a sealing order is at play in this matter. The entirety of the information sought by the Movants is classified information redacted from public FISC opinions that is being withheld by the Executive Branch pursuant to its independent classification authorities and remains subject to the statutory mandate that the FISC maintain its records under the aforementioned security procedures. Adjudication

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of the Movants' motion could therefore require the Court to delve into questions about the constitutionality, pursuant to the First Amendment, of the Executive Branch's national security classification decisions or the scope and constitutional validity of the statute's mandate that this Court maintain material under the required security procedures.

Together, these considerations commend the path paved by the majority of jurisdictions, which have held that an interest is not "legally protected" for the purpose of establishing standing when the constitutional, statutory or common-law source of the interest does not apply or does not exist. It bears emphasizing that the only interest the Movants identify to establish standing in this case is a qualified right to access judicial opinions. Mot. for Release of Ct. Records 1, 2, 10. The Movants claim that this interest is legally protected by the First Amendment. *Id.* at 10. The Movants further assert that this legally protected interest—that is, the qualified right to access judicial documents as protected by the First Amendment—was invaded when they were denied access to this Court's judicial opinions addressing the legality of bulk data collection, thereby causing injury. *Id.* Accordingly, the question for the Court is whether the First Amendment applies.

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IV.

Access to judicial records is not expressly contemplated by the First Amendment, which states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances." U.S. CONST. amend. I. The Supreme Court, however, has inferred that, in conjunction with the Fourteenth Amendment, "[t]hese expressly guaranteed freedoms share a common core purpose of assuring freedom of communication on matters relating to the functioning of government." *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 575 (1980) (plurality opinion). The Supreme Court has further explained that "[i]n guaranteeing freedoms such as those of speech and press, the First Amendment can be read as protecting the right of everyone to attend trials so as to give meaning to these explicit guarantees" and "[w]hat this means in the context of trials is that the First Amendment guarantees of speech and press, standing alone, prohibit government from summarily closing courtroom doors which had long been open to the public at the time that Amendment was adopted." *Id.*

In *Richmond Newspapers*, the Supreme Court "firmly established for the first time that the press and general public have a constitutional right of access to criminal trials." *Globe Newspaper Co v. Superior Court*, 457 U.S. 596, 603 (1982). The Supreme Court has advised, however, that, "[a]lthough the right of access to criminal trials is of constitutional stature, it is not absolute," *id.* at 607, but "may be overcome only by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest," *Press-Enter. Co. v. Superior Court,* 464 U.S. 501, 510 (1984) ("*Press-Enterprise I*"). The Supreme Court has extended this qualified First Amendment right of public access only to

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criminal trials, *Richmond Newspapers*, 448 U.S. at 580, the voir dire examination of jurors in a criminal trial, *Press-Enterprise I*, 464 U.S. at 508-13, and criminal preliminary hearings "as they are conducted in California," *Press-Enter. Co. v. Superior Court*, 478 U.S. 1, 13 (1986) ("*Press-Enterprise II*"). Most circuit courts, though, "have recognized that the First Amendment right of access extends to civil trials and some civil filings." *ACLU v. Holder*, 673 F.3d 245, 252 (4th Cir. 2011). To date, however, the Supreme Court has never "applied the *Richmond Newspapers* test outside the context of criminal judicial proceedings or the transcripts of such proceedings." *Ctr. for Nat'l Sec. Studies v. U.S. Dep't of Justice*, 331 F.3d 918, 935 (D.C. Cir. 2003). Nor has "the Supreme Court . . . ever *indicated* that it would apply the *Richmond Newspapers* test to anything other than criminal judicial proceedings." *Id.* (emphasis in original).

"In *Press–Enterprise II*, the Supreme Court first articulated what has come to be known as the *Richmond Newspapers* 'experience and logic' test, by which the Court determines whether the public has a right of access to 'criminal proceedings.'"[11] *Id.* at 934. The "experience" test questions "whether the place and process have historically been open to the press and general public." *Press-Enterprise II*, 478 U.S. at 8. The "logic" test asks "whether public access plays a significant positive role in the functioning of the particular process in question." *Id.*

This is not the first occasion on which the Court has confronted the question of whether a qualified First Amendment right of access applies to this Court's judicial records. Nearly a decade ago, the ACLU sought by motion the release of this Court's "orders and government

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[11] In addition to the *Richmond Newspapers* "experience and logic" tests, the Second Circuit has also "endorsed" a "second approach" that holds that "the First Amendment protects access to judicial records that are 'derived from or a necessary corollary of the capacity to attend the relevant proceedings.'" *In re N.Y. Times Co. to Unseal Wiretap & Search Warrant Materials*, 577 F.3d 401, 409 (2d Cir. 2009) (quoting *Hartford Courant Co. v. Pellegrino*, 380 F.3d 83, 93 (2d Cir. 2004)).

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pleadings regarding a program of surveillance of suspected international terrorists by the National Security Agency (NSA) that had previously been conducted without court authorization." *In re Motion for Release of Court Records*, 526 F. Supp. 2d at 485. Assuming, for the sake of argument, that a qualified First Amendment right of access might extend to judicial proceedings other than criminal proceedings, the Court applied the requisite "experience" and "logic" tests acknowledged by the Supreme Court in *Press-Enterprise II* to determine whether such a right attached to the FISA electronic surveillance proceedings in which the sought-after orders and pleadings were filed. *Id.* at 491-97.

Considering the "experience" test first, the Court in *In re Motion for Release of Court Records* noted that "[t]he FISC ha[d] no . . . tradition of openness"; it "ha[d] never held a public hearing in its history"; a "total of two opinions ha[d] been released to the public in nearly three decades of operation"; the Court "ha[d] issued literally thousands of classified orders to which the public has had no access"; there was "no tradition of public access to government briefing materials filed with the FISC" or FISC orders; and the publication of two opinions of broad legal significance failed to establish a tradition of public access given the fact that "the FISC ha[d] . . . issued other legally significant decisions that remain classified and ha[d] not been released to the public . . . ." 526 F. Supp. 2d at 492-93. Accordingly, the Court determined that "the FISC is not a court whose place or process has historically been open to the public" and the "experience" test was not satisfied. *Id.* at 493.

As far as the "logic" test was concerned, although the Court in *In re Motion for Release of Court Records* agreed that public access might result in a more informed understanding of the Court's decision-making process, provide a check against "mistakes, overreaching or abuse," and benefit public debate, *id.* at 494, it found that "the detrimental consequences of broad public

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access to FISC proceedings or records would greatly outweigh any such benefits" and would actually imperil the functioning of the proceedings:

> The identification of targets and methods of surveillance would permit adversaries to evade surveillance, conceal their activities, and possibly mislead investigators through false information. Public identification of targets, and those in communication with them, would also likely result in harassment of, or more grievous injury to, persons who might be exonerated after full investigation. Disclosures about confidential sources of information would chill current and potential sources from providing information, and might put some in personal jeopardy. Disclosure of some forms of intelligence gathering could harm national security in other ways, such as damaging relations with foreign governments.

Id. The Court cautioned that "[a]ll these possible harms are real and significant, and, quite frankly, beyond debate," *id.*, and "the national security context applicable here makes these detrimental consequences even more weighty," *id.* at 495. In addition, after rejecting the ACLU's argument that the Court should conduct an independent review of the Executive Branch's classification decisions under a non-deferential standard, the Court identified numerous ways that "the proper functioning of the FISA process would be adversely affected if submitting sensitive information to the FISC could subject the Executive Branch's classification [decisions] to a heightened form of judicial review":

> The greater risk of declassification and disclosure over Executive Branch objections would chill the government's interactions with the Court. That chilling effect could damage national security interests, if, for example, the government opted to forgo surveillance or search of legitimate targets in order to retain control of sensitive information that a FISA application would contain. Moreover, government officials might choose to conduct a search or surveillance without FISC approval where the need for such approval is unclear; creating such an incentive for government officials to avoid judicial review is not preferable. *See Ornelas v. United States*, 517 U.S. 690, 699, 116 S.Ct. 1657, 134 L.Ed.2d 911 (1996) (noting strong Fourth Amendment preference for searches conducted pursuant to a warrant and adopting a standard of review that would provide an incentive for law enforcement to seek warrants). Finally, in cases that are submitted, the free flow of information to the FISC that is needed for an ex parte proceeding to result in sound decision[-]making and effective oversight could also be threatened.

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Id. at 496. Finding that the weight of all these harms counseled against public access, the Court adopted the reasoning of other courts that "have found that there is no First Amendment right of access where disclosure would result in a diminished flow of information, to the detriment of the process in question," *id.*, and remarked that this reasoning "compels the conclusion that the 'logic test' . . . is not satisfied here," *id.* at 497.

Because both the "experience" and "logic" tests were "unsatisfied," the Court concluded that "there [was] no First Amendment right of access to the requested materials." *Id.* The Court also declined to exercise its own discretion to "undertake the searching review of the Executive Branch's classification decisions requested by the ACLU, because of the serious negative consequences that might ensue . . . ." *Id.* The Court noted, however, that "[o]f course, nothing in this decision forecloses the ACLU from pursuing whatever remedies may be available to it in a district court through a FOIA request addressed to the Executive Branch." *Id.*

In the motion that is now pending, the Movants acknowledge the decision in *In re Motion for Release of Court Records* but argue that the decision erred by (1) "limiting its analysis to whether two previously published opinions of this Court 'establish a tradition of public access'" and (2) "concluding that public access would 'result in a diminished flow of information, to the detriment of the process in question.'" Mot. for Release of Ct. Records 21 (quoting *In re Motion for Release of Court Records*, 526 F. Supp. 2d at 493, 496). Taking these two arguments in order, the first argument is premised on a misreading of the Court's analysis and an overly broad framing of the legal question. While examining the experience prong of *Richmond Newspapers*, the Court did not "limit" its analysis to two previously-published opinions; to the contrary, the Court made clear that its rationale for holding that there was no tradition of public access to FISC electronic surveillance proceedings was demonstrated by, as stated above, the lack of any

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public hearing in the (at that point) approximately 30 years in which the FISC had been operating and the fact that, with *the exception of* only two published opinions, the entirety of the court's proceedings, which consisted of the issuance of thousands of judicial orders, was classified and unavailable to the public. *In re Motion for Release of Court Records*, 526 F. Supp. 2d at 492. In other words, at that time, a minimum of 99.98% of FISC proceedings was classified and nonpublic. It would be an understatement to say that such a percentage reflected a tradition of no public access. Indeed, the Court found that "the ACLU's First Amendment claim runs counter to a long-established and virtually unbroken practice of excluding the public from FISA applications and orders . . . ." *Id.* at 493.

The Movants gain no traction challenging *In re Motion for Release of Court Records* by suggesting that the framing of the "experience" test should be enlarged to posit whether public access historically has been available to any "judicial opinions interpreting the meaning and constitutionality of public statutes," Mot. for Release of Ct. Records 14, rather than focusing on whether *FISC proceedings* historically have been accessible to the public. Such an expansive framing of the type or kind of document or proceeding at issue plainly would sweep too broadly because it would encompass grand jury opinions, which often interpret the meaning and constitutionality of public statutes but arise from grand jury proceedings, which are a "paradigmatic example" of proceedings to which no right of public access applies, *In re Boston Herald, Inc.*, 321 F.3d 174, 183 (1st Cir. 2003) (quoting *Press-Enterprise II*, 478 U.S. at 9), and a "classic example" of a judicial process that depends on secrecy to function properly, *Press-Enter. II*, 478 U.S. at 9. As demonstrated by the decision in *Press-Enterprise II*, the Supreme Court certainly contemplated the consideration of narrower subsets of legal documents and proceedings in light of the fact that it entertained the question of whether the First Amendment

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right of access applied to a subset of judicial hearing transcripts—i.e., "the transcript of a preliminary hearing growing out of a criminal prosecution," 478 U.S. at 3—and never intimated that its analysis should (or could) extend to transcripts of *all* judicial hearings growing out of a criminal prosecution. Furthermore, to the extent the Movants take issue with the Court's formulation of the "experience" test on the ground that it focused too narrowly on FISC practices, Mot. for Release of Ct. Records 21 (arguing that the experience test "does not look to the particular practice of any one jurisdiction"), the fact of the matter is that FISA mandates that the FISC "shall have jurisdiction to hear applications for and grant orders approving electronic surveillance anywhere within the United States," 50 U.S.C. § 1803(a)(1), so the FISC's virtually-exclusive[12] jurisdiction over such proceedings is a construct of Congress and, thereby, the American people.[13] The Movants offer no authority to support a suggestion that the concentration of FISC proceedings in one judicial forum detracts from the legitimacy or correctness of applying the "experience" test to FISC proceedings rather than a broader range of proceedings. Accordingly, *In re Motion for Release of Court Records* properly framed the "experience" test to examine whether FISC proceedings—proceedings that relate to applications made by the Executive Branch for the issuance of court orders approving authorities covered exclusively by FISA—have historically been open to the press and general public.

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[12] *See* 50 U.S.C. §§ 1803(a), 1823(a), 1842(b)(1), 1861(b)(1)(A), 1881b(a), 1881c(a)(1). Although applications seeking pen registers, trap-and-trace devices, or certain business records for foreign intelligence purposes may be submitted by the government to a United States Magistrate Judge who has been publicly designated by the Chief Justice of the United States to have the power to hear such applications, FISA makes clear that the United States Magistrate Judge will be acting "on behalf of" a judge of the FISC. 50 U.S.C. §§ 1842(b)(2), 1861(b)(1)(B). In practice, no United States Magistrate Judge has been designated to entertain such applications.

[13] Although FISC proceedings occur in a single judicial forum, the district court judges designated to comprise the FISC are from at least seven of the United States judicial circuits across the country. 50 U.S.C. § 1803(a)(1).

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Attending to the "logic" prong of the constitutional analysis, the Movants argue that the Court "erred in concluding that public access would 'result in a diminished flow of information, to the detriment of the process in question.'" Mot. for Release of Ct. Records 21 (quoting *In re Motion for Release of Court Records*, 526 F. Supp. 2d at 496). The Movants neglect, however, to explain why they believe this conclusion was flawed; nor do they otherwise refute the Court's identification of the detrimental effects that could cause a diminished flow of information as a result of public access, *see In re Motion for Release of Court Records*, 526 F. Supp. 2d at 494-96. Instead, the Movants offer the conclusory statement that "disclosure of the requested opinions would serve weighty democratic interests by informing the governed about the meaning of public laws enacted on their behalf." Mot. for Release of Ct. Records 21. While it undoubtedly is the case that access to judicial proceedings and opinions plays an important, if not imperative, role in furthering the public's understanding about the meaning of public laws, the Movants cannot ignore the Supreme Court's instruction that, "[a]lthough many governmental processes operate best under public scrutiny, it takes little imagination to recognize that there are some kinds of government operations that would be totally frustrated if conducted openly." *Press-Enter. II*, 478 U.S. at 8-9. *In re Motion for Release of Court Records* identified detrimental consequences that could be anticipated if the public had access to open FISC proceedings, some of which the Court noted were "comparable to those relied on by courts in finding that the 'logic' requirement for a First Amendment right of access was not satisfied regarding various types of proceedings and records" and the others were described as "distinctive to FISA's national security context." 526 F. Supp. 2d at 494. These detrimental consequences, which are quoted above, were deemed to outweigh any benefits public access would add to the functioning of such proceedings, *id.*, and the Court emphasized that "the national security

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context applicable here makes these detrimental consequences even more weighty," *id.* at 495. Because the Movants made no attempt to dispute or discredit these detrimental effects, the resulting diminished flow of information that public access would have on the functioning of FISC proceedings, or the weight the Court gave to the detrimental effects, this Court is left to view their argument as simply a generalized assertion that they disagree with *In re Motion for Release of Court Records.*[14] That disagreement being duly noted, the Movants have not made a persuasive case that the result was wrong. Consequently, this Court has no basis to disclaim the conclusion in *In re Motion for Release of Court Records* that the 'logic' test was "not satisfied[,]" *id.* at 497, and, indeed, agrees with it.

Although the records to which the ACLU sought access in *In re Motion for Release of Court Records* implicated only electronic surveillance proceedings pursuant to 50 U.S.C. §§ 1804-1805, *id.* at 486, the analysis applying *Richmond Newspapers'* "experience" and "logic" tests involved reasoning that more broadly concerned all classified, ex parte FISC proceedings regardless of statutory section. *Id.* 491-97. Notwithstanding the passage of time, that analysis retains its force and relevance.[15] The Court also sees no meaningful difference between the

---

[14] The Movants specify four ways public access to FISC judicial opinions is "important to the functioning of the FISA system," Mot. for Release of Ct. Records 17-20; however, the Movants never discuss these benefits vis-à-vis the detrimental effects identified by *In re Motion for Release of Court Records.*

[15] Although there have been several public proceedings since *In re Motion for Release of Court Records* was decided, *see, e.g.*, Misc. Nos. 13-01 through 13-09, *available at* http://www.fisc.uscourts.gov/public-filings, the statistical significance of those public proceedings makes no material difference to the question of whether FISA proceedings historically have been open to the public, especially when considered in light of the many thousands more classified and ex parte proceedings that have occurred since that case was concluded. Furthermore, by and large, those public proceedings have been in the nature of this one whereby, in the wake of the unauthorized disclosures about NSA programs, private parties moved the Court for access to judicial records or for greater transparency about the number of orders issued by the FISC to providers. They are therefore distinguishable from the type of

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application of the "experience" and "logic" tests to FISC proceedings versus the application of these tests to sealed wiretap applications pursuant to Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. §§ 2510-20. Like FISC proceedings, Title III wiretap applications are "subject to a statutory presumption *against* disclosure,"[16] "have not historically been open to the press and general public," and are not subject to a qualified First Amendment right of access, *In re N.Y. Times Co. to Unseal Wiretap & Search Warrant Materials*, 577 F.3d 401, 409 (2d Cir. 2009) (emphasis in original). Accordingly, persuaded by *In re Motion for Release of Court Records*, this Court adopts its analysis and, for the reasons stated therein, as well as those discussed above, holds that a First Amendment qualified right of access does not apply to the FISC proceedings that resulted in the issuance of the judicial opinions the Movants now seek, which consist of proceedings pursuant to 50 U.S.C. § 1842 (pen registers and trap and trace devices for foreign intelligence and international terrorism investigations) and 50 U.S.C. § 1861 (access to certain business records for foreign intelligence and international terrorism investigations).

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proceedings relevant to the instant motion and to *In re Motion for Release of Court Records*, namely ex parte proceedings involving classified government requests for authority to conduct electronic surveillance or other forms of intelligence collection.

[16] Title III mandates that wiretap "[a]pplications made and orders granted under this chapter shall be sealed by the judge." 18 U.S.C. § 2518(8)(b). As discussed *supra*, FISA mandates that "[t]he record of proceedings under this chapter, including applications made and orders granted, shall be maintained under security measures established by the Chief Justice in consultation with the Attorney General and the Director of National Intelligence." 50 U.S.C. § 1803(c).

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V.

As already noted, the only law the Movants cite as the source for their claimed right of public access to FISC judicial opinions is the First Amendment. If any other legal bases existed to secure constitutional standing for these Movants, they were obligated to present them. Because the First Amendment qualified right of access does not apply to the FISC proceedings at issue in this matter, the Movants have no legally protected interest and cannot show that they suffered an injury in fact for the purpose of meeting their burden to establish standing under Article III.[17]

To be sure, the Court does not reach this result lightly. However, application of the Supreme Court's test to determine whether a First Amendment qualified right of access attaches to the FISC proceedings at issue in this matter leads to the conclusion that it does not. Absent some other legal basis to establish standing, this means the Court has no jurisdiction to consider causes of action such as this one whereby individuals and organizations who are not parties to FISC proceedings seek access to classified judicial records that relate to electronic surveillance, business records or pen register and trap-and-trace device proceedings. Notably, the D.C. Circuit has advised that "[e]ven if holding that [the litigant] lacks standing meant that no one could initiate" the cause of action at issue "it would not follow that [the litigant] (or anyone else) must have standing after all. Rather, in such circumstance we would infer that 'the subject matter is committed to the surveillance of Congress, and ultimately to the political process.'" *Sargeant*,

---

[17] The Court's decision involves scrutiny of whether the First Amendment qualified right of access applies, but only as part of the assessment of whether the Movants have standing under Article III. Because they do not, the Court dismisses their Motion for lack of jurisdiction without, strictly speaking, ruling on the merits of their asserted cause of action. Moreover, in the absence of jurisdiction, the Court may not consider any other legal arguments or requests for relief that were advanced in the motion.

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130 F.3d at 1070 (quoting *Richardson*, 418 U.S. at 179). Indeed, "[t]he assumption that if [the litigants] have no standing to sue, no one would have standing, is not a reason to find standing." *Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208 (1974).

Evidence that public access to opinions arising from classified, ex parte FISC proceedings is best committed to the political process is demonstrated by Congress's enactment of the Uniting and Strengthening America by Fulfilling Rights and Ensuring Effective Discipline Over Monitoring Act of 2015 ("USA FREEDOM Act of 2015"), Pub. L. 114-23, 129 Stat. 268 (2015), which, after considerable public debate, made substantial amendments to FISA. One such amendment, which is found in § 402 of the USA FREEDOM Act and codified at 50 U.S.C. § 1872(a), added an entirely new provision for the public disclosure of certain FISC judicial opinions. Consequently, FISA now states that "the Director of National Intelligence, in consultation with the Attorney General, shall conduct a declassification review of each decision, order, or opinion issued by the Foreign Intelligence Surveillance Court . . . that includes a significant construction or interpretation of any provision of law, including any novel or significant construction or interpretation of the term 'specific selection term', and, consistent with that review, make publicly available to the greatest extent practicable each such decision, order, or opinion." 50 U.S.C. § 1872(a). Although the Movants characterize the enactment of this provision of the USA FREEDOM Act as evidence that "favors disclosure of FISC opinions" and bolsters their argument that "public access would improve the functioning of the process in question," Notice of Supplemental Authority 2 (Dec. 4, 2015), the Court does not believe that this provision alters the First Amendment analysis. FISC proceedings of the type at issue historically have not been, nor presently will be, open to the press and general public given that no amendment to FISA altered the statutory mandate for such proceedings to occur ex parte and

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pursuant to the aforementioned security measures established by the Chief Justice in consultation with the Attorney General and the Director of National Intelligence. Furthermore, although Congress had the opportunity to do so, it made no amendment to FISA that established a procedure by which the public could seek or obtain access to FISC records directly from the Court. Rather, after informed debate, Congress deemed public access as contemplated by 50 U.S.C. § 1872(a) to be the means that, all things considered, best served the totality of the American people's interests. Accordingly, the USA FREEDOM Act enhances public access to significant FISC decisions, as provided by § 1872(a), and ensures that the public will have a more informed understanding about how FISA is being construed and implemented, which appears to be at the heart of the Movants' interest. Mot. for Release of Ct. Records 2 (stating that "Movants' current request for access to opinions of this Court evaluating the legality of bulk collection seeks to vindicate the public's overriding interest in understanding how a far-reaching federal statute is being construed and implemented, and how constitutional privacy protections are being enforced").

CONCLUSION

For the foregoing reasons, the Court will dismiss for lack of jurisdiction the pending MOTION OF THE AMERICAN CIVIL LIBERTIES UNION, THE AMERICAN CIVIL LIBERTIES UNION OF THE NATION'S CAPITAL, AND THE MEDIA FREEDOM AND INFORMATION ACCESS CLINIC FOR THE RELEASE OF COURT RECORDS. A separate order will accompany this Opinion.

January 25th, 2017

Rosemary M Collyer

ROSEMARY M. COLLYER
Presiding Judge, United States Foreign Intelligence Surveillance Court

Document ID: 0.7.10904.5475-000001

Filed
United States Foreign
Intelligence Surveillance Court

JAN 25 2017

LeeAnn Flynn Hall, Clerk of Court

UNITED STATES

FOREIGN INTELLIGENCE SURVEILLANCE COURT

WASHINGTON, D.C.

IN RE OPINIONS & ORDERS OF THIS COURT ADDRESSING BULK COLLECTION OF DATA UNDER THE FOREIGN INTELLIGENCE SURVEILLANCE ACT.	Docket No. Misc. 13-08

ORDER

For the reasons set forth in the accompanying Opinion, it hereby is **ORDERED** that the MOTION OF THE AMERICAN CIVIL LIBERTIES UNION, THE AMERICAN CIVIL LIBERTIES UNION OF THE NATION'S CAPITAL, AND THE MEDIA FREEDOM AND INFORMATION ACCESS CLINIC FOR THE RELEASE OF COURT RECORDS is **DISMISSED** for lack of jurisdiction.

SO ORDERED.

January 25th, 2017

Rosemary M Collyer

ROSEMARY M. COLLYER
Presiding Judge, United States Foreign
Intelligence Surveillance Court

Document ID: 0.7.10904.5475-000001

Axelrod, Matthew (ODAG)

From: Axelrod, Matthew (ODAG)
Sent: Wednesday, January 25, 2017 8:26 PM
To: Yates, Sally (ODAG)
Subject: Not urgent

Just give me a call when you're done with dinner if you don't mind.

Gamble, Nathaniel (ODAG)

From: Gamble, Nathaniel (ODAG)
Sent: Thursday, January 26, 2017 12:12 PM
To: Yates, Sally (ODAG)
Cc: Brinkley, Winnie (ODAG)
Subject: Ethics Briefing:

Sally:

Janice is out sick today and asked if we can reschedule until Monday at 3pm?

Thanks,

Axelrod, Matthew (ODAG)

From:	Axelrod, Matthew (ODAG)
Sent:	Saturday, January 21, 2017 9:33 PM
To:	Yates, Sally (ODAG)
Subject:	Fwd: 851 sentencing enhancement data for FY16
Attachments:	ATT00001.htm; image002.png; ATT00002.htm; DOJ_851_Request_17_01_17.pdf; ATT00003.htm

Begin forwarded message:

From: "Bruck, Andrew J. (ODAG)" <ajbruck@jmd.usdoj.gov>
Date: January 21, 2017 at 5:43:18 PM EST
To: "Axelrod, Matthew (ODAG)" <maaxelrod@jmd.usdoj.gov>
Subject: FW: 851 sentencing enhancement data for FY16

Here's the 851 data that Heather requested from USSC.

From: Wroblewski, Jonathan (OLP)
Sent: Wednesday, January 18, 2017 1:40 PM
To: Bruck, Andrew J. (ODAG) <ajbruck@jmd.usdoj.gov>
Cc: Morales, Michelle (b) (6), (b) (7)(C) [redacted] USDOJ.GOV>
Subject: FW: 851 sentencing enhancement data for FY16

Andrew – Please see the email below and the attachment (and note the highlighted section of the message). Let us know if you need anything more on this.

-Jonathan

From: Schmitt, Glenn [mailto:GSchmitt@ussc.gov]
Sent: Wednesday, January 18, 2017 12:03 PM
To: Morales, Michelle (b) (6), (b) (7)(C) [redacted] .USDOJ.GOV>
Cc: Wroblewski, Jonathan (OLP) <Jonathan.Wroblewski2@usdoj.gov>; Cohen, Ken <KCohen@ussc.gov>
Subject: 851 sentencing enhancement data for FY16

Michelle,

(b) (5) [redacted]

(b) (5)

[redacted]

Regards,
Glenn

Gamble, Nathaniel (ODAG)

From: Gamble, Nathaniel (ODAG)

Sent: Thursday, January 26, 2017 2:30 PM

To: Watson, Theresa (OAG); Schedule, AG (SMO); (b) (6), (b) (7)(C), (b) (7)(E) Rybicki, James E. (DO) (FBI); (b) (6), (b) (7)(C), (b) (7)(E) Washington, Tracy T (OAG); Yates, Sally (ODAG); Bennett, Catherine T (OAG); (b) (6), (b) (7)(C), (b) (7)(E) Gauhar, Tashina (ODAG); (b) (6), (b) (7)(C), (b) (7)(E) McCord, Mary (NSD); Meadows, Bessie L (OAG); (b) (6), (b) (7)(C), (b) (7)(E) Axelrod, Matthew (ODAG); (b) (6), (b) (7)(C), (b) (7)(E) McCord, Mary (NSD); (b) (6), (b) (7)(C)); Iftimie, Alex (OAG); Jackson, Wykema C. (OAG); Crowell, James (ODAG); Brinkley, Winnie (ODAG); Powell, SeLena Y (ODAG)

Subject: FBI/SIOC Morning Briefing will be at 9:00am on Friday, January 27, 2017:

Gamble, Nathaniel (ODAG)

From: Gamble, Nathaniel (ODAG)
Sent: Thursday, January 26, 2017 2:46 PM
To: Yates, Sally (ODAG)
Subject: FW: US Marshal Detail
Attachments: US Marshal Detail.msg

Brinkley, Winnie (ODAG)

From:	Brinkley, Winnie (ODAG)
Sent:	Thursday, January 26, 2017 3:01 PM
To:	Yates, Sally (ODAG)
Subject:	Yates Letter
Attachments:	yates ltr_1_26_2017_14_59_25.pdf

Winnie Brinkley
Staff Assistant
U.S. Department of Justice
Office of the Deputy Attorney General
950 Pennsylvania Avenue, NW
Washington, D.C. 20530
Tel: (b) (6) [redacted]
Fax: (202) 307-0097

Document ID: 0.7.10904.5383

Yates, Sally (ODAG)

From:	Yates, Sally (ODAG)
Sent:	Thursday, January 26, 2017 4:55 PM
To:	(b)(6) former Acting Attorney General Yates personal email
Subject:	Fwd: Please Call: Sherrilyn Ifill, NAACP Legal Defense Fund # (b) (6) (cell)

Begin forwarded message:

From: "Gamble, Nathaniel (ODAG)" <nagamble@jmd.usdoj.gov>
Date: January 26, 2017 at 12:00:54 PM EST
To: "Yates, Sally (ODAG)" <sayates@jmd.usdoj.gov>
Cc: "Brinkley, Winnie (ODAG)" <wbrinkley@jmd.usdoj.gov>
Subject: Please Call: Sherrilyn Ifill, NAACP Legal Defense Fund # (b) (6) **(cell)**

From: Axelrod, Matthew (ODAG)
Sent: Thursday, January 26, 2017 11:46 AM
To: Gamble, Nathaniel (ODAG) <nagamble@jmd.usdoj.gov>
Subject: Re: Phone Call:

Yes, please pass on to her. Thx.

On Jan 26, 2017, at 11:36 AM, Gamble, Nathaniel (ODAG) <nagamble@jmd.usdoj.gov> wrote:

> Matt:
>
> Sherrilyn Ifill from the NAACP Legal Defense Fund # (b) (6) (cell) called for Sally a little while ago. Should I pass on the message to her or how should I handle?
>
> Thanks.

Yates, Sally (ODAG)

From:	Yates, Sally (ODAG)
Sent:	Thursday, January 26, 2017 10:25 PM
To:	Axelrod, Matthew (ODAG)
Subject:	Justice Department Signals Change In Approach To Civil Rights Cases | WOSU Radio

http://radio.wosu.org/post/justice-department-signals-change-approach-civil-rights-cases

Document ID: 0.7.10904.5309

David McCleary

From: David McCleary
Sent: Friday, January 27, 2017 10:56 AM
To: sally.yates2@usdoj.gov
Cc: David McCleary
Subject: How are you

Hi Sally,

I hope you are doing well it has been a while sense we talked. I know you are very busy but Mary Frances Bowley founder Wellspring living and I are going to be in DC Ja. 31st meeting with Senato Corker and Isakson to update them on the work we are doing to end human trafficking. I wanted to know if you or someone from you staff would have time to meet. I know it is last minute so I understand if it does not work out we would like to say hi and update you on all the great work Rotary is doing to end human trafficking.

Thanks again,

Dave

Dave McCleary
(b) (6) [redacted]
Cell (b) (6) [redacted]
Vice Chair Rotary Action Group Rotarians Against Slavery
Founder/CEO End Human Trafficking Now
Past President Roswell Rotary 2011-2012
#endhtnow

Brinkley, Winnie (ODAG)

From:	Brinkley, Winnie (ODAG)
Sent:	Friday, January 27, 2017 1:09 PM
To:	Yates, Sally (ODAG)
Subject:	Document
Attachments:	Voter Fraud EO.docx

Winnie Brinkley
Staff Assistant
U.S. Department of Justice
Office of the Deputy Attorney General
950 Pennsylvania Avenue, NW
Washington, D.C. 20530
Tel: (b) (6) (direct)
Fax: (202) 307-0097

Gamble, Nathaniel (ODAG)

From: Gamble, Nathaniel (ODAG)

Sent: Friday, January 27, 2017 2:28 PM

To: Watson, Theresa (OAG); Schedule, AG (SMO); (b) (6), (b) (7)(C), (b) (7)(E) Rybicki, James E. (DO) (FBI); (b) (6), (b) (7)(C), (b) (7)(E) Washington, Tracy T (OAG); Yates, Sally (ODAG); Bennett, Catherine T (OAG); (b) (6), (b) (7)(C), (b) (7)(E) Gauhar, Tashina (ODAG); (b) (6), (b) (7)(C), (b) (7)(E) McCord, Mary (NSD); Meadows, Bessie L (OAG); (b) (6), (b) (7)(C), (b) (7)(E) Williams, Toni (OAG); (b) (6), (b) (7)(C), (b) (7)(E) Axelrod, Matthew (ODAG); (b) (6), (b) (7)(C), (b) (7)(E) McCord, Mary (NSD); (b) (6), (b) (7)(C) Iftimie, Alex (OAG); Jackson, Wykema C. (OAG); Crowell, James (ODAG); Brinkley, Winnie (ODAG); Powell, SeLena Y (ODAG)

Subject: FBI/SIOC Morning Briefing will be at 9:00am on Monday, January 30, 2017:

Yates, Sally (ODAG)

From: Yates, Sally (ODAG)
Sent: Friday, January 27, 2017 3:43 PM
To: Axelrod, Matthew (ODAG)
Subject: Fwd:
Attachments: voter.docx; ATT00001.htm

Begin forwarded message:

> **From:** "Yates, Sally (ODAG)" <sayates@jmd.usdoj.gov>
> **Date:** January 27, 2017 at 1:11:18 PM EST
> **To:** "sally.yates2@usdoj.gov" <sally.yates2@usdoj.gov>

Axelrod, Matthew (ODAG)

From:	Axelrod, Matthew (ODAG)
Sent:	Friday, January 27, 2017 5:05 PM
To:	Yates, Sally (ODAG)
Subject:	FW: 2 week look ahead
Attachments:	Active.Issues.through.02.08.17.pdf

From: Crowell, James (ODAG)
Sent: Friday, January 27, 2017 4:58 PM
To: Axelrod, Matthew (ODAG) <maaxelrod@jmd.usdoj.gov>; Terwilliger, Zachary (ODAG) <zterwilliger@jmd.usdoj.gov>
Subject: 2 week look ahead

Document ID: 0.7.10904.5276

Axelrod, Matthew (ODAG)

From:	Axelrod, Matthew (ODAG)
Sent:	Saturday, January 28, 2017 10:19 AM
To:	Yates, Sally (ODAG)
Subject:	Fwd: NPR piece

Haven't heard back yet but here's the email I sent Peter.

Begin forwarded message:

From: <maaxelrod@jmd.usdoj.gov>
Date: January 28, 2017 at 9:46:34 AM EST
To: Peter Carr <pcarr@jmd.usdoj.gov>
Cc: James Crowell <jcrowell@jmd.usdoj.gov>
Subject: NPR piece

Peter,

(b) (5) [redacted]

Thanks,
Matt

Axelrod, Matthew (ODAG)

From:	Axelrod, Matthew (ODAG)
Sent:	Sunday, January 29, 2017 9:11 AM
To:	Yates, Sally (ODAG)
Subject:	Fwd: Process

Begin forwarded message:

From: <maaxelrod@jmd.usdoj.gov>
Date: January 29, 2017 at 9:10:52 AM EST
To: James Crowell <jcrowell@jmd.usdoj.gov>, Zachary Terwilliger <zterwilliger@jmd.usdoj.gov>
Subject: Process

Jim/Zach,

(b) (5)

Thanks,
Matt

Axelrod, Matthew (ODAG)

From: Axelrod, Matthew (ODAG)
Sent: Sunday, January 29, 2017 11:37 AM
To: Yates, Sally (ODAG)
Subject: Re: Call with (b) (5)

(b) (5)

> On Jan 29, 2017, at 11:36 AM, Yates, Sally (ODAG) <sayates@jmd.usdoj.gov> wrote:
>
>(b) (5)
>
>> On Jan 29, 2017, at 11:26 AM, Axelrod, Matthew (ODAG) <maaxelrod@jmd.usdoj.gov> wrote:
>>
(b) (5)

Aminfar, Amin (ODAG)

From: Aminfar, Amin (ODAG)
Sent: Sunday, January 29, 2017 6:12 PM
To: Yates, Sally (ODAG)
Subject: Re:

I'm free now if that works for you.

> On Jan 29, 2017, at 5:54 PM, Aminfar, Amin (ODAG) <amaminfar@jmd.usdoj.gov> wrote:
>
> I could get away now if you need me or in about 15 minutes. (b) (6)
>
>
>> On Jan 29, 2017, at 5:50 PM, Yates, Sally (ODAG) <sayates@jmd.usdoj.gov> wrote:
>>
>> Hi Amin. I know that you have had a busy weekend. Could you let me know when you might have a few minutes to talk? Thanks.

Axelrod, Matthew (ODAG)

From:	Axelrod, Matthew (ODAG)
Sent:	Monday, January 30, 2017 8:41 AM
To:	Yates, Sally (ODAG)
Attachments:	draft.docx

Matthew S. Axelrod
Office of the Deputy Attorney General
U.S. Department of Justice
Desk: (202) 514-2105
(b) (6) [redacted]

Axelrod, Matthew (ODAG)

From: Axelrod, Matthew (ODAG)
Sent: Monday, January 30, 2017 1:44 PM
To: Yates, Sally (ODAG)
Attachments: Draft2.docx

Yates, Sally (ODAG)

From:	Yates, Sally (ODAG)
Sent:	Monday, January 30, 2017 2:58 PM
To:	(b)(6) former Acting Attorney General Yates personal email
Subject:	Draft2
Attachments:	Draft2.docx

Yates, Sally (ODAG)

From: Yates, Sally (ODAG)
Sent: Monday, January 30, 2017 5:27 PM
To: Axelrod, Matthew (ODAG)
Subject: Draft2
Attachments: Draft2.docx

Document ID: 0.7.10904.5155

Yates, Sally (ODAG)

From:	Yates, Sally (ODAG)
Sent:	Monday, January 30, 2017 5:27 PM
To:	(b)(6) former Acting Attorney General Yates personal email
Subject:	Draft2
Attachments:	Draft2.docx

Aminfar, Amin (ODAG)

From:	Aminfar, Amin (ODAG)
Sent:	Monday, January 30, 2017 6:54 PM
To:	Yates, Sally (ODAG)
Cc:	Axelrod, Matthew (ODAG)
Subject:	draft 530D letter
Attachments:	Ass'n of Am. R.Rs. - 530D letter.docx; ADAG 530D memo 2070130.docx

Acting Attorney General Yates:

I've attached to this email a draft 28 USC 530D letter approved by the Acting Solicitor General for your signature. I've also attached a brief cover memo explaining the purpose of the letter and the reasoning behind it, which I'm happy to expand upon if helpful. Please let me know if you have any questions.

Thanks,
Amin

Document ID: 0.7.10904.5112

Axelrod, Matthew (ODAG)

From: Axelrod, Matthew (ODAG)
Sent: Saturday, January 28, 2017 4:12 PM
To: Yates, Sally (ODAG)
Subject: Fwd: EDVA matter

I'm good with this but wanted to flag for you in case you had a different view.

Begin forwarded message:

> **From:** "Lan, Iris (ODAG)" <irlan@jmd.usdoj.gov>
> **Date:** January 28, 2017 at 3:44:53 PM EST
> **To:** "Axelrod, Matthew (ODAG)" <maaxelrod@jmd.usdoj.gov>
> **Cc:** "Crowell, James (ODAG)" <jcrowell@jmd.usdoj.gov>
> **Subject: EDVA matter**
>
> Matt,

(b) (5)

> Glad to discuss further if you have any questions.
>
> Thanks,
> Iris

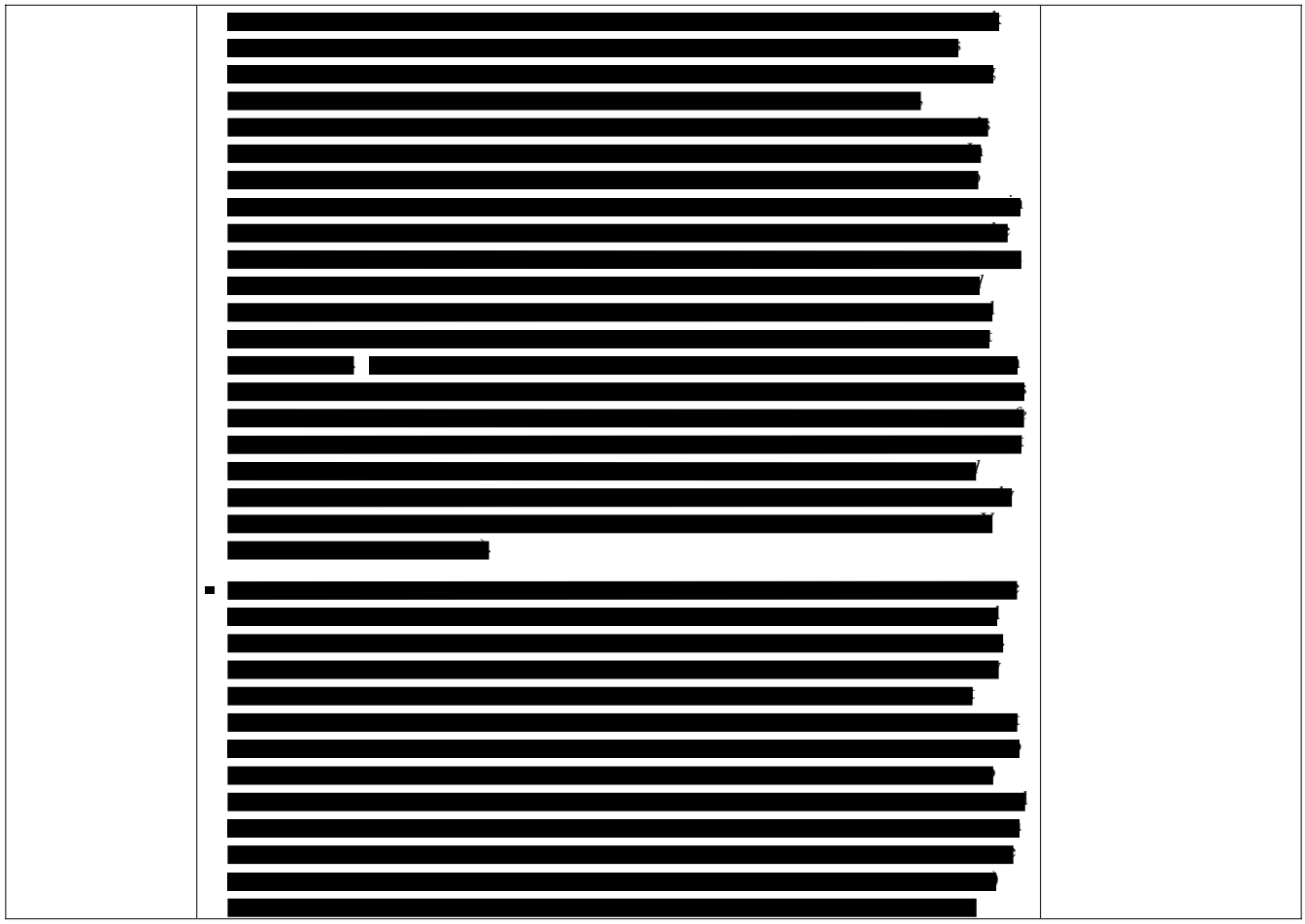
SENSITIVE OR HIGH-PROFILE MATTERS WITHIN NEXT TWO WEEKS

COMPONENT	*ISSUES/MATTERS*	*CONTACTS*
ATJ	• None.	
ATR	• (b) (5) [redacted] ▪ [redacted] ▪ [redacted] ▪ [redacted] • (b) (5) [redacted]	Brent Snyder

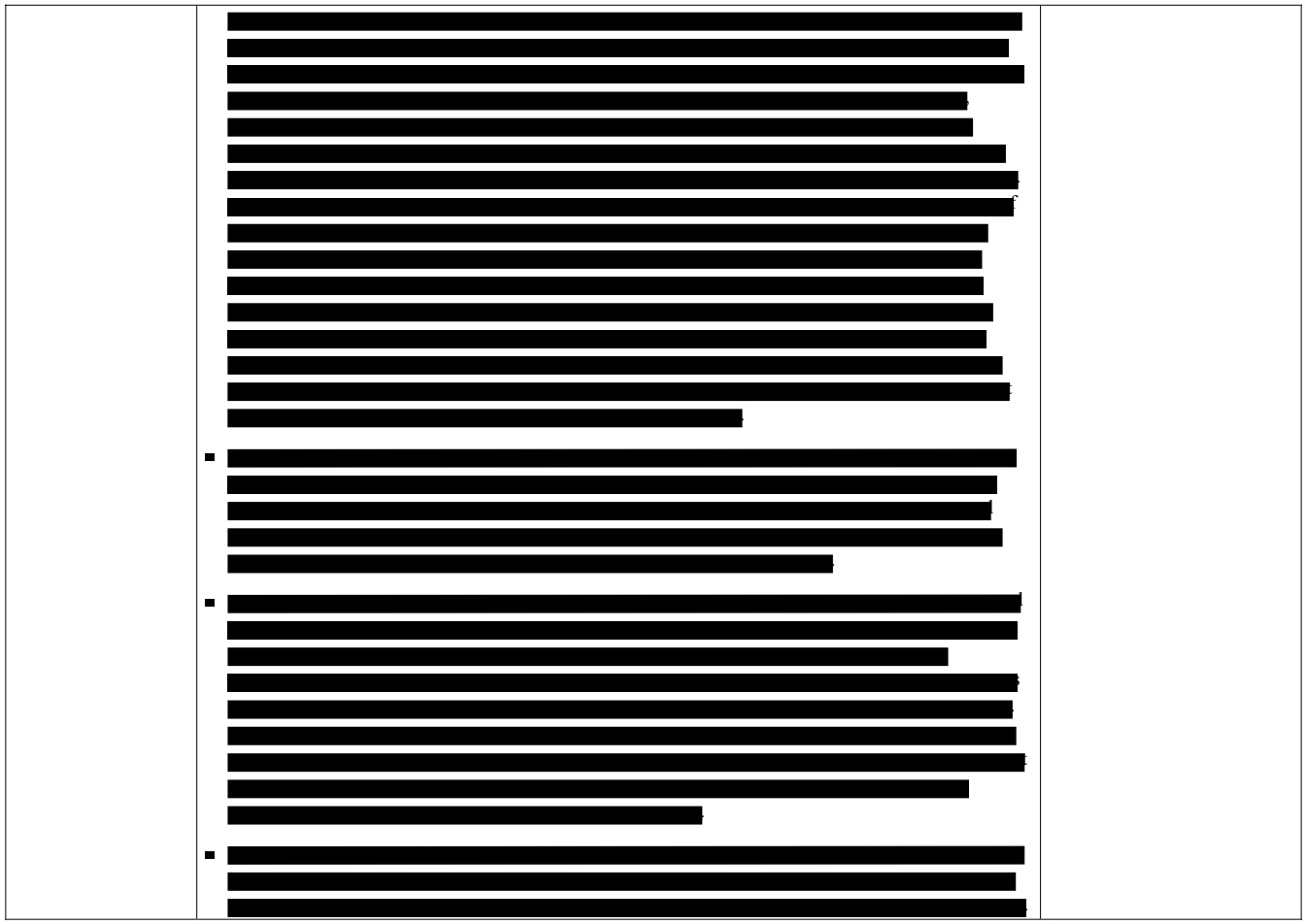
Document ID: 0.7.10904.5276-000001

	[redacted]	
BOP	• [redacted] • RRC Inmate/Clemency Recipient Assassinated: On Monday, January 23, a federal inmate residing in a halfway house (Residential Reentry Center or RRC) in Saginaw MI was shot and killed. This case is significant because the deceased was granted clemency by President Obama last November. Additionally, the manner in which the inmate was killed is quite unusual; two masked men (unidentified and at large) entered the RRC with AK-47 machine guns, and proceeded to the inmates bunk where they shot him multiple times. No staff were injured.	Thomas Kane Judi Garrett Hugh Hurwitz Sonya Thompson
CIV	• [redacted] ▪ [redacted] ▪ [redacted]	Joyce Branda Karen Bloom

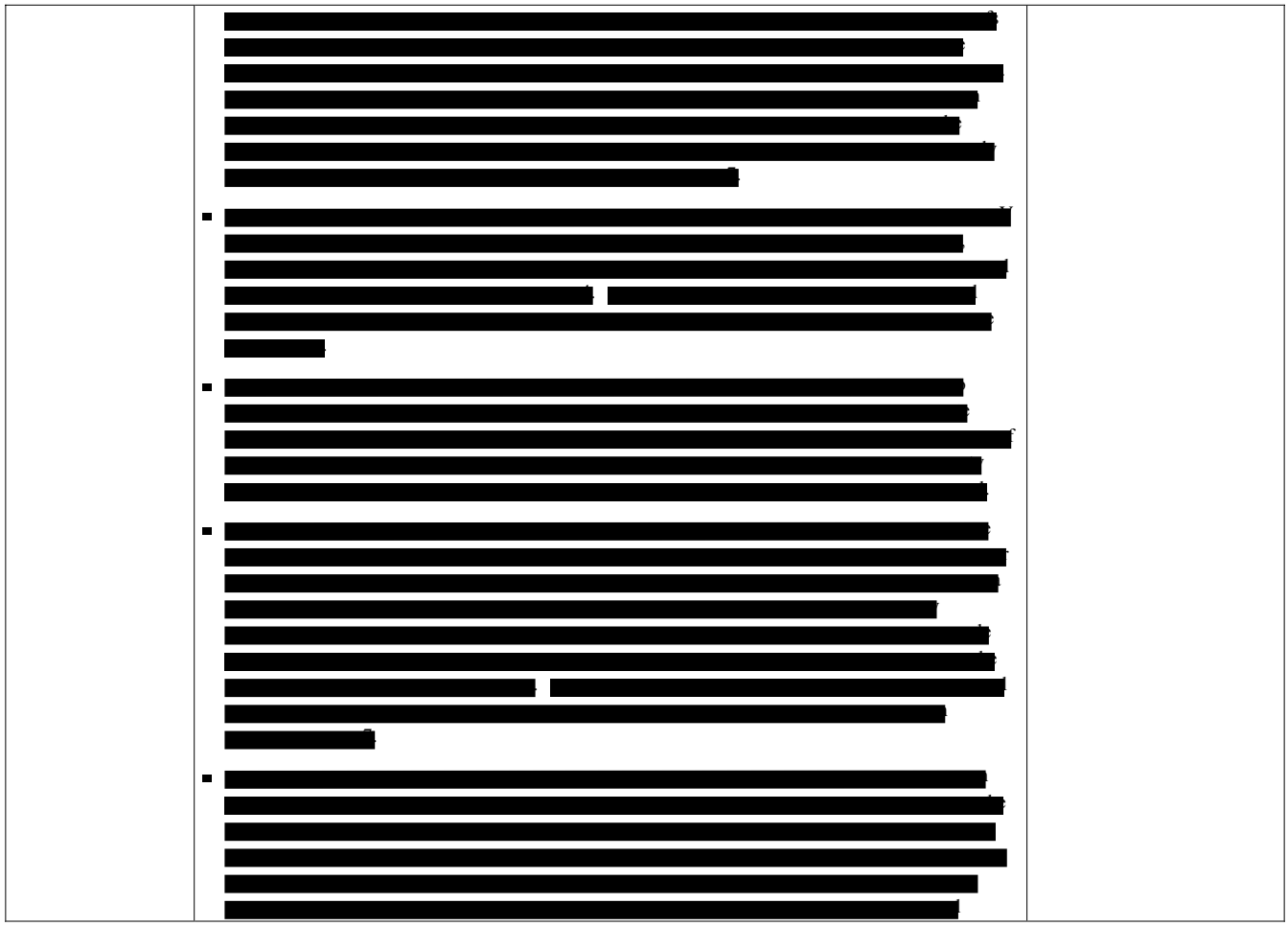
Document ID: 0.7.10904.5276-000001



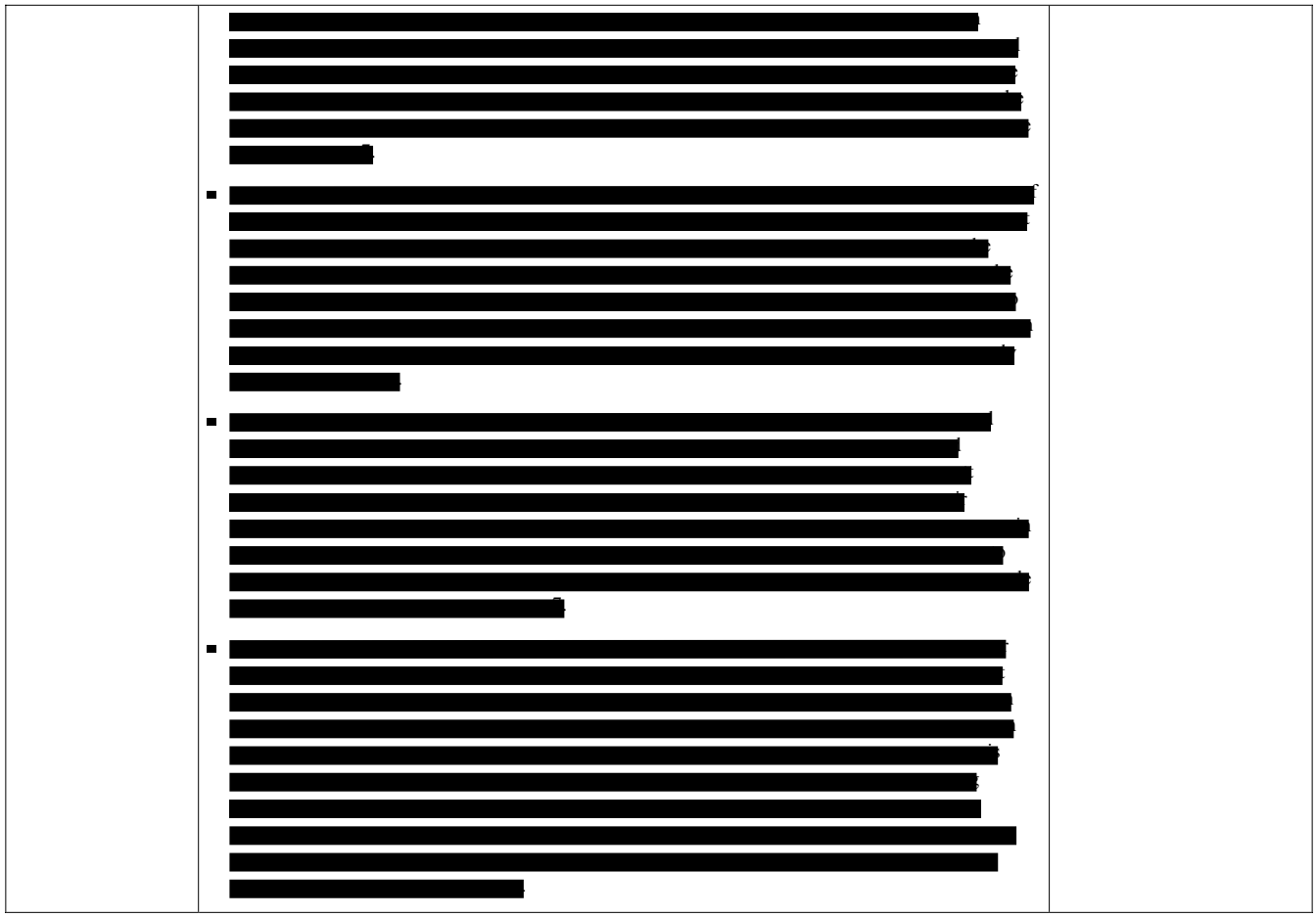
Document ID: 0.7.10904.5276-000001



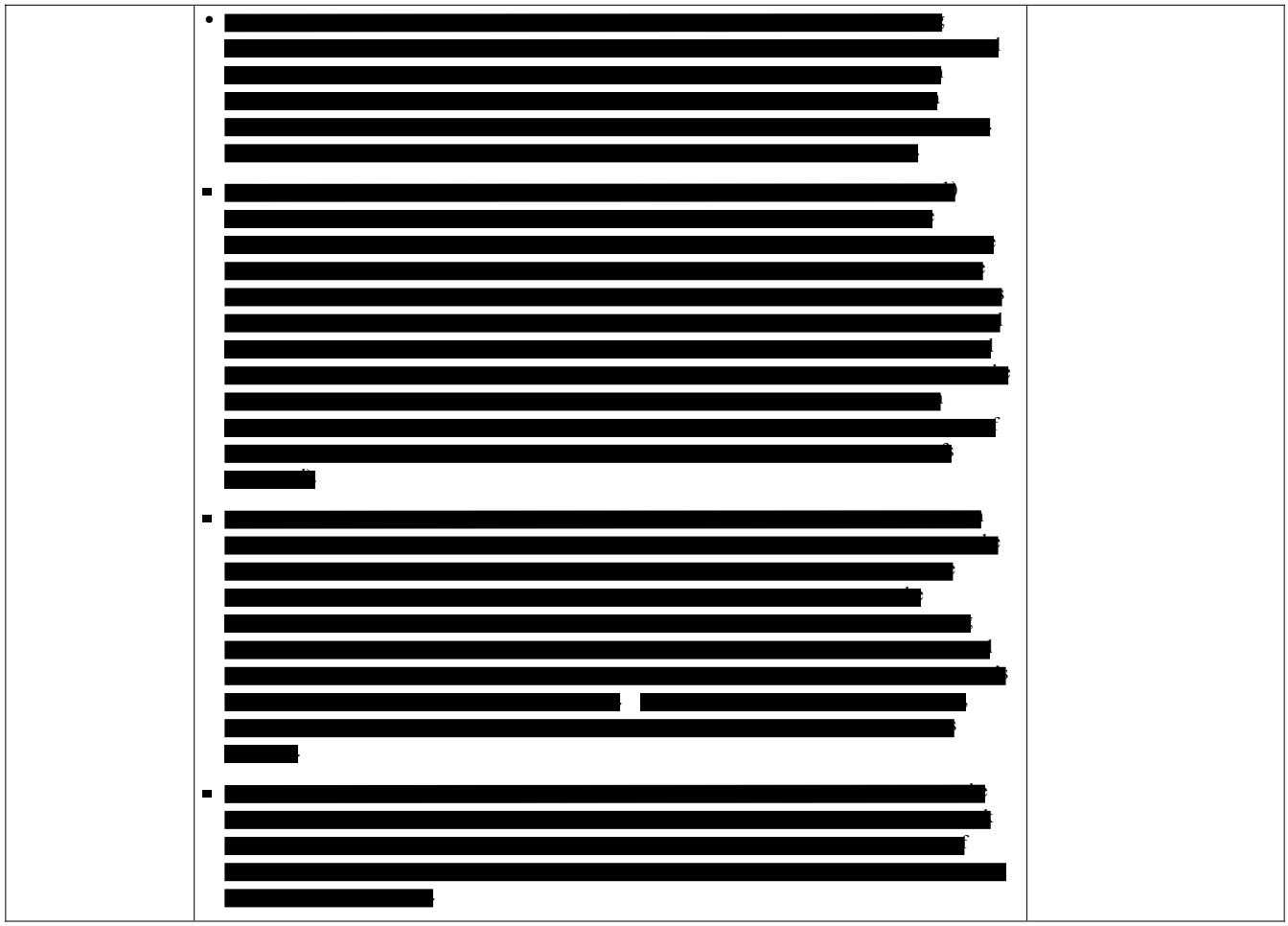
Document ID: 0.7.10904.5276-000001



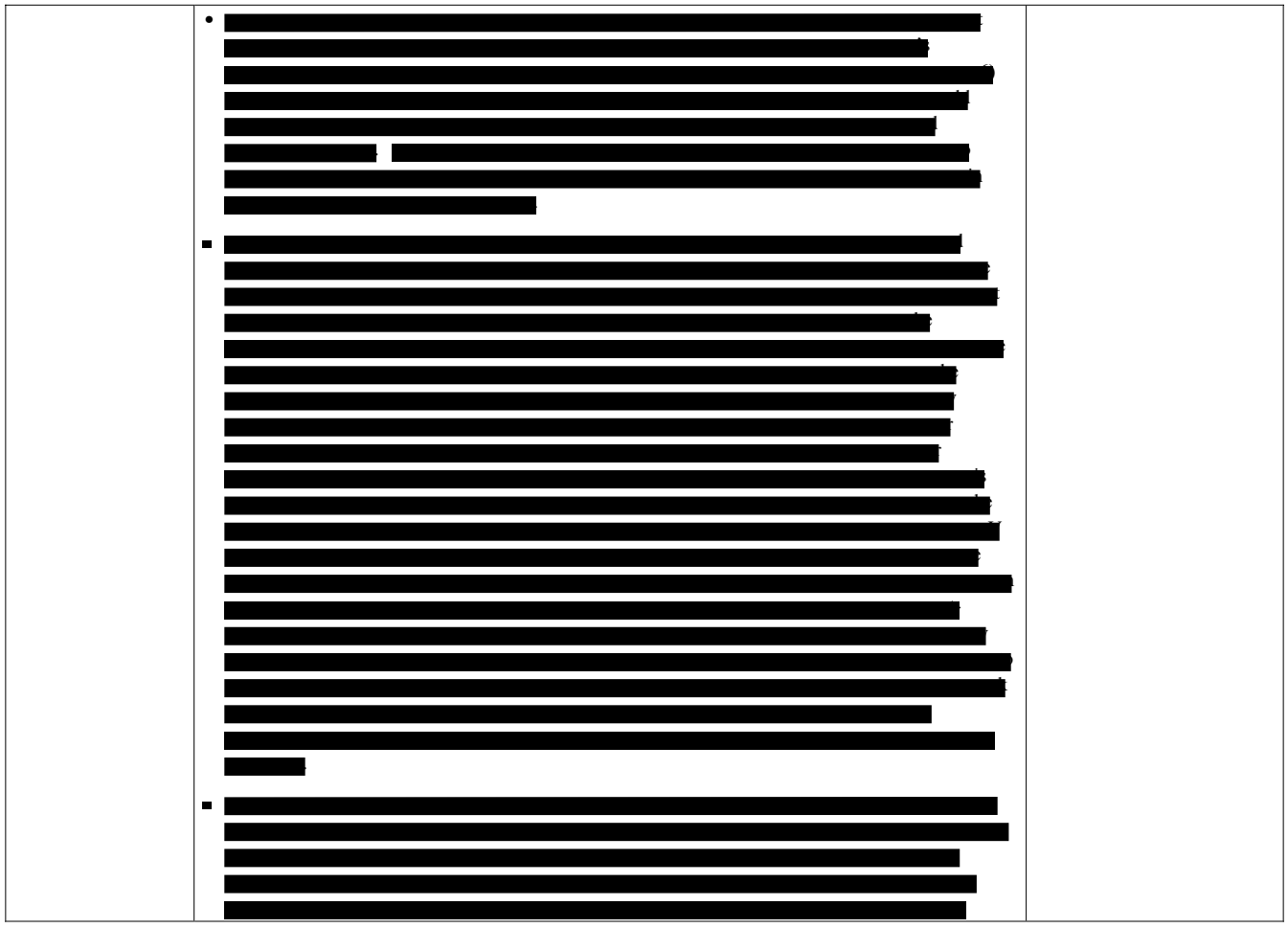
Document ID: 0.7.10904.5276-000001



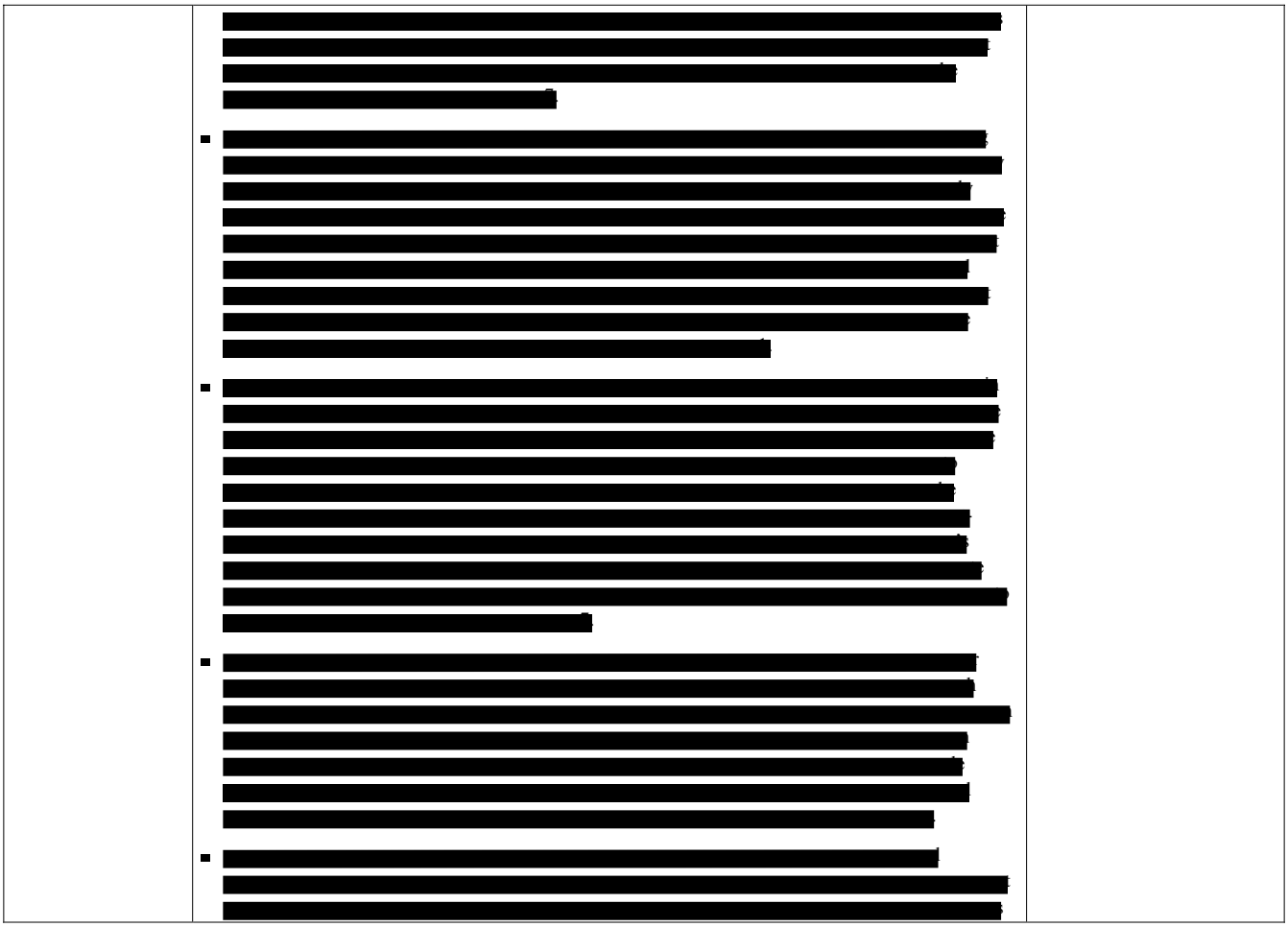
Document ID: 0.7.10904.5276-000001



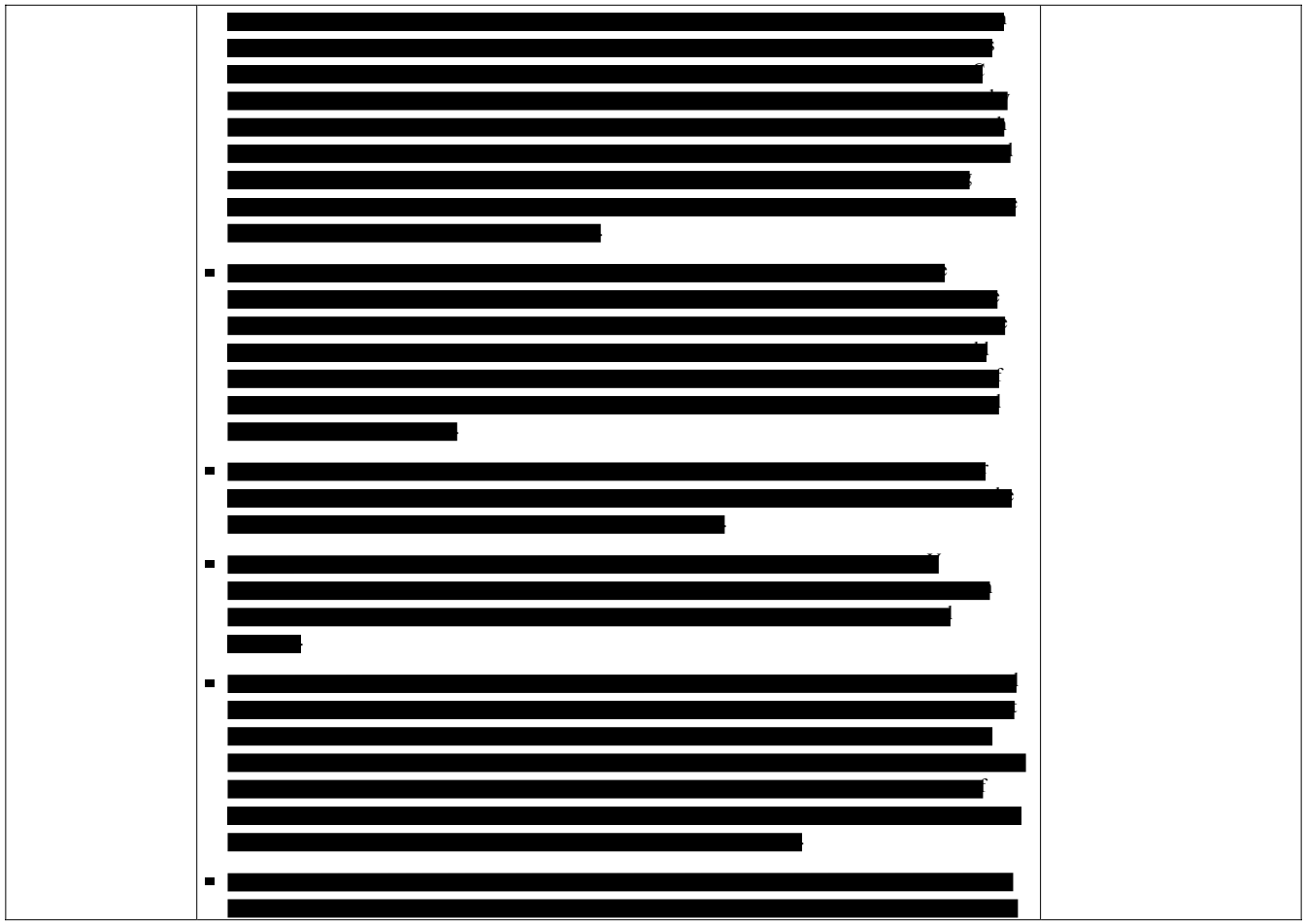
Document ID: 0.7.10904.5276-000001



Document ID: 0.7.10904.5276-000001



Document ID: 0.7.10904.5276-000001



Document ID: 0.7.10904.5276-000001

	[redacted]	
COPS	• (b) (5) [redacted] • Listening Session: COPS is providing Collaborative Reform technical assistance to the Ft. Pierce (FL) Police Department. As part of the collaborative reform process, the COPS Office will conduct a community town hall listening session on Wednesday, February 8 to allow for the community to present ideas and concerns, and to generate support for the collaborative reform process and partnership between the Ft. Pierce Police Department and the COPS Office. • Publications: The COPS Office partnered with the International Association of Chiefs of Police (IACP) to produce a Partnering with Communities of Color Online Toolkit for use by law enforcement agencies to help promote positive relationships between them and the communities they serve. This online toolkit will be maintained on the IACP website, and could be released next week, pending approval. • After Action Report: The COPS Office is finalizing its Critical Response after action review of the Minneapolis (MN) Police Department's response to the November-December 2015 protests and takeover of a police precinct. This report will be ready for public release as early as the week of February 13th, and would likely generate significant local media coverage. • Speaking Engagement: The COPS Acting Director has been requested to speak at the National Sherriff Association Winter Conference, February 4-7, 2017, in Washington D.C. at the Youth and Juvenile Justice Committee.	Russell Washington
CRM	• [redacted]	Kenneth Blanco James Mann

Document ID: 0.7.10904.5276-000001

	[redacted] • (b) (5) [redacted] ▪ [redacted] ▪ [redacted] • (b) (5) [redacted] ▪ [redacted] ▪ [redacted]	

Document ID: 0.7.10904.5276-000001

	• [redacted] ▪ [redacted]	
CRS	• None.	Gerri Ratliff Antoinette Barksdale Theresa Segovia
CRT	• (b) (5) [redacted] ▪ [redacted] ▪ [redacted]	Tom Wheeler Kathleen Toomey

Document ID: 0.7.10904.5276-000001

	[redacted] • Chicago Police Department: On January 13, CRT issued its report on the Chicago Police Department. CRT and the U.S. Attorney's Office (ND IL) are in conversations about next steps, including conversations with the City. • [redacted] ▪ [redacted] ▪ [redacted] ▪ [redacted]	

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	[redacted]	
DEA	• (b) (5), (b) (6) [redacted]	Michael Ben'Ary
ENRD	• Pipeline Executive Order and Standing Rock Sioux Tribe Protests: Tuesday, January 24, President Trump signed an executive order authorizing the resumption of the construction of the Dakota Access Pipeline. ENRD filed a notice with a federal court hearing a matter related to this pipeline. The notice simply informed the court of the president's action.	Jeffrey Wood

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	• (b) (5) ▪ [redacted] ▪ [redacted] ▪ [redacted] ▪ [redacted]	

Document ID: 0.7.10904.5276-000001

	(b) (5) [redacted] ■ [redacted] ■ [redacted] ■ [redacted]	
JMD	■ (b) (5) [redacted]	Lee Lofthus

Document ID: 0.7.10904.5276-000001

	(b) (5) [redacted]	
NSD	• (b) (5) [redacted] ▪ [redacted]	Mary McCord Bradley Weinsheimer

Document ID: 0.7.10904.5276-000001

	• (b) (5) [redacted] • Foreign Agent Registration Act (FARA) Matter re: Lt. General Michael Flynn/Flynn Intel Group, Inc.: On November 8, 2016, Lt. General Flynn published an editorial in The Hill that expressed views that were highly critical of the Turkish cleric Fetullah Gulen and that were similar to those previously expressed by the President of Turkey and other Turkish officials. In light of that editorial and reports in the media about potential ties between Lt. General Flynn and others who might be acting on behalf of the Government of Turkey, on November 30, 2016, NSD requested additional information from Lt. General Flynn and his firm, Flynn Intel Group, Inc. (FIG). On January 11, 2017, Flynn's counsel responded and advised that the General and FIG will probably register under FARA, which could happen imminently and would be public. Any such registration should disclose the foreign principal(s) on whose behalf Lt. General Flynn was acting and his compensation, among other information. • Attorney General Reports to Congress re: National Security Letters: The various statutes authorizing the Federal Bureau of Investigation (FBI) to issue National Security Letters require the Attorney General to submit semiannual reports to Congress regarding requests made by the FBI under the NSL authorities. The next semiannual report is due to Congress on Wednesday, February 1, 2017. Ordinarily, these reports are transmitted to Congress by the Office of Legislative Affairs, with Attorney General approval. We do not anticipate that these reports will garner significant attention. • FISA Section 702 Reauthorization: Section 702 of the FISA Amendments Act of 2008 permits the Attorney General and the Director of National Intelligence (DNI) to jointly authorize targeting of non-U.S. persons reasonably believed to be located outside the United States for foreign intelligence collection. This authority is scheduled to expire on December 31, 2017, and because of its extreme importance to U.S. national security, Section 702's reauthorization should be a top DOJ legislative priority. The DNI has drafted a letter to Congress formally requesting reauthorization, which the Attorney General is expected to join. NSD anticipates that the	

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	reauthorization process will last throughout 2017, so it is imperative to begin the process as soon as possible to avoid any gaps in authority. • (b) (5) [redacted] ▪ [redacted] ▪ [redacted]	

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	[redacted] • Classified FISA Matter: There is a matter relating to Section 702 of FISA that can be briefed by ADAG Tashina Gauhar in an appropriate setting. • (b) (5) [redacted] ▪ [redacted]	

Document ID: 0.7.10904.5276-000001

	(b) (5) [redacted] ■ [redacted] ■ [redacted] • [redacted] • NSD Attorney in London for Meetings. NSD attorney David Laufman is in London for a series of speaking engagements and meetings starting yesterday, January 26, through Wednesday, February 1. These events include remarks at a Defense and Network Security Conference, leading an Intelligence Community roundtable at the U.S. embassy, and a meeting with U.K. reporters to discuss NSD/CES and its key priorities.	

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	• Roundtable With Community Leaders: On Thursday, February 2, Acting AAG Mary McCord will host a VTC roundtable with Arab- and Muslim-American community leaders and USAOs on issues related to countering violent extremism.	
OCDETF	• None.	Bruce Ohr
OJP	• On Tuesday, January 31, in Los Angeles, NIJ Principal Deputy Director and Chief of Staff Howard Spivak gives the keynote address at the 21st Annual UCLA Healthcare Symposium, "Gun Violence and Our Health: Finding Solutions through the Lens of Social Justice," which explores the relationship between gun violence, the health care system, and social justice. Dr. Spivak's address will focus on public health approaches to reduce gun violence. • On Monday, January 30, in Washington, BJA hosts a VALOR / Advanced Law Enforcement Rapid Response Training (ALERRT) focus group meeting to learn about, examine, discuss, and review the current and basic strategies, tools, and resources used in the active shooter training supported by BJA. Since 2002, ALERRT has delivered vital active shooter response training to nearly 40,000 law enforcement professionals throughout the nation. The goal of this meeting will be identifying any new emerging trends and issues to be considered for future training. • On Monday, January 30, in Washington, BJA brings together, in partnership with the Police Executive Research Forum (PERF), representatives from four jurisdictions to discuss ways to improve homicide rates and increase solvability within their respective jurisdictions. • On February 9, BJS releases "State Progress in Record Reporting for Firearm-Related Background Checks: Fugitives from Justice." This report describes the requirements for entering warrants into databases used by the National Instant Criminal Background Check System (NICS) and explains the challenges of entering warrant records into state and national databases. It describes recent progress made by states in making warrant records more readily available to the NICS. • On February 9, BJS releases Justice Expenditures and Employment Extracts, 2012-Final, which presents final 2012 estimates of government expenditures and employment at the national, federal, state, and local levels for the following justice categories: police protection, all judicial and legal functions (including prosecution, courts, and public defense), and corrections.	Maureen Henneberg Howard Spivak Tracey Trautman Jeri Mulrow Louis deBaca Eileen Garry Marilyn Roberts Silas Darden
OLA	• Pipeline Executive Order: Tuesday, January 24, President Trump signed an executive order authorizing the resumption of the construction of the Dakota Access Pipeline and reviving the Keystone XL project. Based upon opposition to both pipelines and recent protests relating to them,	M. Faith Burton

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	OLA anticipates inquiries and other communications from both supporters and opponents in Congress. • (b) (5) [redacted] ▪ [redacted] ▪ [redacted]	
OLP	▪ (b) (5) [redacted]	Ryan Newman

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	(b) (5) • (b) (5)	
OPA	• (b) (5)	Peter Carr

Document ID: 0.7.10904.5276-000001

	[redacted]	
OPATTY	• None.	Lawrence Kupers
OSG	• (b) (5) [redacted]	Noel Francisco

Document ID: 0.7.10904.5276-000001

	(b) (5) ▪ [redacted] ▪ [redacted]	
OTJ	• Pipeline Executive Order and Standing Rock Sioux Tribe Protests: On Tuesday, January 24, President Trump signed an executive order authorizing the resumption of the construction of the Dakota Access Pipeline. Before the Army Corps effectively halted construction by denying the easement to cross federal land on December 4, 2016, there were a series of calls by federal, state and local leaders and law enforcement in North Dakota for DOJ to send federal law enforcement personnel to assist state and local law enforcement with crowd control and in handling the protests. With three notable exceptions, due to the limited missions and authorities of ATF, DEA, FBI and USMS, the Department declined to send law enforcement personnel to North Dakota: USMS sent a mobile tactical unit and personnel when the federal courthouse came under threat, ATF is leading criminal investigations into the use of incendiary devises by protestors, and FBI sent in agents from their Behavior Analysis and Crisis Management Unit. DOJ was also asked to provide funding to reimburse state and local law enforcement for overtime expenses. JMD and OJP examined the Department's budget and OJP grants and determined that North Dakota could reprogram existing DOJ grants but that no new money was available. An interagency working group (now inactive) was established to coordinate response to the protests; should the protests recommence, the working group may need to be restarted.	Tracy Toulou Jeanne Jacobs
TAX	• (b) (5) [redacted]	David Hubbert

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	(b) (5) [redacted]	

Document ID: 0.7.10904.5276-000001

	(b) (5) [redacted]	

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USMS	• None.	David Harlow
USTP	• None.	Clifford White

Document ID: 0.7.10904.5276-000001

From: sayates@jmd.usdoj.gov
Sent: Tuesday, January 31, 2017 9:08 AM
To: (b)(6) former Acting Attorney General Yates personal email
Subject: Fwd: Monday's events

Begin forwarded message:

> **From:** "Ellis, Therese E. (CIV)" <tellis@CIV.USDOJ.GOV>
> **Date:** January 31, 2017 at 9:00:51 AM EST
> **To:** "Yates, Sally (ODAG)" <sayates@jmd.usdoj.gov>
> **Subject: Monday's events**
>
> You are my hero.
>
> *Therese Ellis*
> *Supervisory Paralegal Specialist*
> *Civil Appellate Staff, U.S. Dep't of Justice*
> *950 Pennsylvania Ave., N.W.*
> *Washington, DC 20530*
> (b) (6)

Document ID: 0.7.10904.5111

From: sayates@jmd.usdoj.gov
Sent: Tuesday, January 31, 2017 12:20 AM
To: (b)(6) former Acting Attorney General Yates personal email
Subject: Fwd: Thank you.

Begin forwarded message:

From: "Hudson, Sara (JMD)" <SHudson@jmd.usdoj.gov>
Date: January 31, 2017 at 12:11:13 AM EST
To: "Yates, Sally (ODAG)" <sayates@jmd.usdoj.gov>
Subject: Thank you.

Acting AG Yates,

It has been a privilege, honor and inspiration to serve under you. Thank you for your service, your patriotism, and the example you set today, and every day I have known and worked for you.

I am proud to have served the American people with you.

Best,
Sara

Sara Hudson
DOJ | JMD | Office of the Chief Information Officer
Digital Services Expert | Distinguished IT Fellow
sara.hudson@usdoj.gov
Office: HYPERLINK (b) (6)
Mobile: HYPERLIN (b) (6)

Document ID: 0.7.10904.5141

From: sayates@jmd.usdoj.gov
Sent: Tuesday, January 31, 2017 9:07 AM
To: (b)(6) former Acting Attorney General Yates personal email
Subject: Fwd: Thank you

Begin forwarded message:

> **From:** "Cabanillas, Christina (USANAC)" <Christina.Cabanillas@usdoj.gov>
> **Date:** January 31, 2017 at 8:55:56 AM EST
> **To:** "Yates, Sally (ODAG) (JMD)" <Sally.Yates2@usdoj.gov>
> **Subject: Thank you**
>
> Bravo Sally. You stand for what DOJ represents -- courageous fidelity to law and justice.
>
> Thank you for your hard work on behalf of the United States and DOJ. I wish you the very best in the future.
>
> Chris
>
> P.S. I'm an appellate AUSA in Tucson and I met you when you visited and spoke with our office. I'm currently on detail at the NAC.
>
> Christina M. Cabanillas
> Assistant Director of Criminal Programs
> Office of Legal Education
> Executive Office of U.S. Attorneys
> National Advocacy Center
> 1620 Pendleton Street
> Columbia, S.C. 29201
> Phone (b) (6)
> Email: christina.cabanillas@usdoj.gov

Document ID: 0.7.10904.5115

From: Yates, Sally (ODAG)
Sent: Monday, January 30, 2017 10:18 PM
To: (b)(6) former Acting Attorney General Yates personal email
Subject: FW: Thank you

-----Original Message-----
From: Hertz, Rachel (NSD)
Sent: Monday, January 30, 2017 10:12 PM
To: Yates, Sally (ODAG) <sayates@jmd.usdoj.gov>
Subject: Thank you

Thank you for standing on your principles. It is an act of bravery that makes me proud to serve.

Document ID: 0.7.10904.5010

From: Yates, Sally (ODAG)
Sent: Monday, January 30, 2017 8:57 PM
To: (b)(6) former Acting Attorney General Yates personal email
Subject: FW: Executive order

From: Clair, Jeffrey (CIV)
Sent: Monday, January 30, 2017 8:28 PM
To: Yates, Sally (ODAG) <sayates@jmd.usdoj.gov>
Subject: Executive order

Thank you AG Yates. I've been in civil/appellate for 30 years and have never seen an administration with such contempt for democratic values and the rule of law. The President's order is an unconstitutional embarrassment and I applaud you for taking a principled stand against defending it.

Sent from my Verizon, Samsung Galaxy smartphone

Document ID: 0.7.10904.5063

From: Yates, Sally (ODAG)
Sent: Monday, January 30, 2017 8:57 PM
To: (b)(6) former Acting Attorney General Yates personal email
Subject: FW: Thank you

From: Moss, Benjamin M. (CIV) [mailto:bmoss@CIV.USDOJ.GOV]
Sent: Monday, January 30, 2017 7:58 PM
To: Yates, Sally (ODAG) <sayates@jmd.usdoj.gov>
Subject: Thank you

Dear Acting Attorney General Yates:

Thank you for your leadership. You are an inspiration.

Respectfully,
Ben Moss

Document ID: 0.7.10904.5058

From: Chan, Merry (USACAN) <Merry.Chan@usdoj.gov>
Sent: Monday, January 30, 2017 7:43 PM
To: Yates, Sally (ODAG) (JMD)
Subject: FW: Message from the Acting Attorney General

Dear Acting Attorney General Yates,

Thank you for your leadership. This means a lot to a lot of people.

Sincerely,

Merry Jean Chan

From: Stretch, Brian (USACAN)
Sent: Monday, January 30, 2017 3:53 PM
To: USACAN-ALL <USACAN-ALL@usa.doj.gov>
Subject: FW: Message from the Acting Attorney General

Folks. Please see the attached message from the Acting Attorney General. Thanks. Brian.

From: Wilkinson, Monty (USAEO)
Sent: Monday, January 30, 2017 3:18 PM
To: USAEO-USAttorneysOnly <USAEO-USAttorneysOnly@usa.doj.gov>
Subject: Message from the Acting Attorney General

The Acting Attorney General asked that I forward the attached message to you.

Monty

Document ID: 0.7.10904.5090

Message from the
Acting Attorn...

Document ID: 0.7.10904.5090

From: Yates, Sally (ODAG)
Sent: Monday, January 30, 2017 8:57 PM
To: (b)(6) former Acting Attorney General Yates personal email
Subject: FW: Another subject besides KJ

-----Original Message-----
From: Sines, Deborah (USADC) [mailto:Deborah.Sines@usdoj.gov]
Sent: Monday, January 30, 2017 8:47 PM
To: Yates, Sally (ODAG) (JMD) <Sally.Yates2@usdoj.gov>
Subject: Another subject besides KJ

You have made me very proud to work for you. It began with the KJ case and has been reaffirmed recently. As a career prosecutor, I don't get to say this often, but thank you.

Deborah Sines

Sent from my iPhone

Document ID: 0.7.10904.5066

From: Yates, Sally (ODAG)
Sent: Monday, January 30, 2017 8:58 PM
To: (b)(6) former Acting Attorney General Yates personal email
Subject: FW: Message from the Acting Attorney General
Attachments: Message from the Acting Attorney General.pdf

From: Osborn, Meredith (USACAN) [mailto:Meredith.Osborn@usdoj.gov]
Sent: Monday, January 30, 2017 7:18 PM
To: Yates, Sally (ODAG) (JMD) <Sally.Yates2@usdoj.gov>
Subject: FW: Message from the Acting Attorney General

Dear Acting Attorney General Yates,
Thank you for reaffirming the vital responsibility of the Department of Justice to seek justice and stand for what is right. I joined the Department of Justice to do precisely that, and your actions show that we who work here can continue to do that even in these difficult times.
Thank you for your leadership and integrity.
Sincerely,

Meredith B. Osborn
Assistant United States Attorney
Northern District of California
Desk (b) (6)
Cell (b) (6)

From: Stretch, Brian (USACAN)
Sent: Monday, January 30, 2017 3:53 PM
To: USACAN-ALL <USACAN-ALL@usa.doj.gov>
Subject: FW: Message from the Acting Attorney General

Folks. Please see the attached message from the Acting Attorney General. Thanks. Brian.

From: Wilkinson, Monty (USAEO)
Sent: Monday, January 30, 2017 3:18 PM
To: USAEO-USAttorneysOnly <USAEO-USAttorneysOnly@usa.doj.gov>
Subject: Message from the Acting Attorney General

The Acting Attorney General asked that I forward the attached message to you.

Monty

Document ID: 0.7.10904.5065

From: Yates, Sally (ODAG)
Sent: Monday, January 30, 2017 8:59 PM
To: (b)(6) former Acting Attorney General Yates personal email
Subject: FW: Thank you

From: Alioto, Joseph (USACAN) [mailto:Joseph.Alioto@usdoj.gov]
Sent: Monday, January 30, 2017 7:04 PM
To: Yates, Sally (ODAG) (JMD) <Sally.Yates2@usdoj.gov>
Subject: Thank you

Dear Madam Acting Attorney General:

I am 100% behind you and your decision today, and I am proud to be a member of the department under your direction. Thank you for taking a position so many of us believe in.

Sincerely,

Joe Alioto

Joseph M. Alioto Jr.

Assistant U.S. Attorney

Organized Crime Strike Force

U.S. Attorney's Office

1301 Clay Street, Suite 340S

Oakland, California 94612

(b) (6)

Joseph.Alioto@usdoj.gov

Document ID: 0.7.10904.5049

From: Yates, Sally (ODAG)
Sent: Monday, January 30, 2017 9:00 PM
To: [redacted]
Subject: FW: Message from the Acting Attorney General

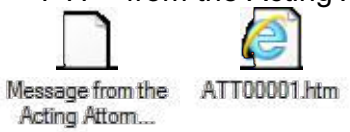
From: Sweet, Joel (USAPAE) [mailto:Joel.Sweet@usdoj.gov]
Sent: Monday, January 30, 2017 6:52 PM
To: Yates, Sally (ODAG) (JMD) <Sally.Yates2@usdoj.gov>
Subject: Fwd: Message from the Acting Attorney General

God bless you!

Sent from my iPhone

Begin forwarded message:

> **From:** "Lappen, Louis (USAPAE)" <LLappen@usa.doj.gov>
> **Date:** January 30, 2017 at 6:44:46 PM EST
> **To:** USAPAE-All EDPA <USAPAE-AllEDPA@usa.doj.gov>
> **Subject: Message from the Acting Attorney General**
>
> FYI -- from the Acting Attorney General



Document ID: 0.7.10904.5059