

From: (b)(6), (b)(7)(C)
Sent: Saturday, January 28, 2017 5:51 PM
To: MCALEENAN, KEVIN K; (b)(6), (b)(7)(C) Owen, Todd C (AC OFO); WAGNER, JOHN P; (b)(6), (b)(7)(C) HOFFMAN, TODD A
Cc: ALLES, RANDOLPH D; FLANAGAN, PATRICK S; (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) HUTTON, JAMES R
Subject: RE: FINAL SIGNED EO FOR ACTION
Attachments: 6 Motion to Stay Removal.pdf; 6-1 Memorandum in Support of Motion to Stay[1].pdf

(b)(5)

(b)(6), (b)(7)(C)
 CBP Associate Chief Counsel (Enforcement and Operations)
 (b)(6), (b)(7)(C)
 ** Attorney Work Product / Attorney-Client Privileged **

From: MCALEENAN, KEVIN K
Sent: Saturday, January 28, 2017 5:47 PM
To: (b)(6), (b)(7)(C)
 (b)(6), (b)(7)(C) Owen, Todd C (AC OFO) (b)(6), (b)(7)(C) WAGNER, JOHN P
 (b)(6), (b)(7)(C) HOFFMAN, TODD A
 (b)(6), (b)(7)(C)
Cc: ALLES, RANDOLPH D (b)(6), (b)(7)(C); FLANAGAN, PATRICK S (b)(6), (b)(7)(C)
 (b)(6), (b)(7)(C)
 (b)(6), (b)(7)(C) HUTTON, JAMES R (b)(6), (b)(7)(C)
Subject: RE: FINAL SIGNED EO FOR ACTION

(b)(5)

From: (b)(6), (b)(7)(C)
Sent: Saturday, January 28, 2017 5:43 PM
To: (b)(6), (b)(7)(C)
 (b)(6), (b)(7)(C) MCALEENAN, KEVIN K (b)(6), (b)(7)(C) Owen, Todd C (AC OFO)
 (b)(6), (b)(7)(C) WAGNER, JOHN P (b)(6), (b)(7)(C)
 (b)(6), (b)(7)(C) HOFFMAN, TODD A (b)(6), (b)(7)(C)
 (b)(6), (b)(7)(C)
Cc: ALLES, RANDOLPH D (b)(6), (b)(7)(C) FLANAGAN, PATRICK S (b)(6), (b)(7)(C);
 (b)(6), (b)(7)(C)
 (b)(6), (b)(7)(C) HUTTON, JAMES R (b)(6), (b)(7)(C)
Subject: RE: FINAL SIGNED EO FOR ACTION

(b)(5)

(b)(5)

From: (b)(6), (b)(7)(C)
Sent: Saturday, January 28, 2017 5:29:15 PM
To: (b)(6), (b)(7)(C) MCALEENAN, KEVIN K; Owen, Todd C (AC OFO); WAGNER, JOHN P; (b)(6), (b)(7)(C) HOFFMAN, TODD A; (b)(6), (b)(7)(C)
Cc: ALLES, RANDOLPH D; FLANAGAN, PATRICK S; (b)(6), (b)(7)(C) HUTTON, JAMES R
Subject: RE: FINAL SIGNED EO FOR ACTION

(b)(5)

From: (b)(6), (b)(7)(C)
Sent: Saturday, January 28, 2017 3:58:23 PM
To: MCALEENAN, KEVIN K; Owen, Todd C (AC OFO); WAGNER, JOHN P; (b)(6), (b)(7)(C) HOFFMAN, TODD A; (b)(6), (b)(7)(C)
Cc: ALLES, RANDOLPH D; FLANAGAN, PATRICK S; (b)(6), (b)(7)(C) HUTTON, JAMES R
Subject: RE: FINAL SIGNED EO FOR ACTION

(b)(5)

(b)(6), (b)(7)(C)
Deputy Associate Chief Counsel
Office of Chief Counsel
U.S. Customs and Border Protection

(b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)
Sent: Saturday, January 28, 2017 1:26 PM
To: MCALEENAN, KEVIN K; (b)(6), (b)(7)(C) Owen, Todd C (AC OFO); (b)(6), (b)(7)(C) WAGNER, JOHN P; (b)(6), (b)(7)(C) HOFFMAN, TODD A; (b)(6), (b)(7)(C)
Cc: ALLES, RANDOLPH D; (b)(6), (b)(7)(C) FLANAGAN, PATRICK S; (b)(6), (b)(7)(C) HUTTON, JAMES R; (b)(6), (b)(7)(C)
Subject: RE: FINAL SIGNED EO FOR ACTION

(b)(5)

(b)(5)

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)
Deputy Associate Chief Counsel
Office of Chief Counsel
U.S. Customs and Border Protection

(b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)
Sent: Saturday, January 28, 2017 11:36 AM
To: (b)(6), (b)(7)(C) MCALEENAN, KEVIN K (b)(6), (b)(7)(C)
Owen, Todd C (AC OFO) (b)(6), (b)(7)(C) WAGNER, JOHN P (b)(6), (b)(7)(C)
(b)(6), (b)(7)(C) HOFFMAN, TODD A (b)(6), (b)(7)(C)
(b)(6), (b)(7)(C)
Cc: ALLES, RANDOLPH D (b)(6), (b)(7)(C) FLANAGAN, PATRICK S (b)(6), (b)(7)(C)
(b)(6), (b)(7)(C)
HUTTON, JAMES R (b)(6), (b)(7)(C)
Subject: RE: FINAL SIGNED EO FOR ACTION

(b)(5)

(b)(5)

(b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)
Sent: Saturday, January 28, 2017 8:27:14 AM
To: MCALEENAN, KEVIN K; Owen, Todd C (AC OFO); WAGNER, JOHN P; (b)(6), (b)(7)(C) HOFFMAN, TODD A; (b)(6), (b)(7)(C)
Cc: ALLES, RANDOLPH D; FLANAGAN, PATRICK S; (b)(6), (b)(7)(C)
Subject: RE: FINAL SIGNED EO FOR ACTION

(b)(5)

(b)(6), (b)(7)(C)
Deputy Associate Chief Counsel
Office of Chief Counsel
U.S. Customs and Border Protection

(b)(6), (b)(7)(C)

From: MCALEENAN, KEVIN K
Sent: Saturday, January 28, 2017 12:19 AM
To: (b)(6), (b)(7)(C) Owen, Todd C (AC OFO) (b)(6), (b)(7)(C)
WAGNER, JOHN P (b)(6), (b)(7)(C) HOFFMAN,
TODD A <(b)(6), (b)(7)(C)>
Cc: ALLES, RANDOLPH D (b)(6), (b)(7)(C); FLANAGAN, PATRICK S (b)(6), (b)(7)(C)
(b)(6), (b)(7)(C)
Subject: RE: FINAL SIGNED EO FOR ACTION

(b)(5)

From: (b)(6), (b)(7)(C)
Sent: Saturday, January 28, 2017 12:13:16 AM
To: MCALEENAN, KEVIN K; Owen, Todd C (AC OFO); WAGNER, JOHN P; (b)(6), (b)(7)(C) HOFFMAN, TODD A; (b)(6), (b)(7)(C)
(b)(6), (b)(7)(C)
Cc: ALLES, RANDOLPH D; FLANAGAN, PATRICK S; (b)(6), (b)(7)(C)
Subject: RE: FINAL SIGNED EO FOR ACTION

(b)(5)

(b)(6), (b)(7)(C)

Deputy Associate Chief Counsel
Office of Chief Counsel
U.S. Customs and Border Protection

(b)(6), (b)(7)(C)

From: MCALEENAN, KEVIN K

Sent: Saturday, January 28, 2017 12:10 AM

To: (b)(6), (b)(7)(C); Owen, Todd C (AC OFO) (b)(6), (b)(7)(C)
WAGNER, JOHN P (b)(6), (b)(7)(C); HOFFMAN, TODD A <(b)(6), (b)(7)(C)>
Cc: ALLES, RANDOLPH D (b)(6), (b)(7)(C); FLANAGAN, PATRICK S (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)
Subject: RE: FINAL SIGNED EO FOR ACTION

(b)(5)

From: (b)(6), (b)(7)(C)

Sent: Saturday, January 28, 2017 12:07 AM

To: MCALEENAN, KEVIN K (b)(6), (b)(7)(C); Owen, Todd C (AC OFO)
(b)(6), (b)(7)(C); WAGNER, JOHN P (b)(6), (b)(7)(C)
(b)(6), (b)(7)(C); HOFFMAN, TODD A (b)(6), (b)(7)(C)
(b)(6), (b)(7)(C)

Cc: ALLES, RANDOLPH D (b)(6), (b)(7)(C); FLANAGAN, PATRICK S (b)(6), (b)(7)(C)
(b)(6), (b)(7)(C)
Subject: RE: FINAL SIGNED EO FOR ACTION

(b)(5), (b)(7)(E)

(b)(5), (b)(7)(E)

(b)(6), (b)(7)(C)

Deputy Associate Chief Counsel
Office of Chief Counsel
U.S. Customs and Border Protection

(b)(6), (b)(7)(C)

From: MCALEENAN, KEVIN K
Sent: Friday, January 27, 2017 11:57 PM

To: (b)(6), (b)(7)(C) Owen, Todd C (AC OFO) (b)(6), (b)(7)(C)
WAGNER, JOHN P (b)(6), (b)(7)(C) HOFFMAN,
TODD A (b)(6), (b)(7)(C)
Cc: ALLES, RANDOLPH D (b)(6), (b)(7)(C); FLANAGAN, PATRICK S (b)(6), (b)(7)(C)
Subject: RE: FINAL SIGNED EO FOR ACTION

(b)(6), (b)(7)(C)

(b)(5)

KM

From: (b)(6), (b)(7)(C)
Sent: Friday, January 27, 2017 11:43 PM
To: MCALEENAN, KEVIN K (b)(6), (b)(7)(C) Owen, Todd C (AC OFO)
(b)(6), (b)(7)(C) WAGNER, JOHN P (b)(6), (b)(7)(C)
(b)(6), (b)(7)(C) HOFFMAN, TODD A (b)(6), (b)(7)(C)
(b)(6), (b)(7)(C)
Cc: ALLES, RANDOLPH D (b)(6), (b)(7)(C); FLANAGAN, PATRICK S (b)(6), (b)(7)(C)
Subject: RE: FINAL SIGNED EO FOR ACTION

(b)(5)

(b)(5)

(b)(6), (b)(7)(C)

Deputy Associate Chief Counsel
Office of Chief Counsel
U.S. Customs and Border Protection

(b)(6), (b)(7)(C)

From: MCALEENAN, KEVIN K

Sent: Friday, January 27, 2017 11:35 PM

To: Owen, Todd C (AC OFO); (b)(6), (b)(7)(C); WAGNER, JOHN P (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C) HOFFMAN, TODD A (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

Cc: ALLES, RANDOLPH D (b)(6), (b)(7)(C); FLANAGAN, PATRICK S (b)(6), (b)(7)(C)

Subject: FW: FINAL SIGNED EO FOR ACTION

(b)(5)

From: Fulghum, Chip

Sent: Friday, January 27, 2017 11:29 PM

To: MCALEENAN, KEVIN K (b)(6), (b)(7)(C); Maher, Joseph (b)(6)

Nielsen, Kirstjen (b)(6); Hamilton, Gene (b)(6)

Cc: Metzler, Alan (b)(6); Higgins, Jennifer (b)(6)

Subject: Re: FINAL SIGNED EO FOR ACTION

I've signed. I've had printer issues at home so doc isn't perfect but you are cleared to go.

Chip

From: MCALEENAN, KEVIN K

Sent: Friday, January 27, 2017 11:25 PM

To: Maher, Joseph; Nielsen, Kirstjen; Hamilton, Gene

Cc: Metzler, Alan; Higgins, Jennifer; Fulghum, Chip

Subject: RE: FINAL SIGNED EO FOR ACTION

(b)(5)

Thank you,
KM

From: Maher, Joseph

Sent: Friday, January 27, 2017 10:54 PM

To: Nielsen, Kirstjen (b)(6); Hamilton, Gene (b)(6); MCALEENAN, KEVIN

K (b)(6), (b)(7)(C)
Cc: Metzler, Alan (b)(6); Higgins, Jennifer (b)(6); Fulghum, Chip (b)(6)
Subject: RE: FINAL SIGNED EO FOR ACTION

(b)(5)

Joe

Joseph B. Maher
Acting General Counsel
U.S. Department of Homeland Security

(b)(6)

This communication, along with any attachments, is covered by federal and state law governing electronic communications and may contain confidential and legally privileged information. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, use or copying of this message is strictly prohibited. If you have received this in error, please reply immediately to the sender and delete this message. Thank you.

From: Nielsen, Kirstjen
Sent: Friday, January 27, 2017 9:24 PM
To: Maher, Joseph (b)(6); Hamilton, Gene (b)(6); MCALEENAN, KEVIN K (b)(6), (b)(7)(C)
Cc: Metzler, Alan (b)(6); Higgins, Jennifer (b)(6); Fulghum, Chip (b)(6)
Subject: RE: FINAL SIGNED EO FOR ACTION

Thanks Joe
Spoke to Gene- will standby in case, when and until S1 engagement is needed.
Thanks

From: Maher, Joseph
Sent: Friday, January 27, 2017 9:18 PM
To: Nielsen, Kirstjen (b)(6); Hamilton, Gene (b)(6); MCALEENAN, KEVIN K (b)(6), (b)(7)(C)
Cc: Metzler, Alan (b)(6); Higgins, Jennifer (b)(6); Fulghum, Chip (b)(6)
Subject: RE: FINAL SIGNED EO FOR ACTION

(b)(5)

From: Nielsen, Kirstjen
Sent: Friday, January 27, 2017 9:15 PM
To: Hamilton, Gene (b)(6); MCALEENAN, KEVIN K (b)(6), (b)(7)(C); Maher,

Joseph (b)(6)
Cc: Metzler, Alan (b)(6); Higgins, Jennifer (b)(6); Fulghum, Chip (b)(6)
Subject: RE: FINAL SIGNED EO FOR ACTION

(b)(5)

Thanks
Best,
K

From: Hamilton, Gene
Sent: Friday, January 27, 2017 8:52 PM
To: MCALEENAN, KEVIN K (b)(6), (b)(7)(C); Maher, Joseph (b)(6)
Cc: Metzler, Alan (b)(6); Higgins, Jennifer (b)(6); Fulghum, Chip (b)(6); Nielsen, Kirstjen (b)(6)
Subject: RE: FINAL SIGNED EO FOR ACTION

Looping in Joe, also.

From: MCALEENAN, KEVIN K
Sent: Friday, January 27, 2017 8:37 PM
To: Hamilton, Gene (b)(6)
Cc: Metzler, Alan (b)(6); Higgins, Jennifer (b)(6); Fulghum, Chip (b)(6); Nielsen, Kirstjen (b)(6)
Subject: RE: FINAL SIGNED EO FOR ACTION

(b)(5)

KM

From: Hamilton, Gene
Sent: Friday, January 27, 2017 8:22:17 PM
To: MCALEENAN, KEVIN K

Cc: Metzler, Alan; Higgins, Jennifer; Fulghum, Chip
Subject: RE: FINAL SIGNED EO FOR ACTION

(b)(5)

From: MCALEENAN, KEVIN K
Sent: Friday, January 27, 2017 8:15 PM
To: Hamilton, Gene; (b)(6)
Cc: Metzler, Alan; (b)(6); Higgins, Jennifer; (b)(6); Fulghum, Chip
(b)(6)
Subject: FW: FINAL SIGNED EO FOR ACTION

Gene,

(b)(5)

KM

From: MCALEENAN, KEVIN K
Sent: Friday, January 27, 2017 7:54:39 PM
To: (b)(6), (b)(7)(C); WAGNER, JOHN P; (b)(6), (b)(7)(C); FLANAGAN, PATRICK S; (b)(6), (b)(7)(C)
(b)(6), (b)(7)(C)
Cc: (b)(6), (b)(7)(C)
Subject: RE: FINAL SIGNED EO FOR ACTION

(b)(5)

From: (b)(6), (b)(7)(C)
Sent: Friday, January 27, 2017 7:48:11 PM
To: MCALEENAN, KEVIN K; WAGNER, JOHN P; (b)(6), (b)(7)(C); FLANAGAN, PATRICK S; (b)(6), (b)(7)(C)
(b)(6), (b)(7)(C)
Cc: (b)(6), (b)(7)(C)
Subject: RE: FINAL SIGNED EO FOR ACTION

(b)(5), (b)(7)(E)

(b)(5), (b)(7)(E)

(b)(5), (b)(7)(E)

(b)(6), (b)(7)(C)

Deputy Associate Chief Counsel
Office of Chief Counsel
U.S. Customs and Border Protection

(b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)

Sent: Friday, January 27, 2017 6:50 PM

To: MCALEENAN, KEVIN K (b)(6), (b)(7)(C) WAGNER, JOHN P (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C) FLANAGAN, PATRICK S (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

Subject: RE: FINAL SIGNED EO FOR ACTION

(b)(5)

(b)(6), (b)(7)(C)

CBP Associate Chief Counsel (Enforcement and Operations)

(b)(6), (b)(7)(C)

** Attorney Work Product / Attorney-Client Privileged **

From: MCALEENAN, KEVIN K

Sent: Friday, January 27, 2017 6:41 PM

To: WAGNER, JOHN P

(b)(6), (b)(7)(C)

FLANAGAN, PATRICK S

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

Subject: FINAL SIGNED EO FOR ACTION

**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

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,

/s/ Michael J. Wishnie
Michael J. Wishnie (MW 1952)
Muneer I. Ahmad[†]
Elora Mukherjee (EM 4011)

David Chen, Law Student Intern*
 Jordan Laris Cohen, Law Student Intern*
 Susanna Evarts, Law Student Intern*
 Aaron Korthuis, Law Student Intern*
 Jordan Laris Cohen, Law Student Intern*
 Zachary-John Manfredi, Law Student
 Intern*
 My Khanh Ngo, Law Student Intern*
 Megha Ram, Law Student Intern*
 Victoria Roeck, Law Student Intern*
 Thomas Scott-Railton, Law Student Intern*
 Emily Villano, Law Student Intern*
 Elizabeth Willis, Law Student Intern*
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 P.O. Box 209090
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Jennifer Chang Newell†
 Cody H. Wofsy†
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Kilpatrick Townsend & Stockton LLP
 1114 Avenue of the Americas
 New York, NY 10036-7703
 Tel. (212) 775 8703
 jpolonsky@kilpatricktownsend.com

**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

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.

Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

U.S. Attorney's Office for the Eastern District of New York
Attn: Civil Process Clerk
271 Cadman Plaza East
Brooklyn NY 11201

Office of the General Counsel
US Department of Homeland Security
Washington, D.C. 20528

Secretary of DHS John Kelly
US Department of Homeland Security
Washington, D.C. 20528

Acting CBP Commissioner Kevin K. McAleenan
US Department of Homeland Security
Washington, D.C. 20528

James T. Madden,
Field Director
New York Field Office,
US CBP
1 World Trade Center
Suite 50.800
New York, NY 10007-0101

President Donald Trump
1600 Pennsylvania Ave NW
Washington, DC 20500

s/ Michael Wishinte
Michael Wishine, Supervising Attorney
Jerome N. Frank Legal Services Organization
Yale Law School
New Haven, CT 06511
Phone: (203) 436-8971
Fax: (203) 432-1426

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.

**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**

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

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

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

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

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 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,

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)

(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

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 or 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

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

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. Peña*, 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

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

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

“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.

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

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).

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 be 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

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

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”).

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>

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

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,

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*

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 severely 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

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

From: (b)(6), (b)(7)(C)
Sent: Saturday, January 28, 2017 8:39 PM
To: MCALEENAN, KEVIN K; Owen, Todd C (AC OFO); WAGNER, JOHN P; ALLES, RANDOLPH D; HOFFMAN, TODD A; HUTTON, JAMES R
Cc: (b)(6), (b)(7)(C)
Subject: Section 5(e) Waiver Approved
Attachments: Delegation to CBP 5(e) waiver authority.docx

(b)(5)

(b)(6), (b)(7)(C)

CBP Associate Chief Counsel (Enforcement and Operations)

(b)(6), (b)(7)(C)

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Department of Homeland Security
DHS Delegation Number: _____
Revision Number: 00
Issue Date:

**DELEGATION TO THE
COMMISSIONER OF U.S.
CUSTOMS AND BORDER
PROTECTION FOR THE
EXERCISE OF AUTHORITY
UNDER § 5(e) OF THE
PRESIDENT’S EXECUTIVE
ORDER ENTITLED
“PROTECTING THE NATION
FROM FOREIGN TERRORIST
ENTRY INTO THE UNITED
STATES”**

I. Purpose

This delegation vests authority in the Commissioner of U.S. Customs and Border Protection to exercise the authority granted to the Secretary under § 5(e) of the President’s Executive Order entitled, “Protecting the Nation from Foreign Terrorist Entry into the United States,” (January 27, 2017).

II. Delegation

Subject to my oversight, direction, and guidance, and notwithstanding the temporary suspension of the U.S. Refugee Admissions Program imposed by § 5(a) of the President’s Executive Order entitled, “Protecting the Nation from Foreign Terrorist Entry into the United States,” (January 27, 2017), I hereby delegate to the Commissioner of U.S. Customs and Border Protection, the authority under § 5(e) of the Executive Order to admit individuals to the United States as refugees on a case-by-case basis, but only if the Commissioner and the Secretary of State, or his designee, jointly determine that the admission of such individuals as refugees is in the national interest and would not pose a risk to the security or welfare of the United States.

III. Re-delegation

Unless re-delegation is otherwise prohibited by law, the authorities delegated herein may be re-delegated in writing to an appropriate subordinate official of the

Commissioner of U.S. Customs and Border Protection, but in no event may this authority be delegated to an official occupying a position less senior than the Senior Executive Service or its equivalent.

IV. Authorities

- A. Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002), as amended (6 U.S.C. § 112).
- B. Title 8, U.S.C. Section 1103, "Powers and duties of the Secretary, the Under Secretary, and the Attorney General" [Immigration and Nationality Act, § 103(a)(1)].
- C. Title 8, U.S.C. Section 1357, "Powers of immigration officers and employees" [Immigration and Nationality Act, § 287].
- D. The President's Executive Order entitled, "Protecting the Nation from Foreign Terrorist Entry into the United States," (January 27, 2017).
- E. Title 8, U.S.C. Section 1182, "Inadmissible aliens" [Immigration and Nationality Act, § 212].

V. Office of Primary Interest

The Office of the Commissioner of U.S. Customs and Border Protection is the office of primary interest in this delegation.

John F. Kelly
Secretary of Homeland Security

Date

From: (b)(6), (b)(7)(C)
Sent: Saturday, January 28, 2017 10:11 PM
To: Owen, Todd C (AC OFO); WAGNER, JOHN P; HOFFMAN, TODD A; HUTTON, JAMES R
Cc: (b)(6), (b)(7)(C)
Subject: FW: Federal Court Stay Being Ordered
Attachments: (b)(7)(E)

(b)(5)

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Sent: Saturday, January 28, 2017 9:31 PM
To: (b)(6), (b)(7)(C) >; ALLES, RANDOLPH D <(b)(6), (b)(7)(C)>;
MCALEENAN, KEVIN K <(b)(6), (b)(7)(C)>; Owen, Todd C (AC OFO) <(b)(6), (b)(7)(C)>;
WAGNER, JOHN P <(b)(6), (b)(7)(C)>; HOFFMAN, TODD A <(b)(6), (b)(7)(C)>;
HUTTON, JAMES R <(b)(6), (b)(7)(C)>
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Subject: RE: Federal Court Stay Being Ordered

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Sent: Saturday, January 28, 2017 9:19 PM
To: ALLES, RANDOLPH D <(b)(6), (b)(7)(C)>
<(b)(6), (b)(7)(C)>; MCALEENAN, KEVIN K <(b)(6), (b)(7)(C)>; Owen, Todd C
(AC OFO) <(b)(6), (b)(7)(C)>; WAGNER, JOHN P <(b)(6), (b)(7)(C)>; HOFFMAN, TODD A
<(b)(6), (b)(7)(C)>; HUTTON, JAMES R <(b)(6), (b)(7)(C)>
Cc: (b)(6), (b)(7)(C)
<(b)(6), (b)(7)(C)>
Subject: RE: Federal Court Stay Being Ordered

(b)(5), (b)(6), (b)(7)(C)

From: ALLES, RANDOLPH D
Sent: Sunday, January 29, 2017 2:16:54 AM
To: (b)(6), (b)(7)(C); MCALEENAN, KEVIN K; Owen, Todd C (AC OFO); WAGNER, JOHN P; HOFFMAN,

TODD A; HUTTON, JAMES R

Cc: (b)(6), (b)(7)(C)

Subject: RE: Federal Court Stay Being Ordered

(b)(5), (b)(6), (b)(7)(C)

S/F

R. D. Alles (b)(6), (b)(7)(C) (Cell)

From: (b)(6), (b)(7)(C)

Sent: Saturday, January 28, 2017 9:02:40 PM

To: ALLES, RANDOLPH D; MCALEENAN, KEVIN K; Owen, Todd C (AC OFO); WAGNER, JOHN P; HOFFMAN, TODD A; HUTTON, JAMES R

Cc: (b)(6), (b)(7)(C)

Subject: RE: Federal Court Stay Being Ordered

(b)(5)

(b)(6), (b)(7)(C)

CBP Associate Chief Counsel (Enforcement and Operations)

(b)(6), (b)(7)(C)

** Attorney Work Product / Attorney-Client Privileged **

From: ALLES, RANDOLPH D

Sent: Saturday, January 28, 2017 9:00 PM

To: (b)(6), (b)(7)(C); MCALEENAN, KEVIN K
<(b)(6), (b)(7)(C)>; Owen, Todd C (AC OFO) <(b)(6), (b)(7)(C)>; WAGNER, JOHN P
<(b)(6), (b)(7)(C)>; HOFFMAN, TODD A <(b)(6), (b)(7)(C)>; HUTTON, JAMES R
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Cc: (b)(6), (b)(7)(C)

<(b)(6), (b)(7)(C)>

Subject: RE: Federal Court Stay Being Ordered

(b)(5), (b)(6), (b)(7)(C)

V/R

R. D. "Tex" Alles (b)(6), (b)(7)(C) (O)

From: (b)(6), (b)(7)(C)

Sent: Saturday, January 28, 2017 20:56

To: MCALEENAN, KEVIN K <(b)(6), (b)(7)(C)>; Owen, Todd C (AC OFO)
<(b)(6), (b)(7)(C)>; WAGNER, JOHN P <(b)(6), (b)(7)(C)>; ALLES, RANDOLPH D
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Cc: (b)(6), (b)(7)(C)

<(b)(6), (b)(7)(C)>

Subject: Federal Court Stay Being Ordered

(b)(5)

(b)(6), (b)(7)(C)

CBP Associate Chief Counsel (Enforcement and Operations)

(b)(6), (b)(7)(C)

** Attorney Work Product / Attorney-Client Privileged **

From: (b)(6), (b)(7)(C)

Sent: Saturday, January 28, 2017 8:39 PM

To: MCALEENAN, KEVIN K <(b)(6), (b)(7)(C)>; Owen, Todd C (AC OFO)

<(b)(6), (b)(7)(C)>; WAGNER, JOHN P <(b)(6), (b)(7)(C)>; ALLES, RANDOLPH D

<(b)(6), (b)(7)(C)>; HOFFMAN, TODD A <(b)(6), (b)(7)(C)>; HUTTON, JAMES R

<(b)(6), (b)(7)(C)>

Cc: (b)(6), (b)(7)(C)

<(b)(6), (b)(7)(C)>

Subject: Section 5(e) Waiver Approved

(b)(5)

(b)(6), (b)(7)(C)

CBP Associate Chief Counsel (Enforcement and Operations)

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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

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;

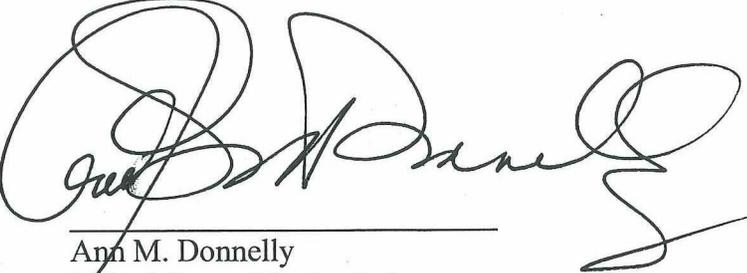
2. There is imminent danger that, absent the stay of removal, there will be substantial and irreparable injury to refugees, visa-holders, and other individuals from nations subject to the January 27, 2017 Executive Order;
3. The issuance of the stay of removal will not injure the other parties interested 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

From: (b)(6), (b)(7)(C)
Sent: Saturday, January 28, 2017 10:32 PM
To: Owen, Todd C (AC OFO); WAGNER, JOHN P; HOFFMAN, TODD A; HUTTON, JAMES R
Cc: (b)(6), (b)(7)(C)
Subject: RE: Federal Court Stay Being Ordered
Attachments: UPDATE Signed Revocation Letter 1-27-2017.pdf

(b)(5)

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CBP Associate Chief Counsel (Enforcement and Operations) (b)(6), (b)(7)(C)

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-----Original Message-----

From: Owen, Todd C (AC OFO)
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Todd C. Owen
Executive Assistant Commissioner
Office of Field Operations
U.S. Customs & Border Protection

From: (b)(6), (b)(7)(C)
Sent: Sunday, January 29, 2017 3:11:11 AM
To: Owen, Todd C (AC OFO); WAGNER, JOHN P; HOFFMAN, TODD A; HUTTON, JAMES R
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Subject: FW: Federal Court Stay Being Ordered

(b)(5)

(b)(6), (b)(7)(C)

CBP Associate Chief Counsel (Enforcement and Operations) (b)(6), (b)(7)(C)

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** Attorney Work Product / Attorney-Client Privileged **

From: (b)(6), (b)(7)(C)
Sent: Saturday, January 28, 2017 9:31 PM
To: (b)(6), (b)(7)(C); ALLES, RANDOLPH D <(b)(6), (b)(7)(C)>; MCALEENAN, KEVIN K <(b)(6), (b)(7)(C)>; Owen, Todd C (AC OFO) <(b)(6), (b)(7)(C)>; WAGNER, JOHN P <(b)(6), (b)(7)(C)>; HOFFMAN, TODD A <(b)(6), (b)(7)(C)>; HUTTON, JAMES R <(b)(6), (b)(7)(C)>
Cc: (b)(6), (b)(7)(C)
<(b)(6), (b)(7)(C)>
Subject: RE: Federal Court Stay Being Ordered

(b)(5)

(b)(6), (b)(7)(C)
CBP Associate Chief Counsel (Enforcement and Operations) (b)(6), (b)(7)(C) 14 /
(b)(6), (b)(7)(C)
** Attorney Work Product / Attorney-Client Privileged **

From: (b)(6), (b)(7)(C)
Sent: Saturday, January 28, 2017 9:19 PM
To: ALLES, RANDOLPH D <(b)(6), (b)(7)(C)>; MCALEENAN, KEVIN K <(b)(6), (b)(7)(C)>; Owen, Todd C (AC OFO) <(b)(6), (b)(7)(C)>; WAGNER, JOHN P <(b)(6), (b)(7)(C)>; HOFFMAN, TODD A <(b)(6), (b)(7)(C)>; HUTTON, JAMES R <(b)(6), (b)(7)(C)>
Cc: (b)(6), (b)(7)(C)
<(b)(6), (b)(7)(C)>
Subject: RE: Federal Court Stay Being Ordered

(b)(5)
(b)(6), (b)(7)(C)

From: ALLES, RANDOLPH D
Sent: Sunday, January 29, 2017 2:16:54 AM
To: (b)(6), (b)(7)(C); MCALEENAN, KEVIN K; Owen, Todd C (AC OFO); WAGNER, JOHN P; HOFFMAN, TODD A; HUTTON, JAMES R
Cc: (b)(6), (b)(7)(C)
Subject: RE: Federal Court Stay Being Ordered (b)(6), (b)(7)(C) Need scope of order when you can get it.

S/F
R. D. Alles, (b)(6), (b)(7)(C) (Cell)

From: (b)(6), (b)(7)(C)
Sent: Saturday, January 28, 2017 9:02:40 PM

To: ALLES, RANDOLPH D; MCALEENAN, KEVIN K; Owen, Todd C (AC OFO); WAGNER, JOHN P; HOFFMAN, TODD A; HUTTON, JAMES R

Cc: (b)(6), (b)(7)(C)

Subject: RE: Federal Court Stay Being Ordered (b)(5)

(b)(5)

(b)(6), (b)(7)(C)

CBP Associate Chief Counsel (Enforcement and Operations) (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

** Attorney Work Product / Attorney-Client Privileged **

From: ALLES, RANDOLPH D
Sent: Saturday, January 28, 2017 9:00 PM

To: (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C) >; MCALEENAN, KEVIN K

(b)(6), (b)(7)(C) >; Owen, Todd C (AC OFO)

(b)(6), (b)(7)(C) >; WAGNER, JOHN P

(b)(6), (b)(7)(C) >; HOFFMAN, TODD A

(b)(6), (b)(7)(C) >; HUTTON, JAMES R

(b)(6), (b)(7)(C) >>

Cc: (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

Subject: RE: Federal Court Stay Being Ordered

(b)(5), (b)(6), (b)(7)(C)

V/R
R. D. "Tex" Alles (b)(6), (b)(7)(C) (O)

From: (b)(6), (b)(7)(C)

Sent: Saturday, January 28, 2017 20:56

To: MCALEENAN, KEVIN K <(b)(6), (b)(7)(C)>; Owen,

Todd C (AC OFO) <(b)(6), (b)(7)(C)>; WAGNER, JOHN P

<(b)(6), (b)(7)(C)>; ALLES, RANDOLPH D

<(b)(6), (b)(7)(C)>; HOFFMAN, TODD A

<(b)(6), (b)(7)(C)>; HUTTON, JAMES R

<(b)(6), (b)(7)(C)>>>

Cc: (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

Subject: Federal Court Stay Being Ordered

(b)(5)

(b)(5)

(b)(6), (b)(7)(C)

CBP Associate Chief Counsel (Enforcement and Operations)

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

** Attorney Work Product / Attorney-Client Privileged **

From: (b)(6), (b)(7)(C)

Sent: Saturday, January 28, 2017 8:39 PM

To: MCALEENAN, KEVIN K <(b)(6), (b)(7)(C)>; Owen,

Todd C (AC OFO) <(b)(6), (b)(7)(C)>; WAGNER, JOHN P

<(b)(6), (b)(7)(C)>; ALLES, RANDOLPH D

<(b)(6), (b)(7)(C)>; HOFFMAN, TODD A

<(b)(6), (b)(7)(C)>; HUTTON, JAMES R

<(b)(6), (b)(7)(C)>

Cc: (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

Subject: Section 5(e) Waiver Approved

(b)(5)

(b)(6), (b)(7)(C)

CBP Associate Chief Counsel (Enforcement and Operations)

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

** Attorney Work Product / Attorney-Client Privileged **

From: (b)(6), (b)(7)(C)
Sent: Sunday, January 29, 2017 7:49 AM
To: HOFFMAN, TODD A
Cc: (b)(6), (b)(7)(C)
Subject: RE: URGENT REQUEST:IMMEDIATE ACTION: Executive Order Implementation and compliance with EDNY Court Order

(b)(5)

(b)(6), (b)(7)(C)
CBP Associate Chief Counsel (Enforcement and Operations)
(b)(6), (b)(7)(C)
** Attorney Work Product / Attorney-Client Privileged **

From: HOFFMAN, TODD A
Sent: Sunday, January 29, 2017 7:47 AM
To: (b)(6), (b)(7)(C)
Subject: FW: URGENT REQUEST:IMMEDIATE ACTION: Executive Order Implementation and compliance with EDNY Court Order

(b)(5)

Todd A. Hoffman
Executive Director, Admissibility and Passenger Programs
Office of Field Operations
U.S. Customs and Border Protection

From: (b)(6), (b)(7)(C)
Sent: Sunday, January 29, 2017 6:32 AM
To: HOFFMAN, TODD A (b)(6), (b)(7)(C) HUTTON, JAMES R (b)(6), (b)(7)(C)
Cc: (b)(6), (b)(7)(C)
Subject: RE: URGENT REQUEST:IMMEDIATE ACTION: Executive Order Implementation and compliance with EDNY Court Order

(b)(5), (b)(6), (b)(7)(C), (b)(7)(E)

(b)(6), (b)(7)(C), (b)(7)(E)

(b)(6), (b)(7)(C), (b)(7)(E)

From: HOFFMAN, TODD A

Sent: Sunday, January 29, 2017 5:23 AM

To: (b)(6), (b)(7)(C) HUTTON, JAMES R (b)(6), (b)(7)(C)

Cc: (b)(6), (b)(7)(C)

Subject: RE: URGENT REQUEST:IMMEDIATE ACTION: Executive Order Implementation and compliance with EDNY Court Order

Please send individual requests.

From: (b)(6), (b)(7)(C)

Sent: Sunday, January 29, 2017 12:47:50 AM

To: HUTTON, JAMES R; HOFFMAN, TODD A

Cc: (b)(6), (b)(7)(C)

Subject: URGENT REQUEST:IMMEDIATE ACTION: Executive Order Implementation and compliance with EDNY Court Order

Gentlemen;

(b)(5), (b)(6), (b)(7)(C), (b)(7)(E)

(b)(6), (b)(7)(C)

(A) Assistant Director, Border Security
U.S. Customs & Border Protection
New York Field Office

(b)(6), (b)(7)(C)

Subject: IMMEDIATE ACTION: Executive Order Implementation and compliance with EDNY Court Order

(b)(7)(E)

(b)(7)(E)



Kevin K. McAleenan
Acting Commissioner
U.S. Customs and Border Protection

(b)(6), (b)(7)(C)

*We are the guardians of our Nation's borders.
We are America's frontline.*

Vigilance • Service • Integrity

(b)(6), (b)(7)(C)

(A) Assistant Director, Border Security
U.S. Customs & Border Protection
New York Field Office

(b)(6), (b)(7)(C)

From: (b)(5), (b)(6), (b)(7)(C), (b)(7)(E)
Sent: Sunday, January 29, 2017 8:28 AM
To: HOFFMAN, TODD A
Subject: RE: Child of a USC set up for offload under 212F

(b)(5)

(b)(5), (b)(6), (b)(7)(C), (b)(7)(E)

CBP Associate Chief Counsel (Enforcement and Operations)

(b)(5), (b)(6), (b)(7)(C), (b)(7)(E)

** Attorney Work Product / Attorney-Client Privileged **

From: HOFFMAN, TODD A
Sent: Sunday, January 29, 2017 8:25:28 AM
To: (b)(6), (b)(7)(C)
Subject: RE: Child of a USC set up for offload under 212F

Can you call me (b)(6), (b)(7)(C)

Todd A. Hoffman
Executive Director, Admissibility and Passenger Programs
Office of Field Operations
U.S. Customs and Border Protection

From: (b)(6), (b)(7)(C)
Sent: Sunday, January 29, 2017 7:58 AM
To: HOFFMAN, TODD A (b)(6), (b)(7)(C)
Cc: (b)(6), (b)(7)(C)
Subject: RE: Child of a USC set up for offload under 212F

(b)(5)

(b)(6), (b)(7)(C)

CBP Associate Chief Counsel (Enforcement and Operations)

(b)(6), (b)(7)(C)

** Attorney Work Product / Attorney-Client Privileged **

From: HOFFMAN, TODD A
Sent: Sunday, January 29, 2017 7:40 AM
To: (b)(6), (b)(7)(C)
Subject: FW: Child of a USC set up for offload under 212F

(b)(5)

Todd A. Hoffman
Executive Director, Admissibility and Passenger Programs
Office of Field Operations

U.S. Customs and Border Protection

From: (b)(6), (b)(7)(C)
Sent: Sunday, January 29, 2017 7:17 AM
To: HOFFMAN, TODD A (b)(6), (b)(7)(C) HUTTON, JAMES R (b)(6), (b)(7)(C)
Cc: (b)(6), (b)(7)(C)
Subject: FW: Child of a USC set up for offload under 212F

Todd/Ryan, (b)(5), (b)(7)(E)
(b)(5), (b)(7)(E) (b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)
Sent: Sunday, January 29, 2017 6:54:38 AM
To: (b)(6), (b)(7)(C)
Subject: FW: Child of a USC set up for offload under 212F

(b)(6), (b)(7)(C)

(b)(5), (b)(7)(E)

From: (b)(6), (b)(7)(C)
Sent: Sunday, January 29, 2017 8:43:15 AM
To: (b)(6), (b)(7)(C)
Cc: (b)(6), (b)(7)(C)
Subject: FW: Child of a USC set up for offload under 212F

(b)(5), (b)(6), (b)(7)(C), (b)(7)(E)

(b)(5), (b)(6), (b)(7)(C), (b)(7)(E)

Respectfully,

(b)(6), (b)(7)(C)
Chief Watch Commander

(b)(7)(E)

(b)(6), (b)(7)(C)



"The ultimate measure of a man is not where he stands in moments of comfort and convenience, but where he stands at times of challenge and controversy."

Martin Luther King Jr.

WARNING: The information contained herein remains under the control of the Department of Homeland Security (DHS), through the Bureau of Customs and Border Protection (CBP). It is being disseminated for authorized LAW ENFORCEMENT purposes only. This information shall not be distributed beyond the original addressees without prior authorization of the originator as it may contain proprietary or other sensitive trade information subject to dissemination restrictions under the Trade Secrecy Act and Bank Secrecy Act. It is not to be released to the public and only those personnel with a valid "need-to-know" should be allowed access.

From: **(b)(6), (b)(7)(C)**

Sent: Sunday, January 29, 2017 3:26 AM

To: **(b)(6), (b)(7)(C)**

Cc: (b)(6), (b)(7)(C)
(b)(6), (b)(7)(C)

Subject: RE: Child of a USC set up for offload under 212F

(b)(5), (b)(6), (b)(7)(C), (b)(7)(E)

(b)(6), (b)(7)(C)

Watch Commander

(b)(7)(E)

U.S. Customs and Border Protection

(b)(6), (b)(7)(C)



From: (b)(6), (b)(7)(C)

Sent: Sunday, January 29, 2017 2:18 AM

To: (b)(6), (b)(7)(C)

Cc: (b)(6), (b)(7)(C)

Subject: RE: Child of a USC set up for offload under 212F

(b)(5), (b)(7)(E)

(b)(6), (b)(7)(C)

Watch Commander

(b)(7)(E)

U.S. Customs and Border Protection

(b)(6), (b)(7)(C)



From: (b)(6), (b)(7)(C)

Sent: Sunday, January 29, 2017 2:12 AM

To: (b)(6), (b)(7)(C)

Cc: (b)(6), (b)(7)(C)

Subject: RE: Child of a USC set up for offload under 212F

(b)(5), (b)(7)(E) (b)(6), (b)(7)(C)

Respectfully,

(b)(6), (b)(7)(C)
Chief Watch Commander

(b)(7)(E)

(b)(6), (b)(7)(C)



"The ultimate measure of a man is not where he stands in moments of comfort and convenience, but where he stands at times of challenge and controversy."

Martin Luther King Jr.

WARNING: The information contained herein remains under the control of the Department of Homeland Security (DHS), through the Bureau of Customs and Border Protection (CBP). It is being disseminated for authorized LAW ENFORCEMENT purposes only. This information shall not be distributed beyond the original addressees without prior authorization of the originator as it may contain proprietary or other sensitive trade information subject to dissemination restrictions under the Trade Secrecy Act and Bank Secrecy Act. It is not to be released to the public and only those personnel with a valid "need-to-know" should be allowed access.

From: (b)(6), (b)(7)(C)

Sent: Sunday, January 29, 2017 2:08 AM

To: (b)(6), (b)(7)(C)

Cc: (b)(6), (b)(7)(C)

Subject: Child of a USC set up for offload under 212F

(b)(5), (b)(6), (b)(7)(C), (b)(7)(E)

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

Watch Commander

(b)(7)(E)

U.S. Customs and Border Protection

(b)(6), (b)(7)(C)



From: (b)(6), (b)(7)(C)
Sent: Sunday, January 29, 2017 9:00 AM
To: (b)(6), (b)(7)(C) Owen, Todd C (AC OFO); WAGNER, JOHN P; MURDOCK, JUDSON W; HOFFMAN, TODD A; (b)(6), (b)(7)(C) OFO-FIELD LIAISON
Cc: (b)(6), (b)(7)(C)
Subject: RE: EO 212(f) Exemption for (b)(6), (b)(7)(C)

(b)(5)

(b)(6), (b)(7)(C)
 CBP Associate Chief Counsel (Enforcement and Operations)
 (b)(6), (b)(7)(C)
 ** Attorney Work Product / Attorney-Client Privileged **

From: (b)(6), (b)(7)(C)
Sent: Sunday, January 29, 2017 8:57 AM
To: (b)(6), (b)(7)(C)
 (b)(6), (b)(7)(C)
 Owen, Todd C (AC OFO) (b)(6), (b)(7)(C) WAGNER, JOHN P (b)(6), (b)(7)(C)
 MURDOCK, JUDSON W (b)(6), (b)(7)(C) HOFFMAN, TODD A
 (b)(6), (b)(7)(C) CAMPBELL, CARL S (b)(6), (b)(7)(C) HUTTON, JAMES R
 (b)(6), (b)(7)(C) OFO-FIELD LIAISON (b)(7)(E)
Cc: (b)(6), (b)(7)(C)
Subject: FW: EO 212(f) Exemption for (b)(6), (b)(7)(C)
Importance: High

ALCON: (b)(5)

(b)(6), (b)(7)(C)
 Director, Field Operations
 Los Angeles Field Office
 U. S. Customs and Border Protection

(b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)
Sent: Sunday, January 29, 2017 4:39 AM
To: (b)(6), (b)(7)(C)
Cc: (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

Subject: FYA: EO 212(f) Exemption for (b)(6), (b)(7)(C)

Importance: High

Subject Line: EO 212(f) Exemption for (b)(6), (b)(7)(C)

Waiver Narrative

OFO recommends that you: (b)(5), (b)(6), (b)(7)(C), (b)(7)(E)

(b)(5), (b)(6), (b)(7)(C), (b)(7)(E)

(b)(6), (b)(7)(C)

Supervisory CBP Officer
U.S. Customs and Border Protection
Los Angeles International Airport
Passenger Enforcement Rover Team (PERT)

(b)(6), (b)(7)(C)

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From: (b)(6), (b)(7)(C)
Sent: Sunday, January 29, 2017 11:39 AM
To: (b)(6), (b)(7)(C)
 (b)(6), (b)(7)(C) HOFFMAN, TODD A; HUTTON, JAMES R; (b)(6), (b)(7)(C)
 (b)(6), (b)(7)(C) OFO-FIELD LIAISON; Owen, Todd C (AC OFO);
 WAGNER, JOHN P
Cc: (b)(6), (b)(7)(C)
 (b)(6), (b)(7)(C)
Subject: RE: Waiver Request- 212 F Executive Order- (b)(6), (b)(7)(C)

(b)(5)

(b)(6), (b)(7)(C)
 CBP Associate Chief Counsel (Enforcement and Operations)
 (b)(6), (b)(7)(C)
 ** Attorney Work Product / Attorney-Client Privileged **

From: (b)(6), (b)(7)(C)
Sent: Sunday, January 29, 2017 11:36:12 AM
To: (b)(6), (b)(7)(C)
 (b)(6), (b)(7)(C) HOFFMAN, TODD A; HUTTON, JAMES R; (b)(6), (b)(7)(C) OFO-FIELD
 LIAISON; Owen, Todd C (AC OFO); WAGNER, JOHN P
Cc: (b)(6), (b)(7)(C)
 (b)(6), (b)(7)(C)
Subject: Waiver Request- 212 F Executive Order- (b)(6), (b)(7)(C)

(b)(5), (b)(6), (b)(7)(C), (b)(7)(E)

(b)(5), (b)(6), (b)(7)(C), (b)(7)(E)

Respectfully,

(b)(6), (b)(7)(C)

Border Security Coordinator
U.S. Customs & Border Protection
Office of Field Operations, New York

(b)(6), (b)(7)(C)

"A man can be destroyed but not defeated."

Ernest Hemingway

From: (b)(6), (b)(7)(C)
Sent: Sunday, January 29, 2017 5:22 PM
To: HUTTON, JAMES R; (b)(6), (b)(7)(C)
Cc: HOFFMAN, TODD A
Subject: RE: Section 5(e) Redelelegation Language
Attachments: DHS Action Memo for Refugees.docx

(b)(5)

(b)(6), (b)(7)(C)
CBP Associate Chief Counsel (Enforcement and Operations)
(b)(6), (b)(7)(C)
** Attorney Work Product / Attorney-Client Privileged **

From: HUTTON, JAMES R
Sent: Sunday, January 29, 2017 5:08 PM
To: (b)(6), (b)(7)(C)
<(b)(6), (b)(7)(C)>
Cc: HOFFMAN, TODD A <(b)(6), (b)(7)(C)>
Subject: RE: Section 5(e) Redelelegation Language

(b)(5)

J. Ryan Hutton
Deputy Executive Director
Admissibility and Passenger Programs
(b)(6), (b)(7)(C)
Washington, DC

(b)(6), (b)(7)(C)



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From: (b)(6), (b)(7)(C)
Sent: Sunday, January 29, 2017 4:46 PM
To: HUTTON, JAMES R <(b)(6), (b)(7)(C)>; Owen, Todd C (AC OFO) <(b)(6), (b)(7)(C)>;
WAGNER, JOHN P <(b)(6), (b)(7)(C)>; HOFFMAN, TODD A <(b)(6), (b)(7)(C)>
Cc: (b)(6), (b)(7)(C)
(b)(6), (b)(7)(C)
Subject: RE: Section 5(e) Redefinition Language

(b)(5)

(b)(6), (b)(7)(C)
CBP Associate Chief Counsel (Enforcement and Operations)
(b)(6), (b)(7)(C)
** Attorney Work Product / Attorney-Client Privileged **

From: HUTTON, JAMES R
Sent: Sunday, January 29, 2017 4:44 PM
To: (b)(6), (b)(7)(C); Owen, Todd C (AC OFO)
(b)(6), (b)(7)(C); WAGNER, JOHN P <(b)(6), (b)(7)(C)>; HOFFMAN, TODD A
(b)(6), (b)(7)(C)
Cc: (b)(6), (b)(7)(C)
(b)(6), (b)(7)(C)
Subject: RE: Section 5(e) Redefinition Language

(b)(5)

J. Ryan Hutton
Deputy Executive Director
Admissibility and Passenger Programs
(b)(6), (b)(7)(C)
Washington, DC

(b)(6), (b)(7)(C)



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From: (b)(6), (b)(7)(C)
Sent: Sunday, January 29, 2017 4:37 PM

To: HUTTON, JAMES R <(b)(6), (b)(7)(C)>; Owen, Todd C (AC OFO) <(b)(6), (b)(7)(C)>;
WAGNER, JOHN P <(b)(6), (b)(7)(C)>; HOFFMAN, TODD A <(b)(6), (b)(7)(C)>
Cc: <(b)(6), (b)(7)(C)>
<(b)(6), (b)(7)(C)>
Subject: RE: Section 5(e) Redelelegation Language

(b)(5)

(b)(6), (b)(7)(C)
CBP Associate Chief Counsel (Enforcement and Operations)
<(b)(6), (b)(7)(C)>
** Attorney Work Product / Attorney-Client Privileged **

From: HUTTON, JAMES R
Sent: Sunday, January 29, 2017 4:31 PM
To: <(b)(6), (b)(7)(C)>; Owen, Todd C (AC OFO)
<(b)(6), (b)(7)(C)>; WAGNER, JOHN P <(b)(6), (b)(7)(C)>; HOFFMAN, TODD A
<(b)(6), (b)(7)(C)>
Cc: <(b)(6), (b)(7)(C)>
<(b)(6), (b)(7)(C)>
Subject: RE: Section 5(e) Redelelegation Language

(b)(5)

J. Ryan Hutton
Deputy Executive Director
Admissibility and Passenger Programs
<(b)(6), (b)(7)(C)>
Washington, DC

(b)(6), (b)(7)(C)



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From: (b)(6), (b)(7)(C)
Sent: Sunday, January 29, 2017 3:39 PM
To: Owen, Todd C (AC OFO) <(b)(6), (b)(7)(C)>; WAGNER, JOHN P <(b)(6), (b)(7)(C)>;
HOFFMAN, TODD A <(b)(6), (b)(7)(C)>; HUTTON, JAMES R <(b)(6), (b)(7)(C)>
Cc: (b)(6), (b)(7)(C)
(b)(6), (b)(7)(C)
Subject: FW: Section 5(e) Redelelegation Language

(b)(5)

(b)(6), (b)(7)(C)
CBP Associate Chief Counsel (Enforcement and Operations)
(b)(6), (b)(7)(C)
** Attorney Work Product / Attorney-Client Privileged **

From: (b)(6), (b)(7)(C)
Sent: Sunday, January 29, 2017 12:59:37 PM
To: HUTTON, JAMES R
Subject: FW: Section 5(e) Redelelegation Language

(b)(6), (b)(7)(C)
CBP Associate Chief Counsel (Enforcement and Operations)
(b)(6), (b)(7)(C)
** Attorney Work Product / Attorney-Client Privileged **

From: MCALEENAN, KEVIN K
Sent: Sunday, January 29, 2017 1:39:56 AM
To: (b)(6), (b)(7)(C); HUTTON, JAMES R
Cc: ALLES, RANDOLPH D; Owen, Todd C (AC OFO); (b)(6), (b)(7)(C)
(b)(6), (b)(7)(C); FLANAGAN, PATRICK S
Subject: RE: Section 5(e) Redelelegation Language

(b)(5)

KM

From: (b)(6), (b)(7)(C)
Sent: Sunday, January 29, 2017 1:36 AM
To: MCALEENAN, KEVIN K <(b)(6), (b)(7)(C)>
Cc: ALLES, RANDOLPH D <(b)(6), (b)(7)(C)>; Owen, Todd C (AC OFO) <(b)(6), (b)(7)(C)>;
(b)(6), (b)(7)(C)
(b)(6), (b)(7)(C)
FLANAGAN, PATRICK S <(b)(6), (b)(7)(C)>
Subject: RE: Section 5(e) Redelelegation Language

(b)(5)

(b)(6), (b)(7)(C)
CBP Associate Chief Counsel (Enforcement and Operations)
(b)(6), (b)(7)(C)
** Attorney Work Product / Attorney-Client Privileged **

From: MCALEENAN, KEVIN K
Sent: Sunday, January 29, 2017 1:30 AM
To: (b)(6), (b)(7)(C)
Cc: ALLES, RANDOLPH D <(b)(6), (b)(7)(C)>; Owen, Todd C (AC OFO) <(b)(6), (b)(7)(C)>; (b)(6), (b)(7)(C); (b)(6), (b)(7)(C); FLANAGAN, PATRICK S <(b)(6), (b)(7)(C)>
Subject: RE: Section 5(e) Redelegation Language

(b)(5)

From: (b)(6), (b)(7)(C)
Sent: Sunday, January 29, 2017 1:21 AM
To: MCALEENAN, KEVIN K <(b)(6), (b)(7)(C)>
Cc: ALLES, RANDOLPH D <(b)(6), (b)(7)(C)>; Owen, Todd C (AC OFO) <(b)(6), (b)(7)(C)>; (b)(6), (b)(7)(C); (b)(6), (b)(7)(C); FLANAGAN, PATRICK S <(b)(6), (b)(7)(C)>
Subject: Section 5(e) Redelegation Language

(b)(5)

(b)(6), (b)(7)(C)

CBP Associate Chief Counsel (Enforcement and Operations)

(b)(6), (b)(7)(C)

** Attorney Work Product / Attorney-Client Privileged **

From: MCALEENAN, KEVIN K

Sent: Saturday, January 28, 2017 10:50 PM

To: (b)(6), (b)(7)(C)

<(b)(6), (b)(7)(C)>; (b)(6), (b)(7)(C)

<(b)(6), (b)(7)(C)>; Owen, Todd C (AC OFO) <(b)(6), (b)(7)(C)>

Cc: ALLES, RANDOLPH D <(b)(6), (b)(7)(C)>

Subject: FW: Section 5(e) Waiver Approved

(b)(5)

KM

From: (b)(6), (b)(7)(C)

Sent: Saturday, January 28, 2017 8:39 PM

To: MCALEENAN, KEVIN K <(b)(6), (b)(7)(C)>; Owen, Todd C (AC OFO)

<(b)(6), (b)(7)(C)>; WAGNER, JOHN P <(b)(6), (b)(7)(C)>; ALLES, RANDOLPH D

<(b)(6), (b)(7)(C)>; HOFFMAN, TODD A <(b)(6), (b)(7)(C)>; HUTTON, JAMES R

<(b)(6), (b)(7)(C)>

Cc: (b)(6), (b)(7)(C)

<(b)(6), (b)(7)(C)>

Subject: Section 5(e) Waiver Approved

(b)(5)

(b)(6), (b)(7)(C)

CBP Associate Chief Counsel (Enforcement and Operations)

(b)(6), (b)(7)(C)

** Attorney Work Product / Attorney-Client Privileged **



United States Department of State

Washington, D.C. 20520

SENSITIVE BUT UNCLASSIFIED

January 28, 2017

ACTION MEMO FOR

FROM:

SUBJECT: (SBU) Determination to except certain refugees from the President's Executive Order so they may enter the United States

Recommendation

(SBU) That you determine to admit the 872 refugees provide by the Department of State (DOS) scheduled to enter the United States through February 2 because their admission is in the national interest and would not pose a risk to the security or welfare of the United States.

Approve _____ Disapprove _____

Background

(SBU) The Executive Order "Protecting the Nation from Foreign Terrorist Entry into the United States" (EO) suspends certain aspects of the US Refugee Admissions Program for 120 days, including the entry of refugees. Section 5(e) of the EO provides that "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 the determine that the admission of such refugees is in the nation interest – including...when the person is already in transit and denying admission would cause undue hardship – and it would pose a risk to the security or welfare of the United States."

(SBU) **XXXX** is seeking for you and DOS to determine jointly to admit 872 refugees who are already in transit through February 2. This group does not include nationals from the specific countries restricted in the Executive Order (Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen). A list of these individuals has been provided by DOS. Many of these individuals have already been moved from camps or other remote locations to U.S.-run refugee processing hubs in

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-2-

preparation for departure. Most have sold or relinquished their accommodations, household effects and other belongings; given up employment; and or discontinued schooling for their children. Many have had their residency permits rescinded by their countries of asylum once granted exit permits to imminently depart to the United States and other have been preparing for life in the United States to join U.S. family members who are already here. These individuals are mostly families with children and immediate cancelation of their travel would impose extreme hardship on people who have fled persecution and conflict in order to be resettled in the U.S. Without this humanitarian measure, some refugees could be stuck in limbo or even risk being returned to a country where they would face persecution. As such, each individual in this group is in transit and denying them admission would cause undue hardship.

(SBU) You must also determine jointly with the Secretary of State that the admission of each of these individuals would not pose a risk to the security or welfare of the United States. Refugees under this exemption request have cleared security vetting. All of the information (including biographic and biometric) collected on applicants has been screened against a multitude of USG databases and watch lists, with an emphasis on counterterrorism, but including concerns pertaining to criminality, trafficking of arms, narcotics, and trafficking in persons. Where appropriate, certain aspects of screening were automated, but human intelligence analysts were engaged throughout.

- Prior to the granting of Refugee status, USCIS officers conduct extensive interviews with refugee applicants to develop all relevant issues related to eligibility for refugee resettlement and admissibility to the United States. Refugee applicants are subject to robust security screening protocols to identify potential fraud, criminal or national security issues. All available biographic and biometric information is vetted against a broad array of law enforcement, intelligence community, and other relevant databases to help confirm a refugee applicant's identity, check for any criminal or other derogatory information, and identify information that could inform lines of questioning during the interview. Screening is performed both internally by the departments with the responsibility for adjudication of benefits (DHS and the Department of State) and externally by Intelligence Community and law enforcement partners.
- Prior to departure, the Federal Bureau of Investigation (FBI) will run the full complement of checks against FBI investigative holdings.

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-3-

- Throughout the travel process, Customs and Border Protection (CBP) National Targeting Center (NTC) traveler vetting checks run against Interpol, USCIS holdings, US-VISIT, Watchlisting Service, NCIC, TECS, ESTA and DOS Visa and U.S. Passport holdings. Additionally, NTC has several classified targeting programs with Intelligence Community (IC) partners that identify matches to previously unknown, analytically significant terrorism information pertaining to inbound travelers through comparison of CBP data with IC information. These programs are able to operate in the unclassified environment through workflows that grant NTC visibility into classified derogatory holdings that are associated to an intending traveler.
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(SBU) This exemption must be jointly determined by the Secretaries of State and Homeland Security. We have coordinated with the Department of State and understand that its Secretary is prepared to make this determination for these individuals jointly with you. Because of the nature of travel bookings, this waiver must be issued today or tomorrow to allow such travel.

Attachment:

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-4-

Approved:

Drafted:

Cleared:

SENSITIVE BUT UNCLASSIFIED

From: (b)(6), (b)(7)(C)
Sent: Monday, January 30, 2017 9:56 AM
To: HUTTON, JAMES R; (b)(6), (b)(7)(C)
Cc: HOFFMAN, TODD A; Owen, Todd C (AC OFO); (b)(6), (b)(7)(C)
Subject: RE: Section 5(e) Redelelegation Language
Attachments: DHS Waiver for 872 Refugees.pdf; State 5(e) Waiver For 872 Refugees.pdf

(b)(5)

(b)(6), (b)(7)(C)
CBP Associate Chief Counsel (Enforcement and Operations)
(b)(6), (b)(7)(C)
** Attorney Work Product / Attorney-Client Privileged **

From: HUTTON, JAMES R
Sent: Monday, January 30, 2017 7:27 AM
To: (b)(6), (b)(7)(C)
<(b)(6), (b)(7)(C)>
Cc: HOFFMAN, TODD A <(b)(6), (b)(7)(C)>
Subject: RE: Section 5(e) Redelelegation Language

(b)(5)

From: (b)(6), (b)(7)(C)
Sent: Monday, January 30, 2017 7:09:55 AM
To: HUTTON, JAMES R; (b)(6), (b)(7)(C)
Cc: HOFFMAN, TODD A
Subject: RE: Section 5(e) Redelelegation Language

(b)(5)

(b)(6), (b)(7)(C)
CBP Associate Chief Counsel (Enforcement and Operations)
(b)(6), (b)(7)(C)
** Attorney Work Product / Attorney-Client Privileged **

From: HUTTON, JAMES R
Sent: Monday, January 30, 2017 7:01 AM
To: (b)(6), (b)(7)(C)
<(b)(6), (b)(7)(C)>
Cc: HOFFMAN, TODD A <(b)(6), (b)(7)(C)>
Subject: RE: Section 5(e) Redelelegation Language

(b)(5)

(b)(5)

From: (b)(6), (b)(7)(C)
Sent: Sunday, January 29, 2017 7:55:10 PM
To: HUTTON, JAMES R; (b)(6), (b)(7)(C)
Cc: HOFFMAN, TODD A
Subject: RE: Section 5(e) Redelelegation Language

(b)(5)

(b)(6), (b)(7)(C)
CBP Associate Chief Counsel (Enforcement and Operations)
(b)(6), (b)(7)(C)
** Attorney Work Product / Attorney-Client Privileged **

From: (b)(6), (b)(7)(C)
Sent: Sunday, January 29, 2017 5:22 PM
To: HUTTON, JAMES R <(b)(6), (b)(7)(C)>
Cc: HOFFMAN, TODD A <(b)(6), (b)(7)(C)>
Subject: RE: Section 5(e) Redelelegation Language

(b)(5)

(b)(6), (b)(7)(C)
CBP Associate Chief Counsel (Enforcement and Operations)
(b)(6), (b)(7)(C)
** Attorney Work Product / Attorney-Client Privileged **

From: HUTTON, JAMES R
Sent: Sunday, January 29, 2017 5:08 PM
To: (b)(6), (b)(7)(C)
<(b)(6), (b)(7)(C)>
Cc: HOFFMAN, TODD A <(b)(6), (b)(7)(C)>
Subject: RE: Section 5(e) Redelelegation Language

(b)(5)

J. Ryan Hutton
Deputy Executive Director
Admissibility and Passenger Programs
(b)(6), (b)(7)(C)
Washington, DC



(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)



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From: (b)(6), (b)(7)(C)
Sent: Sunday, January 29, 2017 4:46 PM
To: HUTTON, JAMES R <(b)(6), (b)(7)(C)>; Owen, Todd C (AC OFO) <(b)(6), (b)(7)(C)>;
WAGNER, JOHN P <(b)(6), (b)(7)(C)>; HOFFMAN, TODD A <(b)(6), (b)(7)(C)>
Cc: (b)(6), (b)(7)(C)
<(b)(6), (b)(7)(C)>
Subject: RE: Section 5(e) Redelegation Language

(b)(5)

(b)(6), (b)(7)(C)
CBP Associate Chief Counsel (Enforcement and Operations)
(b)(6), (b)(7)(C)
** Attorney Work Product / Attorney-Client Privileged **

From: HUTTON, JAMES R
Sent: Sunday, January 29, 2017 4:44 PM
To: (b)(6), (b)(7)(C); Owen, Todd C (AC OFO)
<(b)(6), (b)(7)(C)>; WAGNER, JOHN P <(b)(6), (b)(7)(C)>; HOFFMAN, TODD A
<(b)(6), (b)(7)(C)>
Cc: (b)(6), (b)(7)(C)
<(b)(6), (b)(7)(C)>
Subject: RE: Section 5(e) Redelegation Language

(b)(5), (b)(7)(E)

J. Ryan Hutton
Deputy Executive Director
Admissibility and Passenger Programs
(b)(6), (b)(7)(C)
Washington, DC

(b)(6), (b)(7)(C)



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From: (b)(6), (b)(7)(C)
Sent: Sunday, January 29, 2017 4:37 PM
To: HUTTON, JAMES R <(b)(6), (b)(7)(C)>; Owen, Todd C (AC OFO) <(b)(6), (b)(7)(C)>; WAGNER, JOHN P <(b)(6), (b)(7)(C)>; HOFFMAN, TODD A <(b)(6), (b)(7)(C)>
Cc: (b)(6), (b)(7)(C)
<(b)(6), (b)(7)(C)>
Subject: RE: Section 5(e) Redelelegation Language

(b)(5)

(b)(6), (b)(7)(C)
CBP Associate Chief Counsel (Enforcement and Operations)
(b)(6), (b)(7)(C)
** Attorney Work Product / Attorney-Client Privileged **

From: HUTTON, JAMES R
Sent: Sunday, January 29, 2017 4:31 PM
To: (b)(6), (b)(7)(C); Owen, Todd C (AC OFO) <(b)(6), (b)(7)(C)>; WAGNER, JOHN P <(b)(6), (b)(7)(C)>; HOFFMAN, TODD A <(b)(6), (b)(7)(C)>
Cc: (b)(6), (b)(7)(C)
<(b)(6), (b)(7)(C)>
Subject: RE: Section 5(e) Redelelegation Language

(b)(5)

J. Ryan Hutton
Deputy Executive Director
Admissibility and Passenger Programs
(b)(6), (b)(7)(C)
Washington, DC

(b)(6), (b)(7)(C)



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From: (b)(6), (b)(7)(C)
Sent: Sunday, January 29, 2017 3:39 PM
To: Owen, Todd C (AC OFO) <(b)(6), (b)(7)(C)>; WAGNER, JOHN P <(b)(6), (b)(7)(C)>;
HOFFMAN, TODD A <(b)(6), (b)(7)(C)>; HUTTON, JAMES R <(b)(6), (b)(7)(C)>
Cc: (b)(6), (b)(7)(C)
(b)(6), (b)(7)(C)
Subject: FW: Section 5(e) Redelelegation Language

(b)(5)

(b)(6), (b)(7)(C)
CBP Associate Chief Counsel (Enforcement and Operations)
(b)(6), (b)(7)(C)
** Attorney Work Product / Attorney-Client Privileged **

From: (b)(6), (b)(7)(C)
Sent: Sunday, January 29, 2017 12:59:37 PM
To: HUTTON, JAMES R
Subject: FW: Section 5(e) Redelelegation Language

(b)(6), (b)(7)(C)
CBP Associate Chief Counsel (Enforcement and Operations)
(b)(6), (b)(7)(C)
** Attorney Work Product / Attorney-Client Privileged **

From: MCALEENAN, KEVIN K
Sent: Sunday, January 29, 2017 1:39:56 AM
To: (b)(6), (b)(7)(C); HUTTON, JAMES R
Cc: ALLES, RANDOLPH D; Owen, Todd C (AC OFO); MILLER, TROY A; (b)(6), (b)(7)(C)
(b)(6), (b)(7)(C); FLANAGAN, PATRICK S
Subject: RE: Section 5(e) Redelelegation Language

Ryan,
(b)(5)

KM

From: (b)(6), (b)(7)(C)
Sent: Sunday, January 29, 2017 1:36 AM
To: MCALEENAN, KEVIN K <(b)(6), (b)(7)(C)>
Cc: ALLES, RANDOLPH D <(b)(6), (b)(7)(C)>; Owen, Todd C (AC OFO) <(b)(6), (b)(7)(C)>;
 (b)(6), (b)(7)(C) <(b)(6), (b)(7)(C)>;
 (b)(6), (b)(7)(C)
 FLANAGAN, PATRICK S <(b)(6), (b)(7)(C)>
Subject: RE: Section 5(e) Redelelegation Language

(b)(5), (b)(7)(E)

(b)(6), (b)(7)(C)
 CBP Associate Chief Counsel (Enforcement and Operations)
 (b)(6), (b)(7)(C)
 ** Attorney Work Product / Attorney-Client Privileged **

From: MCALEENAN, KEVIN K
Sent: Sunday, January 29, 2017 1:30 AM
To: (b)(6), (b)(7)(C)
Cc: ALLES, RANDOLPH D <(b)(6), (b)(7)(C)>; Owen, Todd C (AC OFO) <(b)(6), (b)(7)(C)>;
 (b)(6), (b)(7)(C) <(b)(6), (b)(7)(C)>;
 (b)(6), (b)(7)(C)
 FLANAGAN, PATRICK S <(b)(6), (b)(7)(C)>
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Cc: ALLES, RANDOLPH D <(b)(6), (b)(7)(C)>; Owen, Todd C (AC OFO) <(b)(6), (b)(7)(C)>;
 (b)(6), (b)(7)(C) <(b)(6), (b)(7)(C)>;
 (b)(6), (b)(7)(C)
 FLANAGAN, PATRICK S <(b)(6), (b)(7)(C)>
Subject: Section 5(e) Redelelegation Language

(b)(5)

(b)(5)

(b)(6), (b)(7)(C)
CBP Associate Chief Counsel (Enforcement and Operations)
(b)(6), (b)(7)(C)
** Attorney Work Product / Attorney-Client Privileged **

From: MCALEENAN, KEVIN K
Sent: Saturday, January 28, 2017 10:50 PM

To: (b)(6), (b)(7)(C)
(b)(6), (b)(7)(C); MILLER, TROY A
(b)(6), (b)(7)(C); Owen, Todd C (AC OFO) (b)(6), (b)(7)(C)
Cc: ALLES, RANDOLPH D (b)(6), (b)(7)(C) FLANAGAN, PATRICK S (b)(6), (b)(7)(C)
Subject: FW: Section 5(e) Waiver Approved

(b)(5)

KM

From: (b)(6), (b)(7)(C)
Sent: Saturday, January 28, 2017 8:39 PM
To: MCALEENAN, KEVIN K (b)(6), (b)(7)(C); Owen, Todd C (AC OFO)
(b)(6), (b)(7)(C); WAGNER, JOHN P (b)(6), (b)(7)(C); ALLES, RANDOLPH D
(b)(6), (b)(7)(C); HOFFMAN, TODD A (b)(6), (b)(7)(C); HUTTON, JAMES R
Cc: (b)(6), (b)(7)(C)
(b)(6), (b)(7)(C)
Subject: Section 5(e) Waiver Approved

(b)(5)

(b)(6), (b)(7)(C)
CBP Associate Chief Counsel (Enforcement and Operations)
(b)(6), (b)(7)(C)
** Attorney Work Product / Attorney-Client Privileged **



United States Department of State

Washington, D.C. 20520

SENSITIVE BUT UNCLASSIFIED

January 28, 2017

ACTION MEMO FOR

FROM:

SUBJECT: (SBU) Determination to except certain refugees from the President's Executive Order so they may enter the United States

Recommendation

(SBU) That you determine to admit the 872 refugees provide by the Department of State (DOS) scheduled to enter the United States through February 2 because their admission is in the national interest and would not pose a risk to the security or welfare of the United States.

Approve _____ Disapprove _____

Background

(SBU) The Executive Order "Protecting the Nation from Foreign Terrorist Entry into the United States" (EO) suspends certain aspects of the US Refugee Admissions Program for 120 days, including the entry of refugees. Section 5(e) of the EO provides that "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 the determine that the admission of such refugees is in the nation interest – including...when the person is already in transit and denying admission would cause undue hardship – and it would pose a risk to the security or welfare of the United States."

(SBU) **XXXX** is seeking for you and DOS to determine jointly to admit 872 refugees who are already in transit through February 2. This group does not include nationals from the specific countries restricted in the Executive Order (Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen). A list of these individuals has been provided by DOS. Many of these individuals have already been moved from camps or other remote locations to U.S.-run refugee processing hubs in

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-2-

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-3-

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Attachment:

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-4-

Approved:

Drafted:

Cleared:

SENSITIVE BUT UNCLASSIFIED

From: (b)(6), (b)(7)(C)
Sent: Sunday, January 29, 2017 7:55 PM
To: HUTTON, JAMES R; (b)(6), (b)(7)(C)
Cc: HOFFMAN, TODD A
Subject: RE: Section 5(e) Redelelegation Language
Attachments: DHS Action Memo for Refugees.docx

(b)(5)

(b)(6), (b)(7)(C)
CBP Associate Chief Counsel (Enforcement and Operations)
(b)(6), (b)(7)(C)
** Attorney Work Product / Attorney-Client Privileged **

From: (b)(6), (b)(7)(C)
Sent: Sunday, January 29, 2017 5:22 PM
To: HUTTON, JAMES R <(b)(6), (b)(7)(C)>
Cc: HOFFMAN, TODD A
Subject: RE: Section 5(e) Redelelegation Language

(b)(5)

(b)(6), (b)(7)(C)
CBP Associate Chief Counsel (Enforcement and Operations)
(b)(6), (b)(7)(C)
** Attorney Work Product / Attorney-Client Privileged **

From: HUTTON, JAMES R
Sent: Sunday, January 29, 2017 5:08 PM
To: (b)(6), (b)(7)(C)
<(b)(6), (b)(7)(C)>
Cc: HOFFMAN, TODD A <(b)(6), (b)(7)(C)>
Subject: RE: Section 5(e) Redelelegation Language

(b)(5)

J. Ryan Hutton
Deputy Executive Director
Admissibility and Passenger Programs
(b)(6), (b)(7)(C)
Washington, DC

(b)(6), (b)(7)(C)



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From: (b)(6), (b)(7)(C)
Sent: Sunday, January 29, 2017 4:46 PM
To: HUTTON, JAMES R <(b)(6), (b)(7)(C)>; Owen, Todd C (AC OFO) <(b)(6), (b)(7)(C)>; WAGNER, JOHN P <(b)(6), (b)(7)(C)>; HOFFMAN, TODD A <(b)(6), (b)(7)(C)>
Cc: (b)(6), (b)(7)(C)
(b)(6), (b)(7)(C)
Subject: RE: Section 5(e) Redelelegation Language

(b)(5)

(b)(6), (b)(7)(C)
CBP Associate Chief Counsel (Enforcement and Operations)
(b)(6), (b)(7)(C)
** Attorney Work Product / Attorney-Client Privileged **

From: HUTTON, JAMES R
Sent: Sunday, January 29, 2017 4:44 PM
To: (b)(6), (b)(7)(C); Owen, Todd C (AC OFO) <(b)(6), (b)(7)(C)>; WAGNER, JOHN P <(b)(6), (b)(7)(C)>; HOFFMAN, TODD A <(b)(6), (b)(7)(C)>
Cc: (b)(6), (b)(7)(C)
(b)(6), (b)(7)(C)
Subject: RE: Section 5(e) Redelelegation Language

(b)(5)

J. Ryan Hutton
Deputy Executive Director
Admissibility and Passenger Programs
(b)(6), (b)(7)(C)
Washington, DC

(b)(6), (b)(7)(C)



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From: (b)(6), (b)(7)(C)
Sent: Sunday, January 29, 2017 4:37 PM
To: HUTTON, JAMES R <(b)(6), (b)(7)(C)>; Owen, Todd C (AC OFO) <(b)(6), (b)(7)(C)>;
WAGNER, JOHN P <(b)(6), (b)(7)(C)>; HOFFMAN, TODD A <(b)(6), (b)(7)(C)>
Cc: (b)(6), (b)(7)(C)
<(b)(6), (b)(7)(C)>
Subject: RE: Section 5(e) Redelegation Language

(b)(5)

(b)(6), (b)(7)(C)
CBP Associate Chief Counsel (Enforcement and Operations)
(b)(6), (b)(7)(C)
** Attorney Work Product / Attorney-Client Privileged **

From: HUTTON, JAMES R
Sent: Sunday, January 29, 2017 4:31 PM
To: (b)(6), (b)(7)(C); Owen, Todd C (AC OFO)
<(b)(6), (b)(7)(C)>; WAGNER, JOHN P <(b)(6), (b)(7)(C)>; HOFFMAN, TODD A
<(b)(6), (b)(7)(C)>
Cc: (b)(6), (b)(7)(C)
<(b)(6), (b)(7)(C)>
Subject: RE: Section 5(e) Redelegation Language

(b)(5)

J. Ryan Hutton
Deputy Executive Director
Admissibility and Passenger Programs
(b)(6), (b)(7)(C)
Washington, DC

(b)(6), (b)(7)(C)



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From: (b)(6), (b)(7)(C)
Sent: Sunday, January 29, 2017 3:39 PM
To: Owen, Todd C (AC OFO) <(b)(6), (b)(7)(C)>; WAGNER, JOHN P <(b)(6), (b)(7)(C)>;
HOFFMAN, TODD A <(b)(6), (b)(7)(C)>; HUTTON, JAMES R <(b)(6), (b)(7)(C)>
Cc: (b)(6), (b)(7)(C)
(b)(6), (b)(7)(C)
Subject: FW: Section 5(e) Redelelegation Language

(b)(5)

(b)(6), (b)(7)(C)
CBP Associate Chief Counsel (Enforcement and Operations)
(b)(6), (b)(7)(C)
** Attorney Work Product / Attorney-Client Privileged **

From: (b)(6), (b)(7)(C)
Sent: Sunday, January 29, 2017 12:59:37 PM
To: HUTTON, JAMES R
Subject: FW: Section 5(e) Redelelegation Language

(b)(6), (b)(7)(C)
CBP Associate Chief Counsel (Enforcement and Operations)
(b)(6), (b)(7)(C)
** Attorney Work Product / Attorney-Client Privileged **

From: MCALEENAN, KEVIN K
Sent: Sunday, January 29, 2017 1:39:56 AM
To: (b)(6), (b)(7)(C); HUTTON, JAMES R
Cc: ALLES, RANDOLPH D; Owen, Todd C (AC OFO); (b)(6), (b)(7)(C); (b)(6), (b)(7)(C)
(b)(6), (b)(7)(C); FLANAGAN, PATRICK S
Subject: RE: Section 5(e) Redelelegation Language

Ryan,
(b)(5)

KM

From: (b)(6), (b)(7)(C)
Sent: Sunday, January 29, 2017 1:36 AM
To: MCALEENAN, KEVIN K <(b)(6), (b)(7)(C)>
Cc: ALLES, RANDOLPH D <(b)(6), (b)(7)(C)>; Owen, Todd C (AC OFO) <(b)(6), (b)(7)(C)>;
 (b)(6), (b)(7)(C) <(b)(6), (b)(7)(C)>;
 (b)(6), (b)(7)(C);
 FLANAGAN, PATRICK S <(b)(6), (b)(7)(C)>
Subject: RE: Section 5(e) Redelelegation Language

(b)(5)

(b)(6), (b)(7)(C)
 CBP Associate Chief Counsel (Enforcement and Operations)
 (b)(6), (b)(7)(C)
 ** Attorney Work Product / Attorney-Client Privileged **

From: MCALEENAN, KEVIN K
Sent: Sunday, January 29, 2017 1:30 AM
To: (b)(6), (b)(7)(C)
Cc: ALLES, RANDOLPH D <(b)(6), (b)(7)(C)>; Owen, Todd C (AC OFO) <(b)(6), (b)(7)(C)>;
 (b)(6), (b)(7)(C) <(b)(6), (b)(7)(C)>;
 (b)(6), (b)(7)(C);
 FLANAGAN, PATRICK S <(b)(6), (b)(7)(C)>
Subject: RE: Section 5(e) Redelelegation Language

(b)(5)

From: (b)(6), (b)(7)(C)
Sent: Sunday, January 29, 2017 1:21 AM
To: MCALEENAN, KEVIN K <(b)(6), (b)(7)(C)>
Cc: ALLES, RANDOLPH D <(b)(6), (b)(7)(C)>; Owen, Todd C (AC OFO) <(b)(6), (b)(7)(C)>;
 (b)(6), (b)(7)(C)
 (b)(6), (b)(7)(C);
 FLANAGAN, PATRICK S <(b)(6), (b)(7)(C)>
Subject: Section 5(e) Redelelegation Language

(b)(5)

(b)(5)

(b)(6), (b)(7)(C)

CBP Associate Chief Counsel (Enforcement and Operations)

(b)(6), (b)(7)(C)

** Attorney Work Product / Attorney-Client Privileged **

From: MCALEENAN, KEVIN K

Sent: Saturday, January 28, 2017 10:50 PM

To: (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C); MILLER, TROY A

(b)(6), (b)(7)(C); Owen, Todd C (AC OFO) (b)(6), (b)(7)(C)

Cc: ALLES, RANDOLPH D (b)(6), (b)(7)(C); FLANAGAN, PATRICK S (b)(6), (b)(7)(C)

Subject: FW: Section 5(e) Waiver Approved

(b)(5)

KM

From: (b)(6), (b)(7)(C)

Sent: Saturday, January 28, 2017 8:39 PM

To: MCALEENAN, KEVIN K (b)(6), (b)(7)(C); Owen, Todd C (AC OFO)

(b)(6), (b)(7)(C); WAGNER, JOHN P (b)(6), (b)(7)(C); ALLES, RANDOLPH D

(b)(6), (b)(7)(C); HOFFMAN, TODD A (b)(6), (b)(7)(C); HUTTON, JAMES R

(b)(6), (b)(7)(C)

Cc: (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

Subject: Section 5(e) Waiver Approved

(b)(5)

(b)(6), (b)(7)(C)

CBP Associate Chief Counsel (Enforcement and Operations)

(b)(6), (b)(7)(C)

** Attorney Work Product / Attorney-Client Privileged **



United States Department of State

Washington, D.C. 20520

SENSITIVE BUT UNCLASSIFIED

January 28, 2017

ACTION MEMO FOR

FROM:

SUBJECT: (SBU) Determination to except certain refugees from the President's Executive Order so they may enter the United States

Recommendation

(SBU) That you determine to admit the 872 refugees provide by the Department of State (DOS) scheduled to enter the United States through February 2 because their admission is in the national interest and would not pose a risk to the security or welfare of the United States.

Approve _____ Disapprove _____

Background

(SBU) The Executive Order "Protecting the Nation from Foreign Terrorist Entry into the United States" (EO) suspends certain aspects of the US Refugee Admissions Program for 120 days, including the entry of refugees. Section 5(e) of the EO provides that "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 the determine that the admission of such refugees is in the nation interest – including...when the person is already in transit and denying admission would cause undue hardship – and it would pose a risk to the security or welfare of the United States."

(SBU) **XXXX** is seeking for you and DOS to determine jointly to admit 872 refugees who are already in transit through February 2. This group does not include nationals from the specific countries restricted in the Executive Order (Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen). A list of these individuals has been provided by DOS. Many of these individuals have already been moved from camps or other remote locations to U.S.-run refugee processing hubs in

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SENSITIVE BUT UNCLASSIFIED

-2-

preparation for departure. Most have sold or relinquished their accommodations, household effects and other belongings; given up employment; and or discontinued schooling for their children. Many have had their residency permits rescinded by their countries of asylum once granted exit permits to imminently depart to the United States and other have been preparing for life in the United States to join U.S. family members who are already here. These individuals are mostly families with children and immediate cancelation of their travel would impose extreme hardship on people who have fled persecution and conflict in order to be resettled in the U.S. Without this humanitarian measure, some refugees could be stuck in limbo or even risk being returned to a country where they would face persecution. As such, each individual in this group is in transit and denying them admission would cause undue hardship.

(SBU) You must also determine jointly with the Secretary of State that the admission of each of these individuals would not pose a risk to the security or welfare of the United States. Refugees under this exemption request have cleared security vetting. All of the information (including biographic and biometric) collected on applicants has been screened against a multitude of USG databases and watch lists, with an emphasis on counterterrorism, but including concerns pertaining to criminality, trafficking of arms, narcotics, and trafficking in persons. Where appropriate, certain aspects of screening were automated, but human intelligence analysts were engaged throughout.

- Prior to the granting of Refugee status, USCIS officers conduct extensive interviews with refugee applicants to develop all relevant issues related to eligibility for refugee resettlement and admissibility to the United States. Refugee applicants are subject to robust security screening protocols to identify potential fraud, criminal or national security issues. All available biographic and biometric information is vetted against a broad array of law enforcement, intelligence community, and other relevant databases to help confirm a refugee applicant's identity, check for any criminal or other derogatory information, and identify information that could inform lines of questioning during the interview. Screening is performed both internally by the departments with the responsibility for adjudication of benefits (DHS and the Department of State) and externally by Intelligence Community and law enforcement partners.
- Prior to departure, the Federal Bureau of Investigation (FBI) will run the full complement of checks against FBI investigative holdings.

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SENSITIVE BUT UNCLASSIFIED

-3-

- Throughout the travel process, Customs and Border Protection (CBP) National Targeting Center (NTC) traveler vetting checks run against Interpol, USCIS holdings, US-VISIT, Watchlisting Service, NCIC, TECS, ESTA and DOS Visa and U.S. Passport holdings. Additionally, NTC has several classified targeting programs with Intelligence Community (IC) partners that identify matches to previously unknown, analytically significant terrorism information pertaining to inbound travelers through comparison of CBP data with IC information. These programs are able to operate in the unclassified environment through workflows that grant NTC visibility into classified derogatory holdings that are associated to an intending traveler.
- Upon arrival to the port of entry, the refugees will be interviewed by CBP Officers who are specially trained in counterterrorism (CT) response and are responsible for the examination of travelers identified within the Terrorist Screening Database (TSDB), other travelers suspected of having a nexus to terrorism and their associates or co-travelers who arrive to a port of entry. These Port-based Tactical Terrorism Response Teams (TTRT) work closely with analysts at the NTC to exploit information derived from the interview to mitigate any possible threat. TTRT members hold TS/SCI clearance and are immersed in the current and developing threat picture through the continuous review of sensitive and classified information.

(SBU) This exemption must be jointly determined by the Secretaries of State and Homeland Security. We have coordinated with the Department of State and understand that its Secretary is prepared to make this determination for these individuals jointly with you. Because of the nature of travel bookings, this waiver must be issued today or tomorrow to allow such travel.

Attachment:

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SENSITIVE BUT UNCLASSIFIED

-4-

Approved:

Drafted:

Cleared:

SENSITIVE BUT UNCLASSIFIED

From: (b)(6), (b)(7)(C)
Sent: Wednesday, February 01, 2017 7:59 AM
To: MCALEENAN, KEVIN K; (b)(6), (b)(7)(C)
Cc: Owen, Todd C (AC OFO); HOFFMAN, TODD A; ALLES, RANDOLPH D; FLANAGAN, PATRICK S; (b)(6), (b)(7)(C)
Subject: RE: Redelegation
Attachments: Executive Order 2017 Foreign Terrorist Entry -- Highlighted.docx; Executive Order 3(g) Commissioner Redelegation of Exception Authority 1-....pdf; Executive Order 5(e) Commissioner Redelegation of Exception Authority 1-....pdf; State 5(e) Waiver For 872 Refugees.pdf; Executive Order Redelegation From Commissioner to OFO SES Draft 2-1-17.docx

(b)(5)

(b)(6), (b)(7)(C)

CBP Associate Chief Counsel (Enforcement and Operations)

(b)(6), (b)(7)(C)

** Attorney Work Product / Attorney-Client Privileged **

From: MCALEENAN, KEVIN K

Sent: Wednesday, February 1, 2017 7:05 AM

To: (b)(6), (b)(7)(C)
 (b)(6), (b)(7)(C)

Cc: Owen, Todd C (AC OFO); (b)(6), (b)(7)(C); HOFFMAN, TODD A; (b)(6), (b)(7)(C)

ALLES, RANDOLPH D; (b)(6), (b)(7)(C); FLANAGAN, PATRICK S; (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

Subject: Redelegation

Team,

(b)(5)

(b)(5)

KM

From: (b)(6), (b)(7)(C)
To: (b)(6), (b)(7)(C)
Subject: FW: Delegation of Case-by-Case Waiver Authority per Executive Order on Protection the Nation From Foreign Terrorist Entry Into the United States
Date: Saturday, January 28, 2017 12:26:26 AM
Attachments: [image003.png](#)
[image001.png](#)

From: MCALEENAN, KEVIN K
Sent: Saturday, January 28, 2017 12:23 AM
To: Owen, Todd C (AC OFO); (b)(6), (b)(7)(C) WAGNER, JOHN P
 (b)(6), (b)(7)(C) (b)(6), (b)(7)(C)
 (b)(6), (b)(7)(C)
Cc: ALLES, RANDOLPH D; (b)(6), (b)(7)(C)
 (b)(6), (b)(7)(C); FLANAGAN, PATRICK S; (b)(6), (b)(7)(C)
Subject: Delegation of Case-by-Case Waiver Authority per Executive Order on Protection the Nation From Foreign Terrorist Entry Into the United States

Acting Deputy Commissioner/EAC,

Subject to my oversight, direction and guidance, I hereby delegate to the Deputy Commissioner, Executive Assistant Commissioner, Deputy Executive Assistant Commissioner, Executive Director Admissibility and Passenger Programs, Executive Director Operations, Executive Director National Targeting Center, Executive Director, National Targeting Center-Passenger, Directors, Field Operations, Port Director, John F. Kennedy Airport, and Port Director, Los Angeles International Airport, Office of Field Operations, U.S. Customs and Border Protection, the authority, on a case-by-case basis, and when in the national interest, and only with respect to Lawful Permanent Residents of the United States, to issue a visa or other immigration benefits to nationals of countries for which visas and benefits are otherwise blocked under Section 3 of the President’s Executive Order entitled, “Protecting the Nation from Foreign Terrorist Entry Into the United States,” (January 27, 2017). Prior to taking any such action, the Lawful Permanent Resident who is the subject of the action must be subjected to a thorough examination by an immigration officer. This authority may not be further delegated.

KM

 Kevin K. McAleenan
 Acting Commissioner
 U.S. Customs and Border Protection

(b)(6), (b)(7)(C)

We are the guardians of our Nation’s borders. We are America’s frontline.

Vigilance • Service • Integrity

From: [MCALEENAN, KEVIN K](#)
To: [ALLES, RANDOLPH D](#); [Owen, Todd C \(AC OFO\)](#)
Cc: (b)(6), (b)(7)(C); [FLANAGAN, PATRICK S](#)
Subject: Redlegation of Refugee Waiver Authority
Date: Monday, January 30, 2017 3:06:14 PM

Acting Deputy Commissioner/EAC,

Subject to my oversight, direction and guidance, I hereby delegate to the Deputy Commissioner, Executive Assistant Commissioner, Deputy Executive Assistant Commissioner, Executive Director Admissibility and Passenger Programs, Executive Director Operations, Executive Director National Targeting Center, Executive Director, National Targeting Center-Passenger, Directors, Field Operations, Port Director, John F. Kennedy Airport, and Port Director, Los Angeles International Airport, Office of Field Operations, U.S. Customs and Border Protection, the authority under § 5(e) of the Executive Order entitled, "Protecting the Nation from Foreign Terrorist Entry Into the United States," (January 27, 2017), to admit individuals to the United States as first-time refugees on a case-by-case basis, but only if the Commissioner and the Secretary of State, or his designee, jointly determine that the admission of such individuals as refugees is in the national interest and would not pose a risk to the security or welfare of the United States. Prior to any such admission as a first-time refugee, each such individual must be subjected to a thorough examination by an immigration officer, to include CBP conduct of: (b)(7)(E)

(b)(7)(E)

(b)(7)(E)

This authority may not be further delegated.

**U.S. CUSTOMS AND BORDER PROTECTION
DELEGATION ORDER**

ORIGINATING OFFICE: OC

DISTRIBUTION:

ORDER NUMBER: 17-_____

ISSUE DATE: February 1, 2017

EFFECTIVE DATE: February 1, 2017

SUBJECT: Protecting the Nation From Foreign Terrorist Entry Into the United States

DELEGATED BY

DELEGATED TO

Commissioner

Deputy Commissioner
Executive Assistant Commissioner, Field Operations
Deputy Executive Assistant Commissioner, Field Operations
Executive Director Operations, Field Operations
Executive Director, National Targeting Center – Passenger
Directors, Field Operations
Port Director, John F. Kennedy Airport
Port Director, Los Angeles International Airport

SOURCE OF AUTHORITY BEING DELEGATED

Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002), as amended (6 U.S.C. § 112); Title 8, U.S.C. Section 1103, “Powers and duties of the Secretary, the Under Secretary, and the Attorney General” [Immigration and Nationality Act, § 103(a)(1)]; Title 8, U.S.C. Section 1357, “Powers of immigration officers and employees” [Immigration and Nationality Act, § 287]; The President’s Executive Order entitled, “Protecting the Nation from Foreign Terrorist Entry into the United States,” (January 27, 2017); Title 8, U.S.C. Section 1182, “Inadmissible aliens” [Immigration and Nationality Act, § 212]; Delegations from the Secretary to the Commissioner effective that pursuant to the referenced Executive Order (January 28-29, 2017).

DELEGATION

Authority under Section 3(g) of the Executive Order to issue a visa or other immigration benefits to nationals of countries for which visas and benefits are otherwise blocked under Section 3 of the Executive Order, on a case-by-case basis, and when in the national interest of the United States. Prior to taking any such action, the individual who is the subject of the action must be subjected to a thorough examination by an immigration officer.

Authority under Section 5(e) of the Executive Order to admit individuals to the United States as first-time refugees on a case-by-case basis, but only if the Commissioner (or appropriate designee pursuant to this delegation) and the Secretary of State, or his designee, jointly determine that the admission of such individuals as refugees is in the national interest and would not pose a risk to the security or welfare of the United States. Prior to any such admission as a first-time refugee, each such individual must be subjected to a thorough examination by an immigration officer, to include CBP conduct of: (b)(7)(E)

(b)(7)(E)

This authority may not be further delegated.

Commissioner

From: (b)(6), (b)(7)(C)
Sent: Wednesday, February 01, 2017 6:09 PM
To: HOFFMAN, TODD A; HUTTON, JAMES R
Cc: (b)(6), (b)(7)(C); Owen, Todd
 C (AC OFO); WAGNER, JOHN P
Subject: Waiver Narrative -- U.S. National Interest
Attachments: UPDATED Guidance on Executive Order "Protecting the Nation from Foreign Terrorist Entry into the United States; Canadian Landed Immigrants and E.O.PDF
Importance: High

(b)(5)

(b)(6), (b)(7)(C)
 CBP Associate Chief Counsel (Enforcement and Operations)
 T: (b)(6), (b)(7)(C) / C: (b)(6), (b)(7)(C)
 ** Attorney Work Product / Attorney-Client Privileged **

From: HUTTON, JAMES R
Sent: Wednesday, February 1, 2017 3:47 PM
To: (b)(6), (b)(7)(C)
Cc:
Subject: FW: Canadian Landed Immigrants and Executive Order "Protecting the Nation from Foreign Terrorist Entry into the United States"
Importance: High

(b)(6), (b)(7)(C)
 For your OIG files.

J. Ryan Hutton
 Deputy Executive Director
 Admissibility and Passenger Programs
 (b)(6), (b)(7)(C)
 Washington, DC

   (b)(6), (b)(7)(C)



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From: HUTTON, JAMES R

Sent: Wednesday, February 01, 2017 3:46 PM

To: DIRECTORS FIELD OPS <(b)(7)(E)>; BORDER SECURITY ASST DIRECTORS <(b)(7)(E)>; EXECUTIVE DIRECTORS HQ

Cc: ENFORCEMENT PROGRAMS DIVISION <(b)(7)(E)>; <(b)(6), (b)(7)(C)>

<(b)(6), (b)(7)(C)>; Owen, Todd C (AC OFO) <(b)(6), (b)(7)(C)>; WAGNER, JOHN P <(b)(6), (b)(7)(C)>

Subject: Canadian Landed Immigrants and Executive Order "Protecting the Nation from Foreign Terrorist Entry into the United States"

Importance: High

MEMORANDUM FOR: Directors, Field Operations
Director, Field Operations Academy

FROM: Todd A. Hoffman
Executive Director
Admissibility and Passenger Programs
Office of Field Operations

SUBJECT: Canadian Landed Immigrants and Executive Order "Protecting the Nation from Foreign Terrorist Entry into the United States"

Effective immediately, Canadian Landed Immigrants that are citizens of Iran, Iraq, Libya, Somalia, Sudan, Syria and Yemen with a valid U.S. Visa may be considered for an exemption of the 212(f) bar under Section 3(g) of the President's Executive Order if and only if the person satisfies the following conditions:

1. Proof to the satisfaction of the inspection Officer of person's Landed Immigrant Status in Canada;
2. Possession of a valid U.S. visa;
3. Travel that originates in Canada;
4. From only a pre-clearance airport; or
5. Applying for admission at a land border port of entry;
6. And the applicant is otherwise admissible.

The admission of such individuals must be in the national interest of the United States. Prior to any such admission, each individual must be subjected to a thorough examination by an immigration officer, to include CBP conduct of: <(b)(7)(E)>

(b)(7)(E)

(b)(7)(E). Each exemption must be considered on a case by case basis with waiver submitted to Commissioner of CBP as previously outlined in the attached email.

Please ensure that this memorandum is disseminated to all ports of entry within your jurisdiction. If you have any questions or require additional information, please contact (b)(6), (b)(7)(C) Director, Enforcement Programs Division at (b)(6), (b)(7)(C) or send inquiries to

(b)(7)(E)

J. Ryan Hutton
Deputy Executive Director
Admissibility and Passenger Programs

(b)(6), (b)(7)(C)

Washington, DC

☎ (b)(6), (b)(7)(C)
📧
✉



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From: HUTTON, JAMES R
Sent: Saturday, January 28, 2017 9:34 PM
To: HOFFMAN, TODD A; DIRECTORS FIELD OPS; EXECUTIVE DIRECTORS HQ; BORDER SECURITY ASST DIRECTORS
Cc: Owen, Todd C (AC OFO); WAGNER, JOHN P; (b)(6), (b)(7)(C)
Subject: UPDATED Guidance on Executive Order "Protecting the Nation from Foreign Terrorist Entry into the United States
Attachments: RE: EO 212(f) Exemption Request for (b)(6), (b)(7)(C) RE: Waiver Request for 212(1) in re (b)(6), (b)(7)(C) EO 212(f) Waiver for (b)(6), (b)(7)(C)
Importance: High

DFO's

As a follow up from guidance sent last night. In addition to waivers for LPRs, the Secretary of Homeland Security has delegated waiver authority to the Commissioner of CBP for **only** the following categories of individuals subject to the EO:

- Returning Refugees (to include any 1st time refugees encountered);
- Returning Asylees;
- Individuals in possession of a valid I-512 issued by CIS;
- UAC

The request for said waiver will need to follow the below format sent initially to the below distro

- (b)(6), (b)(7)(C)
- EAC Owen
- DEAC Wagner
- XD Murdock
- XD Hoffman
- (a) DXD (b)(6), (b)(7)(C)
- DXD Hutton
- OFO Field Liaison

I have also attached some samples that were submitted for approval today.

Sample

Subject Line: EO 212(f) Exemption for LAST NAME, (f/n) First name

Waiver Narrative

OFO recommends that you (b)(5), (b)(6), (b)(7)(C), (b)(7)(E)

(b)(5), (b)(6), (b)(7)(C), (b)(7)(E)

(b)(5), (b)(6), (b)(7)(C), (b)(7)(E)

(b)(5), (b)(7)(E)

(b)(5), (b)(7)(E)

(b)(5), (b)(7)(E)

J. Ryan Hutton
Deputy Executive Director
Admissibility and Passenger Programs

(b)(6), (b)(7)(C)
Washington, DC

☎
📧: (b)(6), (b)(7)(C)
✉



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From: HOFFMAN, TODD A
Sent: Saturday, January 28, 2017 1:07 AM
To: DIRECTORS FIELD OPS (b)(7)(E) EXECUTIVE DIRECTORS HQ
<(b)(7)(E)> BORDER SECURITY ASST DIRECTORS
<(b)(7)(E)>
Cc: Owen, Todd C (AC OFO) (b)(6), (b)(7)(C); WAGNER, JOHN P (b)(6), (b)(7)(C)
HUTTON, JAMES R (b)(6), (b)(7)(C)
(b)(6), (b)(7)(C)

Subject: Guidance on Executive Order "Protecting the Nation from Foreign Terrorist Entry into the United States
Importance: High

Directors,

I apologize for the delay. Please be advised that you have unilateral authority to approve exemptions to the Executive Order for LPRs, no State Department approval required. The exemption process for other categories of aliens as outlined in the policy guidance currently requires the approval of the acting Commissioner. Further guidance for these exemptions is forthcoming.

Memorandum For: Directors, Field Operations

From: Todd A. Hoffman
Executive Director

Admissibility and Passenger Programs
Office of Field Operations

Subject: Guidance on Executive Order “Protecting the Nation from Foreign Terrorist Entry into the United States”

Effective immediately, and pursuant to Executive Order entitled, “*Protecting the Nation from Foreign Terrorist Entry into the United States*” (January 27, 2017), all entry into the United States for aliens who are nationals from Iran, Iraq, Libya, Somalia, Sudan, Syria and Yemen is hereby suspended in accordance with Section 212(f) of the INA. This includes all non-immigrant classifications, with the exception of those foreign nationals traveling on diplomatic visas, NATO visas, C2 visas for travel to the United Nations, G1, G2, G-3, and G-4 visas. This also includes all immigrant classes of admission, returning resident aliens refugees and asylees.

The Department to State has provided CBP with a letter provisionally revoking all immigrant and non-immigrant visas for nationals of Iran, Iran, Libya, Somalia, Sudan, and Yemen. Revocations may not yet be annotated in the system.

Wherever possible, (b)(7)(E) will coordinate the denial of boarding through (b)(7)(E) (b)(7)(E) locations, and (b)(7)(E)

Should aliens, subject to the Executive Order, arrive at the port of entry, CBP officers are instructed to take the following actions:

Applicants bearing Non-Immigrant Visas and First Time Arriving Immigrants:

- (1) All case processing will be recorded in Secure Integrated Government Mainframe Access (SIGMA) system, according to current policy/procedure.
- (2) Subjects will be allowed to withdraw their application for admission on Form I-275, **without a sworn statement**. All other procedures pertaining to the processing of Form I-275 withdrawal cases apply.
- (3) Should the alien decline to withdraw their application for admission, the alien will be placed in Expedited Removal in accordance with standard operating procedures.
- (4) Aliens claiming fear of return will be referred to an asylum officer, and processed for Expedited Removal/Credible Fear (ERF). Aliens processed under ERF procedures will be referred to ERO for detention. Field Offices should clearly indicate to both CIS and ERO that aliens are subject to Executive Order during the referral process.

Returning Residents,

- (1) Lawful Permanent Residents should be referred for (b)(7)(E) and held at the port of entry until an exemption to the Executive Order is granted. The authority to grant an exemption has been delegated to the Commissioner of CBP, and further delegated to Directors of Field Operations and SES Port Directors. Once an exemption has been granted results of (b)(7)(E) should be notated in (b)(7)(E) with the following language: *Individual is subject to Presidential Executive Order and barred from entry pursuant to 212(f) of the INA but has been granted an exemption per (insert DFO/SES PD).*

Refugees, Asylees, Unaccompanied Children, and subjects returning to the US with Advanced Parole:

- (1) Aliens from the above group who are prevented from entry solely as a result of the Executive Order, should be referred for (b)(7)(E) and held at the port of entry until such time as an exemption to the Executive Order can be obtained. This exemption falls to the Secretary of State and Secretary of Homeland Security. Further guidance will be forthcoming on processing these exemptions.

Individuals who fall within any of the above may not be paroled, which includes port parole and deferred inspection. To the extent that there is an emergent medical issue related to an alien who falls within the Executive Order, CBP officers must accompany the alien for any medical care.

Returning aliens ineligible who withdraw their application for admission:

- (1) Aliens arriving via air or sea: Commercial carriers are required to remove foreign aliens found ineligible for entry under this order pursuant to 241(c)(1) of the INA.
- (2) Aliens arriving via land will be returned per current established procedures with the contiguous country.

Please ensure that this memorandum and attached muster are disseminated to all ports of entry within your jurisdiction. If you have any questions or require additional information, please contact (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) (A) Director, Enforcement Programs Division, at (b)(6), (b)(7)(C)

Todd A. Hoffman
Executive Director, Admissibility and Passenger Programs
Office of Field Operations
U.S. Customs and Border Protection

From: Owen, Todd C (AC OFO)
Sent: Saturday, January 28, 2017 5:23 PM
To: HUTTON, JAMES R
Cc: DURST, CASEY OWEN; (b)(6), (b)(7)(C); HOFFMAN, TODD A; MURDOCK, JUDSON W; (b)(6), (b)(7)(C)
Subject: RE: EO 212(f) Exemption Request for (b)(6), (b)(7)(C)

Approved per C1, 1722 hours.

*Todd C. Owen
Executive Assistant Commissioner
Office of Field Operations
U.S. Customs & Border Protection*

From: HUTTON, JAMES R
Sent: Saturday, January 28, 2017 5:03 PM
To: Owen, Todd C (AC OFO); (b)(6), (b)(7)(C)
Cc: DURST, CASEY OWEN; (b)(6), (b)(7)(C); (b)(6), (b)(7)(C); HOFFMAN, TODD A; (b)(6), (b)(7)(C); MURDOCK, JUDSON W; (b)(6), (b)(7)(C)
Subject: EO 212(f) Exemption Request for (b)(6), (b)(7)(C)
Importance: High

Exemption to Executive Order Request

January 28, 2017

Title: Exemption to Executive Order "Protecting the Nation from Foreign Terrorist Entry into the United States" Request

Summary: CBP, OFO, Baltimore Field Office recommends that you (b)(5), (b)(6), (b)(7)(C), (b)(7)(E)

(b)(5), (b)(6), (b)(7)(C), (b)(7)(E)

(b)(5), (b)(6), (b)(7)(C), (b)(7)(E)

(b)(5), (b)(6), (b)(7)(C), (b)(7)(E)

(b)(5), (b)(6), (b)(7)(C), (b)(7)(E)

J. Ryan Hutton
Deputy Executive Director
Admissibility and Passenger Programs

(b)(6), (b)(7)(C)
Washington, DC

   (b)(6), (b)(7)(C)



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From: Owen, Todd C (AC OFO)
Sent: Saturday, January 28, 2017 1:13 PM
To: HUTTON, JAMES R
Cc: HOFFMAN, TODD A; PEREZ, ROBERT E; (b)(6), (b)(7)(C)
MURDOCK, JUDSON W
Subject: RE: Waiver Request for 212(1) in re (b)(6), (b)(7)(C)

Waiver granted by C1, 1312 hours.

Todd C. Owen
Executive Assistant Commissioner
Office of Field Operations
U.S. Customs & Border Protection

From: HUTTON, JAMES R
Sent: Saturday, January 28, 2017 5:56:22 PM
To: Owen, Todd C (AC OFO)
Cc: HOFFMAN, TODD A; PEREZ, ROBERT E; (b)(6), (b)(7)(C) MURDOCK, JUDSON W
Subject: Waiver Request for 212(1) in re (b)(6), (b)(7)(C)

OFO recommends that you (b)(5), (b)(6), (b)(7)(C), (b)(7)(E)

(b)(5), (b)(6), (b)(7)(C), (b)(7)(E)

(b)(5), (b)(6), (b)(7)(C), (b)(7)(E)

(b)(5), (b)(6), (b)(7)(C), (b)(7)(E)

J. Ryan Hutton
Deputy Executive Director
Admissibility and Passenger Programs

(b)(6), (b)(7)(C)
Washington, DC

• **(b)(6), (b)(7)(C)**
7.
•

[\[cid:image001.png@01D00E30.B35BEEB0\]](#)

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From: HUTTON, JAMES R
Sent: Saturday, January 28, 2017 7:37 PM
To: Owen, Todd C (AC OFO); (b)(6), (b)(7)(C)
 (b)(6), (b)(7)(C)
Cc: HOFFMAN, TODD A; MURDOCK, JUDSON W; (b)(6), (b)(7)(C) PEREZ, ROBERT E;
 (b)(6), (b)(7)(C)
Subject: EO 212(f) Waiver for (b)(6), (b)(7)(C)
Importance: High

OCC

Please see below a waiver request involving a (b)(6), (b)(7)(C) who is travelling with his LPR parents. **JFK PD has already approved a waiver for his LPR parents.**

OFO recommends that you (b)(5), (b)(6), (b)(7)(C), (b)(7)(E)

(b)(5), (b)(6), (b)(7)(C), (b)(7)(E)

(b)(5), (b)(6), (b)(7)(C), (b)(7)(E)

J. Ryan Hutton
Deputy Executive Director
Admissibility and Passenger Programs

(b)(6), (b)(7)(C)

Washington, DC



(b)(6), (b)(7)(C)



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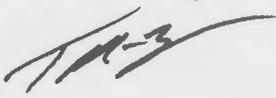
1300 Pennsylvania Avenue NW
Washington, DC 20229



**U.S. Customs and
Border Protection**

FEB 01 2017

MEMORANDUM FOR: Directors, Field Operations
Director, Field Operations Academy

FROM: Todd A. Hoffman 
Executive Director
Admissibility and Passenger Programs
Office of Field Operations

SUBJECT: Canadian Landed Immigrants and Executive Order "Protecting the Nation from Foreign Terrorist Entry into the United States"

Effective immediately, Canadian Landed Immigrants that are citizens of Iran, Iraq, Libya, Somalia, Sudan, Syria and Yemen with a valid U.S. Visa may be considered for an exemption of the 212(f) bar under Section 3(g) of the President's Executive Order if and only if the person satisfies the following conditions:

1. Proof to the satisfaction of the inspection Officer of person's Landed Immigrant Status in Canada;
2. Possession of a valid U.S. visa;
3. Travel that originates in Canada;
4. From only a pre-clearance airport; or
5. Applying for admission at a land border port of entry;
6. And the applicant is otherwise admissible.

The admission of such individuals must be in the national interest of the United States. Prior to any such admission, each individual must be subjected to a thorough examination by an

(b)(7)(E)

(b)(7)(E)

Each exemption must be considered on a case by case basis with waiver submitted to Commissioner of CBP as previously outlined in the attached email.

Please ensure that this memorandum is disseminated to all ports of entry within your jurisdiction. If you have any questions or require additional information, please contact **(b)(6), (b)(7)(C)** Director, Enforcement Programs Division at **(b)(6), (b)(7)(C)** or send inquiries to **(b)(7)(E)**

Law Enforcement Sensitive
For Official Use Only

From: (b)(6), (b)(7)(C)
Sent: Wednesday, February 01, 2017 7:40 PM
To: HOFFMAN, TODD A; (b)(6), (b)(7)(C)
Cc: HUTTON, JAMES R; Owen, Todd C (AC OFO); WAGNER, JOHN P
Subject: RE: Pending C1 Approval 212(f) Exemption for (b)(6), (b)(7)(C) (BOS)

(b)(5)

(b)(6), (b)(7)(C)
CBP Associate Chief Counsel (Enforcement and Operations)
(b)(6), (b)(7)(C)
*** Attorney Work Product / Attorney-Client Privileged ***

From: HOFFMAN, TODD A
Sent: Wednesday, February 1, 2017 7:26 PM
To: (b)(6), (b)(7)(C)
(b)(6), (b)(7)(C)
Cc: HUTTON, JAMES R <(b)(6), (b)(7)(C)>; Owen, Todd C (AC OFO) <(b)(6), (b)(7)(C)>; WAGNER, JOHN P <(b)(6), (b)(7)(C)>
Subject: FW: Pending C1 Approval 212(f) Exemption for (b)(6), (b)(7)(C) (BOS)

Any word on the 3(g) delegation authority? It appears we have another person delayed.

Todd A. Hoffman
Executive Director, Admissibility and Passenger Programs
Office of Field Operations
U.S. Customs and Border Protection

From: (b)(6), (b)(7)(C)
Sent: Wednesday, February 01, 2017 7:13 PM
To: FLANAGAN, PATRICK S <(b)(6), (b)(7)(C)>
Cc: HOFFMAN, TODD A <(b)(6), (b)(7)(C)>
Subject: Pending C1 Approval 212(f) Exemption for (b)(6), (b)(7)(C) (BOS)

Mr. Flannigan,

For visibility, just wanted to highlight that this exemption from BOS is still pending C1 approval (forwarded by OCC at 1653hrs).

C1 has already approved an exemption request from SEA that was forwarded after the BOS request.

If we've missed the BOS approval, please let me know

Thanks in advance,

(b)(6), (b)(7)(C) EO CAT

From: (b)(6), (b)(7)(C)
 Sent: Wednesday, February 01, 2017 4:53 PM
 To: (b)(6), (b)(7)(C)
 (b)(6), (b)(7)(C)
 Cc: ENFORCEMENT PROGRAMS DIVISION <(b)(7)(E)>; BOSTON FIELD OFFICE -
 BORDER SECURITY EMPLOYEES <(b)(7)(E)>; FERRARA, WILLIAM
 (b)(6), (b)(7)(C)
 (b)(6), (b)(7)(C); MCALEENAN, KEVIN K
 (b)(6), (b)(7)(C)
 Subject: RE: EO 212(f) Exemption for (b)(6), (b)(7)(C)

(b)(5) Thanks.

(b)(6), (b)(7)(C)
 CBP Associate Chief Counsel (Enforcement and Operations)
 (b)(6), (b)(7)(C) / C (b)(6), (b)(7)(C)
 ** Attorney Work Product / Attorney-Client Privileged **

From: (b)(6), (b)(7)(C)
 Sent: Wednesday, February 1, 2017 4:02 PM
 To: (b)(6), (b)(7)(C)
 (b)(6), (b)(7)(C)
 Cc: ENFORCEMENT PROGRAMS DIVISION <(b)(7)(E)>; BOSTON FIELD OFFICE -
 BORDER SECURITY EMPLOYEES <(b)(7)(E)>; FERRARA, WILLIAM
 (b)(6), (b)(7)(C)
 Subject: FW: EO 212(f) Exemption for (b)(6), (b)(7)(C)

Exception request for your review.

Respectfully,

(b)(6), (b)(7)(C)
 (A) Program Manager
 E.O. CAT HQ
 Office of Field Operations
 U.S. Customs and Border Protection
 Office:
 Mobile: (b)(6), (b)(7)(C)



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From: (b)(6), (b)(7)(C)

Sent: Wednesday, February 01, 2017 3:51 PM

To: ENFORCEMENT PROGRAMS DIVISION <(b)(7)(E)>

Cc: BOSTON FIELD OFFICE - BORDER SECURITY EMPLOYEES

(b)(7)(E); FERRARA, WILLIAM

(b)(6), (b)(7)(C)

Subject: EO 212(f) Exemption for (b)(6), (b)(7)(C)

OFO CAT,

Below is a waiver request from the Boston Field Office for a passenger that arrived at Boston Logan Airport at 1345 hours.

The subject is in advance parole status

OFO recommends that you (b)(7)(E)

(b)(5), (b)(6), (b)(7)(C), (b)(7)(E)

(b)(5), (b)(6), (b)(7)(C), (b)(7)(E)

(b)(6), (b)(7)(C)

Tactical Operations Supervisor
U.S Customs and Border Protection

(b)(6), (b)(7)(C) (m)

(b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)
Sent: Thursday, February 02, 2017 11:28 AM
To: HOFFMAN, TODD A; HUTTON, JAMES R
Cc: (b)(6), (b)(7)(C); WAGNER, JOHN P; Owen, Todd C (AC OFO)
Subject: FW: Mohammed v. Trump, No. 17-cv-00786
Attachments: CDCA TRO 1-31-17.pdf

(b)(5)

(b)(6), (b)(7)(C)
CBP Associate Chief Counsel (Enforcement and Operations)
T (b)(6), (b)(7)(C) / C. (b)(6), (b)(7)(C)
** Attorney Work Product / Attorney-Client Privileged **

From: (b)(6), (b)(7)(C)
Sent: Thursday, February 2, 2017 8:24 AM
To: MCALEENAN, KEVIN K (b)(6), (b)(7)(C); ALLES, RANDOLPH D
(b)(6), (b)(7)(C) >; Owen, Todd C (AC OFO); (b)(6), (b)(7)(C); WAGNER, JOHN P
(b)(6), (b)(7)(C) >; HOFFMAN, TODD A (b)(6), (b)(7)(C)
HUTTON, JAMES R < (b)(6), (b)(7)(C)
(b)(6), (b)(7)(C)
<MITCHELL.M.MERRIAM@cbp.dhs.gov>
Subject: RE: Mohammed v. Trump, No. 17-cv-00786

Attaching a copy of the court's order for reference and to facilitate compliance with the Commissioner's instruction regarding paragraph 3 below and in furtherance of paragraph 4 of the court's order. Please let us know if you have any questions or would like to discuss. Thanks.

(b)(6), (b)(7)(C)
CBP Associate Chief Counsel (Enforcement and Operations)
T (b)(6), (b)(7)(C) / C. (b)(6), (b)(7)(C)
** Attorney Work Product / Attorney-Client Privileged **

From: MCALEENAN, KEVIN K
Sent: Thursday, February 2, 2017 12:11 AM
To: ALLES, RANDOLPH D (b)(6), (b)(7)(C); Owen, Todd C (AC OFO) (b)(6), (b)(7)(C)
WAGNER, JOHN P (b)(6), (b)(7)(C); HOFFMAN, TODD A < (b)(6), (b)(7)(C)
(b)(6), (b)(7)(C); HUTTON, JAMES R (b)(6), (b)(7)(C)
Cc: (b)(6), (b)(7)(C)
(b)(6), (b)(7)(C)
Subject: RE: Mohammed v. Trump, No. 17-cv-00786

Adding DFO LA and APD LAX

From: MCALEENAN, KEVIN K

Sent: Thursday, February 02, 2017 12:09:50 AM

To: ALLES, RANDOLPH D; Owen, Todd C (AC OFO); WAGNER, JOHN P; HOFFMAN, TODD A; (b)(6), (b)(7)(C) HUTTON, JAMES R

Cc: (b)(6), (b)(7)(C)

Subject: Mohammed v. Trump, No. 17-cv-00786

Acting Deputy/Executive Assistant Commissioner,

Please see the below guidance from counsel on implementing an order from Federal District Court in the above-referenced case. Please confirm receipt and action.

(b)(5)

Here is the list from Post Djibouti:

- 1)
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BADR DHAIFALLAH AHMED
MOHAMMED;
YOUSEF BADR DHAIFALLAH
AHMED MOHAMED;
MAHA ABDULHAMEED
MOHAMMED ALMAWRI;
MURAD KHALED ALI;
WALEED MUSAED QASEM
MOHAMMED;
MAGED WALEED MUSAED
QASEM;
ANWAR SALEH NAGI;
RIFAQ ANWAR SALEH NAGI
ALEAZZALI;
KHALED ANWAR NAGI
ALEAZZALI;
ASHAWQ MOHAMMED AYEDH
AHMED;
SABA ALI ALI SAAED;
YOUSEF AHMED MOHAMED
SAAD;
NAWAR AHMED MOHAMED
SAAD;
IBRAHIM AHMED MOHAMED
SAAD;
MOHAMED AHMED MOHAMED
SAAD;
ABDULATEF ABDO MUTHANNA
HAILAN;
DIYAZAN ALI SAEED;
SAHAR SALEM AHMED;
NASLAH H A SAEED;
ALI MOHSEN SAEED;
SAIF DIYAZAN ALI MOHSEN;
SARAH FADEL MUTHANA SAIF;

Case No. CV 17-00786 AB (PLAx)

**ORDER GRANTING EMERGENCY
MOTION FOR TEMPORARY
RESTRAINING ORDER AND/OR
PRELIMINARY INJUNCTION**

1 OMAR ALI MOHSEN MURSHED;
 2 BASSAM ALI MOHSEN MURSHED;
 3 NADHRA SALEH ALZEER;
 4 MUHRAH MOHSEN SALEH
 5 MOQBEL SALEH;
 6 QASEM ABDULRAHMAN SALEM
 7 AL-HASANI;
 8 MUNA O AL SAKKAF,

Plaintiffs,

v.

9 UNITED STATES OF AMERICA;
 10 UNITED STATES DEPARTMENT
 11 OF HOMELAND SECURITY;
 12 UNITED STATES CITIZENSHIP
 13 AND IMMIGRATION SERVICES;
 14 UNITED STATES DEPARTMENT
 15 OF STATE;
 16 UNITED STATES CUSTOMS AND
 17 BORDER PATROL;
 18 DONALD J. TRUMP, in his official
 19 capacity as President of the United
 20 States of America;
 21 DANA J. BOENTE, in his official
 22 capacity as the Acting Attorney
 23 General of the United States;
 24 JOHN KELLY, Secretary of the
 25 Department of Homeland Security;
 26 LORI SCIALABBA, Acting Director
 27 of U.S. Citizenship and Immigration
 28 Services; KEVIN K. McALEENAN, in
 his official capacity as Acting
 Commissioner of U.S. Customs and
 Border Patrol,

Defendants.

24 Before the Court is Plaintiffs’ Motion for Temporary Restraining Order And/Or
 25 Preliminary Injunctive Relief. (Dkt. No. 3.) Upon consideration of the Complaint (Dkt.
 26 No. 1), the Motion, and the supporting declarations (Dkt. Nos. 4, 5), for Good Cause
 27 Shown, the Court hereby **GRANTS** the Motion.

DISCUSSION

1
2 A temporary restraining order (“TRO”) is “an extraordinary remedy that may only
3 be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Winter v.*
4 *Nat. Res. Def. Council*, 555 U.S. 7, 22 (2008). The purpose of a TRO is to preserve the
5 status quo before a preliminary injunction hearing may be held. *Granny Goose Foods,*
6 *Inc. v. Bhd. of Teamsters & Auto Truck Drivers Local No. 70 of Alameda City.*, 415 U.S.
7 423, 439 (1974). Federal Rule of Civil Procedure 65 governs the issuance of TROs and
8 preliminary injunctions, and courts apply the same standard to both. *Frontline Med.*
9 *Assocs., Inc. v. Coventry Healthcare Workers Comp., Inc.*, 620 F. Supp. 2d 1109, 1110
10 (C.D. Cal. 2009).

11 A party seeking preliminary injunctive relief must satisfy one of two tests. Under
12 one test, the party must establish that he is (1) likely to succeed on the merits of his
13 claims, (2) that he is likely to suffer irreparable harm in the absence of preliminary relief,
14 (3) that the balance of equities tips in his favor, and (4) that an injunction is in the public
15 interest. *Am. Trucking Ass’n, Inc. v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir.
16 2009).

17 Under the alternative test, a party must show “‘serious questions going to the
18 merits’ [,] a balance of hardships that tips sharply toward the plaintiff,” a likelihood of
19 irreparable harm, and that the injunction is in the public interest. *Alliance for the Wild*
20 *Rockies v. Cottrell*, 632 F.3d 1127, 1132 (9th Cir. 2011). A “serious question” is one on
21 which the movant “has a fair chance of success on the merits.” *Sierra On-Line, Inc. v.*
22 *Phoenix Software, Inc.*, 739 F.2d 1415, 1421 (9th Cir. 1984).

23 The Court finds that Plaintiffs have satisfied these standards and that a TRO
24 should issue. Plaintiffs have satisfied the first test because they have shown that they are
25 likely to succeed on the merits of claims that would entitle them to relief; Plaintiffs are
26 likely to suffer irreparable harm in the absence of preliminary relief; the balance of
27 equities favors Plaintiffs; and an injunction is in the public interest. Plaintiffs have also
28 satisfied the “alternative” test: they have established at least a serious question going to

1 the merits of their claims; that the balance of hardships tips decisively in their favor; and,
2 as noted as to the first test, a likelihood of irreparable harm and that an injunction is in
3 the public interest.

4

5 **IT IS HEREBY ORDERED THAT:**

- 6 1. Defendants and their officers, agents, employees, attorneys, and all persons acting in
7 concert or participating with them, are **ENJOINED AND RESTRAINED** from
8 enforcing Defendant President Donald J. Trump’s January 27, 2017 Executive Order
9 by removing, detaining, or blocking the entry of Plaintiffs, or any other person from
10 Iran, Iraq, Libya, Somalia, Sudan, Syria and Yemen with a valid immigrant visa;
- 11 2. Defendants, and Defendant United States Department of State in particular, are
12 hereby **ENJOINED AND RESTRAINED** from cancelling validly obtained and
13 issued immigrant visas of Plaintiffs;
- 14 3. Defendants, and Defendant United States Department of State in particular, are
15 hereby **ORDERED** to return to Plaintiffs their passports containing validly issued
16 immigrant visas so that Plaintiffs may travel to the United States on said visas; and
- 17 4. Defendants are hereby **ORDERED** to **IMMEDIATELY** inform all relevant airport,
18 airline, and other authorities at Los Angeles International Airport and International
19 Airport in Djibouti that Plaintiffs are permitted to travel to the United States on their
20 valid immigrant visas.

21

22 Unless otherwise agreed upon by the parties:

- 23 • Plaintiffs shall file any **supplemental brief** in support of their motion for
24 preliminary injunction **by February 2, 2017.**
- 25 • Defendants shall file their **opposition by February 5, 2017.**
- 26 • Plaintiffs shall file their **reply by February 8, 2017.**
- 27 • Defendants shall appear on **February 10, 2017 at 10:00 a.m.** to show cause why
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the preliminary injunctive relief sought in the Ex Parte Application for Temporary Restraining Order And/Or Preliminary Injunction should not be granted.

IT IS SO ORDERED.

Dated: January 31, 2017



HONORABLE ANDRÉ BIROTTE JR.
UNITED STATES DISTRICT COURT JUDGE

From: (b)(6), (b)(7)(C)
Sent: Sunday, January 29, 2017 10:25 AM
To: MCALEENAN, KEVIN K; (b)(6), (b)(7)(C)
 (b)(6), (b)(7)(C)
Cc: Owen, Todd C (AC OFO); WAGNER, JOHN P; (b)(6), (b)(7)(C) HOFFMAN, TODD A;
 ALLES, RANDOLPH D
Subject: RE: Boston Court Order
Attachments: IMG_0029.jpg; IMG_0030.jpg; IMG_0031.jpg

(b)(5)

(b)(6), (b)(7)(C)

CBP Associate Chief Counsel (Enforcement and Operations)

(b)(6), (b)(7)(C)

From: MCALEENAN, KEVIN K

Sent: Sunday, January 29, 2017 10:22 AM

To: (b)(6)

(b)(6)

Cc: Owen, Todd C (AC OFO); (b)(6), (b)(7)(C) WAGNER, JOHN P; (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C) HOFFMAN, TODD A; (b)(6), (b)(7)(C) ALLES,

RANDOLPH D; (b)(6), (b)(7)(C)

Subject: Boston Court Order

(b)(5) Thank you

MAZDAK POURABDOLLAH
TOOTKABONI and
ARGHAVAN LOUGHALAM,

CIVIL ACTION NO. 17-cv-10154

Petitioners,

v.

DONALD TRUMP, President of
The United States, et al.,

Respondents

TEMPORARY RESTRAINING ORDER

January 29, 2017

BURROUGHS, U.S.D.J.

On January 28, 2017 the Petitioners filed a Petition for Writ of Habeas Corpus and
Complaint for Declaratory and Injunctive Relief.

After consideration of the written submissions, arguments of counsel, and the hearing
held on January 28-29, 2017, the Court hereby finds as follows:

1. The petitioners have met their burden of establishing a strong likelihood of success in
establishing that the detention and/or removal of the petitioners and others similarly situated
would violate their rights to Due Process and Equal Protection as guaranteed by the United
States Constitution;

2. Absent a stay of removal, petitioners and others similarly situated, including lawful
permanent residents, citizens, visa-holders, approved refugees, and other individuals from
nations who are subject to the January 27, 2017 Executive Order, are likely to suffer irreparable
harm.