IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PARS EQUALITY CENTER, IRANIAN AMERICAN BAR ASSOCIATION, NATIONAL IRANIAN AMERICAN COUNCIL, PUBLIC AFFAIRS ALLIANCE OF IRANIAN AMERICANS, INC., et al.,

Plaintiffs,

v.

DONALD J. TRUMP et al.,

Defendants.

No. _____

Electronically Filed

MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

February 8, 2017

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES iii

INTRODUCTION 1

FACTUAL BACKGROUND 3

A. Trump's Campaign Pledge to Ban Muslims from the United States 3

B. The Executive Order 4

C. Defendants' Chaotic Implementation of the Executive Order 7

D. Effects of the Executive Order on Plaintiffs 10

ARGUMENT 13

I. Plaintiffs Are Likely to Succeed on the Merits of Each of Their Claims 13

A. Establishment Clause 13

1. The Purpose of the Executive Order Is to Discriminate Against Muslims and to Favor Christians 13

2. Section 5(b) Facially Differentiates Among Religions 15

3. Section 5(b) Excessively Entangles the Government with Religion 16

B. Equal Protection 17

1. The Executive Order Fails Strict Scrutiny 18

2. The Executive Order Fails Even Rational-Basis Review 20

C. Due Process 20

1. The Order Violates the Due Process Rights of Lawful Permanent Residents and Visa Holders 21

2. The Order Violates the Due Process Rights of Asylees. 23

D. Religious Freedom Restoration Act 24

1. RFRA Applies to the Executive Order and Its Implementation. 25

2. Adherence to Islam Qualifies as Religious Exercise. 25

3. The Executive Order Substantially Burdens Religious Expression..... 26

4. The Executive Order Is Not Narrowly Tailored to Serve a Compelling Interest..... 27

E. Administrative Procedure Act..... 27

1. Defendants' Actions Are Contrary to the INA and Implementing Regulations. 28

2. Defendants' Actions Disregard APA Procedural Requirements. 30

II. Plaintiffs Will Suffer Immediate, Irreparable Harm Absent Preliminary Relief..... 31

III. The Balance of the Equities and the Public Interest Support Preliminary Relief..... 33

CONCLUSION..... 37

CERTIFICATE OF SERVICE

TABLE OF AUTHORITIES

Page(s)

Cases

Andriasian v. I.N.S.,
180 F.3d 1033 (9th Cir. 1999) 23

Aptheker v. Sec'y of State,
378 U.S. 500 (1964) 21

Arizona Dream Act Coalition v. Brewer,
818 F.3d 901 (9th Cir. 2015) 35

Bonham v. D.C. Library Admin.,
989 F.2d 1242 (D.C. Cir. 1993) 13, 14, 16, 17

**Burwell v. Hobby Lobby Stores, Inc.*,
134 S. Ct. 2751 (2014) 26

CBS Corp. v. FCC,
785 F.3d 699 (D.C. Cir. 2015) 29, 30

**Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*,
508 U.S. 520 (1993) 13

City of Cleburne, Tex. v. Cleburne Living Ctr.,
473 U.S. 432 (1985) 19

City of New Orleans v. Dukes,
427 U.S. 297 (1976) 17

City of Richmond v. J.A. Croson Co.,
488 U.S. 469 (1989) 19

Emp't Div., Dep't of Human Res. of Ore. v. Smith,
494 U.S. 872 (1990) 25

Gonzales v. O Centro Espírita Beneficente União do Vegetal, 546 U.S. 418 (2006) 23, 24, 26

Gordon v. Holder,
632 F.3d 722 (D.C. Cir. 2011) 12

Graham v. Richardson,
403 U.S. 365 (1971) 17

Haig v. Agee,
453 U.S. 280 (1981) 21

Haitian Refugee Ctr. v. Smith,
676 F.2d 1023 (5th Cir. 1982) 22

Harisiades v. Shaughnessy,
342 U.S. 580 (1952) 17

Harris v. McRae,
448 U.S. 297 (1980) 17

**Havens Realty Corp. v. Coleman*,
455 U.S. 363 (1982) 11

Hernandez v. C.I.R.,
490 U.S. 680 (1989) 13

Hobby Lobby Stores, Inc. v. Sebelius,
723 F.3d 1114 (10th Cir. 2013) 24

Holt v. Hobbs,
135 S. Ct. 853 (2015) 24

I.N.S. v. Chadha,
462 U.S. 919 (1983) 17

Jie Lin v. Ashcroft,
377 F.3d 1014 (9th Cir. 2004) 23

KH Outdoor, LLC v. City of Trussville,
458 F.3d 1261 (11th Cir. 2006) 32

Kleindienst v. Mandel,
408 U.S. 753 (1972) 17

Kwong Hai Chew v. Colding,
344 U.S. 590 (1953) 20

Landon v. Plascencia,
459 U.S. 21 (1982) 21

Lanza v. Ashcroft,
389 F.3d 917 (9th Cir. 2004) 22, 23

**Larson v. Valente*,
456 U.S. 228 (1982) 12, 15, 16

League of Women Voters v. Newby,
838 F.3d 1 (D.C. Cir. 2016) 11

**Lemon v. Kurtzman*,
403 U.S. 602 (1971) 12, 13

Lyng v. Nw. Indian Cemetery Protective Ass'n,
485 U.S. 439 (1988) 25

**Mathews v. Eldridge*,
424 U.S. 319 (1976) 20

**McCreary, Cnty. v. ACLU of Ky.*,
545 U.S. 844 (2005) 13, 14, 15

McNary v. Haitian Refugee Ctr., Inc.,
498 U.S. 479 (1991) 20

Mills v. District of Columbia,
571 F.3d 1304 (D.C. Cir. 2009) 31

Motor Vehicles Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.,
463 U.S. 29 (1983) 30

**Nat'l Family Planning & Reprod. Health Ass'n v. Sullivan*,
979 F.2d 227 (D.C Cir. 1992) 28, 30

In re Navy Chaplaincy,
738 F.3d 425 (D.C. Cir. 2013) 15, 16

Nken v. Holder,
556 U.S. 418 (2009) 32

Obergefell v. Hodges,
135 S. Ct. 2584 (2015) 22

**Plyler v. Doe*,
457 U.S. 202 (1982) 17, 20

Regents of Univ. of Cal. v. Bakke,
438 U.S. 265 (1978) 17

**Romer v. Evans*,
517 U.S. 620 (1996) 19

Rosenbaum v. Washoe Cty.,
663 F.3d 1071 (9th Cir. 2011) 21

Shaughnessy v. United States ex rel. Mezei,
345 U.S. 206 (1953) 20

Sherbert v. Verner,
374 U.S. 398 (1963) 25

Statharos v. N.Y. Taxi & Limousine Comm'n,
198 F.3d 317 (2d Cir. 1999) 30

Tabbaa v. Chertoff,
509 F.3d 89 (2d Cir. 2007) 24

United States v. U.S. Coin & Currency,
401 U.S. 715 (1971) 32

United States v. Windsor,
133 S. Ct. 2675 (2013) 19

**Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*,
429 U.S. 252 (1977) 11, 18

Zadvydas v. Davis,
533 U.S. 678 (2001) 17, 20

Zetino v. Holder,
622 F.3d 1007 (9th Cir. 2010) 23

Constitutional Provisions

U.S. Const. amend. I 15

U.S. Const. amend. V 17, 20

Statutes

5 U.S.C. § 706(2) 26

8 U.S.C. 1187(a)(2) 5

8 U.S.C. § 1152(a)(1)(A) 27

8 U.S.C. § 1158(a)(1) 22

8 U.S.C. § 1182(f) 27

8 U.S.C. § 1187(a)(12) 32

8 U.S.C. § 1231(b)(3)(A) 22

8 U.S.C. § 1231 note 22

42 U.S.C. § 2000bb-1(a) 23, 24

42 U.S.C. § 2000bb-1(b) 23

42 U.S.C. § 2000bb-2(4) 24

42 U.S.C. § 2000bb-3 24

42 U.S.C. § 2000cc-5(7)(A) 24

Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. No. 105-277, div. G, Title XXII, § 2242, 112 Stat. 2681 (1998) 22

Other Authorities

8 C.F.R. § 205.2 29

22 C.F.R. part 40 28

22 C.F.R. § 40.6 28

Br. in Supp. of Commonwealth of Va.'s Mot. for the Issuance of a Rule to Show Cause, *Aziz v. Trump*, Case No. 17-cv-116 (E.D. Va. Feb. 1, 2017), ECF No. 19 7

C. Thornton, *The Iran We Don't See: A Tour of the Country Where People Love Americans*, The Atlantic (June 6, 2012) 33

Exec. Order No. 13,769, 82 Fed. Reg. 8977 (Jan. 27, 2017) ..... *passim*

Iraq, CIA World Factbook 16

Letter from 23 former U.S. officials to President-Elect Donald Trump (Jan. 9, 2017) 33

Letter from Acting Attorney General Sally Yates, U.S. Dep't of Justice (Jan. 30, 2017) 8

Letter from Deputy Assistant Secretary of State Edward J. Ramotowski, U.S. Dep't of State (Jan. 27, 2017) 7

Martin Chulov, *Iraqi Sunnis Forced to Abandon Homes and Identity in Battle for Survival*, Guardian, Apr. 5, 2015 16

Press release, Senator Marco Rubio, Statement on Iran's Presidential Election (June 14, 2013) 33

Sen. John McCain, Speak Out for Iran and Its Democracy, Arizona Republic, Feb. 5, 2017 34

Statement by Senators McCain & Graham on Executive Order on Immigration (Jan. 29, 2017) 8

U.S. Comm'n on Int'l Religious Freedom, 2016 Annual Report (Apr. 2016) 33, 34

U.S. Dep't of State, Iran 2015 Human Rights Report, *in* Country Report on Human Rights Practices for 2015 34

U.S. Dep't of State Foreign Affairs Manual Vol. 9 ..... 28, 29

Plaintiffs—individual Iranian citizens and four prominent national Iranian-American organizations—respectfully request a preliminary injunction preventing Defendants from implementing or enforcing President Donald J. Trump's Executive Order No. 13,769, entitled "Protecting the Nation from Foreign Terrorist Entry into the United States." Among other things, the Order temporarily bars entry to the United States of nationals from seven majority-Muslim countries, including Iran, and temporarily suspends the entire U.S. Refugee Admission Program. The Executive Order and Defendants' implementation of it violate the First and Fifth Amendments of the U.S. Constitution, the Religious Freedom Restoration Act, the Immigration and Nationality Act and its implementing regulations, and the Administrative Procedure Act. Absent preliminary relief, the Order and its implementation will irreparably harm Plaintiffs.

INTRODUCTION

The United States has long had a policy of sheltering Iranian dissidents from persecution in their home country, and of welcoming Iranians who, like so many others from around the world, hope to share in the promise and opportunity that this nation embodies. These immigrants and visitors have felt welcome in our country, and have flourished and contributed immensely to American society: Iranian Americans today include doctors, mathematicians, diplomats, artists, scientists, lawyers, journalists, athletes, professors, and entrepreneurs. They exemplify the vitality of this nation of immigrants, a nation bound together not by ethnicity or religion, but by the democratic principle that all people are equal before the law.

President Donald J. Trump betrayed this principle with the stroke of a pen. His sweeping Executive Order, and its unsparing and chaotic implementation by the departments and agencies charged with administering the immigration laws, have separated families, jeopardized careers, and disrupted, even imperiled, lives. Many thousands of members of the Iranian-American community have found their world suddenly upended by executive fiat.

The Executive Order reflects invidious discrimination that President Trump and his advisors have barely sought, and utterly failed, to camouflage. In late 2015, Mr. Trump, then a candidate for president, called for "a total and complete shutdown on Muslims entering the United States." Those were Mr. Trump's own words. He and his surrogates repeated them over and over, making a "Muslim ban" a signature promise and rallying cry of the Trump campaign. While Mr. Trump's campaign rhetoric shifted in response to widespread condemnation of such rank religious discrimination, he left no doubt that his intention remained the same: to ban Muslims. As a candidate and now as President, Mr. Trump in effect tars every Iranian citizen, religious or secular, Muslim or non-Muslim, infant or adult, as a presumptive proponent of "radical Islam" and an incipient terrorist. This stereotyping is un-American. It is offensive and misguided. And it will stand as among the most disgraceful episodes in this nation's history.

This stereotyping is also baseless. From 1975-2015, there was not a single case of an American being killed in a terrorist attack in this country by a person born in Iran—or any of the other six countries specified in the Executive Order. To the contrary, Iranian nationals have been leaders in our commerce, our communities, and our democratic institutions.

Categorically excluding all Iranians from the United States in furtherance of an anti-Muslim agenda, as the Executive Order does, not only defies rationality; it also repudiates well-established law. The U.S. Constitution prohibits the government from officially favoring or disfavoring a religion, and from discriminating on the basis of religion or national origin. The Constitution also forbids the government from depriving individuals of protected rights without due process of law. The Executive Order directs the government to disregard all these prohibitions. Defendants' hasty and chaotic implementation of the Order underscores their disregard for constitutional and statutory rights. By way of example, Defendants summarily revoked tens of thousands of valid visas—many held by individuals already in the United

States—and refused entry to Iranian nationals without any of the process that the immigration laws require, functionally repealing dozens of statutes and regulations along the way.

It is difficult to overstate the harm that this unlawful usurpation inflicts on countless Iranian Americans and Iranian nationals, both within U.S. borders and beyond. The Executive Order claims precedence over legal process, shunting aside the statutes and regulations that govern the U.S. immigration system. And it extinguishes the rights of many thousands of families, bypassing well-established constitutional limitations. The harm to Plaintiffs from this invidious and discriminatory Executive Order is certain, imminent, and irreparable. This Court should grant Plaintiffs' motion for a preliminary injunction against its enforcement.

FACTUAL BACKGROUND

A. Mr. Trump's Campaign Pledge to Ban Muslims from the United States

On December 7, 2015, in the wake of the terror attack in San Bernardino, California, Mr. Trump's presidential campaign issued a written statement that "Donald J. Trump calls for a total and complete shutdown on Muslims entering the United States until our country's representatives can figure out what is going on." This proposed "Muslim ban" became a signature promise of the Trump campaign. On the trail, Mr. Trump and his top advisors and surrogates repeated his call for such a ban time and again. Mr. Trump read or paraphrased the December 7, 2015 statement at numerous campaign appearances. In a television ad released by the Trump campaign on January 4, 2016, the narrator says that Mr. Trump is "calling for a temporary shutdown of Muslims entering the United States until we can figure out what's going on." During a January 14, 2016 televised debate, when asked whether he had rethought his "comments about banning Muslims from entering the country," Mr. Trump responded, "No. Look, we have to stop with political correctness." On March 9, 2016, Mr. Trump said in a televised interview, "I think Islam hates us." Compl. ¶¶ 49-50 (citing sources).

Amid widespread outcry that the proposed Muslim ban would be un-American and unconstitutional, Mr. Trump and his advisors and surrogates shifted their rhetoric to be less explicit, while making clear that their continuing and underlying goal remained to exclude Muslims. On June 13, 2016, after the terror attack in Orlando, Florida, Mr. Trump said in a speech: "I called for a ban after San Bernardino, and was met with great scorn and anger, but now many are saying I was right to do so." He then specified that the ban would be "temporary," and, rather than targeting Muslims per se, would apply to certain "areas of the world when there is a proven history of terrorism against the United States, Europe, or our allies, until we understand how to end these threats." Compl. ¶ 51 (citing source).

Soon after these statements, in a July 17, 2016 televised interview, Mr. Trump was confronted with his then-running mate Mike Pence's statement calling a Muslim ban unconstitutional. Mr. Trump responded: "So you call it territories, okay? We're gonna do territories." A week later, in a July 24, 2016 interview, Mr. Trump was asked if his recent remarks signified a "rollback" from his proposal for a "Muslim ban." He answered: "I don't think so. I actually don't think it's a rollback. In fact, you could say it's an expansion. I'm looking now at territories. 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." And on October 9, 2016, during a televised presidential debate, Mr. Trump stated, "The Muslim ban is something that in some form has morphed into a[n] extreme vetting from certain areas of the world." Compl. ¶ 52 (citing sources).

B. The Executive Order

On January 27, 2017, just one week after the Inauguration, President Trump fulfilled his campaign promise to ban Muslims from entering the United States. He signed Executive Order 13,769, entitled "Protecting the Nation from Foreign Terrorist Entry into the United States." 82

Fed. Reg. 8977 (Jan. 27, 2017). At the signing ceremony, after reading the title of the Order aloud, President Trump remarked, "We all know what that means." Compl. ¶ 53.

Among other things, the Executive Order temporarily bars entry of all nationals from seven majority-Muslim countries, including Iran, temporarily suspends the entire U.S. Refugee Admissions Program, establishes a policy of prioritizing Christian refugees upon resuming the program, and indefinitely bars entry of Syrian refugees.

Invoking § 212(f) of the Immigration and Nationality Act ("INA"), § 3(c) of the Executive Order "proclaim[s] that the immigrant and nonimmigrant entry into the United States of aliens from countries referred to in section 217(a)(12) of the INA, 8 U.S.C. 1187(a)(2), would be detrimental to the interests of the United States," and "suspend[s] entry into the United States, as immigrants and nonimmigrants, of such persons for 90 days from the date of this Order" (with enumerated exceptions not relevant here). The referenced statute, § 217(a)(12) of the INA, refers directly or indirectly to seven countries: Iran, Iraq, Syria, Sudan, Yemen, Libya, and Somalia. All are majority-Muslim countries. Under § 3(g) of the Order, "the Secretaries of State and Homeland Security may, on a case-by-case basis, and when in the national interest, issue visas or other immigration benefits to nationals of countries for which visas and benefits are otherwise blocked" under § 3(c).

Section 5(a) of the Order directs the Secretary of State to "suspend the U.S. Refugee Admissions Program [USRAP] for 120 days." Upon resumption of USRAP, Section 5(b) directs the Secretary of State, in consultation with Secretary of Homeland Security, to "prioritize refugee claims made by individuals on the basis of religious-based persecution, provided that the religion of the individual is a minority religion in the individual's country of nationality." Again invoking § 212(f) of the INA, § 5(c) of the Executive Order "proclaim[s] that the entry of nationals of Syria as refugees is detrimental to the interests of the United States and thus

suspend[s] any such entry" indefinitely. And under § 5(e), during the temporary suspension of the USRAP, "the Secretaries of State and Homeland Security may jointly determine to admit individuals to the United States as refugees on a case-by-case basis, in their discretion, but only so long as they determine that the admission of such individuals as refugees is in the national interest—including when the person is a religious minority in his country of nationality facing religious persecution . . . ."

President Trump has made clear that the purpose of these provisions is to favor Christian refugees. In an interview with Christian Broadcasting Network just hours before signing the Executive Order, President Trump was asked the following question about his impending new refugee policy: "As it relates to persecuted Christians, do you see them as kind of a priority here?" President Trump replied, "Yes." He continued, "Do you know if you were a Christian in Syria it was impossible, at least very tough to get into the United States? If you were a Muslim you could come in, but if you were a Christian, it was almost impossible . . . . And I thought it was very, very unfair. So we are going to help them." Compl. ¶ 61 (citing source).

Just one day after President Trump signed the Executive Order, his advisor and surrogate Rudy Giuliani eliminated any doubt whether the Order is in fact the "Muslim ban" that President Trump repeatedly promised during the campaign. On January 28, 2017, Giuliani stated: "So when [Trump] first announced it, he said, 'Muslim ban.' He called me up. He said, 'Put a commission together. Show me the right way to do it legally." Giuliani explained that he assembled a team that came up with a Muslim ban by another name, focusing on places that just happened to be majority Muslim, "where there are [sic] substantial evidence that people are sending terrorists into our country." Compl. ¶ 62 (citing source).

On the same day as President Trump signed the Executive Order, the Department of Justice's Office of Legal Counsel issued a one-page memorandum that describes the terms of the

Executive Order and concludes, in a single sentence without articulating any legal analysis or support, "The proposed Order is approved with respect to form and legality." Compl. ¶ 63.

C. Defendants' Chaotic Implementation of the Executive Order

The announcement of the Executive Order late in the afternoon on Friday, January 27, 2017, set off immediate chaos and confusion around the world, as senior U.S. officials responsible for the nation's defense and homeland security as well as control of the nation's borders denied having been adequately informed or consulted about the Order. Compl. ¶ 74.

The same day, the State Department—at the request of the Department of Homeland Security, and "in implementation of section 3(c) of the Executive Order"—issued a one-page document "provisionally revok[ing] all valid nonimmigrant and immigrant visas of nationals of" the seven countries specified in the Order. Letter from Deputy Assistant Secretary of State Edward J. Ramotowski, U.S. Dep't of State (Jan. 27, 2017) ("DOS Letter"). The revocation affected tens of thousands of valid visas held by students, spouses, workers, and numerous others, both in the United States and abroad, without any consideration of the particular circumstances of these individuals. In addition, U.S. Customs and Border Patrol officials blocked visa holders and lawful permanent residents from entering the United States, similarly without any consideration of the particular circumstances of these individuals. Compl. ¶ 75.

The next day, the U.S. District Court for the Eastern District of New York issued a temporary stay on the detention or deportation of holders of valid visas who had arrived at U.S. airports. *Darweesh v. Trump*, Case No. 17-cv-480, slip op. at 2 (E.D.N.Y. Jan. 28, 2017), ECF No. 6. U.S. Customs and Border Protection personnel reportedly failed to comply with the stay. Separately, the Commonwealth of Virginia sought to hold DHS employees in contempt of another court order requiring that individuals detained pursuant to the Executive Order be given

access to lawyers. Br. in Supp. of Commonwealth of Va.'s Mot. for the Issuance of a Rule to Show Cause, *Aziz v. Trump*, Case No. 17-cv-116 (E.D. Va. Feb. 1, 2017), ECF No. 19.

Defendants' hasty implementation of the Executive Order and its discriminatory policies sparked dissent across the federal government. On January 29, 2017, U.S. Senators John McCain and Lindsey Graham stated, "It is clear from the confusion at our airports across the nation that President Trump's executive order was not properly vetted. We are particularly concerned by reports that this order went into effect with little to no consultation with the Departments of State, Defense, Justice, and Homeland Security." Statement by Senators McCain & Graham on Executive Order on Immigration (Jan. 29, 2017). The senators continued, "This executive order sends a signal, intended or not, that America does not want Muslims coming into our country. That is why we fear this executive order may do more to help terrorist recruitment than improve our security." *Id.*

On Monday, January 30, 2017, Sally Yates, then-acting Attorney General, directed Department of Justice attorneys not to defend the Executive Order. She explained, "I am responsible for ensuring that the positions [the Department of Justice] take[s] in court remain consistent with this institution's solemn obligation to always seek justice and stand for what is right. At present I am not convinced that the defense of the Executive Order is consistent with these responsibilities nor am I convinced that the Executive Order is lawful." Letter from Acting Attorney General Sally Yates, U.S. Dep't of Justice (Jan. 30, 2017). In response, President Trump promptly fired Ms. Yates and appointed Defendant Dana J. Boente as acting Attorney General.

At the State Department, approximately 1,000 officials and employees submitted a memorandum through the Department's internal "Dissent Channel," protesting that "[a] policy which closes our doors to over 200 million legitimate travelers in the hopes of preventing a small

number of travelers who intend to harm Americans from using the visa system to enter the United States will not achieve its aim of making our country safer. Moreover, such a policy runs counter to core American values of nondiscrimination, fair play, and extending a warm welcome to foreign visitors and immigrants." Compl. ¶ 80.

Meanwhile, the chaotic implementation of the Executive Order continued. Defendants changed their positions multiple times regarding the effect and interpretation of key aspects of the Order. For example, on the question whether the Order bars lawful permanent residents from entering the United States, Defendants' views bounced around incessantly:

- The morning after President Trump issued the Executive Order, a Department of Homeland Security spokesperson stated that the Order "will bar green card holders."
- A day later, on January 29, 2017, the White House offered a different interpretation that afforded the Department of Homeland Security discretion, on a case-by-case basis, to admit lawful permanent residents to the United States.
- The same day, the Department of Homeland Security stated: "In applying the provisions of the president's executive order, I hereby deem the entry of lawful permanent residents to be in the national interest. Accordingly, absent the receipt of significant derogatory information indicating a serious threat to public safety and welfare, lawful permanent resident status will be a dispositive factor in our case-by-case determinations."
- On February 1, 2017, White House Counsel Donald McGahn issued "authoritative guidance." Acknowledging that "there has been reasonable uncertainty about whether [§§ 3(c) and 3(e) of the Executive Order] apply to lawful permanent residents of the United States," McGahn stated that, "to remove any confusion, I now clarify that Sections 3(c) and 3(e) do not apply to such individuals." Compl. ¶ 81.

On February 3, 2017, the U.S. District Court for the Western District of Washington temporarily enjoined enforcement of key aspects of the Executive Order nationwide, including §§ 3(c), 5(a), 5(b), 5(c), and 5(e). *Washington v. Trump*, Case No. C17-141, slip op. at 5-6 (W.D. Wash. Feb. 3, 2017), ECF No. 52. In response to the court's order, a State Department spokesperson announced, "We have reversed the provisional revocation of visas" under the Executive Order, unless they were "physically canceled." Compl. ¶ 83. The Department of

Homeland Security announced that it had "suspended any and all actions implementing the affected sections of the Executive Order" and would "resume inspection of travelers in accordance with standard policy and procedure." *Id.* Late that evening, the Ninth Circuit denied the government's request for an emergency stay. Compl. ¶ 84.

D. Effects of the Executive Order on Plaintiffs

The Executive Order has inflicted extraordinary harm on countless Iranian Americans and Iranian nationals. Of the estimated 90,000 visas that Defendants revoked on January 27, 2017, nearly half are held by Iranian nationals. Compl. ¶ 65. The organizational Plaintiffs have received hundreds of reports from Iranian Americans, including dual citizens, lawful permanent residents, and Iranian nationals traveling to this country on valid visas, about the catastrophic effects of the Order. They have been inundated with inquiries from people blocked from boarding flights in airports overseas, or who arrived in the United States and were denied entry.

The Executive Order and Defendants' implementation of it have prevented numerous Iranian nationals from relocating to or visiting the United States for work, travel, or study, despite previously obtaining visas. For example, John Doe #3 was slated to begin a four-year research fellowship at a top-ranked hospital in Boston. Ex. 3, Decl. of John Doe #3 ¶ 9. He was preparing to pick up his approved visa on February 1, 2017, when consular officials told him they could no longer issue it. *Id.* ¶ 17.

Defendants' indiscriminate ban on Iranians, regardless of their personal circumstances, has imposed painful family separations, including:

- Plaintiff John Doe #5 is an Iranian citizen and a post-doctorate fellow in the United States. His wife and infant son, Baby Doe #1, traveled to Iran in early January to introduce Baby Doe #1 to John Doe #5's family. The Executive Order has prevented John Doe #5's wife from returning. He is now separated from her and Baby Doe #1, a U.S. citizen, who is too young to travel alone. Ex. 19, Decl. of John Doe #5 ¶¶ 3-13.

- Plaintiff Omid Moghimi, a dual Iranian-U.S. citizen, has been indefinitely separated from his wife who is currently living in Iran. The day after the Executive Order was signed, they received notice that her February 2, 2017 visa interview had been cancelled. Ex. 7, Decl. of Omid Moghimi ¶¶ 5, 15-16.

- Plaintiff Shiva Hissong, a lawful permanent resident who lives in the United States, was preparing to bring her very ill father and her mother from Iran to visit their new grandchild in the United States. She now fears her parents may never have a chance to meet him. Ex. 6, Decl. of Shiva Hissong ¶¶ 14, 19, 24.

In addition, Defendants have jeopardized the safety of Iranian refugees, including:

- John Doe #4 and Jane Does #5, #6, and #7 are Iranian refugees fleeing political persecution who have been approved for resettlement in the United States. They have been stranded in Turkey awaiting safe passage to the United States as a result of the Executive Order. Ex. 18, Decl. of John Doe #4 ¶ 2; Ex. 12, Decl. of Jane Doe #5 ¶ 2; Ex. 13, Decl. of Jane Doe #6 ¶ 2; Ex. 14, Decl. of Jane Doe #7 ¶ 2.

- Plaintiff John Does #7 and #8 are in a committed same-sex relationship and faced harassment and threats while living in Iran and rejection by the Muslim community because of their sexual orientation. They are currently living in Turkey and continue to fear for their safety while their refugee applications are on hold. Ex. 21, Decl. of John Doe #7 ¶¶ 4-7; Ex. 22, Decl. of John Doe #8 ¶¶ 4-7.

The Executive Order also has frustrated the missions of organizational Plaintiffs Pars, IABA, NIAC, and PAAIA. These organizations have been forced to divert a significant proportion of their resources to responding to the Executive Order and its implementation. They have put pre-existing plans on hold and been unable to perform the regular work that advances their missions, as their staff and leadership are overwhelmed by questions and requests for direct assistance. Over the past eleven days, they have devoted hundreds of hours and diverted resources to assisting Iranian individuals and families whom the Executive Order has left stranded. In addition to its discriminatory intent and impact, the Executive Order leaves

numerous gaps in interpretation, and Defendants have provided conflicting and otherwise inadequate guidance, increasing the strain on the organizational Plaintiffs.[1]

The Executive Order and its enforcement have also directly undermined these organizations' missions. The Order conflicts with Pars' efforts to elevate individuals in the Iranian-American community to their highest career potential, and impedes Pars' ability to provide social services and classes to achieve this goal. Ex. 1, Decl. of Pars Equality Center ¶¶ 3-5. IABA, as an organization of lawyers, law students, and judges, supports the rule of law. It is particularly distressed about reports that the government is flouting valid orders issued by federal judges, that the State Department revoked visas in secret and without notice to affected individuals, and that Iranian Americans who properly followed all procedures necessary to obtain valid permission to enter the United States face arbitrary, unjust, and discriminatory restrictions on their rights. Ex. 2, Decl. of Iranian American Bar Association ¶¶ 12, 24.

Similarly, the Executive Order directly conflicts with NIAC's mission of defending Iranian-American interests against corporate and media bias, discrimination, and government neglect, and monitoring, influencing, and shaping national legislation affecting Iranian Americans. Ex. 3, Decl. of National Iranian American Council ¶¶ 27-29. The Order undermines PAAIA's mission to foster greater understanding between the people of Iran and the United States, expand opportunities for the active participation of Iranian Americans in the democratic process, and provide opportunities for advancement for our next generation. Ex. 4, Decl. of Public Affairs Alliance of Iranian Americans ¶ 21.

---

[1] Organizations that expend resources combatting government action that frustrates their purpose have standing to challenge that action. *See Havens Realty Corp. v. Coleman,* 455 U.S. 363 (1982); *League of Women Voters v. Newby*, 838 F.3d 1, 8 (D.C. Cir. 2016). Recognizing such standing has been critical to achieving civil rights court victories throughout this nation's history. *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 261 (1977).

ARGUMENT

To obtain a preliminary injunction, a party must show that (1) it is likely to succeed on the merits; (2) it is likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in its favor; and (4) the injunction is in the public interest. *Gordon v. Holder*, 632 F.3d 722, 724 (D.C. Cir. 2011). Plaintiffs satisfy each of these factors.

I. Plaintiffs Are Likely To Succeed on the Merits of Each of Their Claims

A. Establishment Clause

Plaintiffs are likely to prevail on the merits of their Establishment Clause claim. "The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another." *Larson v. Valente*, 456 U.S. 228, 244 (1982). The Executive Order, in its entirety, violates that clear command because its purpose and effect—as objectively demonstrated by its implementation and President Trump's own repeated statements—is to discriminate against Muslims. *See Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971). Moreover, § 5(b) of the Executive Order violates the Establishment Clause for two independent reasons. It "facially differentiates among religions" on the basis of their relative size. *Hernandez v. C.I.R.*, 490 U.S. 680, 695 (1989) (citing *Larson*, 456 U.S. 228). And it excessively entangles the government with religion by forcing the government to determine which religions or sects qualify as "a minority religion in [a refugee's] country of nationality." Exec. Order § 5(b); *see Lemon*, 403 U.S. at 612-13.

1. The Purpose of the Executive Order Is To Discriminate Against Muslims and To Favor Christians

Under the three-part test set out in *Lemon v. Kurtzman*, all government action must "(1) have a secular legislative purpose; (2) have a principal or primary effect that neither advances nor inhibits religion; and (3) not result in excessive entanglement with religion or religious institutions." *Bonham v. D.C. Library Admin.*, 989 F.2d 1242, 1244 (D.C. Cir. 1993) (citing

Lemon, 403 U.S. at 612-13). When the government professes a secular purpose for an allegedly sectarian practice, courts must ensure that the government's stated purpose is "genuine, not a sham," *McCreary, Cnty. v. ACLU of Ky.*, 545 U.S. 844, 864 (2005), taking into account the implementation of the policy, its evolution over time, and contemporaneous statements of relevant decisionmakers, *Bonham*, 989 F.2d at 1244-45. Thus, in *McCreary*, the Court considered the "evolution" of a Ten Commandments display as evidence that the government's true purpose was sectarian. 545 U.S. at 850. And in *Church of Lukumi*, Justice Kennedy determined that a facially neutral set of ordinances were, in fact, a "religious gerrymander," by examining "the historical background of the decision under challenge, the specific series of events leading to the enactment or official policy in question, and the legislative or administrative history, including contemporaneous statements made by members of the decisionmaking body." *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 540 (1993) (Kennedy, J., joined by Stevens, J.); *see also Bonham*, 989 F.2d at 1244-45. A sectarian purpose in itself violates the Establishment Clause. *See McCreary*, 545 U.S. at 881.

Here, the Executive Order's development, text, and implementation leave no doubt that its purpose is to discriminate against Muslims and to favor Christians. As in *McCreary*, the policy now expressed in the Executive Order underwent an "evolution," 545 U.S. at 850, morphing from "a total and complete shutdown of Muslims entering the United States," Compl. ¶ 49, to a "suspen[sion] [of] immigration from areas of the world whe[re] there is a proven history of terrorism against the United States, Europe, or our allies," Compl. ¶ 51, to its current form: a 90-day bar on all nationals from seven Muslim-majority countries entering the United States, a 120-day suspension of the entire USRAP, with a plan thereafter to prioritize Christian refugees, and an indefinite suspension of Syrian refugees.

As President Trump's own words make abundantly clear, this evolution marks a change only in style, not in substance. Throughout the presidential campaign, then-candidate Trump stated that his plan was to ban Muslims. Only when challenged did he shift to discussing national origin as a proxy for religion—a constitutional veneer on an unconstitutional policy. Compl. ¶ 62. When presented with his running mate Mike Pence's statement that banning Muslims would be unconstitutional, Mr. Trump responded, "So you call it territories, okay?" Compl. ¶ 52. The following week, Mr. Trump explained, "People were so upset when I used the word Muslim. 'Oh, you can't use the word Muslim.' . . . And I'm okay with that, because I'm talking territory instead of Muslim. But just remember this: Our Constitution is great. But it doesn't necessarily give us the right to commit suicide, okay?" Compl. ¶ 52. And since the Inauguration, President Trump has clarified that the purpose of the Executive Order is not merely anti-Muslim but pro-Christian. Compl. ¶ 61.

Immediately prior to signing the Executive Order, President Trump read its title aloud: "Protecting the Nation From Foreign Terrorist Entry Into the United States," adding, "We all know what that means." Indeed we do. This verbal wink aside, the evidence of the President's purpose is overwhelming. It requires no "judicial psychoanalysis of [his] heart of hearts." *McCreary*, 545 U.S. at 862. It has been broadcast—on the campaign trail, on Twitter, in interviews, speeches, and debates—for months. The Executive Order is nothing more than the instantiation of President Trump's campaign promise to keep Muslims out of this country, and it violates the Establishment Clause of the First Amendment.

2. Section 5(b) Facially Differentiates Among Religions

Even aside from the Executive Order's discriminatory purpose, § 5(b) independently violates the Establishment Clause because it creates an unjustifiable "denominational preference" under *Larson v. Valente*. *Larson*, 456 U.S. at 246. "*Larson* teaches that, when it is claimed that

a denominational preference exists, the initial inquiry is whether the law facially differentiates among religions." *In re Navy Chaplaincy*, 738 F.3d 425, 430 (D.C. Cir. 2013) (quoting *Hernandez*, 490 U.S. at 695). If it does, the government must show that the law is narrowly tailored to serve a compelling government interest. *See id.* In *Larson*, the Supreme Court invalidated a provision of the Minnesota tax code that imposed different tax-reporting requirements on churches based on the source of a church's funding. 456 U.S. at 230-32. Although the provision itself did not explicitly favor one religious group over another, the Supreme Court struck down the provision because it distinguished between different religious groups in a way that amounted to a "denominational preference," thereby violating the "principle, clearly manifested in the history and logic of the Establishment Clause, that no State can 'pass laws which aid one religion' or that 'prefer one religion over another.'" *Id.* at 246.

Section 5(b) of the Executive Order directs the Secretary of State "to prioritize refugee claims made by individuals on the basis of religious-based persecution, provided that the religion of the individual is a minority religion in the individual's country of nationality." Exec. Order § 5(b). The provision "facially differentiates among religions" on the basis of their relative size, *In re Navy Chaplaincy*, 738 F.3d at 430, and bestows a "denominational preference" on minority religions, *Larson*, 456 U.S. at 246. This is precisely the sort of preference that *Larson* forbids, particularly when the President himself has made clear that the purpose is to favor Christians over Muslims. The government can offer no interest to justify such rank discrimination in these circumstances. Accordingly, § 5(b) violates the Establishment Clause.

3. Section 5(b) Excessively Entangles the Government with Religion

Section 5(b) also violates the third prong of the *Lemon* test, which forbids excessive governmental entanglement with religion. *Bonham*, 989 F.2d at 1244. By directing the Secretary of State to prioritize refugee claims brought by members of minority religions, § 5(b)

"force[s]" the government "to decide matters of 'deep religious significance,' and to 'lend its power to one or the other side in controversies over religious authority or dogma.'" *Id.* (quoting *Aguilar v. Felton*, 473 U.S. 402, 414 (1985); *Emp't Div., Dep't of Human Res. of Ore. v. Smith*, 494 U.S. 872, 877 (1990), *superseded on other grounds*, 42 U.S.C. § 2000bb). While President Trump may have thought that he was only creating a preference for Christians, in truth, determining what constitutes a "minority religion" is an inherently sectarian undertaking, involving complicated and delicate questions of religious dogma. For example, will the government distinguish among Sunni, Shia, Alawite, Ismaili, Zaidiyyah, and Druze? And which sects will count as minorities within a given country? Iraq, for example, is majority Shia. *Iraq*, CIA World Factbook. Yet the Shia population has suffered brutal religious persecution at the hands of ISIS. Would Iraqi Shi'ites be eligible for priority status under the Executive Order? If not, why not?

The problem is not that these questions are difficult, or even that the State Department might get them wrong. The problem is that *however* the government decides these questions, it will be forced to consider matters of "deep religious significance" to over one billion Muslims around the world, "lend[ing] its power to one or the other side in controversies over religious authority or dogma." *Bonham*, 989 F.2d at 1244. Section 5(b) therefore excessively entangles the government with religious questions in violation of the Establishment Clause.

B. Equal Protection

Plaintiffs are likely to prevail on their Equal Protection claims. The Fifth Amendment has an "equal protection component," *Harris v. McRae*, 448 U.S. 297, 321 (1980), which applies to citizens and non-citizens alike, *see Plyler v. Doe*, 457 U.S. 202, 210 (1982). If the government employs a suspect class or burdens the exercise of a constitutional right, then strict scrutiny applies, and the government must show that the law is narrowly tailored to serve a

compelling governmental interest. *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 357 (1978). Classifications based on national origin and religion are both suspect and trigger strict scrutiny. *See Graham v. Richardson*, 403 U.S. 365, 371-72 (1971); *City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976).

While courts generally give more latitude to the political branches in the immigration context, *see, e.g.*, *Zadvydas v. Davis*, 533 U.S. 678, 695 (2001), this does not free the President to act with impunity. Even in the context of immigration, the government must choose "a constitutionally permissible means of implementing [its] power." *I.N.S. v. Chadha*, 462 U.S. 919, 941 (1983). At a bare minimum, the government's interests must be "facially legitimate and bona fide," *Kleindienst v. Mandel*, 408 U.S. 753, 770 (1972), and not mere "pretense" for invidious discrimination, *Harisiades v. Shaughnessy*, 342 U.S. 580, 590 (1952). By discriminating on the basis of religion and national origin, the Executive Order triggers and fails strict scrutiny. But regardless, the Order cannot survive any level of review.

1. The Executive Order Fails Strict Scrutiny

The Executive Order warrants strict scrutiny both because it discriminates on the basis of national origin as a pretense for discriminating against Muslims, and because it discriminates on the basis of religion. The record unequivocally demonstrates that the purpose and effect of the Order is to ban Muslims, *i.e.*, to discriminate on the basis of religion. The President and his advisors repeatedly said that he would ban Muslims from entering the United States, and that they would use geographic criteria to achieve this impermissible goal. Compl. ¶¶ 49-52. That is exactly what the Executive Order does. It employs discrimination on the basis of national origin as a pretense for discrimination against Muslims. All this triggers strict scrutiny. *See Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266-67 (1977) (disparate impact plus discriminatory intent triggers strict scrutiny).

The Executive Order cannot withstand strict scrutiny. It cites three rationales to support its temporary ban on admission of nationals of seven countries: "To temporarily reduce investigative burdens on relevant agencies[,] to ensure the proper review and maximum utilization of available resources for the screening of foreign nationals, and to ensure that adequate standards are established to prevent infiltration by foreign terrorists or criminals." Exec. Order § 3(c). The first rationale—essentially a desire to conserve resources by discriminating—is not compelling. And in any case, the Executive Order is not narrowly tailored to achieve any of these goals. Section 3(c) bans nearly every person from specified countries without any evidence that any individual poses a threat to the United States. The ban applies to infants, children, the elderly, the disabled, patients in need of medical treatment, long-time U.S. residents, refugees fleeing religious persecution, translators and others who assisted the United States in conflicts overseas, and many more whom the government has no reason to suspect are terrorists.[2] The government ignores an obvious, less burdensome alternative: the current system. *See City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 507 (1989). According to a study conducted by the CATO Institute that reviewed data from 1975-2015, there was not a single case of an American being killed in a terrorist attack in this country by a person born in Iran—or any of the other six countries specified in the Executive Order.[3]

---

[2] Section 217(a)(12) of the INA—which specifies the seven countries subject to the Executive Order—provides no support for the Order's ban on entry. Under § 217(a)(12), nationals from those countries may enter the United States if they obtain a valid visa through the ordinary vetting processes. The Executive Order does the opposite. It bans individuals from those countries from entering the United States even with a valid visa, and it prevents them from accessing the ordinary visa application and review procedures.

[3] Alex Nowrasteh, *Guide to Trump's Executive Order to Limit Migration for "National Security" Reasons*, Cato Institute (Jan. 26, 2017).

2. The Executive Order Fails Even Rational-Basis Review

While strict scrutiny applies, Plaintiffs would prevail even under a lower level of scrutiny. Governmental action that is "inexplicable by anything but animus toward the class it affects . . . lacks a rational relationship to legitimate state interests." *Romer v. Evans*, 517 U.S. 620, 632 (1996). Likewise, the government has no legitimate interest in exploiting "mere negative attitudes, or fear" toward a disfavored minority. *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 448 (1985). "The Constitution's guarantee of equality 'must at the very least mean that a bare . . . desire to harm a politically unpopular group cannot' justify disparate treatment of that group." *United States v. Windsor*, 133 S. Ct. 2675, 2693 (2013) (quoting *U.S. Dep't of Agric. v. Moreno*, 413 U.S. 528, 534-35 (1973)). In short, blatant animus never justifies governmental action.

As described above, the Executive Order reflects impermissible animus against Muslims. *See supra* pp.14-15. The government's purported national-security justifications for the Executive Order ring hollow. As stated, from 1975-2015, there was not a single case of an American being killed in a terrorist attack in this country by a person born in any of the seven countries specified in the Executive Order. Further, it makes no sense to bar entry to refugees from an oppressive and terroristic government on the ground that the government is oppressive and terroristic. The Executive Order thus bears no "rational relationship to a legitimate governmental purpose," *Romer*, 517 U.S. at 635, and instead reflects irrational fears about Muslims.

C. Due Process

Plaintiffs are likely to prevail on their Due Process claim. The Due Process Clause of the Fifth Amendment requires that the government, at a minimum, provide fair notice and an opportunity to be heard before denying constitutional and statutory rights. *See Mathews v.*

Eldridge, 424 U.S. 319, 333 (1976). In implementing § 3(c) of the Executive Order, Defendants have revoked tens of thousands of valid visas of individuals inside and outside the United States, blocked lawful permanent residents and visa holders from entering the United States, and barred individuals who fear torture and persecution in their home countries from seeking asylum—all without prior notice or even rudimentary proceedings. In so doing, Defendants have violated Plaintiffs' right to due process.

1. The Order Violates the Due Process Rights of Lawful Permanent Residents and Visa Holders

The Due Process Clause bars any deprivation of life, liberty, or property without due process of law for "all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693; *see also Plyler*, 457 U.S. at 210. Lawful permanent residents, visa holders, and illegal aliens alike enjoy the protections of the Fifth Amendment once they have "passed through our gates," and a "temporary absence from our shores" does not deprive them of the right to due process. *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212-13 (1953). The government may not strip lawful permanent residents of their resident status or visa holders of their visas without constitutionally adequate procedures. *See Kwong Hai Chew v. Colding*, 344 U.S. 590, 601 (1953) (lawful permanent resident's "status as a person within the meaning and protection of the Fifth Amendment cannot be capriciously taken from him"); *McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479, 482, 491 (1991) (undocumented aliens seeking adjustment of status must be afforded due process).[4]

[4] While the White House Counsel on February 1, 2017 stated that the Executive Order does not apply to lawful permanent residents, that interpretation is contrary to both the plain text of

(footnote continued on next page)

The Executive Order deprives Plaintiffs of protected liberty interests without due process. Some Plaintiffs are lawful permanent residents or visa holders with significant ties to the United States. For those currently in the country, the Executive Order effectively bars them from traveling abroad. And for those currently traveling abroad, it bars them from re-entering the United States. In either case, the Executive Order deprives Plaintiffs of the right to travel, a constitutionally protected liberty interest. *Haig v. Agee*, 453 U.S. 280, 307 (1981) (right to international travel may not be denied without due process); *Aptheker v. Sec'y of State*, 378 U.S. 500, 514 (1964) (statute denying passports to members of Communist organizations violated due process).

Moreover, some Plaintiffs living in the United States have family in Iran whom they wish to visit. Others have applied for and received visas for family members to join them in the United States or are separated from spouses and children stranded in Iran. The de facto travel ban deprives these Plaintiffs of a protected liberty interest in family integrity, "a right that ranks high among the interests of the individual." *Landon v. Plascencia*, 459 U.S. 21, 34 (1982); *see Rosenbaum v. Washoe Cty.*, 663 F.3d 1071, 1079 (9th Cir. 2011) ("[D]ue process right to family integrity or to familial association is well established."). Other Plaintiffs made wedding plans based on the expectation of receiving spousal visas, and now are unable to come to the United States to get married. The Executive Order interferes with their constitutional right to marriage. *See, e.g., Obergefell v. Hodges*, 135 S. Ct. 2584, 2605 (2015).

Plaintiffs received no notice or process whatsoever before Defendants summarily deprived them of these liberty interests. Pursuant to the Executive Order, Defendants revoked

---

(footnote continued from previous page)
the Order and Defendants' prior statements that the Order does apply to lawful permanent residents. Defendants could reverse the most recent interpretation at any time.

the visas of Plaintiffs both in the United States and abroad without warning. Defendants secretly invalidated them without even disclosing that fact to the public or the affected individuals other than in subsequent court filings. Defendants failed to provide any pre- or post-deprivation notice or opportunity to challenge these decisions.

2. The Order Violates the Due Process Rights of Asylees.

Under 8 U.S.C. § 1158(a)(1), "[a]ny alien who is physically present in the United States or who arrives in the United States . . . may apply for asylum." In addition, an alien may never be removed to a country where "the alien's life or freedom would be threatened . . . because of the alien's race, religion, nationality, membership in a particular social group, or political opinion." 8 U.S.C. § 1231(b)(3)(A); *see also* U.N. Convention Against Torture ("CAT"), implemented in the Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. No. 105-277, div. G, Title XXII, § 2242, 112 Stat. 2681, 2681-82 (1998) (codified as 8 U.S.C. § 1231 note). Congress has established procedures to implement those statutory rights, which include the right to present evidence in support of a claim for asylum or CAT protection, the right to move for reconsideration of an adverse decision, and the right to seek judicial review of a final order denying an asylum or CAT claim. *Lanza v. Ashcroft*, 389 F.3d 917, 927 (9th Cir. 2004).

These statutes "created, at a minimum, a constitutionally protected right to petition our government for political asylum." *Haitian Refugee Ctr. v. Smith*, 676 F.2d 1023, 1038 (5th Cir. 1982). The right to petition for asylum "invoke[s] the guarantee of due process." *Id.* at 1039; *Andriasian v. I.N.S.*, 180 F.3d 1033, 1041 (9th Cir. 1999); *see also Lanza*, 389 F.3d at 927 ("The due process afforded aliens stems from those statutory rights granted by Congress and the principle that minimum due process rights attach to statutory rights." (internal quotation marks and brackets omitted)). Due process requires at a minimum that individuals seeking asylum receive a "full and fair hearing." *Zetino v. Holder*, 622 F.3d 1007, 1013 (9th Cir. 2010). It also

requires that asylees have the opportunity to consult with an attorney. *Jie Lin v. Ashcroft*, 377 F.3d 1014, 1023 (9th Cir. 2004).

The Executive Order violates the due process rights of individuals seeking asylum because it provides no avenue for them to have their asylum claims heard. By barring entry to the United States for nationals of the seven specified countries, the Order renders the asylum protections above an empty formality. This contravenes the due process requirement that asylees receive a "full and fair hearing" on their claims for relief. *Zetino*, 622 F.3d at 1013. It also denies asylees their constitutionally protected right to the effective assistance of counsel. *Jie Lin*, 377 F.3d at 1023.

D. Religious Freedom Restoration Act

Plaintiffs are likely to prevail on their RFRA claim. Under RFRA, the federal government "shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability" unless application of the burden to the person is (1) "in furtherance of a compelling governmental interest"; and (2) "the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. § 2000bb-1(a), (b).

RFRA claims "should be adjudicated in the same manner as constitutionally mandated applications of the [strict scrutiny] test, including at the preliminary injunction stage." *Gonzales v. O Centro Espírita Beneficente União do Vegetal*, 546 U.S. 418, 430 (2006). The plaintiff bears the initial burden of showing that the governmental action "implicates" and "substantially burdens" his exercise of religion. *Holt v. Hobbs*, 135 S. Ct. 853, 862 (2015). The burden then shifts to the government to show that the policy serves a compelling governmental interest and is the least restrictive means of furthering that interest. 42 U.S.C. § 2000bb-1(a); *Holt*, 135 S. Ct. at 863. The government must show that the compelling interest test "is satisfied through

application of the challenged law 'to the person'"—i.e., the particular claimant "whose sincere exercise of religion is being substantially burdened." *Gonzales*, 546 U.S. at 430-31.

1. RFRA Applies to the Executive Order and Its Implementation.

RFRA "applies to all Federal law, and the implementation of that law, whether statutory or otherwise" unless "such law explicitly excludes such application by reference to this chapter." 42 U.S.C. § 2000bb-3. Because all federal laws are presumptively subject to RFRA, "RFRA trumps later federal statutes when RFRA has been violated." *Hobby Lobby Stores, Inc. v. Sebelius*, 723 F.3d 1114, 1146 (10th Cir. 2013), *aff'd sub nom. Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014). RFRA "override[s] other legal mandates . . . if and when they encroach on religious liberty." *Id.* at 1156. In this respect, "RFRA is indeed something of a 'super-statute.'" *Id.* at 1157 (Gorsuch, J., concurring).

Because RFRA contains no exception for immigration laws or regulations, Congress clearly anticipated that immigration rules of general application, like other federal laws, have the potential to burden the free exercise of religion. Even though "[t]he Government's interest in preventing the entry of unwanted persons and effects is at its zenith at the international border," if its actions substantially burden a person's exercise of religion, the government must show that they "were in furtherance of a compelling governmental interest and were the least restrictive means of furthering that interest." *Tabbaa v. Chertoff*, 509 F.3d 89, 106 (2d Cir. 2007).

2. Adherence to Islam Qualifies as Religious Exercise.

"Religious exercise" includes "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." 42 U.S.C. §§ 2000bb-2(4), 2000cc-5(7)(A). Adherence to a particular belief is, in itself, a core religious exercise. "The free exercise of religion means, first and foremost, the right to believe and profess whatever religious doctrine one desires." *Smith*, 494 U.S. at 877. The government "may not . . . impose special disabilities on the basis of

religious views or religious status." *Id.* Certain Plaintiffs here are Muslims by upbringing, by daily practice, or both. Ex. 6, Decl. of Shiva Hissong ¶ 4; Ex. 7, Decl. of Omid Moghimi ¶ 6; Ex. 8, Decl. of Jane Doe #1 ¶ 4; Ex. 17, Decl. of John Doe #3 ¶ 5.

3. The Executive Order Substantially Burdens Religious Expression.

A "substantial burden" exists when an individual is forced to "choose between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion . . . on the other," *Sherbert v. Verner*, 374 U.S. 398, 404 (1963), or where "governmental action penalize[s] religious activity by denying any person an equal share of the rights, benefits, and privileges enjoyed by other citizens," *Lyng v. Nw. Indian Cemetery Protective Ass'n*, 485 U.S. 439, 449 (1988). The Executive Order violates these principles.

Section 3(c) of the Executive Order imposes a substantial burden on certain visa holders' exercise of religion by curtailing their ability to travel freely to and from the United States. Those who are currently in the United States cannot leave for fear of being denied reentry. This disability burdens the exercise of religious and familial duties. Muslims are required to perform the *Hajj*, or pilgrimage to Mecca, at least once in their lifetimes, and are encouraged to perform the Umrah, a pilgrimage to Mecca that, unlike the *Hajj*, can be performed at any time of the year. *See Smith*, 494 U.S. 877 (noting that "the 'exercise of religion' often involves not only belief and profession but the performance of (or abstention from) physical acts"). At a minimum, § 3(c) makes the Umrah impossible to be performed during the 90-day period specified in the order. Section 3(c) also deprives certain Plaintiffs of the ability to give and receive familial care, which is a religious duty under the Qur'an. Ex. 6, Decl. of Shiva Hissong ¶ 14; Ex. 19, Decl. of John Doe #5 ¶ 6.

4. The Executive Order Is Not Narrowly Tailored to Serve a Compelling Interest.

Because the Executive Order substantially burdens the Plaintiffs' religious exercise, "the burden [of strict scrutiny] is placed squarely on the Government." *Gonzales*, 546 U.S. at 429. RFRA, moreover, "contemplates a 'more focused' inquiry: It 'requires the Government to demonstrate that the compelling interest test is satisfied through application of the challenged law 'to the person'—the particular claimant whose sincere exercise of religion is being substantially burdened." *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2779 (2014). The Court must therefore "loo[k] beyond broadly formulated interests" and "'scrutiniz[e] the asserted harm of granting specific exemptions to particular religious claimants'—in other words, to look to the marginal interest in enforcing" the Executive Order against the Plaintiffs. *Id.* (quoting *Gonzales*, 546 U.S. at 431).

Defendants cannot meet their heavy burden. The government has not demonstrated, and cannot show, that a blanket prohibition against immigrant and nonimmigrant entry by Iranian nationals is, or furthers, a compelling governmental interest. While the Executive Order cites a threat of "terrorist attacks by foreign nationals admitted to the United States," there was not a single case of an American being killed in a terrorist attack in this country by a person born in Iran—or any of the other six countries specified in the Executive Order. And as noted above, Defendants fail to address, much less refute, that the existing system already adequately protects the United States against terrorist threats.

E. Administrative Procedure Act

Plaintiffs are likely to prevail on the merits of their APA claims on two grounds. First, Defendants' actions to implement the Executive Order are contrary to the INA and its implementing regulations. *See* 5 U.S.C. § 706(2). Second, Defendants' actions have brought

about a fundamental shift in immigration regulations with no regard for the APA's procedural requirements. The Departments of State and Homeland Security implemented the radical change in policy dictated by the Executive Order literally overnight, with immediate effect and no advance notice, and with no opportunity to be heard, no written guidance, and in many cases no disclosure to the public or the affected parties.

1. Defendants' Actions Are Contrary to the INA and Implementing Regulations.

The Executive Order invokes the President's authority under § 212(f) of the INA to "suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants" if he determines that such entry would be "detrimental to the interests of the United States." 8 U.S.C. § 1182(f); *see* Exec. Order § 3(c). But for two separate reasons, this provision cannot justify Defendants' sweeping actions to implement the Order.

First, the President's power to suspend entry of classes of aliens under § 212(f)—and Defendants' ability to implement such a suspension—is limited by a separate, later-enacted INA provision that prohibits invidious discrimination in the issuance of immigrant visas. Under 8 U.S.C. § 1152(a)(1)(A), "no person shall . . . be discriminated against in the issuance of an immigrant visa because of the person's race, sex, nationality, place of birth, or place of residence." Thus, despite § 212(f), Defendants cannot refuse to process immigrant-visa applications for all Iranian nationals, because doing so discriminates against such individuals in the issuance of immigrant visas. Contrary to § 1152(a)(1)(A)'s categorical prohibition on such discrimination, Defendants have denied—and refused even to process—immigrant visas on the basis of applicants' nationality, birth, and residence (albeit as a pretext or proxy for excluding Muslims on the basis of religion). These actions are contrary to § 1152(a)(1)(A) and invalid.

Second, Defendants' actions to implement the Executive Order effectively revoked formally adopted rules on visa processing and revocation. For example, the State Department has issued regulations governing the visa application process and the grounds on which a consular officer may deny a visa application. Those regulations require an individual determination of eligibility, based on the specifics of the law and on individualized facts and circumstances: "A visa can be refused only upon a ground specifically set out in the law or implementing regulations," and a consular officer's determination that they have a "reason to believe" that an alien is ineligible "shall be considered to require a determination *upon facts and circumstances* which would lead a reasonable person to conclude that the applicant is ineligible to receive a visa." 22 C.F.R. § 40.6 (emphasis added).

These provisions also are found in the State Department's Foreign Affairs Manual. *See* 9 FAM 301.1-2 (a visa may only be refused on a ground specifically set out by statute or implementing regulation). The requirements of the regulations and the FAM track § 222 of the INA, which describe the procedures for granting a visa, as well as § 212, which provides categories of ineligibility for a visa (such as having engaged in narcotics trafficking). Specific regulations, adopted through notice-and-comment rulemaking, set forth categories of ineligibility, including polygamists, international sex traffickers, and former citizens who renounce citizenship to avoid taxation. *See* 22 C.F.R. part 40, subparts B-K.

Regardless of whether § 212(f) permits Defendants to bar entry, the State Department acted contrary to its own regulations and the FAM by imposing a categorical suspension on the issuance of visas to nationals of Iran and the other specified countries. The State Department categorically deemed individuals ineligible on the basis of their nationality without affording each individual visa applicant "a determination based upon facts or circumstances." 22 C.F.R. § 40.6. And the Department failed to conduct the notice-and-comment proceedings required to

reverse a rule adopted by notice and comment, nor even provided a reasoned explanation of this sweeping policy change, as the APA requires. *See Nat'l Family Planning & Reprod. Health Ass'n v. Sullivan*, 979 F.2d 227, 231-32 (D.C. Cir. 1992); *CBS Corp. v. FCC*, 785 F.3d 699, 708 (D.C. Cir. 2015) (agency must "provide a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored").

The same is true of the rules governing revocation of visas or visa applications. Under the State Department Foreign Affairs Manual, a revocation "must be based on an actual finding that the alien is ineligible for the visa," and cannot be revoked "based on a suspected ineligibility, or based on derogatory information that is insufficient to support an ineligibility finding." 9 FAM 403.11-3(B). The Manual further states that revocation authority should not be used "arbitrarily," and that each individual, to the extent "practicable," must be given notice and "the opportunity to show why the visa should not be revoked." 9 FAM 403.11-4(A). Similarly, under 8 C.F.R. § 205.2, the U.S. Citizenship and Immigration Service may revoke approval of applications for immigrant visas only after notice has been given and the individual has the "opportunity to offer evidence in support of the petition . . . and in opposition to the grounds alleged for revocation," and the right to appeal a revocation.

The Departments of State and Homeland Security jettisoned these rules, systemically and categorically revoking tens of thousands of visas and visa applications. This systemic and categorical revocation afforded none of the affected individuals the process to which they were due under well-established agency rules, regulations, policies, and practices.

2. Defendants' Actions Disregard APA Procedural Requirements.

Under the APA, an agency may not, either explicitly or implicitly, alter existing rules adopted through notice-and-comment without undertaking a new notice-and-comment process. "When an agency promulgates a legislative regulation by notice and comment directly affecting

the conduct of both agency personnel and members of the public, whose meaning the agency announces as clear and definitive to the public . . . , it may not subsequently repudiate that announced meaning and substitute for it a totally different meaning without proceeding through the notice and comment rulemaking normally required for amendments of a rule." *Nat'l Family Planning*, 979 F.2d at 231.

Even for rules adopted without notice-and-comment proceedings, the agency is not free to change its rules on a whim; the agency must provide a reasoned explanation for its changes. *See CBS Corp.*, 785 F.3d at 708; *Motor Vehicles Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 42 (1983) ("[A]n agency changing its course by rescinding a rule is obligated to supply a reasoned analysis for the change beyond that which may be required when an agency does not act in the first instance."). Defendants ignored these requirements. In implementing the Executive Order, Defendants cast aside established regulations and practices, imposed a categorical ban on refugee admissions, and applied new, sweeping rules for visa denials and revocations, all without any of the formal procedural steps that the APA requires.

Worse, government officials failed to make even the barest effort to provide clarity, consistency, or transparency as to these changes and acted with reckless disregard for the rights and interests of tens of thousands of Iranian visa holders as well as refugees and asylum seekers. The Executive Branch took immediate action with no provision even to address visa holders already in the United States or in transit to U.S. airports. They provided no guidance or mechanisms in place to prevent arbitrary determinations as to individuals under the case-by-case review provision. These actions were procedurally invalid under the APA.

II. Plaintiffs Will Suffer Immediate, Irreparable Harm Absent Preliminary Relief

Without this Court's intervention, Plaintiffs will suffer immediate and irreparable harm as a result of the enforcement of the Executive Order. Where, as here, plaintiffs allege deprivations

of constitutional rights, irreparable harm for purposes of a preliminary injunction is presumed. *Statharos v. N.Y. Taxi & Limousine Comm'n*, 198 F.3d 317, 322-23 (2d Cir. 1999). The "loss of constitutional freedoms, 'for even minimal periods of time, unquestionably constitutes irreparable injury.'" *Mills v. District of Columbia*, 571 F.3d 1304, 1312 (D.C. Cir. 2009) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality)).

Moreover, Plaintiffs face actual irreparable harm. The organizational Plaintiffs have already been forced to divert significant portions of their limited resources to respond to the Executive Order. They have had to indefinitely suspend all their regular activities—including providing social and legal services, assisting new immigrants to the United States, and legislative and political outreach—while they sort through the implications of the Executive Order.

The Executive Order also threatens irreparable harm to the individual Plaintiffs:

- Plaintiffs Ali Asaei and John Doe #1 will likely be unable to extend or apply for a new work authorization when their current status expires. They will likely be forced to quit their jobs and leave the United States permanently upon expiration of their status, or earlier. Ex. 5, Decl. of Ali Asaei ¶ 16; Ex. 15, Decl. of John Doe #1 ¶ 17.

- Plaintiff Jane Doe #4, an Iranian citizen who was granted asylum in the United States in 2016, is unable to travel outside the United States for fear of being denied entry on her return. If the Executive Order remains in force, Plaintiff Jane Doe #4 will be unable to travel internationally and will be separated from her family indefinitely. Ex. 11, Decl. of Jane Doe #4 ¶¶ 3-4.

- Plaintiff John Doe #3 will be unable to begin his fellowship researching diabetes effects on the heart at a top rated hospital in Boston. Ex. 17, Decl. of John Doe #3 ¶¶ 9, 14, 17.

- The family of John Doe #4, including his mother (Jane Doe #7) and sisters (Jane Does #5 and 6), will be stranded in Turkey indefinitely with limited economic means, and unable to return to Iran due to fears of political persecution. Ex. 18, Decl. of John Doe #4 ¶ 6; Ex. 12, Decl. of Jane Doe #5 ¶ 6; Ex. 13, Decl. of Jane Doe #6 ¶ 6; Ex. 14, Decl. of Jane Doe #7 ¶ 6.

- John Doe #5 will have to choose between being reunited with his wife and infant son, or keeping his current job as a post-doctoral fellow with the SUNY Research Foundation. Ex. 19, Decl. of John Doe #5 ¶ 12.

- Jane Doe #1 will be unable to get married to her visa-holding fiancé. Ex. 8, Decl. of Jane Doe #1 ¶¶ 15-16.

- John Doe #2 will not be able to welcome his sister to the United States because her green card will be denied. Ex. 16, Decl. of John Doe #2 ¶ 16.

- Jane Doe #2's sister will also be unable to enter the United States, nor will Jane Doe #3's brother. Ex. 9, Decl. of Jane Doe #2 ¶ 14; Ex. 10, Decl. of Jane Doe #3 ¶¶ 13-14.

- Plaintiff John Doe #7 and his partner John Doe #8 will continue living in exile in a small town in Turkey, fearing violence on the basis of their sexual orientation, and where they are unable to seek employment. In addition, John Doe #8's health will continue to deteriorate without medical intervention. Ex. 21, Decl. of John Doe #7 ¶¶ 5-7; Ex. 22, Decl. of John Doe #8 ¶ 5-7.

III. The Balance of the Equities and the Public Interest Support Preliminary Relief

The balance of equities and the public interest also support preliminary relief. "These [two] factors merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009).

The government and the public have no legitimate interest in enforcing unconstitutional laws or actions. *See United States v. U.S. Coin & Currency*, 401 U.S. 715, 726 (1971); *KH Outdoor, LLC v. City of Trussville*, 458 F.3d 1261, 1272 (11th Cir. 2006). Any purported "national security" justification for enforcing the Executive Order is a blatant pretext for invidious discrimination and provides no basis for categorically excluding the individual Plaintiffs and others from the United States on the basis of their religion or national origin (as a proxy for religion). The only reason the Executive Order applies to nationals of Iran at all is because the Secretary of State determined, based on the Iranian government's international actions, that the *government* of Iran "repeatedly provided support for acts of international terrorism." 8 U.S.C. § 1187(a)(12). The Executive Order is not based on any evidence, much less any reasoned determination by the Department of Homeland Security or otherwise, that Iranian nationals should be deemed presumptive terrorists.

Indeed, the Executive Order is contrary to longstanding U.S. policy and far more likely to harm than to advance interests of the United States. For decades, this nation has sought to promote democracy and religious freedom and to sanction human rights abuses in Iran. Lawmakers from both sides of the aisle have consistently supported political opposition efforts in Iran. *See* Letter from 23 former U.S. officials to President-Elect Donald Trump (Jan. 9, 2017) (stating that the safety of 2,500 Iranian opposition members stranded in Iraq, whom the U.S. pledged to protect, "remains a moral obligation for the United States");[5] Press release, Senator Marco Rubio, Statement on Iran's Presidential Election (June 14, 2013), ("I intend to . . . find ways to continue to highlight the Iranian regime's treatment of its own people and . . . work toward the day when the Iranian people will have a real opportunity to shape their country's future."). Consistent with these principles, the United States has recognized that it is in the national interest to provide shelter and legal protection to individuals fleeing persecution from the Iranian government, including in particular those who have been victims of "systematic, ongoing, and egregious violations of religious freedom." U.S. Comm'n on Int'l Religious Freedom, 2016 Annual Report 45 (Apr. 2016). Public opinion of the United States is higher in Iran than in any other country in the Middle East (other than Israel). C. Thornton, *The Iran We Don't See: A Tour of the Country Where People Love Americans*, The Atlantic (June 6, 2012).

The U.S. Commission on International Religious Freedom has made clear that U.S. efforts with respect to Iran are about Iranian government policy and not the people of Iran:

---

[5] This bipartisan group includes former House Speaker Newt Gingrich, former Bush Administration Secretary of Homeland Security Tom Ridge, and Former New Mexico Governor and U.S. Ambassador to the United Nations Bill Richardson . Their letter to then-President-Elect Trump emphasized the importance of helping the people of Iran, noting that "the core of our approach is to side with 80 million Iranian people and their desire . . . for freedom and popular sovereignty based on democratic principles."

"[T]he United States continues to keep in place and enforce sanctions for Iran's human rights violations, its support for terrorism, and its ballistic missile program. According to the State Department, these sanctions are intended to target the Iranian government, not the people of Iran." U.S. Comm'n on Int'l Religious Freedom, 2016 Annual Report 48 (Apr. 2016).[6] The State Department's Human Rights Report on Iran criticizes the Iranian government because it "severely restricted freedom of speech and of the press and used the law to intimidate or prosecute persons who directly criticized the government or raised human rights problems." U.S. Dep't of State, Iran 2015 Human Rights Report 15, *in* Country Report on Human Rights Practices for 2015. Senator John McCain stated U.S. policy clearly in 2009: "The president and his administration should be at the forefront, calling on the Iranian regime to annul the fraudulent election, to restore the people's inalienable rights, and to allow peaceful protesters to voice their opinions. . . . [B]y standing with the Iranian people as they pursue their legitimate rights we will demonstrate to them—and to the world—that American is more than its might." Sen. John McCain, Speak Out for Iran and Its Democracy, Arizona Republic, Feb. 5, 2017.

In the face of all this, and without any basis, the Executive Order effectively accuses all Iranians—Muslim or non-Muslim, religious or secular—of presumptively subscribing to "radical Islam" and harboring terrorist intentions against the United States. This baseless stereotyping is an affront to the Iranian American community, who represent and foster those elements of Iranian society that are most likely to cherish the values of freedom and tolerance that this country has long represented. Slamming the door on all Iranian individuals, with no regard to

---

[6] The Commission also made clear that the importance of protecting the rights of Iranian citizens: The U.S. government should "continue to support an annual UN General Assembly resolution condemning severe violations of human rights, including freedom of religion or belief, in Iran and calling for officials responsible for such violations to be held accountable." *Id.* at 49.

their personal circumstances, plays into the hands of hard-liners in the Iranian government, who have long used the United States—"the Great Satan"—as a foil to justify their repressive policies. The Executive Order leaves Iranians who stand up to the regime out in the cold, and will likely encourage anti-Americanism in the region. None of those results serves the American public's interest or our national security.

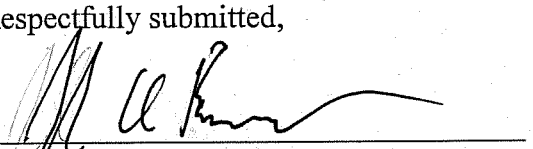
On the other hand, Plaintiffs have a vital, pressing interest in securing preliminary relief and in enjoining enforcement of a policy that has thrown their lives into disarray and infringed on their constitutional rights. "The public interest and the balance of the equities favor preventing the violation of a party's constitutional rights." *Arizona Dream Act Coalition v. Brewer*, 818 F.3d 901, 920 (9th Cir. 2015). There are no other adequate remedies.

CONCLUSION

For the foregoing reasons, Plaintiffs' motion for a preliminary injunction should be granted. A proposed order is attached.

Dated: February 8, 2017

Respectfully submitted,



John A. Freedman (D.C. Bar # 453075)
David P. Gersch (D.C. Bar # 367469)
R. Stanton Jones (D.C. Bar # 987088)
Nancy L. Perkins (D.C. Bar # 421574)
Allison B. Rumsey (D.C. Bar # 450475)*
Ronald A. Schechter (D.C. Bar # 245019)
Robert N. Weiner (D.C. Bar # 298133)
Samuel M. Witten (D.C. Bar # 378008)*
Lindsey D. Carson (D.C. Bar # 992620)*
Sally L. Pei (D.C. Bar # 1030194)*
Sonia Tabriz (D.C. Bar # 1025020)
Stephen K. Wirth (D.C. Bar # 1034038)
ARNOLD & PORTER
KAYE SCHOLER LLP
601 Massachusetts Ave., NW
Washington, DC 20001
(202) 942-5000
(202) 942-5999 (fax)
john.freedman@apks.com

Christopher M. Odell**
ARNOLD & PORTER
KAYE SCHOLER LLP
700 Louisiana Street, Suite 1600
Houston, TX 77002
(713) 576-2400
(713) 576-2499 (fax)
christopher.odell@apks.com

Cyrus Mehri (D.C. Bar # 420970)
Joanna K. Wasik (D.C. Bar # 1027916)*
Amelia Friedman (D.C. Bar # 1033583)*
MEHRI & SKALET, PLLC
1250 Connecticut Ave., NW
Suite 300
Washington, DC 20036
(202) 822-5100
(202) 822-4997 (fax)
cmehri@findjustice.com

U.W. Clemon**
MEHRI & SKALET, PLLC
5202 Mountain Ridge Parkway
Birmingham, AL 35222
(205) 837-2898
(205) 798-2577 (fax)
jclemon@findjustice.com

Kristen Clarke (D.C. Bar # 973885)
Jon Greenbaum (D.C. Bar # 489887)
LAWYERS' COMMITTEE FOR
CIVIL RIGHTS UNDER LAW
1401 New York Ave., NW
Suite 400
Washington, DC 20005
(202) 662-8600
(202) 783-0857 (fax)
jgreenbaum@lawyerscommittee.org

Counsel for Plaintiffs

*D.D.C. admission pending
***Pro hac vice* motion forthcoming