
KEVIN K. MCALEENAN, in his official capacity
as Acting Commissioner of U.S. Customs and
Border Protection
1300 Pennsylvania Ave. NW
Washington, DC 20004

REX W. TILLERSON, in his official capacity as
Secretary of State
2201 C Street, NW
Washington, DC 20530

JEFFERSON BEAUREGARD SESSIONS III, in
his official capacity as Attorney General of the
United States
950 Pennsylvania Avenue, NW
Washington, DC 20530

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. The Plaintiffs are two Yemeni nationals and an organization of American Shi'a Muslims. The Plaintiffs bring this case to challenge President Donald J. Trump's March 6, 2017 Executive Order 13,780, entitled "Protecting the Nation from Foreign Terrorist Entry into the United States." Executive Order 13,780 is intended to, and does, temporarily bar many nationals from six Muslim-majority countries, including Yemen, from entering the United States. Executive Order 13,780 harms the Plaintiffs, and all Muslims living in the United States by subjecting them to hostile treatment under law and by inflicting a damaging stigma upon them based on their religious affiliation.

2.

JURISDICTION AND VENUE

6. The Court has jurisdiction under 28 U.S.C. § 1331.

7. The Court may award declaratory and injunctive relief under the Declaratory Judgment Act, 28 §§ 2201-02, and the Administrative Procedure Act, 5 U.S.C. § 706.

8. Venue is proper in this district under 28 U.S.C. § 1391(b)(2) and (e)(1) because Defendants are United States agencies or officers sued in their official capacities; a substantial part of the events or omissions giving rise to this claim occurred in this district; and one of the plaintiffs, the Universal Muslim Association of America, Inc., maintains its headquarters in this district.

PARTIES

A. Plaintiffs

9. Mr. and Mrs. Doe are citizens of Yemen and reside in the United States under asylum status. The Does and their family adhere to the religion of Islam.

10. The Universal Muslim Association of America, Inc. (UMAA) is the largest organization of Shi'a Muslims in the United States. It is a nonprofit corporation organized under the laws of Maryland and registered under section 501(c)(3) of the Internal Revenue Code. UMAA aims to provide a platform for American Shi'a Muslims to advance political, social, economic, and religious goals important to their community. UMAA provides American Shi'a Muslims a forum to foster intra-faith unity, to participate in civic and political responsibilities, to dispel misgivings about Islam and Muslims, and to help fellow Americans better understand Islam. UMAA also provides American Shi'a Muslims access to advanced levels of Islamic

education by offering short, intensive courses on a variety of subjects presented by senior Islamic seminary students and scholars, many of whom come from Iraq and Iran. UMAA's email distribution list for its weekly newsletters currently includes 17,269 subscribers, and UMAA's national convention draws thousands of attendees annually. UMAA maintains a national organization as well as local chapters across the country. In addition to the annual convention, UMAA also holds other events for the American Shi'a community throughout the year. For its events, UMAA often invites prominent Shi'a scholars—many from Iran and Iraq—to appear as speakers, so that its members may experience their teachings and perspectives.

B. Defendants

11. Defendant Donald J. Trump is the President of the United States and is sued in his

that over 10 million Yemeni civilians need urgent assistance to protect their safety, dignity, and basic human rights².

22. In early 2015, the Does came to the United States on visas with three of their children. But they could not afford the cost of bringing their remaining two children, sons ages 10 and 12, who stayed behind in Yemen with their grandmother. Mr. Doe later received word from Yemen that militants had threatened to kill him and his family if he returned. The militants also threatened to kidnap his two sons who were still in Yemen.

23. With the help of an immigration attorney, Mr. Doe successfully applied for asylum in the United States. Mr. Doe then petitioned for his two sons who were still living in Yemen to obtain visas to enter the United States on the basis of their status as minor children of an asylee pursuant to Section 208(b)(3) of the Immigration and Nationality Act (INA). Mr. Doe's petition was approved in late 2016. The next step in the sons' visa application process is an interview with a United States consulate or embassy abroad, but Yemen does not have a United States consulate or embassy. The boys have fled Yemen to escape the violence there and are now living in Djibouti waiting for their consular interviews to be scheduled. Given the expense of staying in Djibouti, the boys will be forced to return to Yemen unless they can receive their visas to come to the United States.

B. UMAA and the American Shi'a Muslim Community

² Id.

24.

murder against non-believers who won't convert, beheadings and more unthinkable acts that pose great harm to Americans, especially women.⁵

30. The survey cited in the statement had long since been discredited,⁶ the message was clear: Mr. Trump believes that many Muslims bear hostile attitudes toward the United States and favor violent ideology over American law and—for that reason—immigration by Muslims to the United States should be suspended.

31. This proposed “Muslim ban” became a core promise of the Trump campaign, repeated by Mr. Trump and his advisors and surrogates at campaign events across the country.

⁵ Id. (emphasis added).

⁶ The Center for Security Policy's study used an online “opt-in” poll, rather than a traditional sampling model. Results of these “opt-in” polls do not represent the opinions of larger populations because anyone can respond to them and the pollster has no way of knowing who the respondents are. See The Bridge Initiative Team,

32. Asked during a televised debate on January 14, 2016, whether he had rethought his “comments about banning Muslims from entering the country,” Mr. Trump responded, “No.”⁷

33. On March 9, 2016, Mr. Trump stated in a televised interview, “I think Islam hates us.”⁸ The full exchange between Mr. Trump and CNN’s Anderson Cooper is instructive:

Cooper: Do you think Islam is at war with the West?

Trump: I think Islam hates us. There is something—there is something there that is a tremendous hatred there. There’s a tremendous hatred. We have to get to the bottom of it. There’s an unbelievable hatred of us.

Cooper: In Islam itself?

Trump: You’re going to have to figure that out. OK. You’ll get another Pulitzer, right? But you’ll have to figure that out. But there’s a tremendous hatred. And we have to be very vigilant. We have to be very careful. And we can’t allow people coming into this country who have this hatred of the United States . . . and of people that are not Muslim

Cooper: I guess the question is, is there a war between the west and radical Islam or between the west and Islam itself?

Trump: Well, it’s radical but it’s very hard to define. It’s very hard to separate because you don’t know who is who.

⁷ Gerhard Peters & John T. Wooley, Presidential Candidate Debates: Republican Candidates Debate in North Charleston, South Carolina, THE AMERICAN PRESIDENCY PROJECT (Jan. 14, 2016), <http://www.presidency.ucsb.edu/ws/index.php?pid=111111>, Weiner Declaration at Ex. 7.

⁸ Exclusive Interview with Donald Trump: Aired March 9, 2016 - 20:00, CNN (Mar. 9, 2016), <http://www.cnn.com/TRANSCRIPTS/1603/09/acd.01.html>, Weiner Declaration at Ex. 8.

⁹ Id. (emphasis added).

34. Amid widespread outcry that the proposed Muslim ban would be un-American and unconstitutional, Mr. Trump and his advisors began shifting their rhetoric, while clarifying that their goal continued to be some form of a ban on immigration by Muslims.

35. On June 13, 2016, after the attack on a nightclub 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 ¹⁰So."

36. Mr. Trump then specified that the ban would be "temporary," and would apply to

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, you can't use the word Muslim.' . . . And I'm okay with that, because I'm talking territory instead of Muslim."

United States” (“First Executive Order”⁴⁷).

over American law” or who engage in acts of hatred or bigotry “including so called ‘honor killings’ or other forms of violence against women.”

44. Section 10 of the First Executive Order mandated that the Secretary of Homeland Security, in consultation with the Attorney General, collect and make publicly available information related to “foreign nationals in the United States who have been radicalized after entry into the United States” and “honor killings in the United States by foreign nationals.”

45.

in 2016 were nationals of Muslim-majority countries, thus rendering the majority of Muslim refugees ineligible for the religious-based persecution preference.²⁴

47. The following day, January 28, 2017, President Trump's advisor and surrogate Rudy Giuliani admitted that the policy implemented in the First Executive Order resulted from an instruction by the President to find "the right way" to "legally" implement the "Muslim ban."²⁵

E. The First Executive Order Was Enjoined by the Courts.

48. The First Executive Order was immediately met with a series of legal challenges across the country, including in the United States District Courts for the Eastern District of New York, the Western District of Washington, and the Eastern District of Virginia.

49. The day after the First Executive Order was issued, the United States District Court for the Eastern District of New York granted an Emergency Motion for Stay of Removal, enjoining executive-branch officials from removing individuals with approved applications under the United States Refugee Admissions Program, holders of immigrant and non-immigrant visas, and other individuals legally authorized to enter the United States from the seven countries designated in the First Executive Order. *Darweesh v. Trump*, No. 1:17-cv-00480, ECF 8 at 2

²⁴ See Phillip Connor, U.S. admits record number of Muslim refugees in 2016, PEW RESEARCH CENTER (Oct. 5, 2016), <http://www.pewresearch.org/fact-tank/2016/10/05/u-s-admits-record-number-of-muslim-refugees-in-2016/>; Weiner Declaration at Ex. 70.

²⁵ See Rebecca Savransky, Giuliani: Trump asked me how to do a Muslim ban 'legally', THE HILL (Jan. 29, 2017, 8:48 AM), <http://thehill.com/policy/immigration/369000-giuliani-trump-asked-me-how-to-do-a-muslim-ban-legally>

(E.D.N.Y. Jan. 28, 2017). The district court found a substantial likelihood that the plaintiffs could establish that such removals would violate their rights to Due Process and Equal Protection under the United States Constitution. at 1.

50. Days later, on February 3, 2017, the United States District Court for the Western District of Washington issued a Temporary Restraining Order enjoining enforcement of the First Executive Order on a tn a

found that the plaintiffs were likely to succeed on the merits of their Establishment Clause claims. See *Aziz v. Trump*, No. 1:17-cv-00116-LMB-TCB, ECF 111 at 7-9, 20 (E.D. Va. Feb. 13, 2017).

53. In response to the ruling by the Ninth Circuit Court of Appeals, the President signaled his apparent intent to continue litigation over the First Executive Order, tweeting: “SEE YOU IN COURT, THE SECURITY OF OUR NATION IS AT STAKE!”²⁶ Yet just one week after the decision, the DOJ informed the Ninth Circuit that the President intended to rescind the First Executive Order and replace it with a “~~new~~ substantially revised Executive Order to eliminate what the panel erroneously thought were constitutional concerns.” Defendants-Appellants’ Supplemental Brief on En Banc Consideration, *Washington v. Trump*, No. 17:35105, ECF 154 at 4 (9th Cir. Feb. 16, 2017) (emphasis added).

F. The Administration Contradicted Its Representations to the Ninth Circuit Court of Appeals.

54. Despite the DOJ’s representation to the Ninth Circuit Court of Appeals that the President would “rescind” the First Executive Order and issue an updated order, White House Press Secretary Sean Spicer told reporters at a February 21 press conference that President

²⁶ Donald J. Trump (@realDonaldTrump), TWITTER (Feb. 9, 2017, 3:35 PM), <https://twitter.com/realdonaldtrump/status/829836231802515457> (capitalization included in original).

58.

requirements in order to travel to the United States. It also creates exceptions to the travel restriction for legal permanent residents and people who held visas as of March 16, 2017. And finally, the Replacement Executive Order eliminates the priority for refugees of minority religions, but it maintains the First Executive Order's restriction on the total number of refugees permitted into the United States. Just as Mr. Miller predicted, aside from these and other minor

the Replacement Executive Order was a “watered-down version of the first one” and that he thinks “we ought to go back to the first one and go all the way.”

convention by providing prospective attendees with an advance schedule of speakers that includes the foreign speakers it has invited. This year, UMAA has been unable to advertise its

78. The Replacement Executive Order harms the Does because its enforcement renders them unable to bring their two children to the United States from Yemen and because it conveys a message to the Does that they and their religion are disfavored in the United States.

79. The Does have not seen their two children in over 800 days. They remain in fear for their children's lives and wish to bring them to the United States where they can be safe and so that their family can be together.

80. Despite their attorney's best efforts to schedule interviews for the Does' sons, the State Department has not yet scheduled consular interviews for them.

81. As with the First Executive Order, the Replacement Executive Order includes Yemen as one of the countries whose nationals are subject to the travel⁴⁰ ban.

82. As long as Section 2(c) of the Replacement Executive Order is in effect, the Does' children will be categorically barred from entering the country for at least 90 days.

83. The Replacement Executive Order does provide for discretionary "case-by-case waivers" for individuals seeking admission to the United States who can demonstrate to consular officials that their admission would be "in the national interest"⁴¹. But the Does cannot seek a

⁴⁰ See Replacement Executive Order § 1(e)(vi).

⁴¹ See id. § 3(c) (stating that case-by-case waivers may be available, "in the consular officer's or the CBP [Customs and Border Patrol] official's discretion" "if the foreign national has demonstrated to the officer's satisfaction that denying entry during the suspension period would cause undue hardship, and that his or her entry would not pose a threat to national security and would be in the national interest.").

indefinitely, and will soon need to return to Yemen if the Replacement Executive Order is not placed on hold.

87. Accordingly, because the Replacement Executive Order applies to their two sons

from their family members. All Plaintiffs (including UMAA's members) are also injured because of the government's endorsement of hostility toward Islam that is reflected in the Executive Order. All Plaintiffs are also harmed by the waiver provision under Section 3(c) of the Replacement Executive Order because the provision creates an additional hurdle that was imposed with a discriminatory purpose and a discriminatory effect to disfavor Muslims.

98. Absent injunctive and declaratory relief, Plaintiffs will continue to suffer harm from the Replacement Executive Order and Defendants' implementation and enforcement of it.

99. Plaintiffs have no adequate remedy at law.

100.

COUNT II
(Violation of the Right to Equal Protection Under the Fifth Amendment:
Discrimination on the Basis of Religion)
(All Plaintiffs Against All Defendants)

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

102. Plaintiffs are entitled to the protections of the Fifth Amendment.

103. In enacting and implementing the Replacement Executive Order, Defendants have discriminated against Plaintiffs on the basis of their religion in violation of the Equal Protection component of the Due Process Clause of the Fifth Amendment.

104. The Replacement Executive Order was substantially motivated by animus toward Muslims.

105. The Replacement Executive Order has a disparate impact on Muslims.

106. Defendants' numerous public calls for a ban on Muslim immigration demonstrate that the Replacement Executive Order is designed to have a virtually exclusive impact on Muslims.

107. Defendants' overt statements singling out Muslims for exclusion further reveal invidious discriminatory intent.

108. Statements by advisers to Defendant Trump demonstrate that Defendants intend the Replacement Executive Order to yield the same results as the First Executive Order, that is, to exclude categories of foreign nationals that are almost entirely composed of Muslims.

109. The Replacement Executive Order's targeting of certain countries on the basis of religion is not narrowly tailored to achieve a compelling governmental interest.

110. The Replacement Executive Order is not rationally related to a legitimate governmental interest.

111. The Replacement Executive Order was issued in bad faith and is not supported by bona fide and facially legitimate reasoning.

112. Absent injunctive and declaratory relief, Plaintiffs will continue to suffer harm

116. Defendants' enactment, implementation, and threatened enforcement of the Replacement Executive Order discriminate against Plaintiffs on the basis of their national origin, in violation of the right to equal protection under the Due Process Clause of the Fifth Amendment.

117. The Replacement Executive Order singles out nationals of specific countries for exclusion from the United States, regardless of their individual circumstances.

118. The Replacement Executive Order's discrimination on the basis of national origin is not narrowly tailored to achieve a compelling governmental interest.

119. The Replacement Executive Order's discrimination on the basis of national origin is not rationally related to a legitimate governmental interest.

120.

133. Defendants' violations of the Immigration and Nationality Act and Regulations have harmed UMAA and its members. Many of UMAA's members have pending or approved petitions for their family members to obtain immigrant visas to travel to the United States. The Replacement Executive Order prevents these individuals from being able to bring their family members to visit or live in the United States.

134. The Replacement Executive Order has divided the families of UMAA's members, undermining UMAA's mission, which includes promoting the welfare of the Shi'a community in the United States and dispelling misgivings about Muslims and Islam.

135. The actions of Defendants, as set forth above, are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; contrary to constitutional right, power, privilege, or immunity; in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; and without observance of procedure required by law, in violation of the Administrative Procedure Act, 5 U.S.C. §§ 706(2)(A)-(D).

136. Plaintiffs have no adequate or available administrative remedy; in the alternative, any effort to obtain an administrative remedy would be futile.

137. This Court accordingly should declare that Defendants' implementation of the Replacement Executive Order violates the APA and INA.

138. Absent injunctive and declaratory relief, the Plaintiffs will continue to suffer harm from the Replacement Executive Order and from the Defendants' implementation and enforcement of it.

139. Plaintiffs have no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, all Plaintiffs seek an order and judgment to:

140.

143. Require Defendants promptly to rescind any guidance, directive, memorandum, or

- c. For each denied visa application under the above subparagraph (b), the identifying information or numbers for the application for the Court's reference;
- d. For each denied visa application under the above subparagraph (b), a detailed explanation of the reason or reasons why the application was denied. The explanation under this subsection must state the facts, authorities, and reasoning relevant to the Defendants' decision to deny the application.

151. Require Defendants to pay reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988;

152. Any other relief that the Court deems necessary or just to cure the violations specified in this Complaint or that justice may otherwise require.

DATED: March 23, 2017.

Johnathan Smith (application for admission pending)
Aziz Huq (pro hac vice application forthcoming)
MUSLIM ADVOCATES
P.O. Box 71080
Oakland, CA 94612
Telephone: (415) 692-1484
Johnathan@muslimadvocates.org
huq@chicago.edu
jsulahry@gmail.com

Richard B. Katskee (D.C. Bar # 474250)
Bradley Girard (application for admission pending)
AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE
1310 L Street NW, Suite 200
Washington, DC 20005
Telephone: (202) 466-3234
Facsimile: (202) 466-3353
Katskee@au.org
Girard@au.org

Gillian B. Gillers (pro hac vice application forthcoming)
Kristi L. Graunke (pro hac vice application forthcoming)
Naomi R Tsu (pro hac vice application forthcoming)
SOUTHERN POVERTY LAW CENTER
1989 College Avenue NE
Atlanta, GA 30317
Telephone: (404) 521-6700
Facsimile: (404) 221-5857
gillian.gillers@splcenter.org
kristi.graunke@splcenter.org
naomi.tsu@splcenter.org

David J. Weiner (D.C. Bar # 499806)
Charles A. Blanchard (D.C. Bar # 1022256)
Amanda Johnson (application for admission pending)
ARNOLD & PORTER KAYE SCHOLER LLP
601 Massachusetts Avenue NW
Washington, DC 20001
Telephone: (202) 942-5000
Facsimile: (202) 942-5999
David.weiner@apks.com
Charles.blanchard@apks.com
Amanda.johnson@apks.com

Emily Newhouse Dillingham (pro hac vice application forthcoming)
ARNOLD & PORTER KAYE SCHOLER LLP
70 West Madison Street
Chicago, IL 60602
Telephone: (312) 583-2300
Facsimile: (312) 583-2360
Emily.dillingham@apks.com

Andrew D. Bergman (pro hac vice application forthcoming)
ARNOLD & PORTER KAYE SCHOLER LLP
700 Louisiana Street, Suite 1600
Houston, TX 77002
Telephone: (713) 576-2400
Facsimile: (713) 576-2499
Andrew.bergman@apks.com

Kimberly Gelfand (pro hac vice application forthcoming)
ARNOLD & PORTER KAYE SCHOLER LLP
250 West 55th Street
New York, NY 10019
Telephone: (212) 836-8000
Facsimile: (212) 836-8689
Kimberly.gelfand@apks.com

CERTIFICATE OF SERVICE

I hereby certify that on March 23, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail