

1 Carmen Iguina (CA SBN #277369)
2 Jennifer Pasquarella (CA SBN #263241)
3 Ahilan Arulanantham (CA SBN# 237841)
4 Peter Bibring (CA SBN #223981)
5 ACLU of Southern California
6 1313 West 8th Street
7 Los Angeles, CA 90017
8 Telephone: (213) 977-9500
9 Facsimile: (213) 977-5297
10 Email: ciguina@aclusocal.org

11 Stacy Tolchin (CA SBN #217431)
12 Megan Brewer (CA SBN#268248)
13 Law Offices of Stacy Tolchin
14 634 S. Spring St., Suite 500A
15 Los Angeles, CA 90014
16 Telephone: (213) 622-7450
17 Facsimile: (213) 622-7233
18 Email: Stacy@Tolchinimmigration.com
19 Email: Megan@Tolchinimmigration.com

20 UNITED STATES DISTRICT COURT FOR THE
21 CENTRAL DISTRICT OF CALIFORNIA

22 Ali Khoshbakhti Vayeghan,

23 Petitioner,

24 v.

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

Respondents.

Case No.

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INTRODUCTION

Petitioner Ali Khoshbakhti Vayeghan, is an Iranian citizen who has a U.S. Visa, landed at Los Angeles International Airport (“LAX Airport”) on the evening of January 27, 2017. The U.S. government granted Petitioner Vayeghan an immigrant visa on October 27, 2016 as a result of a petition filed by his U.S. citizen son.

Despite these findings and Petitioner’s valid entry documents, U.S. Customs and Border Protection (“CBP”) blocked Petitioner from exiting Los Angeles International (“LAX”) Airport and detained Petitioner therein. No magistrate has determined that there is sufficient justification for the continued detention of Petitioner. Instead, CBP is holding Petitioner at LAX Airport and threatening to deport him back to Iran today at 3:00 p.m. solely pursuant to an executive order issued on January 27, 2017.

Because the executive order is unlawful as applied to Petitioner, his continued detention based solely on the executive order violates his Fifth Amendment procedural and substantive due process rights, violates the First Amendment Establishment Clause, is ultra vires the immigration statutes, and violates the Administrative Procedure Act and Religious Freedom Restoration Act. Further, Petitioner continued unlawful detention is part of a widespread pattern applied to many refugees and arriving aliens detained after the issuance of the January 27, 2017 executive order. Therefore, Petitioner respectfully applies to this Court for a writ of habeas corpus to remedy his unlawful detention by Respondents, and for declaratory and injunctive relief to prevent such harms from recurring.

JURISDICTION AND VENUE

1. Jurisdiction is conferred on this court by 28 U.S.C. §§ 1331, 1361, 2241, 2243, and the Habeas Corpus Suspension Clause of the U.S. Constitution.

1 This court has further remedial authority pursuant to the Declaratory Judgment Act,
2 28 U.S.C. § 2201 *et seq.*

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

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

8 **PARTIES**

9
10 4. Petitioner Khoshbakthi Vayeghan is an Iranian citizen with an
11 approved U.S. visa issued on October 27, 2016 on the basis of a petition filed by
12 his U.S. citizen son. He currently being detained at LAX Airport and threatened
13 with deportation to Iran on January 28, 2017 at 3:00 p.m. Petitioner is Muslim.

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

17 6. U.S. Customs and Border Protection ("CBP") is an agency within
18 DHS with the primary mission of detecting and preventing the unlawful entry of
19 persons and goods into the United States.

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

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

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

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

3 **STATEMENT OF FACTS**

4 **President Trump’s January 27, 2017 Executive Order**

5
6 11. On January 20, 2017, Donald Trump was inaugurated as the forty-fifth
7 President of the United States.

8 12. One week later, on January 27, President Trump signed an executive
9 order entitled, “Protecting the Nation from Foreign Terrorist Entry into the United
10 States,” which is attached hereto as Exhibit A and is hereinafter referred to as the
11 “EO.”

12 13. Citing the threat of terrorism committed by foreign nationals, the EO
13 directs a variety of changes to the manner and extent to which non-citizens may
14 seek and obtain admission to the United States, particularly (although not
15 exclusively) as refugees. Among other things, the EO imposes a 120-day
16 moratorium on the refugee resettlement program as a whole; proclaims that “that
17 the entry of nationals of Syria as refugees is detrimental to the interests of the
18 United States,” and therefore “suspend[s]” indefinitely their entry to the country;
19 similarly proclaims that “the entry of more than 50,000 refugees in fiscal year 2017
20 would be detrimental to the interests” of the country.

21 14. Most relevant to the instant action is Section 3(c) of the EO, in which
22 President Trump proclaims “that the immigrant and nonimmigrant entry into the
23 United States of aliens from countries referred to in section 217(a)(12) of the INA,
24 8 U.S.C. 1187(a)(12), would be detrimental to the interests of the United States,”
25 and that he is therefore “suspend[ing] entry into the United States, as immigrants
26 and nonimmigrants, of such persons for 90 days from the date of this order,” with
27 narrow exceptions not relevant here.

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

5
6 **Petitioner Vayeghan**

7 16. Petitioner Khoshbakthi Vayeghan is an Iranian citizen with an
8 approved U.S. visa issued on October 27, 2016 on the basis of a petition filed by
9 his U.S. citizen son, who lives in Indiana. The visa is set to expire on February 14,
10 2017. Based on this visa, Petitioner Khoshbakthi Vayeghan would be eligible to
11 adjust to legal permanent resident status upon his admission to the United States.

12 17. Had he been afforded admission, several weeks after entering the
13 United States, Petitioner would have received a green card in the mail and could
14 naturalize five years later.

15 18. After selling his business and assets in Iran in anticipation of
16 immigrating to the United States to join his son, Petitioner travelled to the United
17 States. He departed on flight from Dubai and arrived at LAX Airport at
18 approximately 7:15 p.m. on January 27, 2017.

19 19. Upon arrival at LAX Airport, CBP officers detained Petitioner
20 Khoshbakthi Vayeghan. His brother and sister-in-law, who live in Los Angeles,
21 have been informed that Petitioner Khoshbakthi Vayeghan will be deported back to
22 Iran on a flight leaving LAX Airport on January 28, 2017 at approximately 3:00
23 p.m.

24 20. Petitioner is not being permitted to meet with his attorneys who are
25 present at LAX Airport and have made multiple attempts to meet with him. After
26 requesting on multiple occasions to meet with Petitioner, attorneys have been
27 informed that access to Petitioner is denied on the basis of 8 C.F.R. § 292.1.
28

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

3
4 **CAUSES OF ACTION**

5 **COUNT ONE**
6 **FIRST AMENDMENT – ESTABLISHMENT CLAUSE**

7 1. Petitioner repeats and incorporate by reference each and every
8 allegation contained in the preceding paragraphs as if fully set forth herein.

9 2. The EO exhibits hostility to a specific religious faith, Islam, and gives
10 preference to other religious faiths, principally Christianity. The EO therefore
11 violates the Establishment Clause of the First Amendment by not pursuing a course
12 of neutrality with regard to different religious faiths.

13 3. Petitioner is harmed by the EO’s disfavoring of his religion, Islam, and
14 the discriminatory denial of admission to the United States pursuant to the EO.

15 **COUNT TWO**
16 **FIFTH AMENDMENT – EQUAL PROTECTION**

17 4. Petitioner repeats and incorporates by reference each and every
18 allegation contained in the preceding paragraphs as if fully set forth herein.

19 5. The EO discriminates against Petitioner on the basis of his country of
20 origin and religion, without sufficient justification, and therefore violates the equal
21 protection component of the Due Process Clause of the Fifth Amendment.

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

26 7. Respondents have demonstrated an intent to discriminate against
27 Petitioner on the basis of religion through repeated public statements that make
28 clear the EO was designed to prohibit the entry of Muslims to the United States.

1 See Michael D. Shear & Helene Cooper, *Trump Bars Refugees and Citizens of 7*
2 *Muslim Countries*, N.Y. Times (Jan. 27, 2017), (“[President Trump] ordered that
3 Christians and others from minority religions be granted priority over Muslims.”);
4 Carol Morello, *Trump Signs Order Temporarily Halting Admission of Refugees,*
5 *Promises Priority for Christians*, Wash. Post (Jan. 27, 2017).

6 8. Applying a general law in a fashion that discriminate on the basis of
7 religion in this way violates Petitioner’s rights to equal protection the Fifth
8 Amendment Due Process Clause. *Hayden v. County of Nassau*, 180 F.3d 42, 48 (2d
9 Cir. 1999); *Yick Wo v. Hopkins*, 118 U.S. 356, 373-74 (1886). Petitioner satisfies
10 the Supreme Court’s test to determine whether a facially neutral law – in the case,
11 the EO and federal immigration law – has been applied in a discriminatory fashion.
12 The Supreme Court requires an individual bringing suit to challenge the application
13 of a law bear the burden of demonstrating a “prima facie case of discriminatory
14 purpose.” *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266-
15 7 (1977). This test examines the impact of the official action, whether there has
16 been a clear pattern unexplainable on other grounds besides discrimination, the
17 historical background of the decision, the specific sequence of events leading up to
18 the challenged decision, and departures from the normal procedural sequence. *Id.*

19 9. Here, President Donald Trump and senior staff have made clear that
20 EO will be applied to primarily exclude individuals on the basis of their national
21 origin and religion. *See, e.g.*, sources cited, *supra*. *See, e.g.*, Donald J. Trump,
22 *Donald J. Trump Statement On Preventing Muslim Immigration*, (Dec. 7, 2015),
23 [https://www.donaldjtrump.com/press-releases/donald-j.-trump-statement-on-](https://www.donaldjtrump.com/press-releases/donald-j.-trump-statement-on-preventing-muslim-immigration)
24 [preventing-muslim-immigration](https://www.donaldjtrump.com/press-releases/donald-j.-trump-statement-on-preventing-muslim-immigration) (“Donald J. Trump is calling for a total and
25 complete shutdown of Muslims entering the United States until our country's
26 representatives can figure out what is going on.”); Abby Phillip and Abigail
27 Hauslohner, *Trump on the Future of Proposed Muslim Ban, Registry: ‘You know*
28

1 *my plans*', Wash. Post (Dec. 22, 2016). Further, the President has promised that
2 preferential treatment will be given to Christians, unequivocally demonstrating the
3 special preferences and discriminatory impact that the EO has upon Petitioner. *See*
4 *supra*.

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

8
9 **COUNT THREE**
ADMINISTRATIVE PROCEDURE ACT

10 11. Petitioner repeats and incorporates by reference each and every
11 allegation contained in the preceding paragraphs as if fully set forth herein.

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

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

18 14. The INA forbids discrimination in issuance of visas based on a
19 person's race, nationality, place of birth, or place of residence. 8 U.S.C. §
20 1152(a)(1)(A).

21 15. Respondents' actions in detaining and mistreating Petitioner were
22 arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with
23 law, in violation of APA § 706(2)(A); contrary to constitutional right, power,
24 privilege, or immunity, in violation of APA § 706(2)(B); in excess of statutory
25 jurisdiction, authority, or limitations, or short of statutory right, in violation of APA
26 § 706(2)(C); and without observance of procedure required by law, in violation of §
27 706(2)(D).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

COUNT FOUR
RELIGIOUS FREEDOM RESTORATION ACT

16. Petitioner repeats and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

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

COUNT FIVE
THE IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. § 1152

18. Petitioner repeats and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

19. The EO discriminates against Petitioner on the basis of his nationality, without sufficient justification, and therefore violates 8 U.S.C. § 1152.

COUNT SIX
THE IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. § 1151

1. Petitioner repeats and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

2. Petitioner has a valid U.S. visa and approved legal permanent resident status, and denial of admission into the United States violates 8 U.S.C. § 1151.

PRAYER FOR RELIEF

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

- (1) Issue a Writ of Habeas Corpus requiring Respondents to release Petitioner;
-

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- (2) Enter a judgment declaring that Respondents' detention of Petitioner is unauthorized by statute and contrary to law;
- (3) Issue an Order requiring Petitioner's admission to the United States per the terms of the Immigration and Nationality Act;
- (4) Award Petitioner reasonable costs and attorneys' fees; and
- (5) Grant any other and further relief that this Court may deem fit and proper.

DATED: January 28, 2017

Los Angeles, California

Respectfully submitted,

/s/ Carmen Iguina

CARMEN IGUINA
