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13 **UNITED STATES DISTRICT COURT FOR THE**
 14 **CENTRAL DISTRICT OF CALIFORNIA**

15 KHANON MAHINDOKHT AZAD, GISHH
 ALSAEEDI, MUSTAFA ABDUL WAHED,
 16 Individually, and PUBLIC COUNSEL,
 AMERICAN IMMIGRATION LAWYERS
 17 ASSOCIATION, ASIAN AMERICANS
 ADVANCING JUSTICE – LA, IRANIAN
 18 AMERICAN BAR ASSOCIATION, AND
 NATIONAL LAWYERS GUILD-LA,
 19 Nonprofit Organizations,

20 *Plaintiffs-Petitioners,*

21 v.

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

27 *Defendants-Respondents.*
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Case No. 2:17-cv-00706

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

INTRODUCTION

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1. Plaintiffs-Petitioners are forced to file this action on short notice because Respondents have unlawfully detained Petitioners Azad and Alsaeedi (collectively, “Individual Petitioners”) at Los Angeles International Airport (“LAX Airport”) and are coercing the Individual Petitioners in an attempt to forcibly expel them from the United States. Respondents have also denied Petitioners access to their attorneys, and denied the Plaintiffs Public Counsel, American Immigration Lawyers Association, Asian Americans Advancing Justice – LA, Iranian American Bar Association, and National Lawyers Guild – Los Angeles Chapter (“Plaintiff Organizations”) access to their clients, during this unlawful detention.

2. Petitioner Khanon Mahindokht Azad is an Iranian citizen. She is 78 years old. Petitioner Azad resides in Iran, but travels to the United States one every few years to visit her children, nine of whom are United States citizens and one who is a lawful permanent resident. She was traveling from Iran to the United States on a validly-issued tourist visa to visit her children. When she arrived at LAX Airport at 12:30 p.m. on January 28, 2017, Petitioner Azad was denied entry to the United States and was detained by CBP. Petitioner Azad has been permitted to call her son while in detention and explained to her son that CBP officials are pressuring her to sign a document agreeing to withdraw her application for admission. So far, she has refused to sign. She suffers significant health issues, including diabetes, for which she needs regular insulin infusions, high blood pressure, kidney problems, and high cholesterol. In the afternoon of January 28, 2017, CBP officers called her son to inform him that she had fallen ill and they had to call an ambulance, but that she had recovered and was feeling better. Petitioner Azad remains detained by CBP at LAX Airport.

3. Petitioner Gishh Alsaeedi is an Iraqi citizen and eighty-two year old woman. She lives in Baghdad, Iraq. She was traveling from Iraq, via Dubai, to the

1 United States to visit her daughter and grandchildren. She has not seen her daughter
2 in 19 years. Petitioner Alsaeedi has never met any of her six grandchildren who live
3 here in the United States. She arrived at LAX Airport on January 28, 2017 at around
4 12:45 p.m. Petitioner Alsaeedi is traveling on a tourist visa and her Iraqi passport.
5 Upon her arrival, CBP denied her entry into the United States and detained her at
6 LAX Airport. She was traveling with a family friend, because she was uncomfortable
7 traveling alone; however, the friend was not detained but instead released because he
8 is a United States citizen. Petitioner Alsaeedi has not been permitted to call her family
9 or contact an attorney since being detained by CBP. She is Muslim. She suffers from
10 high blood pressure and vision loss. Petitioner Alsaeedi remains detained by CBP at
11 LAX Airport.

12 4. Petitioner Mustafa Abdul Wahed is a 50 year-old Syrian citizen with
13 permanent residence in Saudi Arabia. He has lived in Saudi Arabia since he was a
14 child, and currently lives in Gassim. Petitioner Wahed works for a Saudi company
15 involved in date palm farming, and was traveling from Jedda to the United States to
16 observe date palm farming operations in conjunction with universities and farmers
17 in California and Arizona. He arrived at LAX Airport on January 28, 2017. He is
18 traveling on a business visa and his Syrian passport. Upon his arrival, CBP denied
19 him entry into the United States and detained him. He remains detained. He was
20 traveling with three other coworkers; however, the coworkers were not detained but
21 instead released. Petitioner Wahed has not been permitted to call his coworkers or
22 family since being detained by CBP. He is Muslim. He suffers from high blood
23 pressure and diabetes.

24 5. Plaintiff Public Counsel is an organization of attorneys and other
25 advocates who seek, inter alia, to provide free legal assistance to immigrants. Since
26 on or before January 28, 2017, attorneys from Public Counsel have been at LAX
27 Airport attempting to assist individuals denied entry and detained pursuant to the
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1 January 27, 2017 executive order “PROTECTING THE NATION FROM FOREIGN
2 TERRORIST ENTRY INTO THE UNITED STATES.” (hereinafter “EO”).

3 6. Plaintiff American Immigration Lawyers Association (“AILA”) is a
4 voluntary bar association of more than 14,000 attorneys and law professors
5 practicing, researching, and teaching in the field of immigration and nationality law.
6 Since on or before January 28, 2017, attorneys from AILA have been at LAX Airport
7 attempting to assist individuals denied entry and detained pursuant to the EO.

8 7. Plaintiff Asian Americans Advancing Justice Los Angeles (“Advancing
9 Justice – LA”) is an organization of attorneys and other advocates who, inter alia,
10 provide free legal assistance to immigrants. Since on or before January 28, 2017,
11 attorneys from Advancing Justice – LA have been at LAX Airport attempting to
12 assist individuals denied entry and detained pursuant to the EO.

13 8. Plaintiff Iranian American Bar Association (“IABA”) is a national
14 organization of Iranian American attorneys with a membership in the hundreds, and
15 is the largest network of Iranian American lawyers in the U.S. Its mission includes
16 educating and informing the Iranian-American community about legal issues of
17 interest, advancing legal rights of the community, and ensuring that the American
18 public at large, local representatives, and other government officials are fully and
19 accurately informed on legal matters of interest and concern to the Iranian-American
20 community. Members of IABA have been at LAX Airport attempting to assist
21 individuals denied entry and detained pursuant to the EO.

22 9. Plaintiff National Lawyers Guild, Los Angeles Chapter (“NLG-LA”) is
23 an organization of attorneys who seek, inter alia, to provide free legal assistance to
24 immigrants. Since on or before January 28, 2017, attorneys from the NLG-LA have
25 been at LAX Airport attempting to assist individuals denied entry and detained
26 pursuant to the EO.

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1 10. Individual Petitioners all have valid entry documents, and were
2 subjected to security checks prior to the federal government issuing their entry
3 documents. Despite this, U.S. Customs and Border Protection (“CBP”) blocked the
4 Individual Petitioners from exiting LAX Airport and detained the Individual
5 Petitioners therein. No magistrate has determined that there is sufficient justification
6 for the continued detention of the Individual Petitioners. Instead, CBP is holding the
7 Individual Petitioners at LAX Airport solely pursuant to the executive order issued
8 by President Donald Trump on January 27, 2017. Removals pursuant to that
9 executive order were stayed by a federal district court on January 28, 2017. *See infra*.
10 Upon information and belief, Respondents are coercing the Individual Petitioners
11 and other individuals in their custody to sign forms withdrawing their application for
12 admission or otherwise relinquishing their claims for lawful status in the United
13 States.

14 11. The Individual Petitioners have been denied access to counsel while
15 being sequestered at LAX Airport for hours on end. Upon information and belief,
16 CBP has also confiscated Individual Petitioners’ personal cellphones, blocking
17 access to both counsel and family members. Numerous attorneys from Plaintiffs
18 Organizations have been present at LAX Airport since early on January 28, 2017,
19 attempting to reach the Individual Petitioners and other individuals unlawfully
20 detained by CBP. However, these attorneys have been denied access to speak to or
21 visit with the Individual Petitioners or other individuals detained at LAX Airport.

22 12. Because the executive order is unlawful as applied to the Individual
23 Petitioners, their continued detention based solely on the executive order violates the
24 Immigration and Nationality Act, their Fifth Amendment procedural and substantive
25 due process rights, the First Amendment Establishment Clause, the Administrative
26 Procedure Act, and the Religious Freedom Restoration Act. Further, Individual
27 Petitioners’ continued unlawful detention is part of a widespread policy, pattern, and
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1 practice applied to many refugees and arriving noncitizens detained after the issuance
2 of the January 27, 2017 executive order.

3 13. Therefore, the Individual Petitioners respectfully apply to this Court for
4 a writ of habeas corpus to remedy their unlawful detention by Respondents, and for
5 declaratory and injunctive relief to prevent such harms from recurring. The
6 Individual Petitioners and Plaintiff Organizations further request that this Court issue
7 an order directing CBP to allow all individuals detained at LAX Airport pursuant to
8 the January 27, 2017 executive order access to counsel.

9 14. On January 28, 2017, the Honorable Ann M. Donnelly of the U.S.
10 District Court for the Eastern District of New York issued a nationwide stay of
11 removal which provides that the federal government is “enjoined and restrained
12 from, in any manner, removing individuals with refugee applications approved by
13 U.S. Citizenship and Immigration Services as part of the U.S. Refugee Admissions
14 Program, holders of valid immigrant and non-immigrant visas, and other individuals
15 from Iraq, Syria, Iran, Sudan, Libya, Somalia, and Yemen legally authorized to enter
16 the United States.” The court found that the “petitioners have a strong likelihood of
17 success in establishing that the removal of the petitioner and other similarly situation
18 violates their rights to Due Process and Equal Protection guaranteed by the United
19 States Constitution.” A copy of the order is attached as Exhibit A.

20 **JURISDICTION AND VENUE**

21 15. This Court has subject matter jurisdiction over this action under 28
22 U.S.C. §§ 1331, 1361, 2241, 2243, and the Habeas Corpus Suspension Clause of the
23 U.S. Constitution. This court has further remedial authority pursuant to the
24 Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*

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

1 23. Plaintiff Asian Americans Advancing Justice Los Angeles (“Advancing
2 Justice – LA”) is an organization of attorneys and other advocates who, inter alia,
3 provide free legal assistance to immigrants. Since on or before January 28, 2017,
4 attorneys from the Advancing Justice – LA have been at LAX Airport attempting to
5 assist individuals denied entry and detained pursuant to the EO.

6 24. Plaintiff Iranian American Bar Association (“IABA”) is a national
7 organization of Iranian American attorneys with a membership in the hundreds, and
8 is the largest network of Iranian American lawyers in the U.S. Its mission includes
9 educating and informing the Iranian-American community about legal issues of
10 interest, advancing legal rights of the community, and ensuring that the American
11 public at large, local representatives, and other government officials are fully and
12 accurately informed on legal matters of interest and concern to the Iranian-American
13 community. Members of IABA have been at LAX Airport attempting to assist
14 individuals denied entry and detained pursuant to the EO.

15 25. Plaintiff National Lawyers Guild, Los Angeles Chapter (“NLG-LA”) is
16 an organization of attorneys who seek, inter alia, to provide free legal assistance to
17 immigrants. Since on or before January 28, 2017, attorneys from the NLG-LA have
18 been at LAX Airport attempting to assist individuals denied entry and detained
19 pursuant to the EO.

20 26. The U.S. Department of Homeland Security (“DHS”) is a cabinet
21 department of the United States federal government with the primary mission of
22 securing the United States.

23 27. U.S. Customs and Border Protection (“CBP”) is an agency within DHS
24 with the primary mission of detecting and preventing the unlawful entry of persons
25 and goods into the United States.

26 28. Respondent John Kelly is the Secretary of DHS. Secretary Kelly has
27 immediate custody of Petitioner. He is sued in his official capacity.
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1 36. Most relevant to the instant action is Section 3(c) of the EO, in which
2 President Trump proclaims “that the immigrant and nonimmigrant entry into the
3 United States of aliens from countries referred to in section 217(a)(12) of the INA, 8
4 U.S.C. 1187(a)(12), would be detrimental to the interests of the United States,” and
5 that he is therefore “suspend[ing] entry into the United States, as immigrants and
6 nonimmigrants, of such persons for 90 days from the date of this order,” with narrow
7 exceptions not relevant here.

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

12 **Petitioner Khanon Mahindokht Azad**

13 38. Petitioner Khanon Mahindokht Azad is an Iranian citizen. She is 78
14 years old. Petitioner Azad resides in Iran, but travels to the United States one every
15 few years to visit her children, nine of whom are United States citizens and one who
16 is a lawful permanent resident.

17 39. Petitioner Azad was traveling from Iran to the United States on a
18 validly-issued tourist visa to visit her children.

19 40. However, when she arrived at LAX Airport at around 12:30 p.m. on
20 January 28, 2017, Petitioner Azad was denied entry to the United States and was
21 detained by CBP.

22 41. Petitioner Azad has been permitted to call her son while in detention
23 and explained to her son that CBP officials are pressuring her to sign a document
24 agreeing to withdraw her application for admission. So far, she has refused to sign.

25 42. Petitioner Azad is not being permitted to meet with her attorneys who
26 are present at LAX Airport and have made multiple attempts to meet with her.
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1 43. Petitioner Azad suffers significant health issues, including diabetes, for
2 which she needs regular insulin infusions, high blood pressure, kidney problems, and
3 high cholesterol. In the afternoon of January 28, 2017, CBP officers called her son
4 to inform him that she had fallen ill and they had to call an ambulance, but that she
5 had recovered and was feeling better.

6 44. Petitioner Azad remains detained by CBP at LAX Airport and is not
7 being allowed to enter the United States to meet with her children.

8 **Petitioner Marzieh Moosavizadeh Yazdi**

9 45. Petitioner Gishh Alsaedi is an Iraqi citizen and eighty-two year old
10 woman. She lives in Baghdad, Iraq. Petitioner Alsaedi was traveling from Iraq, via
11 Dubai, to the United States to visit her daughter and grandchildren. She has not seen
12 her daughter in 19 years, and has never met any of her six grandchildren who live
13 here in the United States. Petitioner Alsaedi is Muslim.

14 46. Petitioner Alsaedi arrived at LAX Airport on January 28, 2017 at
15 around 12:45 p.m. She is traveling on a tourist visa and her Iraqi passport.

16 47. However, upon her arrival, CBP denied her entry into the United States
17 and detained her at LAX Airport.

18 48. Petitioner Alsaedi was traveling with a family friend, because she was
19 uncomfortable traveling alone; however, the friend was not detained but instead
20 released because he is a United States citizen.

21 49. Petitioner Alsaedi has not been permitted to call her family since being
22 detained by CBP. She suffers from high blood pressure and vision loss. Petitioner
23 Alsaedi remains detained by CBP at LAX Airport.

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

26 51. Petitioner Alsaedi remains detained by CBP at LAX Airport and is not
27 being allowed to enter the United States to meet with her children.
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1 **Petitioner Mustafa Abdul Wahed**

2 52. Petitioner Mustafa Abdul Wahed is a 50 year-old Syrian citizen with
3 permanent residence in Saudi Arabia. He has lived in Saudi Arabia since he was a
4 child, and currently lives in Gassim. Petitioner Wahed is Muslim.

5 53. Petitioner Wahed works for a Saudi company involved in date palm
6 farming, and was traveling from Jedda to the United States to observe date palm
7 farming operations in conjunction with universities and farmers in California and
8 Arizona.

9 54. He arrived at LAX Airport on January 28, 2017. He is traveling on a
10 business visa and his Syrian passport.

11 55. However, upon his arrival, CBP denied him entry into the United States
12 and detained him. He remains detained at LAX Airport. Petitioner was traveling with
13 three other coworkers; however, the coworkers were not detained but instead
14 released.

15 56. Since his detention by CBP, Petitioner Wahed has not been permitted to
16 call his coworkers or family since being detained by CBP.

17 57. Petitioner Wahed is not being permitted to meet with his attorneys who
18 are present at LAX Airport and have made multiple attempts to meet with him.

19 58. Petitioner Wahed suffers from high blood pressure and diabetes.

20 **Information Regarding Other Detainees**

21 50. Upon information and belief, a number of other individuals have been
22 detained under color of the EO in LAX. Some have been held for over 24 hours. They
23 have been denied access to phones to call their family members and the
24 Organizational Petitioners. They have been pressured by Respondents to withdraw
25 their applications for admission or otherwise waive their right to remain in the United
26 States.

27 **Plaintiff Organizations**

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1 59. Plaintiff Public Counsel is a 501(c)(3) non-profit organization located
2 at 610 S. Ardmore Avenue, Los Angeles, California. It has been in operation since
3 1970. Its primary goals are to advance the rights of children, immigrants fleeing
4 persecution and torture, and to foster economic and social justice in underserved
5 communities through quality legal representation. Public Counsel has diverted
6 significant resources, including staff time, to protect the rights of lawful immigrants
7 seeking entry to the United States through LAX Airport since the issuance of the
8 January 27, 2017 EO. Public Counsel attorneys were repeatedly denied access to
9 clients detained by U.S. Customs and Border Patrol in the days following the
10 issuance of the executive order.

11 60. Plaintiff American Immigration Lawyers Association (“AILA”) is a
12 voluntary bar association of more than 14,000 attorneys and law professors
13 practicing, researching, and teaching in the field of immigration and nationality law.
14 Its mission includes the advancement of the law pertaining to immigration and
15 nationality and the facilitation of justice in the field. AILA members regularly advise
16 and represent businesses, United States citizens, lawful permanent residents, and
17 foreign nationals regarding the application and interpretation of United States
18 immigration laws, including eligibility for visas and admission to the United States,
19 and the processes associated with applying for visas and admission at a United States
20 port of entry. AILA attorneys have diverted significant resources to protect the rights
21 of lawful immigrants seeking entry to the United States through LAX Airport since
22 the issuance of the January 27, 2017 EO. AILA attorneys have been repeatedly
23 denied access to clients detained by CBP in the days following the issuance of the
24 executive order.

25 61. Plaintiff Advancing Justice – LA is a non-profit, community based civil
26 rights and legal services organization. Founded in 1983, Advancing Justice – LA
27 serves more than 15,000 individuals and organizations every year. Through direct
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1 services, impact litigation, policy advocacy, leadership development, and capacity
2 building, Advancing Justice – LA’s mission is to focus on serving the civil rights and
3 legal services needs of the most vulnerable members of Asian American and NHPI
4 communities while also building a strong voice for civil rights and social justice. In
5 furtherance of its mission, Advancing Justice – LA represents clients in immigration
6 proceedings, and brings lawsuits to protect the civil and human rights of immigrants,
7 including the rights of refugees and legal permanent residents to come to and stay in
8 the United States. Advancing Justice – LA has been counsel of record in the case
9 *Valle del Sol v. Whiting* (D. Az., Case No. 10-01061), a case challenging Arizona’s
10 SB 1070, a law that curtails the Constitutional rights of individuals the state deems
11 are present in the country unlawfully.

12 62. As a result of the EO, Advancing Justice – LA has had to divert
13 resources to assist refugees and Lawful Permanent Residents (“LPRs”) who are
14 subject to deportation and detention under the EO. Advancing Justice has deployed
15 lawyers and legal advocates to LAX Airport, who have monitored flights arriving
16 with refugees and LPRs, assisted with legal intake, and monitored legal list serves to
17 help triage people to appropriate legal resources. Advancing Justice – LA have also
18 spent resources coordinating and deploying volunteer attorneys to LAX Airport,
19 particularly with Arabic and Farsi language capacity, to assist individuals subject to
20 the EO.

21 54. The Iranian American Bar Association (“IABA”) was formed in 2000
22 in the District of Columbia. IABA has grown to include eight chapters and a
23 membership of hundreds of prominent attorneys, members of the judiciary, and law
24 students across the nation, and is now the largest network of Iranian American
25 lawyers in the U.S. Its mission includes educating and informing the Iranian-
26 American community about legal issues of interest, advancing legal rights of the
27 community, and ensuring that the American public at large, local representatives, and
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1 other government officials are fully and accurately informed on legal matters of
2 interest and concern to the Iranian-American community. Since on or before January
3 28, 2017, attorneys from the IABA have been at LAX Airport attempting to assist
4 individuals denied entry and detained pursuant to the EO. They have been denied
5 access to interview individuals detained pursuant to Respondents' enforcement of the
6 order.

7 63. Plaintiff National Lawyers Guild, Los Angeles Chapter (NLG-LA) is an
8 organization of attorneys who seek, inter alia, to provide free legal assistance to
9 immigrants. Since on or before January 28, 2017, attorneys from the NLG-LA have
10 been at LAX Airport attempting to assist individuals denied entry and detained
11 pursuant to the EO.

12 64. Individual Petitioners and other detainees have now been detained for
13 an extended period of time solely pursuant to the EO, despite the fact that
14 Respondents lack authority to remove them under that EO. Petitioners have also been
15 denied access to legal counsel from Organizational Petitioners. Absent access to their
16 counsel, Individual Petitioners and other individuals detained at LAX Airport cannot
17 meaningfully understand their legal rights and obligations—and therefore they
18 cannot make determinations about what legal proceedings to pursue, including
19 whether or not to withdraw their applications for admission, as . Moreover, if
20 removed from the United States, Individual Petitioners and other individuals detained
21 at LAX Airport are uncertain when or whether they will be permitted to return to the
22 United States. Similarly, if removed from the United States, Individual Petitioners
23 and other individuals detained at LAX Airport may lose material legal rights.
24 Respondents may later argue, for example, that there are legal distinctions to be
25 drawn between individuals within the United States and those outside the United
26 States. Finally, because Petitioner Organizations and other attorneys are being denied
27 access to individuals detained at LAX Airport, their status is unknown, and there is
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1 the possibility that Individual Petitioners or other individuals detained therein have
2 claims for asylum or other form of protection in the United States, and that absent
3 access to counsel, they would be denied the opportunity to request such relief.

4 **CAUSES OF ACTION**

5 **COUNT ONE**

6 **FIFTH AMENDMENT DUE PROCESS**

7 **ACCESS TO COUNSEL**

8 65. Plaintiffs-Petitioners repeat and incorporate by reference each and every
9 allegation contained in the preceding paragraphs as if fully set forth herein.

10 66. Defendants-Respondents' acts of preventing attorneys to access
11 Individual Petitioners and other individuals detained in their custody at LAX Airport
12 violate the Due Process Clause of the Fifth Amendment.

13 **COUNT TWO**

14 **ADMINISTRATIVE PROCEDURE ACT**

15 **ACCESS TO COUNSEL**

16 67. Plaintiffs-Petitioners repeat and incorporate by reference each and every
17 allegation contained in the preceding paragraphs as if fully set forth herein.

18 68. Defendants-Respondents' acts of preventing attorneys to access
19 Individual Petitioners and other individuals detained in their custody at LAX Airport
20 violate Section 555(b) of the Administrative Procedure Act.

21 **COUNT THREE**

22 **IMMIGRATION AND NATIONALITY ACT**

23 **ACCESS TO COUNSEL**

24 69. Plaintiffs-Petitioners repeat and incorporate by reference each and every
25 allegation contained in the preceding paragraphs as if fully set forth herein.

26 70. Defendants-Respondents' acts of preventing attorneys to access
27 Individual Petitioners and other individuals detained in their custody at LAX Airport
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1 violate 8 C.F.R. § 292.5(b), and the statutory authority from which that regulation
2 derives, 8 U.S.C. § 1103.

3 **COUNT FOUR**

4 **ARBITRARY DETENTION IN VIOLATION OF DUE PROCESS**

5 71. Plaintiffs-Petitioners repeat and incorporate by reference each and every
6 allegation contained in the preceding paragraphs as if fully set forth herein.

7 72. Respondents have detained individual Petitioners and other detainees
8 without legal authority, apparently under color of the EO, in violation of the Due
9 Process Clause of the Fifth Amendment.

10 **COUNT FIVE**

11 **FIRST AMENDMENT – ESTABLISHMENT CLAUSE**

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

14 74. The EO exhibits hostility to a specific religious faith, Islam, and gives
15 preference to other religious faiths, principally Christianity. Individual Petitioners'
16 detention based on the EO therefore violates the Establishment Clause of the First
17 Amendment by not pursuing a course of neutrality with regard to different religious
18 faiths.

19 **COUNT SIX**

20 **FIFTH AMENDMENT – EQUAL PROTECTION**

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

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

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

4 78. Respondents have demonstrated an intent to discriminate against
5 Petitioners on the basis of religion through repeated public statements that make clear
6 the EO was designed to prohibit the entry of Muslims to the United States. *See*
7 Michael D. Shear & Helene Cooper, *Trump Bars Refugees and Citizens of 7 Muslim*
8 *Countries*, N.Y. Times (Jan. 27, 2017), (“[President Trump] ordered that Christians
9 and others from minority religions be granted priority over Muslims.”); Carol
10 Morello, *Trump Signs Order Temporarily Halting Admission of Refugees, Promises*
11 *Priority for Christians*, Wash. Post (Jan. 27, 2017).

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

25 80. Here, President Donald Trump and senior staff have made clear that EO
26 will be applied to primarily exclude individuals on the basis of their national origin
27 and religion. *See, e.g.*, Donald J. Trump, *Donald J. Trump Statement On Preventing*
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1 *Muslim Immigration*, (Dec. 7, 2015), [https://www.donaldjtrump.com/press-](https://www.donaldjtrump.com/press-releases/donald-j.-trump-statement-on-preventing-muslim-immigration)
2 releases/donald-j.-trump-statement-on-preventing-muslim-immigration (“Donald J.
3 Trump is calling for a total and complete shutdown of Muslims entering the United
4 States until our country's representatives can figure out what is going on.”); Abby
5 Phillip and Abigail Hauslohner, *Trump on the Future of Proposed Muslim Ban,*
6 *Registry: ‘You know my plans’*, Wash. Post (Dec. 22, 2016). Further, the President
7 has promised that preferential treatment will be given to Christians, unequivocally
8 demonstrating the special preferences and discriminatory impact that the EO has
9 upon Petitioner. *See supra*.

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

13 **COUNT SEVEN**

14 **ADMINISTRATIVE PROCEDURE ACT**

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

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

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

23 85. The INA forbids discrimination in issuance of visas based on a person’s
24 race, nationality, place of birth, or place of residence. 8 U.S.C. § 1152(a)(1)(A).

25 86. Respondents’ actions in detaining and mistreating Petitioners were
26 arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,
27 in violation of APA § 706(2)(A); contrary to constitutional right, power, privilege,
28

1 or immunity, in violation of APA § 706(2)(B); in excess of statutory jurisdiction,
2 authority, or limitations, or short of statutory right, in violation of APA § 706(2)(C);
3 and without observance of procedure required by law, in violation of § 706(2)(D).

4 **COUNT EIGHT**

5 **RELIGIOUS FREEDOM RESTORATION ACT**

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

8 88. The EO will have the effect of imposing a special disability on the basis
9 of religious views or religious status, by withdrawing an important immigration
10 benefit principally from Muslims on account of their religion. In doing so, the EO
11 places a substantial burden on Individual Petitioners’ exercise of religion in a way
12 that is not the least restrictive means of furthering a compelling governmental
13 interest.

14 **COUNT NINE**

15 **COERCION TO ABANDON REQUEST FOR ADMISSION**

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

18 90. Due process and governing regulations specifically prevent Petitioners
19 from being coerced into abandoning their ability to enter the United States. *See* 8
20 C.F.R. § 287.8(c)(2)(vii) (“The use of threats, coercion, or physical abuse by the
21 designated immigration officer to induce a suspect to waive his or her rights or to
22 make a statement is prohibited.”).

23 **COUNT TEN**

24 **IMMIGRATION AND NATIONALITY ACT**

25 **8 U.S.C. §§ 1101(a)(26), 1184, 1101(a)(15)(B)**

26 91. Individual Petitioners repeat and incorporate by reference each and
27 every allegation contained in the preceding paragraphs as if fully set forth herein.
28

1 Individual Petitioners have valid U.S. visas, and Respondents' denial of their
2 admission into the United States violates 8 U.S.C. §§ 1101(a)(26), 1184,
3 1101(a)(15)(B).

4 **PRAYER FOR RELIEF**

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

- 6 1) Issue a Writ of Habeas Corpus requiring Respondents to release the
7 Individual Petitioners;
 - 8 2) Issue an injunction ordering Respondents not to detain the Individual
9 Petitioners solely on the basis of the EO;
 - 10 3) Enter an Order declaring that Respondents' detention of the Individual
11 Petitioners is and will be unauthorized by statute and contrary to law;
 - 12 4) Issue an injunction prohibiting Respondents from accepting a voluntary
13 withdrawal of an application for admission or a voluntary relinquishment
14 of legal status in the United States;
 - 15 5) Issue an injunction requiring Respondents to inform Petitioners that they
16 are legally entitled to enter the United States as nonimmigrant visa
17 holders, and that no federal official can or will take retaliatory action in
18 response to Petitioners' refusal to withdraw their applications for
19 admission or refusal to relinquish legal status in the United States;
 - 20 6) Issue declaratory relief holding that Respondents have an obligation under
21 the governing law to inform all individuals detained within their custody
22 that the Executive Order has been stayed, and that there can be no
23 retaliatory action taken in response to Petitioners' refusal to withdraw
24 application for admission or refusal to relinquish legal status in the United
25 States;
 - 26 7) Issue an injunction ordering that Respondents shall permit lawyers access
27 to all individuals detained at LAX Airport;
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- 8) Issue an injunction ordering that Respondents shall permit Individual Petitioners and other detainees access to phones with which to contact their friends, families, and Organizational Petitioners;
- 9) Issue an Order prohibiting Respondents from denying Petitioners admission to the United States pursuant to their status as nonimmigrants and the terms of the Immigration and Nationality Act;
- 10) Award Petitioners reasonable costs and attorneys' fees; and
- 11) Grant any other and further relief that this Court may deem fit and proper.

DATED: January 29, 2017

Respectfully submitted,

ACLU FOUNDATION OF SOUTHERN
CALIFORNIA

LAW OFFICES OF STACY TOLCHIN

/s/ Carmen Iguina

CARMEN IGUINA
