

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

Alexandria Division

TAREQ AQEL MOHAMMED AZIZ, et al.,

Petitioners,

v.

DONALD TRUMP, President of the United States; U.S. DEPARTMENT OF HOMELAND SECURITY; U.S. CUSTOM AND BORDER PROTECTION; JOHN KELLY, Secretary of DHS; KEVIN K. MCALEENAN, Acting Commissioner of CBP; and WAYNE BIONDI, Customs and Border Protection (CBP) Port Director of the Area Port of Washington, Dulles.

Respondents.

Civil Action No. 1:17-cv-00116

OSMAN NASRELDIN AND SAHAR KAMAL AHMED FADUL’S MOTION TO INTERVENE

Osman Nasreldin and Sahar Kamal Ahmed Fadul, by their undersigned counsel, Timothy J. Heaphy, move to intervene as plaintiffs in the above-styled action, pursuant to Rule 24 of the Federal Rules of Civil Procedure. Like the named petitioner-plaintiffs in this case, Ms. Fadul was unlawfully detained and removed on or around January 28, 2017 by United States Customs and Border Protection (CBP) agents at Washington-Dulles International Airport, operating under the recent Executive Order, “Protecting the Nation from Foreign Terrorist Entry into the United States,” signed by President Donald J. Trump on January 27, 2017.

Ms. Fadul, whose fiancé, Mr. Nasreldin, is a United States citizen and a Colorado resident, was traveling to the United States from Addis Ababa, Ethiopia on a valid K-1 visa.

After arriving at Washington-Dulles, Ms. Falud was stopped by CBP agents, and forced to surrender her visa and accompanying immigration documentation. Ms. Falud was then unlawfully detained at Washington-Dulles, denied access to either a telephone or an interpreter, and ultimately informed that her visa was “cancelled.” CBP agents then compelled Ms. Falud to sign a form that rescinded her visa application, and summarily deposited her on the next available flight to Addis Ababa.

Based on the significant factual similarity between these events and the allegations made by the petitioner-plaintiffs, as well as the common claims to be asserted by Mr. Nasreldin and Ms. Fadul (collectively, the “Intervenors”) and the petitioner-plaintiffs, we respectfully move the Court to grant the instant motion to intervene in this case as a matter of right under Rule 24(a).¹ More specifically, intervention of right is appropriate because (1) the Intervenors have a significant protectable interest in this case, (2) failure to allow intervention will impede the ability of the Intervenors to protect that interest, and (3) no existing party adequately represents their interests.

The Intervenors have a significant protectable interest in this case that supports intervention of right under Rule 24(a). Like the petitioner-plaintiffs in this case, the Intervenors suffered concrete harm, giving rise to various causes of action against the respondents, including, *inter alia*, claims under the First and Fifth Amendments to the United States Constitution, the Immigration and Nationality Act, the Administrative Procedure Act, and the Religious Freedom

¹ Rule 24(a) states, in pertinent part, that “[o]n timely motion, the court must permit anyone to intervene who . . . (2) claims an interest relating to the . . . transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant’s ability to protect its interest, unless existing parties adequately represent that interest.” Fed. R. Civ. P. 24(a).

Restoration Act. Each of these claims arise from the issuance and implementation of the Executive Order.

Failure to grant this motion will also impede the ability of the Intervenors to vindicate their protectable interest. In the course of adjudicating this dispute, the Court is likely to determine the legality of the Executive Order, and evaluate whether the implementation of the Executive Order violated the petitioner-plaintiffs' rights. These findings would clearly affect the ability of the Intervenors to pursue their claims. Finally, no existing party in this case adequately represents the interests of the Intervenors. While the named petitioner-plaintiffs and Ms. Fadul were both unjustly ensnared by the Executive Order, Ms. Fadul traveled to the United States on a K-1 "fiancé" visa, while the named petitioner-plaintiffs traveled to the United States on an "immigrant" visa, based on their father's United States citizenship. Additionally, the harm suffered by Mr. Nasreldin, as Ms. Fadul's fiancé, is entirely distinct from any harm suffered by the petitioner-plaintiffs. Therefore, this Court should allow Mr. Nasreldin and Ms. Fadul to intervene in this case, pursuant to Rule 24(a).

In the alternative, Mr. Nasreldin and Ms. Fadul seek permissive intervention under Rule 24(b)(1).² Federal courts may allow "anyone" to intervene in a civil action who has a claim sharing a "common question of law or fact." Fed. R. Civ. P. 24(b)(1)(B). Here, the question of whether the Executive Order was lawful, and whether various agencies of the Executive Branch violated the constitutional and statutory rights of the petitioner-plaintiffs in this case, goes to the heart of the Intervenors' claims, and clearly falls within the language of Rule 24(b). Like the petitioner-plaintiffs, Ms. Fadul traveled to the United States after receiving a valid visa from a

² Rule 24(b) states, in pertinent part, that "(1) ... the court may permit anyone to intervene who . . . (B) has a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b). Rule 24(b)(3) requires the court to consider whether "the intervention will unduly delay or prejudice the adjudication of the original parties' rights."

United States embassy. Before receiving her visa, she and Mr. Nasreldin complied in good faith with United States immigration procedures, and were subject to extensive vetting. Ms. Fadul departed the Sudan, and then Addis Ababa, anticipating a reunion with her fiancé. Instead, under color of the Executive Order, Ms. Fadul was detained, coerced, and shipped back to Ethiopia, in clear violation of the United States Constitution and federal law. If this Court adjudicates the petitioner-plaintiffs' claims, the Court's ruling will inevitably affect Ms. Fadul's ability to obtain relief for these unconscionable actions. Further, there is no evidence that permitting intervention under these circumstances will either delay the adjudication of this case, or prejudice any of the current parties. Thus, the Court should permit intervention under Rule 24(b).

For the reasons set forth here and in the accompanying memorandum of law in support of intervention, the Intervenors respectfully request that the Court grant the motion to intervene. We have attached a draft Order to that effect. Counsel for the Intervenors has conferred with counsel for the petitioner-plaintiffs, and counsel for the Commonwealth of Virginia, which has also moved to intervene in this action. Both petitioner-plaintiffs and the Commonwealth of Virginia have consented to intervention. While counsel has also attempted to ascertain the position of the defendants on the instant Motion to Intervene, we have not received information regarding the defendants' position on the motion.

The Intervenors also request a hearing on this motion to intervene. The Intervenors request leave of the Court to appear at the hearing on the Commonwealth of Virginia's *Motion to Intervene*, scheduled for Friday, February 3, 2017. The Commonwealth of Virginia does not oppose this request.

Dated: February 2, 2017

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I hereby certify that on the February 2, 2017, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to all counsel of record.

_____/s/_____
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