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THE WHITE HOUSE
Office of the Press Secretary

For Immediate Release

January 27, 2017

EXECUTIVE ORDER

- - - - -

PROTECTING THE NATION FROM FOREIGN TERRORIST
ENTRY INTO THE UNITED STATES

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.*, and section 301 of title 3, United States Code, and to protect the American people from terrorist attacks by foreign nationals admitted to the United States, it is hereby ordered as follows:

Section 1. Purpose. The visa-issuance process plays a crucial role in detecting individuals with terrorist ties and stopping them from entering the United States. Perhaps in no instance was that more apparent than the terrorist attacks of September 11, 2001, when State Department policy prevented consular officers from properly scrutinizing the visa applications of several of the 19 foreign nationals who went on to murder nearly 3,000 Americans. And while the visa-issuance process was reviewed and amended after the September 11 attacks to better detect would-be terrorists from receiving visas, these measures did not stop attacks by foreign nationals who were admitted to the United States.

Numerous foreign-born individuals have been convicted or implicated in terrorism-related crimes since September 11, 2001, including foreign nationals who entered the United States after receiving visitor, student, or employment visas, or who entered through the United States refugee resettlement program. Deteriorating conditions in certain countries due to war, strife, disaster, and civil unrest increase the likelihood that terrorists will use any means possible to enter the United States. The United States must be vigilant during the visa-issuance process to ensure that those approved for admission do not intend to harm Americans and that they have no ties to terrorism.

In order to protect Americans, the United States must ensure that those admitted to this country do not bear hostile attitudes toward it and its founding principles. The United States cannot, and should not, admit those who do not support the Constitution, or those who would place violent ideologies over American law. In addition, the United States should not admit those who engage in acts of bigotry or hatred (including "honor" killings, other forms of violence against women, or the persecution of those who practice religions different from their own) or those who would oppress Americans of any race, gender, or sexual orientation.

Sec. 2. Policy. It is the policy of the United States to protect its citizens from foreign nationals who intend to commit terrorist attacks in the United States; and to prevent the admission of foreign nationals who intend to exploit United States immigration laws for malevolent purposes.

Sec. 3. Suspension of Issuance of Visas and Other Immigration Benefits to Nationals of Countries of Particular Concern. (a) The Secretary of Homeland Security, in consultation with the Secretary of State and the Director of National Intelligence, shall immediately conduct a review to determine the information needed from any country to adjudicate any visa, admission, or other benefit under the INA (adjudications) in order to determine that the individual seeking the benefit is who the individual claims to be and is not a security or public-safety threat.

(b) The Secretary of Homeland Security, in consultation with the Secretary of State and the Director of National Intelligence, shall submit to the President a report on the results of the review described in subsection (a) of this section, including the Secretary of Homeland Security's determination of the information needed for adjudications and a list of countries that do not provide adequate information, within 30 days of the date of this order. The Secretary of Homeland Security shall provide a copy of the report to the Secretary of State and the Director of National Intelligence.

(c) To temporarily reduce investigative burdens on relevant agencies during the review period described in subsection (a) of this section, 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, pursuant to section 212(f) of the INA, 8 U.S.C. 1182(f), I hereby proclaim 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)(12), would be detrimental to the interests of the United States, and I hereby suspend entry into the United States, as immigrants and nonimmigrants, of such persons for 90 days from the date of this order (excluding those foreign nationals traveling on diplomatic visas, North Atlantic Treaty Organization visas, C-2 visas for travel to the United Nations, and G-1, G-2, G-3, and G-4 visas).

(d) Immediately upon receipt of the report described in subsection (b) of this section regarding the information needed for adjudications, the Secretary of State shall request all foreign governments that do not supply such information to start providing such information regarding their nationals within 60 days of notification.

(e) After the 60-day period described in subsection (d) of this section expires, the Secretary of Homeland Security, in consultation with the Secretary of State, shall submit to the President a list of countries recommended for inclusion on a Presidential proclamation that would prohibit the entry of foreign nationals (excluding those foreign nationals traveling on diplomatic visas, North Atlantic Treaty Organization visas, C-2 visas for travel to the United Nations, and G-1, G-2, G-3, and G-4 visas) from countries that do not provide the

information requested pursuant to subsection (d) of this section until compliance occurs.

(f) At any point after submitting the list described in subsection (e) of this section, the Secretary of State or the Secretary of Homeland Security may submit to the President the names of any additional countries recommended for similar treatment.

(g) Notwithstanding a suspension pursuant to subsection (c) of this section or pursuant to a Presidential proclamation described in subsection (e) of this section, 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.

(h) The Secretaries of State and Homeland Security shall submit to the President a joint report on the progress in implementing this order within 30 days of the date of this order, a second report within 60 days of the date of this order, a third report within 90 days of the date of this order, and a fourth report within 120 days of the date of this order.

Sec. 4. Implementing Uniform Screening Standards for All Immigration Programs. (a) The Secretary of State, the Secretary of Homeland Security, the Director of National Intelligence, and the Director of the Federal Bureau of Investigation shall implement a program, as part of the adjudication process for immigration benefits, to identify individuals seeking to enter the United States on a fraudulent basis with the intent to cause harm, or who are at risk of causing harm subsequent to their admission. This program will include the development of a uniform screening standard and procedure, such as in-person interviews; a database of identity documents proffered by applicants to ensure that duplicate documents are not used by multiple applicants; amended application forms that include questions aimed at identifying fraudulent answers and malicious intent; a mechanism to ensure that the applicant is who the applicant claims to be; a process to evaluate the applicant's likelihood of becoming a positively contributing member of society and the applicant's ability to make contributions to the national interest; and a mechanism to assess whether or not the applicant has the intent to commit criminal or terrorist acts after entering the United States.

(b) The Secretary of Homeland Security, in conjunction with the Secretary of State, the Director of National Intelligence, and the Director of the Federal Bureau of Investigation, shall submit to the President an initial report on the progress of this directive within 60 days of the date of this order, a second report within 100 days of the date of this order, and a third report within 200 days of the date of this order.

Sec. 5. Realignment of the U.S. Refugee Admissions Program for Fiscal Year 2017. (a) The Secretary of State shall suspend the U.S. Refugee Admissions Program (USRAP) for 120 days. During the 120-day period, the Secretary of State, in conjunction with the Secretary of Homeland Security and in consultation with the Director of National Intelligence, shall

review the USRAP application and adjudication process to determine what additional procedures should be taken to ensure that those approved for refugee admission do not pose a threat to the security and welfare of the United States, and shall implement such additional procedures. Refugee applicants who are already in the USRAP process may be admitted upon the initiation and completion of these revised procedures. Upon the date that is 120 days after the date of this order, the Secretary of State shall resume USRAP admissions only for nationals of countries for which the Secretary of State, the Secretary of Homeland Security, and the Director of National Intelligence have jointly determined that such additional procedures are adequate to ensure the security and welfare of the United States.

(b) Upon the resumption of USRAP admissions, the Secretary of State, in consultation with the Secretary of Homeland Security, is further directed to make changes, to the extent permitted by law, 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. Where necessary and appropriate, the Secretaries of State and Homeland Security shall recommend legislation to the President that would assist with such prioritization.

(c) Pursuant to section 212(f) of the INA, 8 U.S.C. 1182(f), I hereby proclaim that the entry of nationals of Syria as refugees is detrimental to the interests of the United States and thus suspend any such entry until such time as I have determined that sufficient changes have been made to the USRAP to ensure that admission of Syrian refugees is consistent with the national interest.

(d) Pursuant to section 212(f) of the INA, 8 U.S.C. 1182(f), I hereby proclaim that the entry of more than 50,000 refugees in fiscal year 2017 would be detrimental to the interests of the United States, and thus suspend any such entry until such time as I determine that additional admissions would be in the national interest.

(e) Notwithstanding the temporary suspension imposed pursuant to subsection (a) of this section, 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, when admitting the person would enable the United States to conform its conduct to a preexisting international agreement, or when the person is already in transit and denying admission would cause undue hardship -- and it would not pose a risk to the security or welfare of the United States.

(f) The Secretary of State shall submit to the President an initial report on the progress of the directive in subsection (b) of this section regarding prioritization of claims made by individuals on the basis of religious-based persecution within 100 days of the date of this order and shall submit a second report within 200 days of the date of this order.

(g) It is the policy of the executive branch that, to the extent permitted by law and as practicable, State and local jurisdictions be granted a role in the process of determining the placement or settlement in their jurisdictions of aliens eligible to be admitted to the United States as refugees. To that end, the Secretary of Homeland Security shall examine existing law to determine the extent to which, consistent with applicable law, State and local jurisdictions may have greater involvement in the process of determining the placement or resettlement of refugees in their jurisdictions, and shall devise a proposal to lawfully promote such involvement.

Sec. 6. Rescission of Exercise of Authority Relating to the Terrorism Grounds of Inadmissibility. The Secretaries of State and Homeland Security shall, in consultation with the Attorney General, consider rescinding the exercises of authority in section 212 of the INA, 8 U.S.C. 1182, relating to the terrorism grounds of inadmissibility, as well as any related implementing memoranda.

Sec. 7. Expedited Completion of the Biometric Entry-Exit Tracking System. (a) The Secretary of Homeland Security shall expedite the completion and implementation of a biometric entry-exit tracking system for all travelers to the United States, as recommended by the National Commission on Terrorist Attacks Upon the United States.

(b) The Secretary of Homeland Security shall submit to the President periodic reports on the progress of the directive contained in subsection (a) of this section. The initial report shall be submitted within 100 days of the date of this order, a second report shall be submitted within 200 days of the date of this order, and a third report shall be submitted within 365 days of the date of this order. Further, the Secretary shall submit a report every 180 days thereafter until the system is fully deployed and operational.

Sec. 8. Visa Interview Security. (a) The Secretary of State shall immediately suspend the Visa Interview Waiver Program and ensure compliance with section 222 of the INA, 8 U.S.C. 1222, which requires that all individuals seeking a nonimmigrant visa undergo an in-person interview, subject to specific statutory exceptions.

(b) To the extent permitted by law and subject to the availability of appropriations, the Secretary of State shall immediately expand the Consular Fellows Program, including by substantially increasing the number of Fellows, lengthening or making permanent the period of service, and making language training at the Foreign Service Institute available to Fellows for assignment to posts outside of their area of core linguistic ability, to ensure that non-immigrant visa-interview wait times are not unduly affected.

Sec. 9. Visa Validity Reciprocity. The Secretary of State shall review all nonimmigrant visa reciprocity agreements to ensure that they are, with respect to each visa classification, truly reciprocal insofar as practicable with respect to validity period and fees, as required by sections 221(c) and 281 of the INA, 8 U.S.C. 1201(c) and 1351, and other treatment. If a country does not treat United States nationals seeking

nonimmigrant visas in a reciprocal manner, the Secretary of State shall adjust the visa validity period, fee schedule, or other treatment to match the treatment of United States nationals by the foreign country, to the extent practicable.

Sec. 10. Transparency and Data Collection. (a) To be more transparent with the American people, and to more effectively implement policies and practices that serve the national interest, the Secretary of Homeland Security, in consultation with the Attorney General, shall, consistent with applicable law and national security, collect and make publicly available within 180 days, and every 180 days thereafter:

(i) information regarding the number of foreign nationals in the United States who have been charged with terrorism-related offenses while in the United States; convicted of terrorism-related offenses while in the United States; or removed from the United States based on terrorism-related activity, affiliation, or material support to a terrorism-related organization, or any other national security reasons since the date of this order or the last reporting period, whichever is later;

(ii) information regarding the number of foreign nationals in the United States who have been radicalized after entry into the United States and engaged in terrorism-related acts, or who have provided material support to terrorism-related organizations in countries that pose a threat to the United States, since the date of this order or the last reporting period, whichever is later; and

(iii) information regarding the number and types of acts of gender-based violence against women, including honor killings, in the United States by foreign nationals, since the date of this order or the last reporting period, whichever is later; and

(iv) any other information relevant to public safety and security as determined by the Secretary of Homeland Security and the Attorney General, including information on the immigration status of foreign nationals charged with major offenses.

(b) The Secretary of State shall, within one year of the date of this order, provide a report on the estimated long-term costs of the USRAP at the Federal, State, and local levels.

Sec. 11. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP

THE WHITE HOUSE,
January 27, 2017.

#

ARRIVAL 30 JANUARY												
PF #	DOA PoE	Arr Time	Carrier	Case	Family Name	First Name	Middle Name	Birthdate	Relation	Nationality	Size	Po E
(b)(6), (b)(7)(C)	30-Jan-2017	17:45	AA		(b)(6), (b)(7)(C)							
				(b)(7)(E)						SV	1	MIA
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ARRIVAL 1 FEBRUARY												
PF #	DOA PoE	Arr Time	Carrier	Case	Family Name	First Name	Middle Name	Birthdate	Relation	Nationality	Size	Po E
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ARRIVAL 2 FEBRUARY												
PE #	DOA PoE	Arr Time	Carrier	Case	Family Name	First Name	Middle Name	Birthdate	Relation	Nationality	Size	Po E
(b)(6), (b)(7)(C)	2-Feb-2017	17:45	AA		(b)(6), (b)(7)(C)							
				(b)(7)(E)						SV	1	MIA
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										20		

From: HUTTON, JAMES R
Sent: Sunday, January 29, 2017 11:49 AM
To: HOFFMAN, TODD A; DIRECTORS FIELD OPS; EXECUTIVE DIRECTORS HQ; BORDER SECURITY ASST DIRECTORS; ENFORCEMENT PROGRAMS DIVISION
Cc: Owen, Todd C (AC OFO); WAGNER, JOHN P; (b)(6), (b)(7)(C)
Subject: RE: UPDATED Guidance on Executive Order "Protecting the Nation from Foreign Terrorist Entry into the United States"

DFO's

Kindly request that you all Enforcement Programs Division (group mailbox) to all waiver requests. This will help us track the waivers and alleviate field reporting.

Thank very much for all of your flexibility. We are striving not to burden the Field.

J. Ryan Hutton
 Deputy Executive Director
 Admissibility and Passenger Programs
 (b)(6), (b)(7)(C)
 Washington, DC

(b)(6), (b)(7)(C)



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From: HUTTON, JAMES R
Sent: Saturday, January 28, 2017 9:34 PM
To: HOFFMAN, TODD A; (b)(6), (b)(7)(C); DIRECTORS FIELD OPS
 <(b)(7)(E)> EXECUTIVE DIRECTORS HQ <(b)(7)(E)> BORDER SECURITY ASST DIRECTORS <(b)(7)(E)>
Cc: Owen, Todd C (AC OFO); (b)(6), (b)(7)(C); WAGNER, JOHN P; (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

Subject: UPDATED Guidance on Executive Order "Protecting the Nation from Foreign Terrorist Entry into the United States

Importance: High

DFO's

As a follow up from guidance sent last night.

(b)(5), (b)(7)(E)

(b)(5), (b)(7)(E)

:

(b)(6), (b)(7)(C)

(b)(5), (b)(7)(E)

(b)(5), (b)(6), (b)(7)(C), (b)(7)(E)

J. Ryan Hutton
Deputy Executive Director
Admissibility and Passenger Programs
(b)(6), (b)(7)(C)
Washington, DC



(b)(6), (b)(7)(C)



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From: HOFFMAN, TODD A

Sent: Saturday, January 28, 2017 1:07 AM

To: DIRECTORS FIELD OPS <(b)(7)(E)>; EXECUTIVE DIRECTORS HQ

<(b)(7)(E)> BORDER SECURITY ASST DIRECTORS

<(b)(7)(E)>

Cc: Owen, Todd C (AC OFO) <(b)(6), (b)(7)(C)>; WAGNER, JOHN P <(b)(6), (b)(7)(C)>

HUTTON, JAMES R <(b)(6), (b)(7)(C)>

(b)(6), (b)(7)(C)

Subject: Guidance on Executive Order "Protecting the Nation from Foreign Terrorist Entry into the United States

Importance: High

Directors,

I apologize for the delay. <(b)(5), (b)(7)(E)>

(b)(5), (b)(7)(E)

Memorandum For: Directors, Field Operations

From: Todd A. Hoffman
Executive Director
Admissibility and Passenger Programs
Office of Field Operations

Subject: Guidance on Executive Order "Protecting the Nation from Foreign Terrorist Entry into the United States"

(b)(5), (b)(7)(E)

(b)(5), (b)(6), (b)(7)(C), (b)(7)(E)

Todd A. Hoffman
Executive Director, Admissibility and Passenger Programs
Office of Field Operations
U.S. Customs and Border Protection

From: HUTTON, JAMES R
Sent: Saturday, January 28, 2017 9:34 PM
To: HOFFMAN, TODD A; DIRECTORS FIELD OPS; EXECUTIVE DIRECTORS HQ; BORDER SECURITY ASST DIRECTORS
Cc: Owen, Todd C (AC OFO); WAGNER, JOHN P; (b)(6), (b)(7)(C)
Subject: (b)(6), (b)(7)(C)
Attachments: UPDATED Guidance on Executive Order "Protecting the Nation from Foreign Terrorist Entry into the United States
 RE: EO 212(f) Exemption Request for (b)(6), (b)(7)(C) RE: Waiver Request for 212(1) in re: (b)(6), (b)(7)(C) EO 212(f) Waiver for (b)(6), (b)(7)(C) (MINOR)
Importance: High

DFO's

As a follow up from guidance sent last night. In addition to waivers for LPRs, the Secretary of Homeland Security has delegated waiver authority to the Commissioner of CBP for **only** the following categories of individuals subject to the EO:

- Returning Refugees (to include any 1st time refugees encountered);
- Returning Asylees;
- Individuals in possession of a valid I-512 issued by CIS;
- UAC

The request for said waiver will need to follow the below format sent initially to the below distro

- (b)(6), (b)(7)(C)
- EAC Owen
- DEAC Wagner
- XD Murdock
- XD Hoffman
- (a) DXD (b)(6), (b)(7)(C)
- DXD Hutton
- OFO Field Liaison

I have also attached some samples that were submitted for approval today.

Sample

Subject Line: EO 212(f) Exemption for LAST NAME, (f/n) First name

Waiver Narrative

OFO recommends that you (b)(5), (b)(6), (b)(7)(C), (b)(7)(E)

(b)(5), (b)(6), (b)(7)(C), (b)(7)(E)

(b)(5), (b)(6), (b)(7)(C), (b)(7)(E)

(b)(6), (b)(7)(C), (b)(7)(E)

J. Ryan Hutton
Deputy Executive Director
Admissibility and Passenger Programs
(b)(6), (b)(7)(C)
Washington, DC



(b)(6), (b)(7)(C)



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From: HOFFMAN, TODD A

Sent: Saturday, January 28, 2017 1:07 AM

To: DIRECTORS FIELD OPS (b)(7)(E) EXECUTIVE DIRECTORS HQ
(b)(7)(E) BORDER SECURITY ASST DIRECTORS

Cc: Owen, Todd C (AC OFO) <(b)(6), (b)(7)(C)> WAGNER, JOHN P <(b)(6), (b)(7)(C)>
HUTTON, JAMES R <(b)(6), (b)(7)(C)>

(b)(6), (b)(7)(C)

Subject: Guidance on Executive Order "Protecting the Nation from Foreign Terrorist Entry into the United States

Importance: High

Directors,

I apologize for the delay. Please be advised that you have unilateral authority to approve exemptions to the Executive Order for LPRs, no State Department approval required. The exemption process for other categories of aliens as outlined in the policy guidance currently requires the approval of the acting Commissioner. Further guidance for these exemptions is forthcoming.

Memorandum For: Directors, Field Operations

From: Todd A. Hoffman
Executive Director

Admissibility and Passenger Programs
Office of Field Operations

Subject: Guidance on Executive Order “Protecting the Nation from Foreign Terrorist Entry into the United States”

Effective immediately, and pursuant to Executive Order entitled, “*Protecting the Nation from Foreign Terrorist Entry into the United States*” (January 27, 2017), all entry into the United States for aliens who are nationals from Iran, Iraq, Libya, Somalia, Sudan, Syria and Yemen is hereby suspended in accordance with Section 212(f) of the INA. This includes all non-immigrant classifications, with the exception of those foreign nationals traveling on diplomatic visas, NATO visas, C2 visas for travel to the United Nations, G1, G2, G-3, and G-4 visas. This also includes all immigrant classes of admission, returning resident aliens refugees and asylees.

The Department of State has provided CBP with a letter provisionally revoking all immigrant and non-immigrant visas for nationals of Iran, Iran, Libya, Somalia, Sudan, and Yemen. Revocations may not yet be annotated in the system.

Wherever possible, (b)(7)(E)

(b)(7)(E)

Should aliens, subject to the Executive Order, arrive at the port of entry, CBP officers are instructed to take the following actions:

Applicants bearing Non-Immigrant Visas and First Time Arriving Immigrants:

- (1) All case processing will be recorded in (b)(7)(E) system, according to current policy/procedure.
- (2) Subjects will be allowed to withdraw their application for admission on Form I-275, **without a sworn statement**. All other procedures pertaining to the processing of Form I-275 withdrawal cases apply.
- (3) Should the alien decline to withdraw their application for admission, the alien will be placed in Expedited Removal in accordance with standard operating procedures.
- (4) Aliens claiming fear of return will be referred to an asylum officer, and processed for Expedited Removal/Credible Fear (ERF). Aliens processed under ERF procedures will be referred to ERO for detention. Field Offices should clearly indicate to both CIS and ERO that aliens are subject to Executive Order during the referral process.

Returning Residents,

- (1) Lawful Permanent Residents should be referred for (b)(7)(E) and held at the port of entry until an exemption to the Executive Order is granted. The authority to grant an exemption has been delegated to the Commissioner of CBP, and further delegated to Directors of Field Operations and SES Port Directors. Once an exemption has been granted results of (b)(7)(E) should be notated in (b)(7)(E) with the following language: *Individual is subject to Presidential Executive Order and barred from entry pursuant to 212(f) of the INA but has been granted an exemption per (insert DFO/SES PD).*

Refugees, Asylees, Unaccompanied Children, and subjects returning to the US with Advanced Parole:

- (1) Aliens from the above group who are prevented from entry solely as a result of the Executive Order, should be referred for (b)(7)(E) and held at the port of entry until such time as an exemption to the Executive Order can be obtained. This exemption falls to the Secretary of State and Secretary of Homeland Security. Further guidance will be forthcoming on processing these exemptions.

Individuals who fall within any of the above may not be paroled, which includes port parole and deferred inspection. To the extent that there is an emergent medical issue related to an alien who falls within the Executive Order, CBP officers must accompany the alien for any medical care.

Returning aliens ineligible who withdraw their application for admission:

- (1) Aliens arriving via air or sea: Commercial carriers are required to remove foreign aliens found ineligible for entry under this order pursuant to 241(c)(1) of the INA.
- (2) Aliens arriving via land will be returned per current established procedures with the contiguous country.

Please ensure that this memorandum and attached muster are disseminated to all ports of entry within your jurisdiction. If you have any questions or require additional information, please contact

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C) (A) Director, Enforcement Programs Division, at (b)(6), (b)(7)(C)

Todd A. Hoffman
Executive Director, Admissibility and Passenger Programs
Office of Field Operations
U.S. Customs and Border Protection

From: HUTTON, JAMES R
Sent: Saturday, January 28, 2017 12:58 AM
To: HOFFMAN, TODD A
Cc: (b)(6), (b)(7)(C)
Subject: Signed memo
Attachments: Executive Order - Protecting the Nation from Foreign Terrorist Entry into the United States.pdf

J. Ryan Hutton
Deputy Executive Director
Admissibility and Passenger Programs

(b)(6), (b)(7)(C)
Washington, DC

(b)(6), (b)(7)(C)



Warning: This document is UNCLASSIFIED//FOR OFFICIAL USE ONLY (U//FOUO). It contains information that may be exempt from public release under the Freedom of Information Act (5 U.S.C. 552). It is to be controlled, stored, handled, transmitted, distributed, and disposed of in accordance with DHS policy relating to FOUO information and is not to be released to the public or other personnel who do not have a valid "need-to-know" without prior approval of an authorized DHS official. No portion of this report should be furnished to the media, either in written or verbal form. *This document, and any attachment(s) hereto, may contain confidential and/or sensitive U.S. Government information, and is not for release, review, retransmission, dissemination or use by anyone other than the intended recipient(s). Please notify the sender if this email has been misdirected and immediately destroy all originals and copies of the original. Any disclosure of this document must be approved by U.S. Customs and Border Protection.*

From: DURST, CASEY OWEN
Sent: Sunday, January 29, 2017 9:20 PM
To: HUTTON, JAMES R
Subject: FW: Situational Awareness: Philadelphia, PA: Syrian National Crewmembers (b)(4), (b)(6), (b)(7)(C), (b)(7)(E)
 (b)(4), (b)(6), (b)(7)(C), (b)(7)(E) in AOR on 01/30/17
Attachments: Situational Awareness mv (b)(4), (b)(6), (b)(7)(C), (b)(7)(E).pdf;
 (b)(4), (b)(6), (b)(7)(C), (b)(7)(E) Crew Passports.pdf

FYSA – we will be submitted a similar package for the other vessel arriving on 1/31 (b)(4), (b)(6), (b)(7)(C), (b)(7)(E).

Casey Owen Durst
 Director, Field Operations
 Baltimore Field Office

(b)(6), (b)(7)(C)

“This document and any attachment(s) may contain restricted, sensitive, and/or law enforcement-sensitive information belonging to the U.S. Government. It is not for release, review, retransmission, dissemination, or use by anyone other than the intended recipient.”

From: (b)(6), (b)(7)(C)
Sent: Sunday, January 29, 2017 7:30 PM
To: OFO-FIELD LIAISON (b)(7)(E); OFO-OPS-CAT (b)(7)(E)
Cc: DURST, CASEY OWEN (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

Subject: Situational Awareness: Philadelphia, PA: Syrian National Crewmembers (b)(4), (b)(6), (b)(7)(C), (b)(7)(E) in AOR on 01/30/17

Field Liaison and OPS CAT,

Please see the below bullets detailing the impending arrival of cargo vessel into Philadelphia with 9 Syrian crew on board:

**Baltimore Field Office
 Area Port of Philadelphia**

01/29/2017

Title: (b)(4), (b)(6), (b)(7)(C), (b)(7)(E) with Detained Syrian Crewmembers (No Visas) arriving to load out/exported from Penn Terminal to (b)(4), (b)(6), (b)(7)(C), (b)(7)(E)

Summary: (b)(4), (b)(6), (b)(7)(C), (b)(7)(E) is due to arrive into PENN Terminal, Eddystone, PA Area Port of Philadelphia on Monday January 30, 2017 at 1200 hours dockside. The vessel is to load out only (b)(4), (b)(6), (b)(7)(C), (b)(7)(E) destined for (b)(4), (b)(6), (b)(7)(C), (b)(7)(E). On board the vessel are a total of twenty-four (24) crew. Nine (9) of the 24 crewmembers are Syrian Nationals without Visas. CBP Philadelphia worked with the (b)(7)(E)

(b)(7)(E)

(b)(7)(E)

Details:

On January 30, 2017, (b)(4), (b)(6), (b)(7)(C), (b)(7)(E) will arrive under into the Area Port of Philadelphia to load out export (b)(4), (b)(6), (b)(7)(C), (b)(7)(E) nine (9) crewmembers who are nationals of Syria will be arriving on board without Visas. CBP approved (b)(7)(E) were executed for the vessel.

- (b)(4), (b)(6), (b)(7)(C), (b)(7)(E)
- Last 5 ports of call:
 - (b)(4), (b)(6), (b)(7)(C), (b)(7)(E) January 4th, 2017
 - (b)(4), (b)(6), (b)(7)(C), (b)(7)(E) December 29th, 2016
 - (b)(4), (b)(6), (b)(7)(C), (b)(7)(E) - December 12th, 2016
 - (b)(4), (b)(6), (b)(7)(C), (b)(7)(E) December 4th, 2016
 - (b)(4), (b)(6), (b)(7)(C), (b)(7)(E) November 11th, 2016
- (b)(7)(E) ordered on 01/12/2017
- (b)(7)(E) developed on 01/13/2017
- USCG performs enforcement board upon arrival on (b)(4), (b)(6), (b)(7)(C), (b)(7)(E) on 01/15/2017
- (b)(7)(E) approved on 01/20/2017
- 28 of 29 crewmembers on board the vessel do not have Visas
- 9 Syrian crewmembers affected by Executive Order:
 - (b)(6), (b)(7)(C) ABLE SEAMAN
 - (b)(6), (b)(7)(C) ORDINARY SEAMAN
 - (b)(6), (b)(7)(C) ABLE SEAMAN
 - (b)(6), (b)(7)(C) ORDINARY SEAMAN
 - (b)(6), (b)(7)(C) ABLE SEAMAN
 - (b)(6), (b)(7)(C) BOSUN
 - (b)(6), (b)(7)(C) ABLE SEAMAN
 - (b)(6), (b)(7)(C) ABLE SEAMAN
 - (b)(6), (b)(7)(C) ORDINARY SEAMAN
- Based on (b)(7)(E) CBP Philadelphia received approval on 01/29/17 from the DFO Baltimore to (b)(7)(E)
- On January 30, 2017 Actions:
 - (b)(4), (b)(6), (b)(7)(C), (b)(7)(E) will board at anchorage and transit with the vessel and remain on board at berth until returning to anchorage on February 1, 2017

(b)(7)(E)

- (b)(7)(E)**

(b)(6), (b)(7)(C)

CBPBATES00075198

**Baltimore Field Office
Area Port of Philadelphia**

01/29/2017

Title: (b)(4), (b)(6), (b)(7)(C), (b)(7)(E) with Detained Syrian Crewmembers (No Visas) arriving to load out/exported (b)(4), (b)(6), (b)(7)(C), (b)(7)(E) from Penn Terminal t (b)(4), (b)(6), (b)(7)(C), (b)(7)(E)

Summary: (b)(4), (b)(6), (b)(7)(C), (b)(7)(E) is due to arrive into PENN Terminal, Eddystone, PA Area Port of Philadelphia on Monday January 30, 2017 at 1200 hours dockside. The vessel is to load out only of (b)(4), (b)(6), (b)(7)(C), (b)(7)(E) On board the vessel are a total of twenty-four (24) crew. Nine (9) of the 24 crewmembers are Syrian Nationals without Visas. CBP Philadelphia worked with

(b)(7)(E)

(b)(7)(E)

Details:

On January 30, 2017 (b)(4), (b)(6), (b)(7)(C), (b)(7)(E) will arrive under into the Area Port of Philadelphia to load out (b)(4), (b)(6), (b)(7)(C), (b)(7)(E) Nine (9) crewmembers who are nationals of Syria will be arriving on board without Visas. CBP approved (b)(7)(E)

(b)(7)(E)

(b)(4), (b)(6), (b)(7)(C), (b)(7)(E)

- Last 5 ports of call:
 - (b)(4), (b)(6), (b)(7)(C), (b)(7)(E) January 4th, 2017
 - (b)(4), (b)(6), (b)(7)(C), (b)(7)(E) December 29th, 2016
 - (b)(4), (b)(6), (b)(7)(C), (b)(7)(E) - December 12th, 2016
 - (b)(4), (b)(6), (b)(7)(C), (b)(7)(E) December 4th, 2016
 - (b)(4), (b)(6), (b)(7)(C), (b)(7)(E) November 11th, 2016
- (b)(7)(E) ordered on 01/12/2017
- (b)(7)(E) developed on 01/13/2017
- USCG performs enforcement board upon arrival on (b)(4), (b)(6), (b)(7)(C), (b)(7)(E) (b)(4), (b)(6), (b)(7)(C), (b)(7)(E) on 01/15/2017
- (b)(7)(E) 01/20/2017
- 28 of 29 crewmembers on board the vessel do not have Visas
- 9 Syrian crewmembers affected by Executive Order:

- (b)(6), (b)(7)(C) ABLE SEAMAN
- (b)(6), (b)(7)(C) ORDINARY SEAMAN
- (b)(6), (b)(7)(C) ABLE SEAMAN
- (b)(6), (b)(7)(C) ORDINARY SEAMAN
- (b)(6), (b)(7)(C) ABLE SEAMAN
- (b)(6), (b)(7)(C) BOSUN
- (b)(6), (b)(7)(C) ABLE SEAMAN
- (b)(6), (b)(7)(C) ABLE SEAMAN
- (b)(6), (b)(7)(C) ORDINARY SEAMAN
- Based on (b)(7)(E) CBP Philadelphia received approval on 01/29/17 from the DFO Baltimore to (b)(7)(E) (b)(7)(E)
- On January 30, 2017 Actions:
 - (b)(4), (b)(6), (b)(7)(C), (b)(7)(E)
- (b)(4), (b)(6), (b)(7)(C), (b)(7)(E)
- (b)(4), (b)(6), (b)(7)(C), (b)(7)(E)
- Vessel scheduled to depart foreign (b)(4), (b)(6), (b)(7)(C), (b)(7)(E) on 02/01/2017 at 1000
- Various conference calls/discussions with USCG Sector Delaware Bay

Attachments:

- I-418 (b)(4), (b)(6), (b)(7)(C), (b)(7)(E)
- (b)(7)(E)

U.S. Department of
Homeland Security

United States
Coast Guard



Commander
United States Coast Guard
Sector Delaware Bay

One Washington Avenue
Philadelphia, PA 19147-4395
Phone: (215) 271-4807
FAX: (215) 271-4888

16600/ IMO# 9109079
January 12, 2017

Host Agency
Attn: Master, M/V ZAD ELKHIR, IMO# 9109079
4747 South Broad Street
Philadelphia, PA, 19112

SUBJ: CAPTAIN OF THE PORT ORDER 054-17, M/V ZAD ELKHIR, IMO# 9109079

Dear Sir or Ma'am:

SITUATION: It has come to my attention that M/V ZAD ELKHIR, IMO# 9109079 is bound for the Delaware Bay Captain of the Port Zone with an estimated arrival date of January 15, 2017. In support of Homeland Security and public safety the U.S. Coast Guard will conduct a security boarding of the vessel. The purpose of this boarding will be to assess the overall security condition of your vessel prior to entering port.

DIRECTIONS: As Captain of the Port (COTP) and pursuant to Title 46 United States Code (USC), Section 70110; Title 50 USC, Section 191, Title 33 USC, Section 1232, and Title 33 Code of Federal Regulations, Part 6, M/V ZAD ELKHIR is directed to:

1. Proceed to Breakwater Anchorage.
2. Present your vessel for boarding as directed by the U.S. Coast Guard Security Team on scene.
3. No crew changes, cargo, or bunkering operations shall occur until the conclusion of the security boarding or unless expressly authorized by my designated representative.
4. To avoid any delays to the vessel schedule, any changes to the vessel's arrival time should immediately be brought to the attention of the Sector Command Center at (215) 271-4807.

This Order shall remain in effect until the completion of a successful security boarding as determined by my on-scene representative.

PENALTIES: This order is given to you under the authority of Title 33 USC, Section 1232. Failing to comply with the provisions of this order subjects you to a civil penalty of up to \$88,613 for each violation. Each day of a continuing violation shall constitute a separate violation. A willful and/or knowing violation of this order is a federal crime punishable as a Class D felony by imprisonment of up to six years and/or a fine for up to \$500,000.

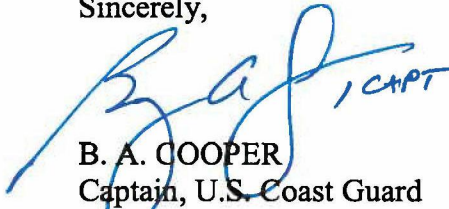
SUBJ: COTP ORDER 054-17, M/V ZAD ELKHIR

16600/IMO# 9109079

January 12, 2017

APPEALS: Should you be aggrieved by this order, you may, after requesting reconsideration from this office, make a formal appeal via this office to the Fifth Coast Guard District, 431 Crawford St, Portsmouth, VA 23704, in accordance with 46 CFR 1.03-20 within 30 days of this order. Additional information on the appeals process is contained in 46 CFR 1.3-15 and 33 CFR 160.7. You may verbally appeal this order by contacting (757) 398-6231.

Sincerely,



B. A. COOPER
Captain, U.S. Coast Guard
Captain of the Port

Copy: Delaware Bay Pilots Association
Maritime Exchange

(b)(4), (b)(6), (b)(7)(C), (b)(7)(E)

(b)(4), (b)(6), (b)(7)(C), (b)(7)(E)

(b)(4), (b)(6), (b)(7)(C), (b)(7)(E)

(b)(4), (b)(6), (b)(7)(C), (b)(7)(E)

(b)(4), (b)(6), (b)(7)(C), (b)(7)(E)

From: (b)(6), (b)(7)(C)
Sent: Friday, February 03, 2017 9:25 PM
To: MCALEENAN, KEVIN K; Owen, Todd C (AC OFO); WAGNER, JOHN P; HOFFMAN, TODD A; DIRECTORS FIELD OPS
Cc: ALLES, RANDOLPH D; (b)(6), (b)(7)(C)
(b)(6), (b)(7)(C) HUTTON, JAMES R; FLANAGAN, PATRICK S; (b)(6), (b)(7)(C)
Subject: RE: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

Acknowledged

From: MCALEENAN, KEVIN K
Sent: Friday, February 03, 2017 9:23:19 PM
To: Owen, Todd C (AC OFO); WAGNER, JOHN P; HOFFMAN, TODD A; DIRECTORS FIELD OPS
Cc: ALLES, RANDOLPH D; (b)(6), (b)(7)(C) HUTTON, JAMES R; FLANAGAN, PATRICK S; (b)(6), (b)(7)(C)
Subject: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

All,

Per the Department of Justice:

(b)(5)

Accordingly, effective immediately, U.S. Customs and Border Protection will suspend any and all actions implementing the affected sections of the Executive Order 13769 entitled, "*Protecting the Nation from Foreign Terrorist Entry into the United States*" (January 27, 2017). Field Offices are instructed to immediately resume inspection of travelers in accordance with standard policy and procedure.

This will include actions to suspend targeting system rules that flag travelers for operational action subject to the Executive Order including the State Department's letter revoking visas based on that Executive Order (attached).

Please communicate this suspension as appropriate with key stakeholders such as airlines.

(b)(5) We will update you with further guidance as soon as it is received.

Thank you,



Kevin K. McAleenan
Acting Commissioner
U.S. Customs and Border Protection

(b)(6), (b)(7)(C)

*We are the guardians of our Nation's borders.
We are America's frontline.*

Vigilance • Service • Integrity

From: STAVINOHA, STEVEN
Sent: Friday, February 03, 2017 9:16 PM
To: MCALEENAN, KEVIN K; Owen, Todd C (AC OFO); WAGNER, JOHN P; HOFFMAN, TODD A; DIRECTORS FIELD OPS
Cc: ALLES, RANDOLPH D; (b)(6), (b)(7)(C)
 (b)(6), (b)(7)(C) HUTTON, JAMES R; FLANAGAN, PATRICK S; (b)(6), (b)(7)(C)
Subject: RE: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

Acknowledged

Steven Stavinoha
 Director, New Orleans
 Office of Field Operations
 US Customs & Border Protection

(b)(6), (b)(7)(C)

From: MCALEENAN, KEVIN K
Sent: Friday, February 03, 2017 7:23:19 PM
To: Owen, Todd C (AC OFO); WAGNER, JOHN P; HOFFMAN, TODD A; DIRECTORS FIELD OPS
Cc: ALLES, RANDOLPH D; (b)(6), (b)(7)(C) HUTTON, JAMES R; FLANAGAN, PATRICK S; (b)(6), (b)(7)(C)
Subject: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

All,

Per the Department of Justice:

(b)(5)

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(b)(5) We will
update you with further guidance as soon as it is received.

Thank you,



Kevin K. McAleenan
Acting Commissioner
U.S. Customs and Border Protection

(b)(6), (b)(7)(C)

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From: MANCHA, HECTOR
Sent: Friday, February 03, 2017 8:42 PM
To: MCALEENAN, KEVIN K; Owen, Todd C (AC OFO); WAGNER, JOHN P; HOFFMAN, TODD A; DIRECTORS FIELD OPS
Cc: ALLES, RANDOLPH D; (b)(6), (b)(7)(C)
 (b)(6), (b)(7)(C) HUTTON, JAMES R; FLANAGAN, PATRICK S; (b)(6), (b)(7)(C)
Subject: RE: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

Acknowledge. El Paso FO

From: MCALEENAN, KEVIN K
Sent: Friday, February 03, 2017 6:23:19 PM
To: Owen, Todd C (AC OFO); WAGNER, JOHN P; HOFFMAN, TODD A; DIRECTORS FIELD OPS
Cc: ALLES, RANDOLPH D; (b)(6), (b)(7)(C) HUTTON, JAMES R; FLANAGAN, PATRICK S; (b)(6), (b)(7)(C)
Subject: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

All,

Per the Department of Justice:

(b)(5)

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Please communicate this suspension as appropriate with key stakeholders such as airlines.

(b)(5) We will update you with further guidance as soon as it is received.

Thank you,



Kevin K. McAleenan
Acting Commissioner
U.S. Customs and Border Protection

(b)(6), (b)(7)(C)

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From: WHITE, ROBERT E
Sent: Friday, February 03, 2017 8:38 PM
To: MCALEENAN, KEVIN K; Owen, Todd C (AC OFO); WAGNER, JOHN P; HOFFMAN, TODD A; DIRECTORS FIELD OPS
Cc: ALLES, RANDOLPH D; (b)(6), (b)(7)(C)
(b)(6), (b)(7)(C) JAMES R; FLANAGAN, PATRICK S; (b)(6), (b)(7)(C)
Subject: RE: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

Chicago Field Office acknowledged.

Robert White
 Director, Field Operations
 CBP Chicago Field Office

(b)(6), (b)(7)(C) Office
 Mobile

Sent by Mobile Device

From: MCALEENAN, KEVIN K
Sent: Saturday, February 04, 2017 9:23:19 AM
To: Owen, Todd C (AC OFO); WAGNER, JOHN P; HOFFMAN, TODD A; DIRECTORS FIELD OPS
Cc: ALLES, RANDOLPH D; (b)(6), (b)(7)(C) HUTTON,
 JAMES R; FLANAGAN, PATRICK S; (b)(6), (b)(7)(C)
Subject: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

All,

Per the Department of Justice:

(b)(5)

Accordingly, effective immediately, U.S. Customs and Border Protection will suspend any and all actions implementing the affected sections of the Executive Order 13769 entitled, "*Protecting the Nation from Foreign Terrorist Entry into the United States*" (January 27, 2017). Field Offices are instructed to immediately resume inspection of travelers in accordance with standard policy and procedure.

This will include actions to suspend targeting system rules that flag travelers for operational action subject to the Executive Order including the State Department's letter revoking visas based on that Executive Order (attached).

Please communicate this suspension as appropriate with key stakeholders such as airlines.

(b)(5) We will
update you with further guidance as soon as it is received.

Thank you,



Kevin K. McAleenan
Acting Commissioner
U.S. Customs and Border Protection

(b)(6), (b)(7)(C)

*We are the guardians of our Nation's borders.
We are America's frontline.*

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From: PERRY, CHRISTOPHER M
Sent: Friday, February 03, 2017 8:37 PM
To: MCALEENAN, KEVIN K; Owen, Todd C (AC OFO); WAGNER, JOHN P; HOFFMAN, TODD A; DIRECTORS FIELD OPS
Cc: ALLES, RANDOLPH D; (b)(6), (b)(7)(C)
(b)(6), (b)(7)(C) HUTTON, JAMES R; FLANAGAN, PATRICK S; (b)(6), (b)(7)(C)
Subject: RE: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

Received. All ports in Detroit Field Office notified.

Thanks,

Chris

Christopher Perry
 Director, Field Operations
 Detroit Field Office
 U.S. Customs and Border Protection
 (b)(6), (b)(7)(C) (office)
 (b)(6), (b)(7)(C) (cell)

From: MCALEENAN, KEVIN K
Sent: Friday, February 03, 2017 8:23:19 PM
To: Owen, Todd C (AC OFO); WAGNER, JOHN P; HOFFMAN, TODD A; DIRECTORS FIELD OPS
Cc: ALLES, RANDOLPH D; (b)(6), (b)(7)(C) HUTTON, JAMES R; FLANAGAN, PATRICK S; (b)(6), (b)(7)(C)
Subject: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

All,

Per the Department of Justice:

(b)(5)

Accordingly, effective immediately, U.S. Customs and Border Protection will suspend any and all actions implementing the affected sections of the Executive Order 13769 entitled, “*Protecting the Nation from Foreign Terrorist Entry into the United States*” (January 27, 2017). Field Offices are instructed to immediately resume inspection of travelers in accordance with standard policy and procedure.

This will include actions to suspend targeting system rules that flag travelers for operational action subject to the Executive Order including the State Department’s letter revoking visas based on that Executive Order (attached).

Please communicate this suspension as appropriate with key stakeholders such as airlines.

(b)(5)

We will

update you with further guidance as soon as it is received.

Thank you,



Kevin K. McAleenan
Acting Commissioner
U.S. Customs and Border Protection

(b)(6), (b)(7)(C)

*We are the guardians of our Nation’s borders.
We are America’s frontline.*

Vigilance • Service • Integrity

From: FLORES, PETE ROMERO
Sent: Friday, February 03, 2017 8:33 PM
To: MCALEENAN, KEVIN K; Owen, Todd C (AC OFO); WAGNER, JOHN P; HOFFMAN, TODD A; DIRECTORS FIELD OPS
Cc: ALLES, RANDOLPH D; (b)(6), (b)(7)(C)
(b)(6), (b)(7)(C) HUTTON, JAMES R; FLANAGAN, PATRICK S; (b)(6), (b)(7)(C)
Subject: RE: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

Acknowledged

From: MCALEENAN, KEVIN K
Sent: Friday, February 03, 2017 5:23:19 PM
To: Owen, Todd C (AC OFO); WAGNER, JOHN P; HOFFMAN, TODD A; DIRECTORS FIELD OPS
Cc: ALLES, RANDOLPH D; (b)(6), (b)(7)(C) HUTTON, JAMES R; FLANAGAN, PATRICK S; (b)(6), (b)(7)(C)
Subject: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

All,

Per the Department of Justice:

(b)(5)

Accordingly, effective immediately, U.S. Customs and Border Protection will suspend any and all actions implementing the affected sections of the Executive Order 13769 entitled, "*Protecting the Nation from Foreign Terrorist Entry into the United States*" (January 27, 2017). Field Offices are instructed to immediately resume inspection of travelers in accordance with standard policy and procedure.

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Please communicate this suspension as appropriate with key stakeholders such as airlines.

(b)(5)

We will
update you with further guidance as soon as it is received.

Thank you,



Kevin K. McAleenan
Acting Commissioner
U.S. Customs and Border Protection

(b)(6), (b)(7)(C)

*We are the guardians of our Nation's borders.
We are America's frontline.*

Vigilance • Service • Integrity

From: DURST, CASEY OWEN
Sent: Friday, February 03, 2017 8:32 PM
To: MCALEENAN, KEVIN K; Owen, Todd C (AC OFO); WAGNER, JOHN P; HOFFMAN, TODD A; DIRECTORS FIELD OPS
Cc: ALLES, RANDOLPH D; (b)(6), (b)(7)(C)
 (b)(6), (b)(7)(C); HUTTON, JAMES R; FLANAGAN, PATRICK S; (b)(6), (b)(7)(C)
Subject: RE: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

All Ports within the Baltimore Field Office have been notified.

Casey Owen Durst
 Director, Field Operations
 Baltimore Field Office

From: MCALEENAN, KEVIN K
Sent: Friday, February 03, 2017 8:23:19 PM
To: Owen, Todd C (AC OFO); WAGNER, JOHN P; HOFFMAN, TODD A; DIRECTORS FIELD OPS
Cc: ALLES, RANDOLPH D; (b)(6), (b)(7)(C); HUTTON, JAMES R; FLANAGAN, PATRICK S; (b)(6), (b)(7)(C)
Subject: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

All,

Per the Department of Justice:

(b)(5)

Accordingly, effective immediately, U.S. Customs and Border Protection will suspend any and all actions implementing the affected sections of the Executive Order 13769 entitled, "*Protecting the Nation from Foreign Terrorist Entry into the United States*" (January 27, 2017). Field Offices are instructed to immediately resume inspection of travelers in accordance with standard policy and procedure.

This will include actions to suspend targeting system rules that flag travelers for operational action subject to the Executive Order including the State Department's letter revoking visas based on that Executive Order (attached).

Please communicate this suspension as appropriate with key stakeholders such as airlines.

(b)(5) We will update you with further guidance as soon as it is received.

Thank you,



Kevin K. McAleenan
Acting Commissioner
U.S. Customs and Border Protection

(b)(6), (b)(7)(C)

*We are the guardians of our Nation's borders.
We are America's frontline.*

Vigilance • Service • Integrity

From: MANNING, REGINALD I
Sent: Friday, February 03, 2017 8:32 PM
To: MCALEENAN, KEVIN K; Owen, Todd C (AC OFO); WAGNER, JOHN P; HOFFMAN, TODD A; DIRECTORS FIELD OPS
Cc: ALLES, RANDOLPH D; (b)(6), (b)(7)(C)
 (b)(6), (b)(7)(C) HUTTON, JAMES R; FLANAGAN, PATRICK S; (b)(6), (b)(7)(C)
Subject: RE: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

Sir,

10-4

Reginald Manning
 Director, Field Operations
 U.S. Customs and Border Protection
 Atlanta Field Office

(b)(6), (b)(7)(C)

OFO PROUD!

From: MCALEENAN, KEVIN K
Sent: Friday, February 03, 2017 8:23:19 PM
To: Owen, Todd C (AC OFO); WAGNER, JOHN P; HOFFMAN, TODD A; DIRECTORS FIELD OPS
Cc: ALLES, RANDOLPH D; (b)(6), (b)(7)(C) HUTTON, JAMES R; FLANAGAN, PATRICK S; (b)(6), (b)(7)(C)
Subject: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

All,

Per the Department of Justice:

(b)(5)

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Please communicate this suspension as appropriate with key stakeholders such as airlines.

(b)(5)

We will

update you with further guidance as soon as it is received.

Thank you,



Kevin K. McAleenan
Acting Commissioner
U.S. Customs and Border Protection

(b)(6), (b)(7)(C)

*We are the guardians of our Nation’s borders.
We are America’s frontline.*

Vigilance • Service • Integrity

From: HILMEY, ROSE M
Sent: Friday, February 03, 2017 8:31 PM
To: MCALEENAN, KEVIN K; Owen, Todd C (AC OFO); WAGNER, JOHN P; HOFFMAN, TODD A; DIRECTORS FIELD OPS
Cc: ALLES, RANDOLPH D; (b)(6), (b)(7)(C)
 (b)(6), (b)(7)(C) HUTTON, JAMES R; FLANAGAN, PATRICK S; (b)(6), (b)(7)(C)
Subject: RE: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

Acknowledged.

From: MCALEENAN, KEVIN K
Sent: Friday, February 3, 2017 8:23 PM
To: Owen, Todd C (AC OFO); (b)(6), (b)(7)(C) WAGNER, JOHN P; (b)(6), (b)(7)(C)
 HOFFMAN, TODD A; (b)(6), (b)(7)(C) DIRECTORS FIELD OPS; (b)(7)(E)
Cc: ALLES, RANDOLPH D; (b)(6), (b)(7)(C)
 (b)(6), (b)(7)(C)
 (b)(6), (b)(7)(C); HUTTON, JAMES R; (b)(6), (b)(7)(C) FLANAGAN, PATRICK S
 (b)(6), (b)(7)(C)
Subject: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

All,

Per the Department of Justice:

(b)(5)

All enforcement of the above-listed sections of the Executive Order must halt immediately. The judge issued this ruling orally in open court, and advised that he would release a written order over the weekend. To be clear, the injunction is effective right now and compliance with the ruling must begin immediately."

Accordingly, effective immediately, U.S. Customs and Border Protection will suspend any and all actions implementing the affected sections of the Executive Order 13769 entitled, "*Protecting the Nation from Foreign Terrorist Entry into the United States*" (January 27, 2017). Field Offices are instructed to immediately resume inspection of travelers in accordance with standard policy and procedure.

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Please communicate this suspension as appropriate with key stakeholders such as airlines.

(b)(5) We will
update you with further guidance as soon as it is received.

Thank you,



Kevin K. McAleenan
Acting Commissioner
U.S. Customs and Border Protection

(b)(6), (b)(7)(C)

*We are the guardians of our Nation's borders.
We are America's frontline.*

Vigilance • Service • Integrity

From: SHOBERG, ERIK
Sent: Friday, February 03, 2017 8:31 PM
To: MCALEENAN, KEVIN K; Owen, Todd C (AC OFO); WAGNER, JOHN P; HOFFMAN, TODD A; DIRECTORS FIELD OPS
Cc: ALLES, RANDOLPH D; (b)(6), (b)(7)(C)
(b)(6), (b)(7)(C) HUTTON, JAMES R; FLANAGAN, PATRICK S; (b)(6), (b)(7)(C)
Subject: RE: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

Acknowledged.

Erik Shoberg
Acting Director Field Operations
Houston Field Office
Office of Field Operations
Customs and Border Protection
(b)(6), (b)(7)(C) office
cell

From: MCALEENAN, KEVIN K
Sent: Friday, February 03, 2017 7:23:19 PM
To: Owen, Todd C (AC OFO); WAGNER, JOHN P; HOFFMAN, TODD A; DIRECTORS FIELD OPS
Cc: ALLES, RANDOLPH D; (b)(6), (b)(7)(C) HUTTON, JAMES R; FLANAGAN, PATRICK S; (b)(6), (b)(7)(C)
Subject: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

All,

Per the Department of Justice:

(b)(5)

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Acting Commissioner
U.S. Customs and Border Protection

(b)(6), (b)(7)(C)

*We are the guardians of our Nation's borders.
We are America's frontline.*

Vigilance • Service • Integrity

From: HUMPHREY, BRIAN J (DFO)
Sent: Friday, February 03, 2017 8:30 PM
To: MCALEENAN, KEVIN K; Owen, Todd C (AC OFO); WAGNER, JOHN P; HOFFMAN, TODD A; DIRECTORS FIELD OPS
Cc: ALLES, RANDOLPH D; (b)(6), (b)(7)(C)
 (b)(6), (b)(7)(C) HUTTON, JAMES R; FLANAGAN, PATRICK S; (b)(6), (b)(7)(C)
Subject: RE: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

Understood. All ports notified

Brian J. Humphrey
 Director, Field Operations
 San Francisco/Portland
 33 New Montgomery St., (b)(6), (b)(7)(C)
 San Francisco, California 94105
 (b)(6), (b)(7)(C)

From: MCALEENAN, KEVIN K
Sent: Friday, February 03, 2017 8:23:19 PM
To: Owen, Todd C (AC OFO); WAGNER, JOHN P; HOFFMAN, TODD A; DIRECTORS FIELD OPS
Cc: ALLES, RANDOLPH D; (b)(6), (b)(7)(C) HUTTON, JAMES R; FLANAGAN, PATRICK S; (b)(6), (b)(7)(C)
Subject: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

All,

Per the Department of Justice:

(b)(5)

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Kevin K. McAleenan
Acting Commissioner
U.S. Customs and Border Protection

(b)(6), (b)(7)(C)

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We are America's frontline.*

Vigilance • Service • Integrity

From: MARTEL, CARLOS C
Sent: Friday, February 03, 2017 8:25 PM
To: MCALEENAN, KEVIN K; Owen, Todd C (AC OFO); WAGNER, JOHN P; HOFFMAN, TODD A; DIRECTORS FIELD OPS
Cc: ALLES, RANDOLPH D; (b)(6), (b)(7)(C)
 (b)(6), (b)(7)(C); HUTTON, JAMES R; FLANAGAN, PATRICK S; (b)(6), (b)(7)(C)
Subject: RE: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

Acknowledged.

Carlos C. Martel
 Director, Field Operations
 Los Angeles Field Office
 U. S. Customs and Border Protection

(b)(6), (b)(7)(C)

From: MCALEENAN, KEVIN K
Sent: Friday, February 03, 2017 5:23 PM
To: Owen, Todd C (AC OFO); (b)(6), (b)(7)(C); WAGNER, JOHN P; (b)(6), (b)(7)(C)
 HOFFMAN, TODD A; (b)(6), (b)(7)(C); DIRECTORS FIELD OPS; (b)(7)(E)
Cc: ALLES, RANDOLPH D; (b)(6), (b)(7)(C)
 (b)(6), (b)(7)(C)
 (b)(6), (b)(7)(C); HUTTON, JAMES R; (b)(6), (b)(7)(C); FLANAGAN, PATRICK S
 (b)(6), (b)(7)(C)
Subject: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

All,

Per the Department of Justice:

(b)(5)

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Foreign Terrorist Entry into the United States” (January 27, 2017). Field Offices are instructed to immediately resume inspection of travelers in accordance with standard policy and procedure.

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Thank you,



Kevin K. McAleenan
Acting Commissioner
U.S. Customs and Border Protection

(b)(6), (b)(7)(C)

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Vigilance • Service • Integrity

From: MCALEENAN, KEVIN K
Sent: Friday, February 03, 2017 8:23 PM
To: Owen, Todd C (AC OFO); WAGNER, JOHN P; HOFFMAN, TODD A; DIRECTORS FIELD OPS
Cc: ALLES, RANDOLPH D; (b)(6), (b)(7)(C)
 (b)(6), (b)(7)(C); HUTTON, JAMES R; FLANAGAN, PATRICK S; (b)(6), (b)(7)(C)
Subject: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

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Per the Department of Justice:

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Thank you,



Kevin K. McAleenan
 Acting Commissioner
 U.S. Customs and Border Protection

(b)(6), (b)(7)(C)

*We are the guardians of our Nation's borders.
We are America's frontline.*

Vigilance • Service • Integrity

From: HOFFMAN, TODD A
Sent: Friday, February 03, 2017 5:39 PM
To: MCALEENAN, KEVIN K; ALLES, RANDOLPH D; WAGNER, JOHN P; (b)(6), (b)(7)(C);
 (b)(6), (b)(7)(C) HOWE, RANDY J;
 (b)(6), (b)(7)(C) FLANAGAN, PATRICK S
Cc: (b)(6), (b)(7)(C) LOWRY, KIM M; HUTTON, JAMES R; DIRECTORS FIELD OPS;
 EXECUTIVE DIRECTORS HQ
Subject: Weekend GS-15 EO CAT coverage:
Expires: Wednesday, August 02, 2017 12:00 AM

For your awareness, please see the GS-15 EO CAT coverage for this weekend. The EO CAT can be reached via (b)(7)(E) or (b)(6), (b)(7)(C)

The Department of State, Bureau of Consular Affairs will be joining the CAT this evening and will match our 24x7 coverage to ensure we are fully coordinated on all overseas waiver requests.

Directors, if you directly receive an overseas waiver request, please send it to (b)(7)(E)

Saturday

0000-0800
 0600-1400
 1000-2000
 1800-0200

(b)(6), (b)(7)(C)

Sunday

0000-0800
 0600-1400
 1000-2000
 1800-0200

(b)(6), (b)(7)(C)

Contact information: (cell)

(b)(6), (b)(7)(C)

From: DURST, CASEY OWEN
Sent: Saturday, February 04, 2017 9:01 PM
To: (b)(6), (b)(7)(C)
Cc:
Subject: RE: EO Status Report for Washington Dulles 02/04/2017- Situational Report

Thanks

Casey Owen Durst
 Director, Field Operations
 Baltimore Field Office

From: (b)(6), (b)(7)(C)
Sent: Saturday, February 04, 2017 7:35:17 PM
To: DURST, CASEY OWEN
Cc: (b)(6), (b)(7)(C)
Subject: FW: EO Status Report for Washington Dulles 02/04/2017- Situational Report

Just fyi on what we saw/seeing today. (b)(6), (b)(7)(C)
 No issues. (b)(6), (b)(7)(C)

Sent via mobile device

(b)(6), (b)(7)(C)
 Port Director
 Dulles Airport
 U.S. Customs and Border Protection

(b)(6), (b)(7)(C) Port Office Desk
 (b)(6), (b)(7)(C) Terminal Desk
 (b)(6), (b)(7)(C) Cell

From: (b)(6), (b)(7)(C)
Sent: Saturday, February 04, 2017 7:09:12 PM
To: (b)(6), (b)(7)(C) CBP IAD WATCH COMMANDER
Subject: EO Status Report for Washington Dulles 02/04/2017- Situational Report

**Office of Field Operations
 Baltimore Field Office
 Port of Washington/Dulles International Airport**

February 4, 2017

Title: EO Status Report for Washington Dulles

Summary: On 2/04 /2017 no issues have been reported with anyone seeking admission to the United States from the seven countries under the E.O. All passengers who have arrived earlier were admitted on primary with no issues reported and the remainder of the expected arrivals will be admitted on primary barring no other secondary issues are discovered.

GPS Coordinates: (b)(6), (b)(7)(C)

Details:

- No issues have been reported with anyone seeking admission to the United States from the seven countries under the E.O.
- A total of 22 passengers will or have arrived for today 02/04/2017.
- We have 108 passengers scheduled to arrive tomorrow 02/05/2017.

Already arrived:

Flight#	Passengers	Classification
EK231	3	3 LPRs
SV37	1	1 LPR
QR707	2	2 LPRs

Arriving later tonight:

Flight#	Passengers	Classification
TK7	13	11 LPRs, 1 F1, 1 A1
UA933	2	1 LPR, 1 IV
BA293	1	1 G4

Arriving Tomorrow Morning:

Flight#	Passengers	Classification
ET 500	3	3 IVs (1 MINOR)
EK231	8	1 IV, 1 G4, 6 LPRs

We continue to provide LPRs with pro Bono council sheet for anyone sent for secondary review" We are annotating in the closeout the time Pro Bono sheet was given.

(b)(6), (b)(7)(C)

Watch Commander
Customs & Border Protection
Washington Dulles International Airport
Department Of Homeland Security

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)
Sent: Saturday, February 04, 2017 7:35 PM
To: DURST, CASEY OWEN
Cc: (b)(6), (b)(7)(C)
Subject: FW: EO Status Report for Washington Dulles 02/04/2017- Situational Report

Just fyi on what we saw/seeing today. (b)(6), (b)(7)(C)
 No issues. (b)(6), (b)(7)(C)

Sent via mobile device

(b)(6), (b)(7)(C)
 Port Director
 Dulles Airport
 U.S. Customs and Border Protection

(b)(6), (b)(7)(C) Port Office Desk
 (b)(6), (b)(7)(C) Terminal Desk
 (b)(6), (b)(7)(C) Cell

From: (b)(6), (b)(7)(C)
Sent: Saturday, February 04, 2017 7:09:12 PM
To: (b)(6), (b)(7)(C) CBP IAD WATCH COMMANDER
Subject: EO Status Report for Washington Dulles 02/04/2017- Situational Report

**Office of Field Operations
 Baltimore Field Office
 Port of Washington/Dulles International Airport**

February 4, 2017

Title: EO Status Report for Washington Dulles

Summary: On 2/04 /2017 no issues have been reported with anyone seeking admission to the United States from the seven countries under the E.O. All passengers who have arrived earlier were admitted on primary with no issues reported and the remainder of the expected arrivals will be admitted on primary barring no other secondary issues are discovered.

GPS Coordinates: Latitude: 38.953116 | Longitude: -77.456539

Details:

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- We have 108 passengers scheduled to arrive tomorrow 02/05/2017.

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SV37	1	1 LPR
QR707	2	2 LPRs

Arriving later tonight:

Flight#	Passengers	Classification
TK7	13	11 LPRs, 1 F1, 1 A1
UA933	2	1 LPR, 1 IV
BA293	1	1 G4

Arriving Tomorrow Morning:

Flight#	Passengers	Classification
ET 500	3	3 IVs (1 MINOR)
EK231	8	1 IV, 1 G4, 6 LPRs

We continue to provide LPRs with pro Bono council sheet for anyone sent for secondary review" We are annotating in the closeout the time Pro Bono sheet was given.

(b)(6), (b)(7)(C)

Watch Commander
 Customs & Border Protection
 Washington Dulles International Airport
 Department Of Homeland Security

(b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)
Sent: Saturday, February 04, 2017 5:26 PM
To: (b)(6), (b)(7)(C) DURST, CASEY OWEN
Subject: RE: Just Reading
Attachments: (b)(6), (b)(7)(C)

(b)(5), (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)
 CBP Assistant Chief Counsel (Baltimore)

(b)(6), (b)(7)(C)
 ** Attorney Work Product / Attorney-Client Privileged **

From: (b)(6), (b)(7)(C)
Sent: Saturday, February 04, 2017 5:12 PM
To: DURST, CASEY OWEN (b)(6), (b)(7)(C)
 (b)(6), (b)(7)(C)
Subject: Just Reading

Finally had a chance today (lull), thank goodness, to read more in depth, most of the news reports on Dulles and exec order and the demonstrations and visitors and Lawyers etc....unbelievable; ...falsehoods, wrong info, lies.... it's amazing what they print..when they want; couple of sentences were correct...
 As they say...this too shall pass.. (b)(6), (b)(7)(C)

Sent via mobile device

(b)(6), (b)(7)(C)
 Port Director
 Dulles Airport
 U.S. Customs and Border Protection

(b)(6), (b)(7)(C) Port Office Desk
 Terminal Desk
 Cell

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

TAREQ AQEL MOHAMMED	.	Civil Action No. 1:17CV116
AZIZ, et al.,	.	
	.	
Petitioners,	.	
	.	
vs.	.	Alexandria, Virginia
	.	February 3, 2017
DONALD TRUMP, President of	.	10:00 a.m.
the United States, et al.,	.	
	.	
Respondents.	.	
	.	
.	.	

TRANSCRIPT OF MOTIONS HEARING
BEFORE THE HONORABLE LEONIE M. BRINKEMA
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PETITIONERS:	SIMON SANDOVAL-MOSHENBERG, ESQ.
	Legal Aid Justice Center
	6066 Leesburg Pike, Suite 520
	Falls Church, VA 22041
	and
	PAUL W. HUGHES, ESQ.
	Mayer Brown LLP
	1999 K Street, N.W.
	Washington, D.C. 20006

FOR THE RESPONDENTS:	EREZ R. REUVENI
	Senior Litigation Counsel
	United States Department of
	Justice
	Civil Division, Office of
	Immigration Litigation
	P.O. Box 868
	Ben Franklin Station
	Washington, D.C. 20044

(APPEARANCES CONT'D. ON FOLLOWING PAGE)

(Pages 1 - 54)

COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

APPEARANCES: (Cont'd.)

FOR THE RESPONDENTS:

DENNIS C. BARGHAAN, JR., AUSA
United States Attorney's Office
2100 Jamieson Avenue
Alexandria, VA 22314

FOR INTERVENOR PLAINTIFF
COMMONWEALTH OF VIRGINIA:

MARK R. HERRING, Attorney General
STUART A. RAPHAEL
Solicitor General
Office of the Attorney General
202 North 9th Street
Richmond, VA 23219

FOR INTERVENOR PLAINTIFFS
OSMAN NASRELDIN AND
SAHAR KAMAL AHMED FADUL:

TIMOTHY J. HEAPHY, ESQ.
Hunton & Williams LLP
2200 Pennsylvania Avenue, N.W.
Washington, D.C. 20037

OFFICIAL COURT REPORTER:

ANNELIESE J. THOMSON, RDR, CRR
U.S. District Court, Fifth Floor
401 Courthouse Square
Alexandria, VA 22314
(703)299-8595

1 P R O C E E D I N G S

2 THE CLERK: Civil Action 17-116, Tareq Agel Mohammed
3 Aziz, et al., v. Donald Trump, President of the United States,
4 et al. Will counsel please note their appearances for the
5 record.

6 MR. RAPHAEL: Good morning, Your Honor. Stuart
7 Raphael from the Commonwealth of Virginia.

8 THE COURT: Good morning.

9 MR. HERRING: Good morning, Your Honor. Mark
10 Herring.

11 THE COURT: Good morning.

12 MR. HEAPHY: Good morning, Your Honor. I'm Jim
13 Heaphy at Hunton & Williams. I'm here for Osman Nasreldin and
14 Sahar Fadul.

15 THE COURT: Good morning.

16 MR. HEAPHY: Good morning.

17 MR. SANDOVAL-MOSHENBERG: Good morning, Your Honor.
18 Simon Sandoval-Moshenbergs, Legal Aid Justice Center, appearing
19 pro bono for the Aziz petitioners; and with me is Paul Hughes
20 with the Mayer Brown law firm, who has been admitted pro hac
21 vice.

22 THE COURT: Good morning, counsel. We almost ran out
23 of seats for you-all, didn't we?

24 MR. BARGHAAN: And good morning, Your Honor.
25 Assistant United States Attorney Dennis Barghaan on behalf of

1 the respondents. With me today is Erez Reuveni from the Office
2 of Immigration Litigation at the Department of Justice, the
3 Civil Division, and he will be arguing the cause on behalf of
4 the respondents this morning.

5 THE COURT: Don't you want to do that, Mr. Barghaan?

6 MR. BARGHAAN: Can I plead the fifth?

7 (Laughter.)

8 THE COURT: You realize you'll be quoted on that one,
9 I'm sure. All right.

10 Well, I'm glad everybody is smiling this morning
11 because I hope we can resolve what's before us today in a good
12 and amicable and civil fashion. All right, we have several
13 motions before us, and I want to address the first one, which
14 is the motion to hold in abeyance. It's my understanding that
15 in terms of the two Aziz plaintiffs, they have worked out their
16 dispute with the United States. Is that correct?

17 MR. REUVENI: That is correct, Your Honor.

18 THE COURT: All right. Could you -- how close is
19 that resolution to being finalized?

20 MR. REUVENI: So we have a signed settlement document
21 that both parties have countersigned. It is not finally
22 executed; that will take several days. There are certain
23 conditions in the settlement that need to be -- need to occur
24 before the settlement is finally executed, at which point
25 our -- the terms of the settlement will lead to dismissal of

1 the Aziz brothers' claims.

2 THE COURT: But as you know, there were other, I
3 believe, 60 John Does also named in that complaint --

4 MR. REUVENI: Yes.

5 THE COURT: -- so that there are other claims that
6 still are potentially unresolved.

7 MR. REUVENI: I don't want to speak on behalf of
8 plaintiffs' counsel, but there is language in there that the
9 government believes addresses those claims as well. It just
10 leads -- it would lead to a dismissal without prejudice, and if
11 those claims are picked up again, if individuals are identified
12 that can raise those claims, they'd be free to bring them
13 before the Court.

14 THE COURT: All right. Well, that, I think, then is
15 a segue into the motion from the commonwealth to intervene in
16 this case. Mr. Raphael?

17 MR. RAPHAEL: Your Honor, if I may, I think
18 Mr. Heaphy has a motion to intervene. It would make sense for
19 sequencing purposes for him to -- for the Court to address
20 that. I think he's going to be very brief.

21 THE COURT: All right, that's fine.

22 MR. HEAPHY: Thank you, Your Honor. Your Honor, good
23 morning again. I'm Tim Heaphy, and I'm here representing the
24 proposed intervenors Osman Nasreldin and Sahar Fadul.

25 We have filed a motion to intervene in this matter

1 because our clients are in a very same position as the
2 petitioner-plaintiffs, the Aziz brothers. Very briefly, Your
3 Honor, our clients are an American citizen, Mr. Nasreldin, and
4 his Somali fiancée, Ms. Fadul. She was on the very same flight
5 with the Aziz brothers from Ethiopia to Dulles Airport on
6 Friday, January 28.

7 She was detained at the airport, asked to sign a
8 paper, we believe, withdrawing her K-1 visa, which she had been
9 lawfully issued by the embassy in Sudan, and when she did sign
10 that document, despite the fact that she doesn't speak English
11 and did not understand it, she was immediately returned to
12 Ethiopia, and it is on that basis that we have filed the motion
13 to intervene and seek the Court's leave to help us reverse that
14 action and get her admitted on that lawfully issued K-1 visa.

15 THE COURT: So she's within those 60 John Does that
16 were part of the original case.

17 MR. HEAPHY: I believe so, Your Honor, but again --

18 THE COURT: Well, if she was at Dulles Airport --

19 MR. HEAPHY: She was.

20 THE COURT: -- she was among those.

21 MR. HEAPHY: She was. I think she was actually on
22 the same flight, Your Honor, yes. But again, we also represent
23 her American citizen husband, who is a resident of Colorado.

24 Now, we have also been offered a proposed resolution
25 by the United States. I think it is exactly the same

1 resolution that is offered the Aziz brothers, and that
2 essentially would be to return Ms. Fadul to the United States
3 on that originally executed K-1 visa, and we are inclined to
4 work with the United States to have that occur, but we do not
5 believe that the litigation should be held in abeyance.

6 Our preference is for Your Honor to grant our motion
7 to intervene because there are common questions of law and fact
8 at issue with our clients and the Aziz brothers, but until our
9 client is returned to the United States pursuant to that
10 agreement, this is a very live controversy.

11 THE COURT: All right.

12 MR. HEAPHY: As a matter of fact, we actually asked
13 the Court to set a deadline by which we would file a
14 substantive complaint, and if Ms. Fadul has been returned,
15 obviously, that would moot that, and we would withdraw for --
16 or seek to dismiss our case, but we believe, Your Honor, it's a
17 very live controversy, and unless and until Ms. Fadul is
18 returned to this country pursuant to this negotiated settlement
19 that we are attempting to work out with the government.

20 We don't have a signed document. We have had
21 discussions, but essentially, it would be to return our client
22 to the United States, which would then moot her substantive
23 claims.

24 THE COURT: Thank you.

25 MR. HEAPHY: So, Your Honor, again, we would just

1 move to formally intervene, and hopefully, the Court will grant
2 our motion.

3 THE COURT: All right.

4 MR. REUVENI: Good morning again, Your Honor. This
5 can be very short. We have an agreement in principle.
6 However, in case that doesn't come together, which I don't have
7 any reason to believe it should, there are very similar terms
8 that, as her counsel indicated, if that does not follow
9 through, intervention would not be appropriate in this case.

10 The individual who we are seeking to bring back
11 pursuant to this settlement we have in principle is not an
12 unlawful permanent resident is and not an immigrant visa
13 holder.

14 THE COURT: But she is somebody who went through a
15 carefully vetted review process, correct, before she got the
16 authorization to come here?

17 MR. REUVENI: That's absolutely correct.

18 THE COURT: That's absolutely correct, all right.

19 MR. REUVENI: She is a -- well, actually, sorry, let
20 me clarify.

21 THE COURT: All right.

22 MR. REUVENI: There are different levels.

23 THE COURT: I'm fully aware of that.

24 MR. REUVENI: A K-1 visa is a nonimmigrant visa that
25 fiances can use to come to the United States and within 90

1 days get married once they arrive here. It is not the same
2 level of rigorous review that may occur in the context of
3 refugees or in other sorts of review scenarios.

4 And the issues that would arise if this case -- and
5 we're not saying they can't bring their case. They can
6 certainly bring their case. It's just not the same nexus of
7 facts or events. It's not the same type of visa. It's not the
8 same type of legal issues. It's not the same sort of due
9 process rights that may be in play.

10 It would unnecessarily complicate this case and
11 essentially set up, if this case moves forward, which we very
12 much hope it does not at least not respect to the Aziz brothers
13 and with respect to the additional individual who wishes to
14 intervene, but it would set up two separate tracks before Your
15 Honor of a nonimmigrant track, an immigrant visa track, and a
16 lawful permanent resident track, so you'd have three separate
17 sets of legal issues.

18 THE COURT: Well, I don't know why it should. If, in
19 fact, the proper way of looking at this case is to simply draw
20 a line in the sand and say that any visas or other
21 authorizations to come into the United States that had gone
22 through the then existing appropriate processes before the
23 executive order went into effect should be implemented, and --
24 so that anybody, whether they're a refugee or they've got a K-1
25 visa or they've got a -- or they're a lawful permanent

1 resident, if that paperwork had gone through, they've been
2 properly vetted through the processes that we've had in place
3 up to this point, why should they not get the benefit of that?

4 Going forward is another question because the
5 executive order has changed that situation, but I'm looking
6 right now and I think most of the -- all of the issues in this
7 case right now are focused essentially on that, that people who
8 have already gotten the permission to be in this country or to
9 come to this country, why should that not be honored?

10 MR. REUVENI: Before I answer that, just one global
11 response to that. I don't know that the issues that the
12 commonwealth wishes to raise, but we'll talk about that later,
13 fall into that category, but with respect to the Aziz
14 plaintiffs and with respect to the individual with the K-1
15 visa, yes, our understanding is they all arrived here over the
16 weekend, which is why the United States government is looking
17 to resolve those particular issues.

18 If I may perhaps just suggest this as a course
19 forward with respect to the motion to intervene, we do have an
20 agreement in principle. At this point, we're simply
21 wordsmithing. There's no principle terms that are in
22 disagreement at this point between the parties.

23 Perhaps we table the motion to intervene for a short
24 period of time, allow us to reach a settlement, and we may not
25 even need to deal with these issues, but we can do that on a

1 short turnaround, if you don't object to that, of course, and
2 we don't have to address this on the legal matter -- on the
3 legal merits.

4 MR. HEAPHY: If I may, Your Honor, I do object to
5 that. We need to be intervened in this case.

6 THE COURT: You want a stake in this litigation just
7 in case.

8 MR. HEAPHY: We need to be in the case. We see it
9 exactly as Your Honor just articulated in your question. This
10 is a matter of whether or not people with lawful visas vetted
11 carefully by the United States government were wrongly and
12 unconstitutionally denied access. That's the situation
13 involving our client with the K-1 visa and those with the
14 immigrant visas.

15 There may be subtle factual distinctions that would
16 be relevant, but the common issues of law and fact in our view
17 compel intervention. We need to be a party in this case,
18 frankly, for leverage to enforce whatever settlement may ensue,
19 and we don't have a settlement until Ms. Fadul sets foot back
20 in the United States, and that has not happened yet.

21 THE COURT: I understand. Well, first of all, I want
22 to commend -- I want to commend the government for working so
23 quickly in trying to resolve these cases. That's great. And I
24 don't want to do anything that's going to interfere with that,
25 but I do agree with Mr. Heaphy that, number one, I think that

1 his clients have alleged sufficient common facts and issues of
2 law that are already included in the amended papers that have
3 been filed in the original case to justify the Court's exercise
4 of its discretion and to allow them to intervene, so the motion
5 is granted, all right?

6 MR. REUVENI: Your Honor, I understand the order, but
7 I just want to verify something for the record.

8 THE COURT: Yeah.

9 MR. REUVENI: I mean, we'll work this out going
10 forward, of course.

11 It is the government's understanding that
12 Mr. Heaphy's client is not in either of the two classes before
13 you in the current -- in the current state of this case. A
14 nonimmigrant visa is very different than an immigrant visa.
15 Very different equities attach. Very different processes
16 occur.

17 THE COURT: Yes, and --

18 MR. REUVENI: Putting that aside --

19 THE COURT: Right.

20 MR. REUVENI: Putting that aside, going forward if we
21 need to, we'll elaborate on that.

22 THE COURT: Thank you.

23 All right, Mr. Raphael?

24 MR. RAPHAEL: Thank you, Your Honor. I stood up
25 before because the permissive intervention and intervention of

1 right issues that you were just talking about are obviously at
2 issue in our case with our motion as well. So we do have a
3 motion to intervene. We filed that on Tuesday. On Wednesday,
4 we filed a proposed complaint in intervention.

5 And I think it's important to start from the
6 standpoint that at this stage of the proceeding, there are now
7 two parties in the case that are in that have, that clearly
8 have standing, and the law is clear, as I believe the
9 government cited in its papers, that you only need one
10 plaintiff to have standing in order for the Court to be able to
11 exercise its Article III jurisdiction.

12 So I'm going to get to in a second why it's
13 absolutely clear that Virginia has standing because of direct
14 injuries to Virginia, but the government argued last night in
15 their brief that we don't have standing, and given that there
16 are now several parties who are plaintiffs in the case, the
17 Aziz brothers and Mr. Heaphy's clients, standing is just not a
18 question.

19 And the case I would cite for that is *Rumsfeld v.*
20 *Forum for Academic and Institution Rights*. It's 547 U.S. 47,
21 at -- pinpoint is 52, note 2, from 2006, where the Court said
22 the presence of one party with standing is sufficient to
23 satisfy Article III's case or controversy requirement.

24 So the government's principal objection to our motion
25 to intervene is that we don't have standing. It's just not an

1 issue given the current posture of the case.

2 They also suggest that the case is somehow mooted now
3 because they're working out a deal to whisk these other
4 plaintiffs back in exchange for their promising to dismiss
5 their cases once they get back to U.S. soil. That's just not
6 accurate as far as the law goes.

7 We cited to the Court *CVLR v. Wynne* in the papers we
8 filed last night. That's 792 F.3d 469, 475. And I have a copy
9 of that. If it would help the Court, I have a copy of that.

10 THE COURT: It's all right.

11 MR. RAPHAEL: Okay. Two sentences that appear at
12 page 475 of that, of that opinion, the first one is that most
13 courts -- this is in footnote 2 -- "Most courts that have
14 considered situations similar to Tosco" -- which was a Tenth
15 Circuit case -- "agree that when the motion to intervene is not
16 filed until after the underlying case is fully resolved, that
17 motion is moot."

18 The underlying case here is obviously not fully
19 resolved. The Aziz brothers and Mr. Heaphy's clients are in
20 the case, and it's not fully resolved, but more importantly, I
21 think this is sort of the -- the important language is further
22 down the page. The Fourth Circuit said, "To the contrary, the
23 case was live when Appellants moved to intervene, and remained
24 so when the district court denied the motion"

25 So if the intervention motion is filed when the case

1 is a live controversy, that is all that is needed, even if the
2 underlying case later becomes moot. So you measure this as of
3 the time the motion to intervene was filed, and that was filed
4 on Tuesday, when this was absolutely a live controversy, and
5 still is.

6 Now, I'm going to address standing. We don't need to
7 because we've got existing parties that have it, but I want the
8 Court to be comfortable that we absolutely have direct injury
9 here. To have standing, you need an injury that's caused by
10 the conduct at issue and that would be redressed by the relief
11 that you're seeking, and we satisfy all three of those
12 requirements.

13 And I point out, by the way, that the federal court
14 in Massachusetts just yesterday in the *Louhghalam v. Trump*
15 case, docket 17-10154, granted Massachusetts' motion to
16 intervene in a case that has a very similar posture, and I
17 actually brought a copy of that order, which I'd be
18 delighted --

19 THE COURT: We've also seen that.

20 MR. RAPHAEL: Okay. Very good.

21 So what is the direct injury here? You know, in the
22 Massachusetts case, Massachusetts was arguing for a much sort
23 of broader notion of standing, to just protect citizens, you
24 know, allowing refugees to come to the state.

25 We're not, we're not challenging the refugee

1 provision in this case. We're here based on direct injury to
2 Virginia, and it's laid out in Taylor Reveley's declaration,
3 which we filed yesterday. That's ECF 32.

4 In the commonwealth, in our 14 colleges and
5 universities, not to mention our community colleges, there are
6 more than 350 students alone at VCU, Virginia Tech, George
7 Mason, UVA, and William & Mary, 350 students who come from
8 these banned countries. There are numerous others at other
9 schools. We haven't been able to tally them all up yet, but
10 that's a lot of students coming to our public schools.

11 We know at this point based on Mr. Reveley's
12 declaration, and this is paragraph 5, there are dozens of
13 employees and faculty who have work visas or LPR status who
14 come from these banned countries.

15 We know of at least two students who are trapped and
16 cannot get back to the United States. One of them is an
17 Iranian doctoral candidate who needs to come back to have his
18 examination for his dissertation, and he was planning to come
19 with his wife. They've been issued visas, and then they were
20 cancelled. They can't get here. And they need to do that this
21 semester.

22 And then we know of a young lady who is a student at
23 George Mason University who's from Libya. Her visa was
24 cancelled when she was in Turkey, and she's stuck in Turkey.

25 Now, to the government's credit, they've been working

1 with us to try to get the information needed so they can free
2 her to come back, and that's one reason why we were willing to
3 set the TRO -- the preliminary injunction hearing for next
4 Friday rather than for, for this Friday, but I think that
5 demonstrates the irreparable harm and injury to Virginia's
6 interests that the executive order is causing right now.

7 There are other harms that are laid out in
8 Mr. Reveley's declaration. For example, a number of scholars
9 have cancelled their travel plans to international conferences.
10 They're afraid to leave the country because they won't be able
11 to get back, and those include some Iranian-born faculty and
12 students. That's paragraph 7 of Mr. Reveley's declaration.

13 We have examples of visiting scholars who've
14 cancelled their plans to come here. There are five people in
15 that category, paragraph 9 of Mr. Reveley's declaration.

16 There are a number of students who have now withdrawn
17 their applications to come to our schools. We're aware of two
18 Sudanese applicants and a handful of Iranian engineering
19 students who, who have withdrawn their applications. That's
20 lost opportunity and lost -- and if you have to put it in
21 monetary terms, obviously, this is much bigger than that, but
22 if you have to put it in monetary terms, that's lost revenue to
23 the commonwealth.

24 All of those direct injuries are plainly caused by
25 the executive order, and they will plainly be redressed by the

1 injunction that we're seeking. We absolutely have standing.

2 Now, the primary group we're here to protect are the
3 students and faculty at our universities and colleges, but we
4 are also here to protect Virginia residents who are here on LPR
5 or work or student visas even if they're not going to our
6 schools, and we have standing for that, too, because they are
7 taxpayers.

8 Under IRS Publication 519, at page 3 to 4, the IRS
9 rules provide that green card holders and others who have been
10 substantially present in the U.S. are considered U.S. residents
11 for tax purposes, and Virginia follows that rule. It's on our
12 Web site under the residency status page at the Department of
13 Taxation Web site. It says, "If you are a resident or a
14 nonresident alien required to file a federal income tax return,
15 and you meet the definition of a Virginia resident, part-year
16 resident or nonresident and other filing requirements, you must
17 file a Virginia return, unless exempted from the requirement by
18 federal treaty."

19 So they're taxpayers, and if they can't be here, we
20 lose that tax revenue. And that kind of trivializes what's
21 really important here, but that's plainly a pecuniary interest
22 that the commonwealth has.

23 And if you need case law to back that up, I've got
24 two suggestions. Number one, *Corr v. MWAA*. That was the
25 Dulles Toll Road case which Judge Trenga decided; and, you

1 know, when I represented MWAA on that case, I argued that the
2 toll payers didn't have standing because a zillion people pay
3 tolls, and that it's not adequate to restrict who the
4 plaintiffs could be, and I persuaded him I was right, but the
5 Fourth Circuit reversed in that case.

6 The Fourth Circuit held -- and this is at 740 F.3d
7 295 (2014) -- the Fourth Circuit held that paying like a \$2
8 toll was enough to give them standing to complain that MWAA was
9 unconstitutional, and the Fourth Circuit let that case go
10 forward. And so if paying \$2 is enough for standing, certainly
11 everything that the commonwealth is losing here is enough for
12 standing.

13 And one other case I'd cite is *Texas v. United*
14 *States*, the Fifth Circuit case from 2015, 787 F.3d 733. You
15 know, Texas challenged President Obama's DAPA policy, and their
16 basis for standing was that because the federal government
17 deemed these people from other countries to be lawfully
18 present, Texas had to spend \$131 on each of them in order to
19 issue them a license or some kind of identifying paper, and
20 that was enough for standing in Texas.

21 So given that low bar, we amply meet it here. We
22 clearly have standing, but again, we don't need it because
23 there are two parties in the case who have it.

24 Now, we have sought both permissive standing --
25 permissive intervention and as of right intervention, and I

1 think I'm going to flip it and take permissive first because
2 it's really, frankly, the easiest way for the Court to decide
3 it. It's totally in your discretion to do it, and this is
4 where I was going to stand up for Mr. Heaphy's client, because
5 I think it's easy to think of his motion to intervene in a very
6 narrow way like we're just dealing with his two clients.

7 This is a much bigger issue, and I think there's a
8 very good chance that you're going to be seeing a lot more
9 motions to intervene, and that's why it's important to
10 understand what permissive intervention is all about.

11 There are three elements. The first one, 24(b)(1),
12 has to be timely. We're here in two days after the original
13 complaint was filed. That is clearly timely.

14 Number two, it has to involve a claim or defense that
15 share with the main action a common question of fact or law.
16 That's 24(b)(1)(B). We only need one of those elements.

17 Both of those elements are satisfied here. There's a
18 common legal claim that the executive order is
19 unconstitutional. We've pleaded the same theories as the
20 underlying complaint. There are also common facts arising from
21 the events this past weekend at Dulles. So for both of those
22 reasons, you clearly have permissive standing under element 2.

23 And there's a third one. The third element is
24 prejudice to the parties. This is 24(b)(3). It says: "In
25 exercising its discretion, the court must consider whether the

1 intervention will unduly delay or prejudice the adjudication of
2 the original parties' rights."

3 Well, there's plainly no prejudice to adjudicating
4 the Aziz brothers' rights. In fact, they consent to our
5 intervention. They're happy for us to be in this case. So no
6 prejudice to their rights.

7 Is there any prejudice to the government's rights?
8 Obviously not. Forcing the government to have to adjudicate
9 the constitutionality of the executive order sooner than they
10 would like to does not prejudice their rights. You're not
11 entitled to do a delay for delay's sake. So permissive
12 intervention is plainly established.

13 We cited a case at page 7 of our brief on this, ECF
14 No. 15, footnote 17, I want to bring to the Court's attention:
15 *Feller v. Brock*. It's 802 F.2d 722, 729 (4th Cir. 1986), and
16 it really captures the purpose of permissive standing --
17 permissive intervention.

18 The court said: ". . . [L]iberal intervention is
19 desirable" -- desirable -- "to dispose of as much of a
20 controversy 'involving as many apparently concerned persons as
21 is compatible with efficiency and due process.'" That was
22 tailor -- in other words, permissive intervention is
23 tailor-designed for exactly this kind of controversy, because
24 when it gets out that what the government is really doing is
25 anybody who comes forward to sue them will be allowed back in

1 the United States, there are a lot of people who are going to
2 want to come forward to take that deal, and you shouldn't make
3 them file a new lawsuit to do that. That's exactly what
4 permissive intervention is for.

5 Let me turn to intervention of right. The federal
6 court in Massachusetts, I know Your Honor is familiar with
7 that, granted Massachusetts' intervention of right as opposed
8 to discretion. It granted it as of right. Similar elements.
9 It has to be timely. We are, two days. You have to show that
10 the intervenor shares -- claims an interest relating to the
11 property or transaction that's the subject of the action and is
12 so situated that disposing of the action may as a practical
13 matter impair or impede the movant's ability to protect its
14 interest unless existing parties adequately represent that
15 interest.

16 I have articulated Virginia's substantial interest.
17 I think that's clearly satisfied. Virginia's interests will be
18 adversely affected were this executive order upheld, and as a
19 sovereign entity, we are plainly not represented by the Aziz
20 brothers or by Mr. Heaphy's clients, so all of those elements
21 are satisfied.

22 Now, you've heard the government say, well, the
23 claims by these plaintiffs and by Virginia are kind of
24 different claims so they shouldn't be in this case. That is
25 not the test for intervention. In the *CVLR* case, you had

1 different plaintiffs who were injured differently by the
2 defendants' common racketeering scheme.

3 Of course they were different claims. The issue is
4 is there a common claim of law or a common claim of fact, and
5 you plainly have that here.

6 Practicality is also a critical aspect of the
7 decision whether to allow intervention, and the Ninth Circuit
8 said in *Citizens for Balanced Use*, 648 F.3d 893, 897: "In
9 addition to mandating broad construction" -- and they're
10 talking about intervention of right -- "our review is guided
11 primarily by practical considerations, not technical
12 distractions."

13 Again, you should be using this vehicle to address
14 this controversy in a broader way than simply focusing on a
15 specific plaintiff's claim.

16 THE COURT: All right, thank you, Mr. Raphael.

17 Let me hear, Mr. Reuveni -- is that how you pronounce
18 your name?

19 MR. REUVENI: Yes, Your Honor.

20 THE COURT: All right. Mr. Reuveni, do you know --
21 first of all, since you are senior litigation counsel, are you
22 overseeing this litigation as a whole, or are you just
23 addressing it in this court?

24 MR. REUVENI: At the moment, I'm just addressing it
25 in this court, but we are, we are, as you know --

1 THE COURT: You're litigating all over the country.

2 MR. REUVENI: We're litigating everywhere right now.

3 THE COURT: Okay. So I would assume down the road,
4 there's going to be some uniform approach to this case -- these
5 cases.

6 MR. REUVENI: I would clearly hope so. It would
7 allow me to sleep more.

8 THE COURT: All right. Do you have any sense at this
9 point as to how many people have been affected by this, that
10 is, how many people to whom -- from these seven countries, how
11 many people had gotten some kind of visa or authorization to
12 enter the United States? Any idea? Are we talking thousands,
13 tens of thousands, hundreds of thousands, or you don't know?

14 MR. REUVENI: Well, I think it's important to
15 distinguish two things here in answering this question. There
16 are the group of people that made their plans, had their visas,
17 and attempted to come over right after the order was signed or
18 may have already been in the air. Let's call that the events
19 of the weekend, January 27th to the 29th. It's a very small
20 number. I don't have the exact figures. It's in the ballpark
21 of between 100 and 200 people. It's a very small --

22 THE COURT: Nationwide, not just coming to Dulles.

23 MR. REUVENI: Don't hold me to that, but let me make
24 sure that's correct as to Dulles versus nationwide, and I can
25 get that to you very quickly afterwards, but that's a much

1 smaller number than the folks that are abroad and can't come
2 here currently because their visas have been revoked, and so
3 the government has submitted in two separate lawsuits, the one
4 in Massachusetts and the one in New York, a notice -- we didn't
5 submit it here because we didn't believe it was relevant to the
6 specific facts at issue in this case, because it involved
7 immigrant visas and lawful permanent resident visas that had
8 come over over the weekend. Visas have been revoked. Over
9 100,000 visas have been revoked. That's the scope of this
10 thing. Those were revoked on Friday at 6:30 p.m.

11 That is not this lawsuit. It is not the lawsuit
12 Virginia wishes to bring, and it is not the lawsuit the
13 plaintiffs -- the named plaintiffs that are already in the case
14 wish to bring, and it is certainly not the lawsuit that the
15 intervenor who you've granted leave to participate, the K-1
16 visa, wishes to bring. Those two individuals and others
17 similarly situated, at least in this case, we are attempting to
18 bring them back and resolve those claims.

19 The individuals abroad who did not get on a plane
20 before any of this happened and are now trying to come into the
21 United States, a very different case, and the government at
22 this time is defending those cases.

23 THE COURT: But what's the logical difference?

24 MR. REUVENI: The logical difference is they are
25 folks that made plans and had sort of just call it a reliance

1 interest. While we were implementing this thing, our clients
2 were implementing the order, and it was a very chaotic 48 hours
3 for all of us, those folks seem to be the ones that have the
4 better argument from the government's perspective as to
5 something not completely perfect from the government's view
6 happened.

7 Those folks that are abroad right now and their visas
8 have been revoked, that's a totally different case, and if we
9 are given the opportunity, if that issue arises in this case
10 and it's certainly already arisen in the Massachusetts case and
11 potentially in the Washington case that the attorney general of
12 Washington is bringing, we would argue, the government would
13 argue that that visa revocation is a non-reviewable
14 discretionary decision committed to the executive discretion.
15 That's by statute, 8 U.S.C. 1201 and 8 U.S.C. 1155, but
16 obviously, we're getting ahead of ourselves here. That's not
17 this case, but that's why we would think that will be a very
18 different lawsuit.

19 So to the extent Your Honor is contemplating that as
20 being part of what you have before you right now, there are no
21 claims to that effect in this case, no plaintiffs in this case
22 with those types of claims. Virginia, I don't believe -- I've
23 seen the complaint that they filed last night or was it two
24 days ago, they don't raise those claims. That would be a very
25 different lawsuit, and there's already other cases addressing

1 that issue -- or where that issue is raised.

2 As to this case, as to the commonwealth and the
3 motion for intervention, I think it's absolutely fundamental
4 that they demonstrate standing if they want to participate in
5 this case or any case. If they were to file their own lawsuit,
6 they would have to have standing. If you grant them
7 intervention, they would still need to have standing because
8 when the Aziz plaintiffs and when the K-1 visa plaintiff, their
9 matters are resolved, there's no one left with standing, and
10 standing has to exist at every step of the lawsuit -- at its
11 commencement, at the motion for preliminary injunction stage,
12 at the motion to dismiss stage, and so on all the way up on
13 appeal. So if they don't have standing, they can't get in this
14 case. They can't bring any case.

15 So this is a pivotal issue to address, and it may not
16 be this venue in which it should be addressed. It should be in
17 their own case, with their own issues, with their own
18 plaintiffs or individuals they've identified through
19 declarations.

20 The issues here are not at all interrelated with the
21 issues I believe the commonwealth is attempting to bring before
22 Your Honor. The LPR issue that they raise, it's a moot point
23 now. We've all seen at this point, I think, the White House
24 guidance on that, and we submitted it with our papers last
25 night on the opposition --

1 THE COURT: But, you know, there's case law that just
2 because there has been a response to alleged illegal activity
3 doesn't get the parties totally off the hook.

4 MR. REUVENI: That's certainly true. I'm familiar
5 with that, Your Honor, but I would say in this case involving
6 the things that happened at Dulles, not a single lawful
7 permanent resident was turned around. They've all been
8 admitted into the United States. They're all in the United
9 States presently.

10 Not a single individual was turned around, so there
11 is no live controversy as to any lawful permanent resident,
12 including the Doe plaintiffs -- or the unnamed Doe plaintiffs.
13 They've all been admitted. We've confirmed that with our
14 client. Not a single lawful permanent resident arriving in
15 Dulles before your order came in and after you had entered Your
16 Honor's order, they've not been turned around. They have been
17 admitted. They're here in the United States.

18 And going forward, lawful permanent residents who
19 wish to come to the United States, the executive order is not
20 being applied to them. They are coming in. They're getting
21 into the United States.

22 So the lawful permanent resident issue from the
23 government's view in this case is a moot point. There are no
24 lawful permanent residents' interests at stake in this case any
25 longer, and so to the extent the commonwealth wishes to

1 piggyback on those interests to get into this case, that would
2 be inappropriate because those claims are moot, and there's no
3 live controversy as to any lawful permanent resident.

4 I do want to talk for a minute about the case that
5 the commonwealth raised with you a number of times concerning
6 its presentation, the *CVLR* case. So that's a very different
7 case. I've had an opportunity to see it as well as the
8 commonwealth. That is a case where a party moved to intervene,
9 and that motion was denied while the case was live. They
10 appealed the denial of the motion to intervene after the case
11 was resolved by the actual named parties.

12 The Court of Appeals said it could exercise its
13 appellate jurisdiction to address the issue of whether that was
14 an erroneous denial of the motion to intervene, and I think
15 it's important, the commonwealth left this part out when it was
16 reading various language to you, that case cites an earlier
17 case from the Fourth Circuit, *Atkins v. State Board*, 418 F.2d
18 at 876, that's a 1969 case: ". . . [A] court may treat
19 intervention as a separate action" only when "the intervenor
20 has an independent basis for jurisdiction."

21 So it's arguable whether that case has any bearing
22 here at all. The cases that are more relevant are those cases
23 cited in the federal government's brief at pages 3 through 4.
24 I'm referring to the Eleventh Circuit, the Tenth Circuit, the
25 Seventh Circuit, and the Ninth Circuit, all of which hold --

1 and the Ninth Circuit en banc at that -- the intervenor has to
2 have standing throughout the litigation. They can't piggyback
3 on standing, particularly where, as here, the actual parties to
4 the case, including the other intervenor who is now in the
5 case, want to resolve the case and move on.

6 We will meet Virginia in court; I have no doubt about
7 that. The question is simply is this case, with very different
8 issues of the actual named plaintiffs, the place to do that.

9 As I mentioned, we are defending these cases
10 nationwide. We're not trying to run and hide from Virginia.
11 We know we're going to be defending this in Virginia and
12 elsewhere. The question simply is whether it should be here in
13 this case.

14 As to the standing itself in this case, from what we
15 know now, Virginia seems to raise two theories as to standing.
16 They wish to sue on behalf of their citizens generally, but
17 that's a settled issue. The Supreme Court settled that in the
18 1920s in the *Mellon* case, and *Massachusetts v. E.P.A.* case in
19 2007 similarly revisited the issue and made clear *Mellon* is
20 still good law.

21 The fact that the federal government 's action causes
22 a general tax burden on your citizens does not provide you
23 parens -- and I'm going to mispronounce this; I'm terrible at
24 latin -- parens patriae jurisdiction or standing. That just
25 doesn't -- that is a nonstarter in the government's view, and

1 we have that in our papers and cases, and we're happy to give
2 you more on that if you'd like.

3 The other, the other injury they raise is the impact
4 to their public universities, and again, I think here it's
5 important to realize what is really being challenged: Federal
6 action in the federal space which is committed entirely to the
7 federal government under the separation of powers on the
8 state-federal system we have. So it is the federal government
9 that actually would have this general welfare of the citizenry
10 jurisdiction or standing to speak on behalf of individuals
11 affected by federal law, not Virginia.

12 And I can refer you specifically to cases addressing
13 this very issue. We have them in our papers. One,
14 *Pennsylvania v. Kleppe* (D.C. Cir. 1976), 533 F.2d 668, or if
15 it's easier, I'll just refer you to the pages in the brief
16 where that --

17 THE COURT: That's all right. We've read it.

18 MR. REUVENI: Okay. Very good. I didn't -- I have
19 no doubt you -- the -- so as to the actual individuals,
20 Virginia speaks in generalities, and that's really not what
21 standing requires. We need specific -- for there to be Article
22 III jurisdiction, there needs to be specific articulated injury
23 as to specific individuals, not the commonwealth writ large.

24 Their papers refer to individuals, generally
25 professors or students, and again, these are individuals who

1 are not similarly situated to the individuals that are
2 currently in this case. F-1 visas and J-1 visas, which would
3 refer to students coming to the commonwealth's universities,
4 those are nonimmigrant visas, and this is the issue I alluded
5 to earlier. This is a very different claim, very different
6 issues, very different legal defense the government would make
7 and different arguments that plaintiffs or the commonwealth
8 would make if that issue was in this case.

9 As to some of the other issues, the commonwealth
10 raised an establishment clause violation as a basis for
11 standing in this case. I'd just like to refer the Court to the
12 Ninth Circuit's decision on this very issue. It's called the
13 *Catholic League for Religious and Civil Rights v. City of San*
14 *Francisco*, 624 F.3d 1050. This one is not in our papers.
15 States cannot allege injury based on religious stigma or
16 spiritual or psychological harm derived from federal action or
17 state action based on -- or impacting religion in some way.

18 The commonwealth doesn't really address that in their
19 papers, but that's another impediment to jurisdiction going
20 forward.

21 Intervention as of right and permissive intervention,
22 their papers as to as of right are premised on the same
23 jurisdictional theory that they cannot rely on. That's the
24 general welfare of the citizenry. So I won't spend too much
25 time on that.

1 Permissive joinder, again, this case is winding down.
2 Well, at least the government believes as to the named
3 plaintiffs, it is winding down. Let me be clear on that. As
4 to also the intervenor you just granted intervention to, that
5 we can resolve very quickly.

6 And it is, it is our position that it is in the
7 interests of the United States to resolve these where it is
8 appropriate, and the commonwealth's papers suggest that we're
9 just trying to get out of a lawsuit. That's -- we're being
10 sued right now in ten different courts. We're going to be sued
11 tomorrow in 20 different courts. That's just not the case.
12 We're defending these cases. We're not playing games with the
13 courts. It's just a matter of whether these particular
14 plaintiffs and the issues in this case are the appropriate
15 vehicle for the commonwealth to come into court and have its
16 day in court, particularly where they at this time so far as
17 the government is concerned don't have standing to raise those
18 claims.

19 If you have any more questions on that, that's enough
20 for me.

21 THE COURT: All right. Well, the issue has been very
22 thoroughly briefed and argued. We've had, obviously,
23 relatively short periods of time for both counsel and the Court
24 to look at all this, but I am satisfied at this point that the
25 commonwealth has made a sufficient argument to establish that

1 it does have standing to enter into this lawsuit both under
2 permissive and as of right principles of intervention, and at
3 this point, I'm granting the motion and therefore will allow
4 the commonwealth to enter into this litigation.

5 There have been no objections from either the
6 original plaintiffs or from the new intervenor, and I therefore
7 find that it is not inappropriate to allow the commonwealth in
8 the case.

9 Now, part of the commonwealth's papers, however, and
10 I'm not actually going to hear a lot of argument on this today,
11 the commonwealth has included a motion for an order to show
12 cause, and I'm not going to grant that motion at this time, in
13 part because I am encouraged by the attitude of the government
14 that they're trying to resolve these cases, and I don't want to
15 stir up the waters unnecessarily.

16 This Court has always taken the position in any type
17 of civil litigation that the most successful litigation is that
18 which can be amicably and appropriately settled, and,
19 Mr. Barghaan, I know you and your office have a great deal of
20 experience with that, and I know the Department of Justice does
21 as well.

22 I have to tell you I've been on this bench a long
23 time. I was the judge that handled the September 11 case. I
24 have never had so much public outpouring as I have seen in this
25 case. It is amazing. I have spoken to some of the other

1 judges in the country who have these cases, and their
2 experience has been the same. This order touched something in
3 the United States that I've never seen before. People are
4 really upset.

5 Now, there is no question the president of the United
6 States has almost, almost unfettered discretion in matters of
7 international relations and in protecting the borders. There's
8 no question about that. But it's not unfettered. There are
9 limits.

10 And this case, this order went into -- was issued so
11 quickly, it's quite clear that there were not all the -- not
12 all the thought went into it that should have gone into it. As
13 a result, there has been chaos. I mean, the example being how
14 the, for lawful permanent residents, they were captured in this
15 order, and now the government has recognized that was a
16 mistake, and they have backed off of that.

17 But it is a real problem, it seems to me, when the
18 government has gone through the vetting process, has authorized
19 individuals to come to this country, and then without any kind,
20 from what we can tell, of significant fact-finding or any kind
21 of actual hard evidence that there is a need to rescind those
22 decisions, to revoke them.

23 Human beings have relied upon those decisions that
24 were made by hard-working government authorities. Families
25 have expected family members to be reunited with them.

1 Universities have expected students or faculty to be able to
2 come back. It has obviously thrown hundreds of thousands of
3 people into states of great discomfort, and it's something that
4 the government should think very carefully about how you want
5 to resolve all of these cases globally.

6 Again, I commend you for having taken the steps
7 you've taken so far, but I don't think it's far enough, and I
8 would hope that you would give serious thought to thinking more
9 broadly about how you want to address these issues.

10 In any case, we have this case scheduled for next
11 Friday for a hearing on a more permanent situation. At this
12 point, all I'm going to do, and I'll have some orders that
13 we'll issue at some point today, the injunction, the temporary
14 restraining order which we issued last Saturday was only for
15 seven days. That's how it was presented to the Court. I want
16 to leave that injunction in place, and I'm going to expand it
17 slightly, but only slightly, and you'll get it later today, but
18 it will be in place until next Friday.

19 I want to make sure that there is no slippage, and
20 that is, that lawful permanent residents clearly are allowed to
21 come back in. I understand the government has agreed to do
22 that. I want to make sure that it is done, so I want to
23 definitely keep that within the language of the injunction, and
24 at this point, that would be maintaining the status quo.

25 Plus, I am concerned about the representations in the

1 commonwealth's papers that although the order had clearly said
2 that people who are being held at Dulles should have the
3 opportunity to have access to counsel, that that was not being
4 done. Now, I understand from the government's papers that
5 there was some telephone arrangement that was set up. I don't
6 want to get into the details of that today other than to say
7 that the agents need to be careful at the airport not to
8 violate a court order because there are sanctions that can
9 result from that.

10 I'm not unsympathetic with the poor Customs and
11 Border Patrol officials at the airport Saturday and Sunday. It
12 was chaotic for everybody, and I'm certainly not going to find
13 that the people at the low level, who were just following
14 orders, that was too confusing a time to find that any of them
15 would have been in contempt.

16 Whether or not any of the people who are more in
17 control should have acted differently, I'm not in a position at
18 this point to address, and frankly, I don't think it furthers
19 the goal of trying to get these issues resolved by pushing for
20 contempt citations at this point.

21 It does appear as though the government is now
22 working diligently to resolve many of the ills involved, maybe
23 not all but many of the ills involved in the original case, and
24 that gives the Court some optimism in this respect, all right?
25 So unless there's anything else, I think I've resolved all the

1 issues.

2 Mr. Raphael?

3 MR. RAPHAEL: Yes, Your Honor, thank you. Just a
4 couple minor points. Just to be clear, we weren't seeking to
5 hold the government in contempt. We were seeking to have them
6 account for what they've done.

7 When Your Honor expands slightly the language of the
8 TRO, I would ask that you make clear that the requirement to
9 permit access to lawyers means in person access. The paragraph
10 7, I think it was, of the motion for a TRO made it clear that
11 there were lawyers waiting there to see these people. There
12 was nothing preventing them from seeing them if they were
13 allowed. They were all -- the people were gathered together.

14 And the government has apparently taken the position
15 that it didn't require in person access. So I think you need
16 to clarify that or -- they say maybe, maybe telephone access
17 was okay. We don't have any records --

18 THE COURT: They indicated -- and again, I wasn't
19 there; I don't know what was going on -- that the folks were
20 being held in the secondary inspection locations, and I don't
21 think counsel are permitted into the secondary area. That's
22 the problem.

23 And so -- but access can be -- I mean, prisoners all
24 the time have adequate access to counsel via telephone.

25 MR. RAPHAEL: Right. And my point is that we don't

1 have any records to show that, in fact, people were being
2 granted access, that the named plaintiffs and the intervenors
3 say that their phones were taken away. Mr. Heaphy's client
4 wasn't allowed to call her fiance.

5 Maybe that was before the TRO issued, but I think
6 that there is something very troubling about the fact that
7 there were so many lawyers there waiting to help, and not a
8 single one of them got to talk with any of the detainees. So I
9 would just ask the Court to make it clear that CBP must provide
10 access to lawyers who are on hand, willing and waiting to help,
11 or it's going to be unfair to these people.

12 THE COURT: All right. Let me hear the government's
13 response to that. I'm sorry, was there another thing?

14 MR. RAPHAEL: Yeah, I had a couple more points. Part
15 of the problem -- part of the consequence of the lawyers not
16 having access is there was a restriction on the flow of public
17 information. We know very little about what was going on
18 there. The fact that lawyers weren't involved means the
19 lawyers couldn't tell us what was going on there.

20 As you know, the attorney general sent a letter to
21 the government on last Sunday with these concerns and asking
22 for the names of Virginia residents who have been removed from
23 the country or blocked from entering, and so I would ask the
24 Court today to require the government to tell the commonwealth
25 of Virginia which Virginia residents have been denied entry or

1 have been removed from the country, and I would ask for the
2 name, the Virginia address, the foreign residence address, the
3 type of visa, a phone number where we can get in touch with
4 these Virginia residents, and an e-mail address if they have
5 it.

6 I would ask for that both retrospectively, anybody
7 whose visas were cancelled, and prospectively, any Virginia
8 resident whose visa is cancelled going forward, and the same
9 for people removed. If somebody's been removed from the
10 country, we'd like to know which Virginia residents were
11 removed both retrospectively and prospectively. I don't think
12 that's asking for a lot.

13 And I want to say one thing about the government's
14 good faith. I am, I am pleased that they are willing to whisk
15 people back when they come to our attention. They're not going
16 to come to our attention if we don't have this list because,
17 you know, please stand forward if you're not here, right? It's
18 hard to know who's affected. So I think that list is really
19 important.

20 And I don't, I don't want to be overly critical of
21 the government on this, but I think it's important to point out
22 that there appears to be some strategic maneuvering here not by
23 counsel but by counsel's client. So whenever one of these
24 folks comes forward and files a lawsuit and intervenes, they
25 are immediately presented with a deal that drop your case and

1 I'll bring your person back and dismiss your case with
2 prejudice, which is exactly why you need a vehicle like this
3 case, where you allow permissive intervention, but there's
4 something very troubling about the way this is playing out.

5 These people were excluded based on national origin
6 on the theory that they were a security risk, but if they can
7 file a lawsuit, you get right back unless you are a security
8 risk. So I'm very -- we're very troubled by that.

9 MR. HEAPHY: Your Honor, before the government goes,
10 can I just add one thing?

11 THE COURT: Yes.

12 MR. HEAPHY: Thank you. It's on the scope of your
13 order on counsel, Your Honor. My client now has a lawyer, and
14 that's me, and arguably, we would be protected by the temporary
15 restraining order in terms of access to counsel, and I just
16 want to be clear that I understand the Court's order correctly.
17 It applies to lawyers' access to all legal permanent residents
18 being detained at Dulles International Airport.

19 When it's extended, Your Honor, I would assume that
20 that allows me to have access to Ms. Fadul despite the fact
21 that she's in this K-1 status, not yet a lawful permanent
22 resident, that the Legal Aid Justice Center and Mayer Brown
23 also have access to their clients upon their return.

24 My understanding is that the government, through its
25 good faith efforts to resolve the case, are going to make

1 efforts to reinstate my client's visa, but when she arrives,
2 we'd very much like to be there and facilitate her processing
3 through CBP so that there is no confusion, that the order is
4 enforced.

5 THE COURT: Well, before this order went into effect,
6 what was the arrangement for access to counsel at Dulles
7 Airport?

8 MR. HEAPHY: I don't know, Your Honor.

9 THE COURT: All right.

10 MR. SANDOVAL-MOSHENBERG: If I may address that?

11 THE COURT: All right, Mr. Sandoval-Moshenberg.

12 MR. SANDOVAL-MOSHENBERG: Thank you, Your Honor. My
13 practice, although I've been practicing immigration for
14 eight-and-a-half years, does not generally involve consular
15 processing, bringing people into the country, but I can tell
16 you that it is not the case that lawyers are never allowed to
17 speak with clients when those clients are taken, for example,
18 into credible fear interviews, for example. So it is -- it
19 would certainly not be the first time, you know, in the history
20 of Dulles Airport that attorneys are allowed back into the CBP
21 area.

22 THE COURT: All right.

23 All right?

24 MR. REUVENI: Maybe I can go now?

25 THE COURT: Yeah.

1 MR. REUVENI: Thank you. Let me take these in
2 reverse order, Your Honor, because there are a number of things
3 here, and it looks like we are going to argue some aspect of
4 the commonwealth's motion, even though we weren't going to, but
5 now we are.

6 You hit on this point earlier, and this is a line, I
7 think, that CBP would have to draw, and this is just, lawyers
8 do not get into secondary inspection unless that becomes a
9 custodial interrogation or a criminal investigation occurs and
10 a right to counsel attaches.

11 The INA is very clear on this, and I want to speak to
12 the Aziz attorney's point. Credible fear hearings, those are
13 an adjudicatory proceeding that you actually have by regulation
14 entitlement to counsel. You're not in secondary when that
15 happens. A credible fear hearing does not occur in secondary
16 with CBP. A credible fear hearing occurs in front of the
17 United States Citizenship and Immigration Service. Totally
18 different entity, not part of this lawsuit at least at this
19 time.

20 I am not aware of, no party has cited any case in
21 which any individual, including citizens returning to the
22 United States who would just go through normal secondary
23 process, have a lawyer in secondary. I don't think it's really
24 hard to imagine what sort of operational problems that may
25 present at the border, but more so in terms of trying to move

1 forward with this litigation and just getting past this weekend
2 and addressing the real issues, that's the sort of thing that
3 the government would probably have to look at very closely if
4 the order was expanding to that.

5 Actually, I will say this: The counsel, pro bono
6 counsel, we are not aware of anyone after Your Court -- Your
7 Honor's order was implemented who -- of anyone asking for
8 counsel who was a lawful permanent resident once they received
9 this document, because they were getting waived through very
10 quickly -- why would you want to talk to a lawyer if you're
11 getting admitted to the United States? -- which suggests things
12 were working fine once your order was operationalized.

13 So there's really -- the government would strongly
14 oppose, and this is really the only issue we're left -- we're
15 opposing here, expanding the order to apply to individuals who
16 are in secondary. That's not the law, and the INA doesn't
17 provide for it, and there's no constitutional right to that for
18 anyone, let alone arriving aliens who have never been admitted
19 to the United States before and have no ties or connection to
20 this country.

21 As to the commonwealth's request for a list, that
22 seems way beyond the scope of the TRO you entered, which had to
23 do with access to counsel, and the commonwealth never mentioned
24 this to us when we in good faith were discussing bringing back
25 these potentially one or two individuals they mentioned.

1 I want to -- since I mention that, I take issue with
2 the fact on behalf of the federal government that the
3 commonwealth is suggesting we're mooting cases out
4 strategically. Everyone in this courtroom knows very well we
5 have dozens of these across the country. Some of them we are
6 litigating; some of them we're not.

7 As to the events that happened on the weekend, those
8 seem like cases we're looking to resolve because that is an
9 entirely different scenario than people now trying to come to
10 the United States with a revoked visa. Those we're defending.
11 Those at this time we're continuing to defend. There's no
12 strategic mooting of cases out occurring here from the
13 government's view.

14 Back to the list, I mean, we would oppose that. We
15 don't see any reason for it right now, and frankly, it would
16 complicate moving forward with trying to resolve some of these
17 cases if we have to dig in and look for names, and I don't see
18 its relevance right now. I don't see its helpfulness to where
19 we are in this case right now, and at the very least, we would
20 request, Your Honor, an opportunity to provide a brief opposing
21 that.

22 THE COURT: Well, again, how many people do you think
23 as best you can tell were removed from Dulles over the weekend?

24 MR. REUVENI: So now that we're talking about not
25 just lawful permanent residents --

1 THE COURT: The whole --

2 MR. REUVENI: Everyone --

3 THE COURT: Yeah.

4 MR. REUVENI: -- trying to come into Virginia, I
5 don't know the answer because the answer I had before I came to
6 court today was limited to lawful permanent residents, which
7 was zero people removed over the weekend.

8 So I don't have the answer as to nonimmigrants, and I
9 don't have the answer as to individuals who had immigrant visas
10 but had not yet been admitted to the United States so had not
11 yet been lawful permanent residents.

12 THE COURT: And among -- I'm sorry, among the people
13 who were removed on Saturday and/or Sunday, did that include
14 refugees? If you know. If you don't know, I mean,
15 obviously -- yeah.

16 MR. REUVENI: No, I'd be speculating. I'd like to
17 say no, but I'm speculating.

18 THE COURT: All right.

19 MR. REUVENI: So I'll just go with I don't know right
20 now.

21 THE COURT: Okay.

22 MR. REUVENI: If need be, if necessary, I can find
23 out, but what I do know, not a single lawful permanent resident
24 even before your order was entered, between the time the
25 executive order was signed and your TRO was -- CBP received

1 notice of it, and thereafter, no lawful permanent residents
2 were removed. The government -- every single one has been
3 admitted to the United States that I'm aware of, and those that
4 would now proceed to continue to try to come to Dulles and get
5 on a plane, the way that they're supposed to be working is they
6 get on a plane, they arrive at Dulles, they don't otherwise
7 have some reason under the INA during the secondary inspection,
8 if they get through secondary, to be denied entry, they're
9 admitted to the United States.

10 THE COURT: Are lawful permanent residents normally,
11 normally required to go through secondary?

12 MR. REUVENI: No one is required to go through
13 secondary if they're a lawful permanent resident, but everyone
14 including citizens can be asked to go through secondary.

15 THE COURT: Right. All right, so there has never
16 been an established practice in the past that all LPRs must go
17 through secondary?

18 MR. REUVENI: I'm not aware of one.

19 THE COURT: And is that what's happening now? That
20 is, those LPRs who are being permitted, permitted back in the
21 country from those particular countries, are they all required
22 to go through secondary?

23 MR. REUVENI: Well, no. To be clear, we're talking
24 about two different points in time. So we're talking about the
25 weekend, and yes, at that time, lawful permanent residents were

1 going through secondary and then getting this waiver process
2 that the executive order anticipates and outlines, and they
3 were getting waived through pretty quickly, 15 to 30 minutes
4 after, by Sunday is my understanding.

5 Going forward, no. We have the White House guidance
6 that we attached to our intervention. The way that our --
7 opposition to intervention. The way that is being
8 operationalized, they are not, they are not going through
9 secondary.

10 If there is an independent reason other than the
11 executive order, as it would have been before the order was
12 signed on Friday, to go to secondary, they're going to
13 secondary, as everybody else would if the order didn't exist.

14 THE COURT: So it's your understanding that lawful
15 permanent residents now are being treated exactly the -- from
16 those seven countries are being treated the same as they would
17 have been treated a year ago.

18 MR. REUVENI: Correct. So the guidance and the way
19 that it's being implemented, sections 3(c) and 3(e) of the
20 executive order that would otherwise apply if read that way to
21 lawful permanent residents does not apply to them, so they are
22 to be treated -- are being treated so far as I know as though
23 it was 4:21 Friday.

24 THE COURT: But you would agree with me that within
25 the four corners of that document, that is not included. It

1 required the additional statement by counsel to make it clear
2 that they were not included within the executive order.

3 MR. REUVENI: Well --

4 THE COURT: I didn't see the word "lawful permanent
5 residents" in there.

6 MR. REUVENI: No, that is in there. "I understand
7 that there has been reasonable uncertainty about whether those
8 provisions" -- and I'm reading from the counsel for the
9 president's memorandum, back to the language -- "apply to
10 lawful permanent residents of the United States. Accordingly,
11 to remove any confusion, I now clarify that Sections 3(c) and
12 3(e) do not apply to such individuals. Please immediately
13 convey this interpretive guidance to all individuals
14 responsible for the administration and implementation of the
15 Executive Order."

16 So at least in the government's understanding of
17 this, no lawful permanent residents are going to secondary
18 solely on the basis of the executive order. Again, if there's
19 some independent basis that it preexisted the executive order
20 that's in the INA, yes, they're going to secondary, but other
21 than that, no. The order does not apply to them so far as the
22 government is concerned.

23 THE COURT: All right.

24 MR. REUVENI: Thank you.

25 THE COURT: Mr. Raphael?

1 MR. RAPHAEL: Just a couple points. Just on that
2 last point, section -- as we, as we read the executive order,
3 it does apply to lawful permanent residents. There is an
4 exemption -- an exception in 5(g), but it requires case-by-case
5 review.

6 And so what's happened here is after the chaos
7 developed, I think the government realized they made a mistake
8 or at least it wasn't turning out as they planned, and the
9 secretary has promulgated this sort of categorical decree that
10 if you're an LPR, you can come in. I don't, I don't see how
11 that comports with 5(g), which required case-by-case review.

12 But Your Honor touched on it earlier. Under the
13 voluntary cessation doctrine, they snap their fingers; they
14 change it. They can snap their fingers back, and unless the
15 wrongful conduct is absolutely certain not to recur, they can't
16 moot the case out by changing their -- by changing what they're
17 doing.

18 On the issue of the list, this is no surprise. We
19 asked for this list last Sunday. We might not have gotten in
20 this case if they'd given it to us and we could figure out the
21 full extent of the damage to Virginia residents.

22 We're here seven days after this order was issued,
23 only five business days, and we know of these two students who
24 were stranded that I mentioned earlier, and yeah, we're trying
25 to get them back, but there could be many others, and we can't

1 find them unless we know who they are. It is not an
2 unreasonable request for the government to tell us which
3 Virginia residents they have not let in or who have been
4 removed, and I think that's very reasonable.

5 And the last thing I might ask, Your Honor, given a
6 showing of cooperation here, if Your Honor might consider
7 appointing a magistrate judge who might facilitate mediation
8 efforts, such as Magistrate Judge Buchanan, who's been
9 extremely successful on these things.

10 THE COURT: All right. Well --

11 MR. REUVENI: Your Honor, just one last point?

12 THE COURT: Yeah.

13 MR. REUVENI: I just want to clarify any confusion
14 here. Paragraph 5(g) that counsel refers to applies to
15 refugees. Paragraph 3 applies to lawful permanent residents.
16 That's why the White House guidance says nothing about
17 paragraph 5. Refugees coming here are not lawful permanent
18 residents; they're refugees, different category. Maybe one day
19 they will become lawful permanent residents, but refugees don't
20 have that status when they arrive in the United States.

21 THE COURT: All right, thank you.

22 MR. RAPHAEL: I'm sorry, it's 3(g), not 5(g). 3(g)
23 does apply. 3(g).

24 MR. REUVENI: You said 5(g).

25 THE COURT: You had said 5(g).

1 MR. RAPHAEL: I apologize, it was 3(g). That calls
2 for case-by-case review.

3 THE COURT: All right.

4 MR. REUVENI: On the list, again we would, we would
5 oppose what the commonwealth is proposing, and we think it
6 would change the tenor of this litigation dramatically, but if
7 you would like us to get back to you with a brief on that, we
8 can do so. We just haven't had enough time to think of that or
9 respond to it. It just came up today.

10 THE COURT: All right.

11 MR. REUVENI: As to the letter, I mean, I would say
12 one last thing; I apologize, Your Honor. The letter asked us
13 to respond to ongoing litigation. I think we all understand
14 the position that puts the U.S. government in when we're asked
15 to give information that could affect ongoing litigation.

16 THE COURT: All right. Well, we'll take a look at
17 that issue in chambers, but at this point, then I've allowed --
18 granted the motions to intervene. We're going to extend the
19 temporary restraining order to keep things somewhat in place.

20 The access to counsel issue is a troubling one
21 because I -- my experience having handled many cases at Dulles
22 is that, in fact, the government's position is correct that
23 normally, under normal circumstances, counsel would not have
24 the right to have direct, in person contact with people who are
25 held up in the process there.

1 There are exceptions, and I do believe in one of your
2 sets of papers, there was discussion about reference of people
3 to hotlines or telephone contact with various agencies that
4 provide legal counsel in immigration. So I'll see what makes
5 sense to me.

6 I mean, I do think that probably this issue is
7 somewhat less pressing than it was on Saturday because at this
8 point, I don't think folks are coming to the airport who would
9 be covered by this, right? I mean, are there any more issues
10 of people who have been coming to the airport and being turned
11 around since this weekend?

12 MR. RAPHAEL: Well, I mean, LPRs, I guess after the
13 government's change in position, are now allowed in.

14 THE COURT: LPRs are coming in, and the problem now
15 is from your standpoint, is that everybody else is basically
16 stopped because the airlines won't let -- they aren't getting
17 the visas.

18 MR. RAPHAEL: That's right.

19 THE COURT: Yeah.

20 MR. RAPHAEL: And Your Honor's TRO applied only to
21 LPRs.

22 THE COURT: Correct.

23 MR. RAPHAEL: And so I think the counsel issue is
24 still a live issue if they have problems going forward.

25 THE COURT: If LPRs have problems.

1 MR. RAPHAEL: Yes, yes.

2 MR. REUVENI: Yes. No one is getting turned around
3 at the airport if they're a lawful permanent resident. If
4 they're not and they don't have a valid visa, practically
5 speaking, they're not getting on a plane to get here, so that
6 can't be an issue unless and until they do.

7 THE COURT: All right, thank you.

8 All right, I think that resolves everything for
9 today. We will recess court until 12:00.

10 MR. RAPHAEL: Thank you.

11 (Which were all the proceedings had
12 at this time.)

13

14 CERTIFICATE OF THE REPORTER

15 I certify that the foregoing is a correct transcript of
16 the record of proceedings in the above-entitled matter.

17

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24

25

/s/

Anneliese J. Thomson

From: (b)(6), (b)(7)(C)
Sent: Saturday, February 04, 2017 5:19 PM
To: DURST, CASEY OWEN
Subject: FW: Hearing Transcript
Attachments: aziz20317.pdf

(b)(5), (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)
CBP Assistant Chief Counsel (Baltimore)
(b)(6), (b)(7)(C)
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Subject: Hearing Transcript

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(b)(6), (b)(7)(C)
CBP Assistant Chief Counsel (Baltimore)
(b)(6), (b)(7)(C)
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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

TAREQ AQEL MOHAMMED	.	Civil Action No. 1:17CV116
AZIZ, et al.,	.	
	.	
Petitioners,	.	
	.	
vs.	.	Alexandria, Virginia
	.	February 3, 2017
DONALD TRUMP, President of	.	10:00 a.m.
the United States, et al.,	.	
	.	
Respondents.	.	
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TRANSCRIPT OF MOTIONS HEARING
BEFORE THE HONORABLE LEONIE M. BRINKEMA
UNITED STATES DISTRICT JUDGE

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(APPEARANCES CONT'D. ON FOLLOWING PAGE)

(Pages 1 - 54)

COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

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1 P R O C E E D I N G S

2 THE CLERK: Civil Action 17-116, Tareq Agel Mohammed
3 Aziz, et al., v. Donald Trump, President of the United States,
4 et al. Will counsel please note their appearances for the
5 record.

6 MR. RAPHAEL: Good morning, Your Honor. Stuart
7 Raphael from the Commonwealth of Virginia.

8 THE COURT: Good morning.

9 MR. HERRING: Good morning, Your Honor. Mark
10 Herring.

11 THE COURT: Good morning.

12 MR. HEAPHY: Good morning, Your Honor. I'm Jim
13 Heaphy at Hunton & Williams. I'm here for Osman Nasreldin and
14 Sahar Fadul.

15 THE COURT: Good morning.

16 MR. HEAPHY: Good morning.

17 MR. SANDOVAL-MOSHENBERG: Good morning, Your Honor.
18 Simon Sandoval-Moshenbergs, Legal Aid Justice Center, appearing
19 pro bono for the Aziz petitioners; and with me is Paul Hughes
20 with the Mayer Brown law firm, who has been admitted pro hac
21 vice.

22 THE COURT: Good morning, counsel. We almost ran out
23 of seats for you-all, didn't we?

24 MR. BARGHAAN: And good morning, Your Honor.
25 Assistant United States Attorney Dennis Barghaan on behalf of

1 the respondents. With me today is Erez Reuveni from the Office
2 of Immigration Litigation at the Department of Justice, the
3 Civil Division, and he will be arguing the cause on behalf of
4 the respondents this morning.

5 THE COURT: Don't you want to do that, Mr. Barghaan?

6 MR. BARGHAAN: Can I plead the fifth?

7 (Laughter.)

8 THE COURT: You realize you'll be quoted on that one,
9 I'm sure. All right.

10 Well, I'm glad everybody is smiling this morning
11 because I hope we can resolve what's before us today in a good
12 and amicable and civil fashion. All right, we have several
13 motions before us, and I want to address the first one, which
14 is the motion to hold in abeyance. It's my understanding that
15 in terms of the two Aziz plaintiffs, they have worked out their
16 dispute with the United States. Is that correct?

17 MR. REUVENI: That is correct, Your Honor.

18 THE COURT: All right. Could you -- how close is
19 that resolution to being finalized?

20 MR. REUVENI: So we have a signed settlement document
21 that both parties have countersigned. It is not finally
22 executed; that will take several days. There are certain
23 conditions in the settlement that need to be -- need to occur
24 before the settlement is finally executed, at which point
25 our -- the terms of the settlement will lead to dismissal of

1 the Aziz brothers' claims.

2 THE COURT: But as you know, there were other, I
3 believe, 60 John Does also named in that complaint --

4 MR. REUVENI: Yes.

5 THE COURT: -- so that there are other claims that
6 still are potentially unresolved.

7 MR. REUVENI: I don't want to speak on behalf of
8 plaintiffs' counsel, but there is language in there that the
9 government believes addresses those claims as well. It just
10 leads -- it would lead to a dismissal without prejudice, and if
11 those claims are picked up again, if individuals are identified
12 that can raise those claims, they'd be free to bring them
13 before the Court.

14 THE COURT: All right. Well, that, I think, then is
15 a segue into the motion from the commonwealth to intervene in
16 this case. Mr. Raphael?

17 MR. RAPHAEL: Your Honor, if I may, I think
18 Mr. Heaphy has a motion to intervene. It would make sense for
19 sequencing purposes for him to -- for the Court to address
20 that. I think he's going to be very brief.

21 THE COURT: All right, that's fine.

22 MR. HEAPHY: Thank you, Your Honor. Your Honor, good
23 morning again. I'm Tim Heaphy, and I'm here representing the
24 proposed intervenors Osman Nasreldin and Sahar Fadul.

25 We have filed a motion to intervene in this matter

1 because our clients are in a very same position as the
2 petitioner-plaintiffs, the Aziz brothers. Very briefly, Your
3 Honor, our clients are an American citizen, Mr. Nasreldin, and
4 his Somali fiancée, Ms. Fadul. She was on the very same flight
5 with the Aziz brothers from Ethiopia to Dulles Airport on
6 Friday, January 28.

7 She was detained at the airport, asked to sign a
8 paper, we believe, withdrawing her K-1 visa, which she had been
9 lawfully issued by the embassy in Sudan, and when she did sign
10 that document, despite the fact that she doesn't speak English
11 and did not understand it, she was immediately returned to
12 Ethiopia, and it is on that basis that we have filed the motion
13 to intervene and seek the Court's leave to help us reverse that
14 action and get her admitted on that lawfully issued K-1 visa.

15 THE COURT: So she's within those 60 John Does that
16 were part of the original case.

17 MR. HEAPHY: I believe so, Your Honor, but again --

18 THE COURT: Well, if she was at Dulles Airport --

19 MR. HEAPHY: She was.

20 THE COURT: -- she was among those.

21 MR. HEAPHY: She was. I think she was actually on
22 the same flight, Your Honor, yes. But again, we also represent
23 her American citizen husband, who is a resident of Colorado.

24 Now, we have also been offered a proposed resolution
25 by the United States. I think it is exactly the same

1 resolution that is offered the Aziz brothers, and that
2 essentially would be to return Ms. Fadul to the United States
3 on that originally executed K-1 visa, and we are inclined to
4 work with the United States to have that occur, but we do not
5 believe that the litigation should be held in abeyance.

6 Our preference is for Your Honor to grant our motion
7 to intervene because there are common questions of law and fact
8 at issue with our clients and the Aziz brothers, but until our
9 client is returned to the United States pursuant to that
10 agreement, this is a very live controversy.

11 THE COURT: All right.

12 MR. HEAPHY: As a matter of fact, we actually asked
13 the Court to set a deadline by which we would file a
14 substantive complaint, and if Ms. Fadul has been returned,
15 obviously, that would moot that, and we would withdraw for --
16 or seek to dismiss our case, but we believe, Your Honor, it's a
17 very live controversy, and unless and until Ms. Fadul is
18 returned to this country pursuant to this negotiated settlement
19 that we are attempting to work out with the government.

20 We don't have a signed document. We have had
21 discussions, but essentially, it would be to return our client
22 to the United States, which would then moot her substantive
23 claims.

24 THE COURT: Thank you.

25 MR. HEAPHY: So, Your Honor, again, we would just

1 move to formally intervene, and hopefully, the Court will grant
2 our motion.

3 THE COURT: All right.

4 MR. REUVENI: Good morning again, Your Honor. This
5 can be very short. We have an agreement in principle.
6 However, in case that doesn't come together, which I don't have
7 any reason to believe it should, there are very similar terms
8 that, as her counsel indicated, if that does not follow
9 through, intervention would not be appropriate in this case.

10 The individual who we are seeking to bring back
11 pursuant to this settlement we have in principle is not an
12 unlawful permanent resident is and not an immigrant visa
13 holder.

14 THE COURT: But she is somebody who went through a
15 carefully vetted review process, correct, before she got the
16 authorization to come here?

17 MR. REUVENI: That's absolutely correct.

18 THE COURT: That's absolutely correct, all right.

19 MR. REUVENI: She is a -- well, actually, sorry, let
20 me clarify.

21 THE COURT: All right.

22 MR. REUVENI: There are different levels.

23 THE COURT: I'm fully aware of that.

24 MR. REUVENI: A K-1 visa is a nonimmigrant visa that
25 fiances can use to come to the United States and within 90

1 days get married once they arrive here. It is not the same
2 level of rigorous review that may occur in the context of
3 refugees or in other sorts of review scenarios.

4 And the issues that would arise if this case -- and
5 we're not saying they can't bring their case. They can
6 certainly bring their case. It's just not the same nexus of
7 facts or events. It's not the same type of visa. It's not the
8 same type of legal issues. It's not the same sort of due
9 process rights that may be in play.

10 It would unnecessarily complicate this case and
11 essentially set up, if this case moves forward, which we very
12 much hope it does not at least not respect to the Aziz brothers
13 and with respect to the additional individual who wishes to
14 intervene, but it would set up two separate tracks before Your
15 Honor of a nonimmigrant track, an immigrant visa track, and a
16 lawful permanent resident track, so you'd have three separate
17 sets of legal issues.

18 THE COURT: Well, I don't know why it should. If, in
19 fact, the proper way of looking at this case is to simply draw
20 a line in the sand and say that any visas or other
21 authorizations to come into the United States that had gone
22 through the then existing appropriate processes before the
23 executive order went into effect should be implemented, and --
24 so that anybody, whether they're a refugee or they've got a K-1
25 visa or they've got a -- or they're a lawful permanent

1 resident, if that paperwork had gone through, they've been
2 properly vetted through the processes that we've had in place
3 up to this point, why should they not get the benefit of that?

4 Going forward is another question because the
5 executive order has changed that situation, but I'm looking
6 right now and I think most of the -- all of the issues in this
7 case right now are focused essentially on that, that people who
8 have already gotten the permission to be in this country or to
9 come to this country, why should that not be honored?

10 MR. REUVENI: Before I answer that, just one global
11 response to that. I don't know that the issues that the
12 commonwealth wishes to raise, but we'll talk about that later,
13 fall into that category, but with respect to the Aziz
14 plaintiffs and with respect to the individual with the K-1
15 visa, yes, our understanding is they all arrived here over the
16 weekend, which is why the United States government is looking
17 to resolve those particular issues.

18 If I may perhaps just suggest this as a course
19 forward with respect to the motion to intervene, we do have an
20 agreement in principle. At this point, we're simply
21 wordsmithing. There's no principle terms that are in
22 disagreement at this point between the parties.

23 Perhaps we table the motion to intervene for a short
24 period of time, allow us to reach a settlement, and we may not
25 even need to deal with these issues, but we can do that on a

1 short turnaround, if you don't object to that, of course, and
2 we don't have to address this on the legal matter -- on the
3 legal merits.

4 MR. HEAPHY: If I may, Your Honor, I do object to
5 that. We need to be intervened in this case.

6 THE COURT: You want a stake in this litigation just
7 in case.

8 MR. HEAPHY: We need to be in the case. We see it
9 exactly as Your Honor just articulated in your question. This
10 is a matter of whether or not people with lawful visas vetted
11 carefully by the United States government were wrongly and
12 unconstitutionally denied access. That's the situation
13 involving our client with the K-1 visa and those with the
14 immigrant visas.

15 There may be subtle factual distinctions that would
16 be relevant, but the common issues of law and fact in our view
17 compel intervention. We need to be a party in this case,
18 frankly, for leverage to enforce whatever settlement may ensue,
19 and we don't have a settlement until Ms. Fadul sets foot back
20 in the United States, and that has not happened yet.

21 THE COURT: I understand. Well, first of all, I want
22 to commend -- I want to commend the government for working so
23 quickly in trying to resolve these cases. That's great. And I
24 don't want to do anything that's going to interfere with that,
25 but I do agree with Mr. Heaphy that, number one, I think that

1 his clients have alleged sufficient common facts and issues of
2 law that are already included in the amended papers that have
3 been filed in the original case to justify the Court's exercise
4 of its discretion and to allow them to intervene, so the motion
5 is granted, all right?

6 MR. REUVENI: Your Honor, I understand the order, but
7 I just want to verify something for the record.

8 THE COURT: Yeah.

9 MR. REUVENI: I mean, we'll work this out going
10 forward, of course.

11 It is the government's understanding that
12 Mr. Heaphy's client is not in either of the two classes before
13 you in the current -- in the current state of this case. A
14 nonimmigrant visa is very different than an immigrant visa.
15 Very different equities attach. Very different processes
16 occur.

17 THE COURT: Yes, and --

18 MR. REUVENI: Putting that aside --

19 THE COURT: Right.

20 MR. REUVENI: Putting that aside, going forward if we
21 need to, we'll elaborate on that.

22 THE COURT: Thank you.

23 All right, Mr. Raphael?

24 MR. RAPHAEL: Thank you, Your Honor. I stood up
25 before because the permissive intervention and intervention of

1 right issues that you were just talking about are obviously at
2 issue in our case with our motion as well. So we do have a
3 motion to intervene. We filed that on Tuesday. On Wednesday,
4 we filed a proposed complaint in intervention.

5 And I think it's important to start from the
6 standpoint that at this stage of the proceeding, there are now
7 two parties in the case that are in that have, that clearly
8 have standing, and the law is clear, as I believe the
9 government cited in its papers, that you only need one
10 plaintiff to have standing in order for the Court to be able to
11 exercise its Article III jurisdiction.

12 So I'm going to get to in a second why it's
13 absolutely clear that Virginia has standing because of direct
14 injuries to Virginia, but the government argued last night in
15 their brief that we don't have standing, and given that there
16 are now several parties who are plaintiffs in the case, the
17 Aziz brothers and Mr. Heaphy's clients, standing is just not a
18 question.

19 And the case I would cite for that is *Rumsfeld v.*
20 *Forum for Academic and Institution Rights*. It's 547 U.S. 47,
21 at -- pinpoint is 52, note 2, from 2006, where the Court said
22 the presence of one party with standing is sufficient to
23 satisfy Article III's case or controversy requirement.

24 So the government's principal objection to our motion
25 to intervene is that we don't have standing. It's just not an

1 issue given the current posture of the case.

2 They also suggest that the case is somehow mooted now
3 because they're working out a deal to whisk these other
4 plaintiffs back in exchange for their promising to dismiss
5 their cases once they get back to U.S. soil. That's just not
6 accurate as far as the law goes.

7 We cited to the Court *CVLR v. Wynne* in the papers we
8 filed last night. That's 792 F.3d 469, 475. And I have a copy
9 of that. If it would help the Court, I have a copy of that.

10 THE COURT: It's all right.

11 MR. RAPHAEL: Okay. Two sentences that appear at
12 page 475 of that, of that opinion, the first one is that most
13 courts -- this is in footnote 2 -- "Most courts that have
14 considered situations similar to Tosco" -- which was a Tenth
15 Circuit case -- "agree that when the motion to intervene is not
16 filed until after the underlying case is fully resolved, that
17 motion is moot."

18 The underlying case here is obviously not fully
19 resolved. The Aziz brothers and Mr. Heaphy's clients are in
20 the case, and it's not fully resolved, but more importantly, I
21 think this is sort of the -- the important language is further
22 down the page. The Fourth Circuit said, "To the contrary, the
23 case was live when Appellants moved to intervene, and remained
24 so when the district court denied the motion"

25 So if the intervention motion is filed when the case

1 is a live controversy, that is all that is needed, even if the
2 underlying case later becomes moot. So you measure this as of
3 the time the motion to intervene was filed, and that was filed
4 on Tuesday, when this was absolutely a live controversy, and
5 still is.

6 Now, I'm going to address standing. We don't need to
7 because we've got existing parties that have it, but I want the
8 Court to be comfortable that we absolutely have direct injury
9 here. To have standing, you need an injury that's caused by
10 the conduct at issue and that would be redressed by the relief
11 that you're seeking, and we satisfy all three of those
12 requirements.

13 And I point out, by the way, that the federal court
14 in Massachusetts just yesterday in the *Louhghalam v. Trump*
15 case, docket 17-10154, granted Massachusetts' motion to
16 intervene in a case that has a very similar posture, and I
17 actually brought a copy of that order, which I'd be
18 delighted --

19 THE COURT: We've also seen that.

20 MR. RAPHAEL: Okay. Very good.

21 So what is the direct injury here? You know, in the
22 Massachusetts case, Massachusetts was arguing for a much sort
23 of broader notion of standing, to just protect citizens, you
24 know, allowing refugees to come to the state.

25 We're not, we're not challenging the refugee

1 provision in this case. We're here based on direct injury to
2 Virginia, and it's laid out in Taylor Reveley's declaration,
3 which we filed yesterday. That's ECF 32.

4 In the commonwealth, in our 14 colleges and
5 universities, not to mention our community colleges, there are
6 more than 350 students alone at VCU, Virginia Tech, George
7 Mason, UVA, and William & Mary, 350 students who come from
8 these banned countries. There are numerous others at other
9 schools. We haven't been able to tally them all up yet, but
10 that's a lot of students coming to our public schools.

11 We know at this point based on Mr. Reveley's
12 declaration, and this is paragraph 5, there are dozens of
13 employees and faculty who have work visas or LPR status who
14 come from these banned countries.

15 We know of at least two students who are trapped and
16 cannot get back to the United States. One of them is an
17 Iranian doctoral candidate who needs to come back to have his
18 examination for his dissertation, and he was planning to come
19 with his wife. They've been issued visas, and then they were
20 cancelled. They can't get here. And they need to do that this
21 semester.

22 And then we know of a young lady who is a student at
23 George Mason University who's from Libya. Her visa was
24 cancelled when she was in Turkey, and she's stuck in Turkey.

25 Now, to the government's credit, they've been working

1 with us to try to get the information needed so they can free
2 her to come back, and that's one reason why we were willing to
3 set the TRO -- the preliminary injunction hearing for next
4 Friday rather than for, for this Friday, but I think that
5 demonstrates the irreparable harm and injury to Virginia's
6 interests that the executive order is causing right now.

7 There are other harms that are laid out in
8 Mr. Reveley's declaration. For example, a number of scholars
9 have cancelled their travel plans to international conferences.
10 They're afraid to leave the country because they won't be able
11 to get back, and those include some Iranian-born faculty and
12 students. That's paragraph 7 of Mr. Reveley's declaration.

13 We have examples of visiting scholars who've
14 cancelled their plans to come here. There are five people in
15 that category, paragraph 9 of Mr. Reveley's declaration.

16 There are a number of students who have now withdrawn
17 their applications to come to our schools. We're aware of two
18 Sudanese applicants and a handful of Iranian engineering
19 students who, who have withdrawn their applications. That's
20 lost opportunity and lost -- and if you have to put it in
21 monetary terms, obviously, this is much bigger than that, but
22 if you have to put it in monetary terms, that's lost revenue to
23 the commonwealth.

24 All of those direct injuries are plainly caused by
25 the executive order, and they will plainly be redressed by the

1 injunction that we're seeking. We absolutely have standing.

2 Now, the primary group we're here to protect are the
3 students and faculty at our universities and colleges, but we
4 are also here to protect Virginia residents who are here on LPR
5 or work or student visas even if they're not going to our
6 schools, and we have standing for that, too, because they are
7 taxpayers.

8 Under IRS Publication 519, at page 3 to 4, the IRS
9 rules provide that green card holders and others who have been
10 substantially present in the U.S. are considered U.S. residents
11 for tax purposes, and Virginia follows that rule. It's on our
12 Web site under the residency status page at the Department of
13 Taxation Web site. It says, "If you are a resident or a
14 nonresident alien required to file a federal income tax return,
15 and you meet the definition of a Virginia resident, part-year
16 resident or nonresident and other filing requirements, you must
17 file a Virginia return, unless exempted from the requirement by
18 federal treaty."

19 So they're taxpayers, and if they can't be here, we
20 lose that tax revenue. And that kind of trivializes what's
21 really important here, but that's plainly a pecuniary interest
22 that the commonwealth has.

23 And if you need case law to back that up, I've got
24 two suggestions. Number one, *Corr v. MWAA*. That was the
25 Dulles Toll Road case which Judge Trenga decided; and, you

1 know, when I represented MWAA on that case, I argued that the
2 toll payers didn't have standing because a zillion people pay
3 tolls, and that it's not adequate to restrict who the
4 plaintiffs could be, and I persuaded him I was right, but the
5 Fourth Circuit reversed in that case.

6 The Fourth Circuit held -- and this is at 740 F.3d
7 295 (2014) -- the Fourth Circuit held that paying like a \$2
8 toll was enough to give them standing to complain that MWAA was
9 unconstitutional, and the Fourth Circuit let that case go
10 forward. And so if paying \$2 is enough for standing, certainly
11 everything that the commonwealth is losing here is enough for
12 standing.

13 And one other case I'd cite is *Texas v. United*
14 *States*, the Fifth Circuit case from 2015, 787 F.3d 733. You
15 know, Texas challenged President Obama's DAPA policy, and their
16 basis for standing was that because the federal government
17 deemed these people from other countries to be lawfully
18 present, Texas had to spend \$131 on each of them in order to
19 issue them a license or some kind of identifying paper, and
20 that was enough for standing in Texas.

21 So given that low bar, we amply meet it here. We
22 clearly have standing, but again, we don't need it because
23 there are two parties in the case who have it.

24 Now, we have sought both permissive standing --
25 permissive intervention and as of right intervention, and I

1 think I'm going to flip it and take permissive first because
2 it's really, frankly, the easiest way for the Court to decide
3 it. It's totally in your discretion to do it, and this is
4 where I was going to stand up for Mr. Heaphy's client, because
5 I think it's easy to think of his motion to intervene in a very
6 narrow way like we're just dealing with his two clients.

7 This is a much bigger issue, and I think there's a
8 very good chance that you're going to be seeing a lot more
9 motions to intervene, and that's why it's important to
10 understand what permissive intervention is all about.

11 There are three elements. The first one, 24(b)(1),
12 has to be timely. We're here in two days after the original
13 complaint was filed. That is clearly timely.

14 Number two, it has to involve a claim or defense that
15 share with the main action a common question of fact or law.
16 That's 24(b)(1)(B). We only need one of those elements.

17 Both of those elements are satisfied here. There's a
18 common legal claim that the executive order is
19 unconstitutional. We've pleaded the same theories as the
20 underlying complaint. There are also common facts arising from
21 the events this past weekend at Dulles. So for both of those
22 reasons, you clearly have permissive standing under element 2.

23 And there's a third one. The third element is
24 prejudice to the parties. This is 24(b)(3). It says: "In
25 exercising its discretion, the court must consider whether the

1 intervention will unduly delay or prejudice the adjudication of
2 the original parties' rights."

3 Well, there's plainly no prejudice to adjudicating
4 the Aziz brothers' rights. In fact, they consent to our
5 intervention. They're happy for us to be in this case. So no
6 prejudice to their rights.

7 Is there any prejudice to the government's rights?
8 Obviously not. Forcing the government to have to adjudicate
9 the constitutionality of the executive order sooner than they
10 would like to does not prejudice their rights. You're not
11 entitled to do a delay for delay's sake. So permissive
12 intervention is plainly established.

13 We cited a case at page 7 of our brief on this, ECF
14 No. 15, footnote 17, I want to bring to the Court's attention:
15 *Feller v. Brock*. It's 802 F.2d 722, 729 (4th Cir. 1986), and
16 it really captures the purpose of permissive standing --
17 permissive intervention.

18 The court said: ". . . [L]iberal intervention is
19 desirable" -- desirable -- "to dispose of as much of a
20 controversy 'involving as many apparently concerned persons as
21 is compatible with efficiency and due process.'" That was
22 tailor -- in other words, permissive intervention is
23 tailor-designed for exactly this kind of controversy, because
24 when it gets out that what the government is really doing is
25 anybody who comes forward to sue them will be allowed back in

1 the United States, there are a lot of people who are going to
2 want to come forward to take that deal, and you shouldn't make
3 them file a new lawsuit to do that. That's exactly what
4 permissive intervention is for.

5 Let me turn to intervention of right. The federal
6 court in Massachusetts, I know Your Honor is familiar with
7 that, granted Massachusetts' intervention of right as opposed
8 to discretion. It granted it as of right. Similar elements.
9 It has to be timely. We are, two days. You have to show that
10 the intervenor shares -- claims an interest relating to the
11 property or transaction that's the subject of the action and is
12 so situated that disposing of the action may as a practical
13 matter impair or impede the movant's ability to protect its
14 interest unless existing parties adequately represent that
15 interest.

16 I have articulated Virginia's substantial interest.
17 I think that's clearly satisfied. Virginia's interests will be
18 adversely affected were this executive order upheld, and as a
19 sovereign entity, we are plainly not represented by the Aziz
20 brothers or by Mr. Heaphy's clients, so all of those elements
21 are satisfied.

22 Now, you've heard the government say, well, the
23 claims by these plaintiffs and by Virginia are kind of
24 different claims so they shouldn't be in this case. That is
25 not the test for intervention. In the *CVLR* case, you had

1 different plaintiffs who were injured differently by the
2 defendants' common racketeering scheme.

3 Of course they were different claims. The issue is
4 is there a common claim of law or a common claim of fact, and
5 you plainly have that here.

6 Practicality is also a critical aspect of the
7 decision whether to allow intervention, and the Ninth Circuit
8 said in *Citizens for Balanced Use*, 648 F.3d 893, 897: "In
9 addition to mandating broad construction" -- and they're
10 talking about intervention of right -- "our review is guided
11 primarily by practical considerations, not technical
12 distractions."

13 Again, you should be using this vehicle to address
14 this controversy in a broader way than simply focusing on a
15 specific plaintiff's claim.

16 THE COURT: All right, thank you, Mr. Raphael.

17 Let me hear, Mr. Reuveni -- is that how you pronounce
18 your name?

19 MR. REUVENI: Yes, Your Honor.

20 THE COURT: All right. Mr. Reuveni, do you know --
21 first of all, since you are senior litigation counsel, are you
22 overseeing this litigation as a whole, or are you just
23 addressing it in this court?

24 MR. REUVENI: At the moment, I'm just addressing it
25 in this court, but we are, we are, as you know --

1 THE COURT: You're litigating all over the country.

2 MR. REUVENI: We're litigating everywhere right now.

3 THE COURT: Okay. So I would assume down the road,
4 there's going to be some uniform approach to this case -- these
5 cases.

6 MR. REUVENI: I would clearly hope so. It would
7 allow me to sleep more.

8 THE COURT: All right. Do you have any sense at this
9 point as to how many people have been affected by this, that
10 is, how many people to whom -- from these seven countries, how
11 many people had gotten some kind of visa or authorization to
12 enter the United States? Any idea? Are we talking thousands,
13 tens of thousands, hundreds of thousands, or you don't know?

14 MR. REUVENI: Well, I think it's important to
15 distinguish two things here in answering this question. There
16 are the group of people that made their plans, had their visas,
17 and attempted to come over right after the order was signed or
18 may have already been in the air. Let's call that the events
19 of the weekend, January 27th to the 29th. It's a very small
20 number. I don't have the exact figures. It's in the ballpark
21 of between 100 and 200 people. It's a very small --

22 THE COURT: Nationwide, not just coming to Dulles.

23 MR. REUVENI: Don't hold me to that, but let me make
24 sure that's correct as to Dulles versus nationwide, and I can
25 get that to you very quickly afterwards, but that's a much

1 smaller number than the folks that are abroad and can't come
2 here currently because their visas have been revoked, and so
3 the government has submitted in two separate lawsuits, the one
4 in Massachusetts and the one in New York, a notice -- we didn't
5 submit it here because we didn't believe it was relevant to the
6 specific facts at issue in this case, because it involved
7 immigrant visas and lawful permanent resident visas that had
8 come over over the weekend. Visas have been revoked. Over
9 100,000 visas have been revoked. That's the scope of this
10 thing. Those were revoked on Friday at 6:30 p.m.

11 That is not this lawsuit. It is not the lawsuit
12 Virginia wishes to bring, and it is not the lawsuit the
13 plaintiffs -- the named plaintiffs that are already in the case
14 wish to bring, and it is certainly not the lawsuit that the
15 intervenor who you've granted leave to participate, the K-1
16 visa, wishes to bring. Those two individuals and others
17 similarly situated, at least in this case, we are attempting to
18 bring them back and resolve those claims.

19 The individuals abroad who did not get on a plane
20 before any of this happened and are now trying to come into the
21 United States, a very different case, and the government at
22 this time is defending those cases.

23 THE COURT: But what's the logical difference?

24 MR. REUVENI: The logical difference is they are
25 folks that made plans and had sort of just call it a reliance

1 interest. While we were implementing this thing, our clients
2 were implementing the order, and it was a very chaotic 48 hours
3 for all of us, those folks seem to be the ones that have the
4 better argument from the government's perspective as to
5 something not completely perfect from the government's view
6 happened.

7 Those folks that are abroad right now and their visas
8 have been revoked, that's a totally different case, and if we
9 are given the opportunity, if that issue arises in this case
10 and it's certainly already arisen in the Massachusetts case and
11 potentially in the Washington case that the attorney general of
12 Washington is bringing, we would argue, the government would
13 argue that that visa revocation is a non-reviewable
14 discretionary decision committed to the executive discretion.
15 That's by statute, 8 U.S.C. 1201 and 8 U.S.C. 1155, but
16 obviously, we're getting ahead of ourselves here. That's not
17 this case, but that's why we would think that will be a very
18 different lawsuit.

19 So to the extent Your Honor is contemplating that as
20 being part of what you have before you right now, there are no
21 claims to that effect in this case, no plaintiffs in this case
22 with those types of claims. Virginia, I don't believe -- I've
23 seen the complaint that they filed last night or was it two
24 days ago, they don't raise those claims. That would be a very
25 different lawsuit, and there's already other cases addressing

1 that issue -- or where that issue is raised.

2 As to this case, as to the commonwealth and the
3 motion for intervention, I think it's absolutely fundamental
4 that they demonstrate standing if they want to participate in
5 this case or any case. If they were to file their own lawsuit,
6 they would have to have standing. If you grant them
7 intervention, they would still need to have standing because
8 when the Aziz plaintiffs and when the K-1 visa plaintiff, their
9 matters are resolved, there's no one left with standing, and
10 standing has to exist at every step of the lawsuit -- at its
11 commencement, at the motion for preliminary injunction stage,
12 at the motion to dismiss stage, and so on all the way up on
13 appeal. So if they don't have standing, they can't get in this
14 case. They can't bring any case.

15 So this is a pivotal issue to address, and it may not
16 be this venue in which it should be addressed. It should be in
17 their own case, with their own issues, with their own
18 plaintiffs or individuals they've identified through
19 declarations.

20 The issues here are not at all interrelated with the
21 issues I believe the commonwealth is attempting to bring before
22 Your Honor. The LPR issue that they raise, it's a moot point
23 now. We've all seen at this point, I think, the White House
24 guidance on that, and we submitted it with our papers last
25 night on the opposition --

1 THE COURT: But, you know, there's case law that just
2 because there has been a response to alleged illegal activity
3 doesn't get the parties totally off the hook.

4 MR. REUVENI: That's certainly true. I'm familiar
5 with that, Your Honor, but I would say in this case involving
6 the things that happened at Dulles, not a single lawful
7 permanent resident was turned around. They've all been
8 admitted into the United States. They're all in the United
9 States presently.

10 Not a single individual was turned around, so there
11 is no live controversy as to any lawful permanent resident,
12 including the Doe plaintiffs -- or the unnamed Doe plaintiffs.
13 They've all been admitted. We've confirmed that with our
14 client. Not a single lawful permanent resident arriving in
15 Dulles before your order came in and after you had entered Your
16 Honor's order, they've not been turned around. They have been
17 admitted. They're here in the United States.

18 And going forward, lawful permanent residents who
19 wish to come to the United States, the executive order is not
20 being applied to them. They are coming in. They're getting
21 into the United States.

22 So the lawful permanent resident issue from the
23 government's view in this case is a moot point. There are no
24 lawful permanent residents' interests at stake in this case any
25 longer, and so to the extent the commonwealth wishes to

1 piggyback on those interests to get into this case, that would
2 be inappropriate because those claims are moot, and there's no
3 live controversy as to any lawful permanent resident.

4 I do want to talk for a minute about the case that
5 the commonwealth raised with you a number of times concerning
6 its presentation, the *CVLR* case. So that's a very different
7 case. I've had an opportunity to see it as well as the
8 commonwealth. That is a case where a party moved to intervene,
9 and that motion was denied while the case was live. They
10 appealed the denial of the motion to intervene after the case
11 was resolved by the actual named parties.

12 The Court of Appeals said it could exercise its
13 appellate jurisdiction to address the issue of whether that was
14 an erroneous denial of the motion to intervene, and I think
15 it's important, the commonwealth left this part out when it was
16 reading various language to you, that case cites an earlier
17 case from the Fourth Circuit, *Atkins v. State Board*, 418 F.2d
18 at 876, that's a 1969 case: ". . . [A] court may treat
19 intervention as a separate action" only when "the intervenor
20 has an independent basis for jurisdiction."

21 So it's arguable whether that case has any bearing
22 here at all. The cases that are more relevant are those cases
23 cited in the federal government's brief at pages 3 through 4.
24 I'm referring to the Eleventh Circuit, the Tenth Circuit, the
25 Seventh Circuit, and the Ninth Circuit, all of which hold --

1 and the Ninth Circuit en banc at that -- the intervenor has to
2 have standing throughout the litigation. They can't piggyback
3 on standing, particularly where, as here, the actual parties to
4 the case, including the other intervenor who is now in the
5 case, want to resolve the case and move on.

6 We will meet Virginia in court; I have no doubt about
7 that. The question is simply is this case, with very different
8 issues of the actual named plaintiffs, the place to do that.

9 As I mentioned, we are defending these cases
10 nationwide. We're not trying to run and hide from Virginia.
11 We know we're going to be defending this in Virginia and
12 elsewhere. The question simply is whether it should be here in
13 this case.

14 As to the standing itself in this case, from what we
15 know now, Virginia seems to raise two theories as to standing.
16 They wish to sue on behalf of their citizens generally, but
17 that's a settled issue. The Supreme Court settled that in the
18 1920s in the *Mellon* case, and *Massachusetts v. E.P.A.* case in
19 2007 similarly revisited the issue and made clear *Mellon* is
20 still good law.

21 The fact that the federal government 's action causes
22 a general tax burden on your citizens does not provide you
23 parens -- and I'm going to mispronounce this; I'm terrible at
24 latin -- parens patriae jurisdiction or standing. That just
25 doesn't -- that is a nonstarter in the government's view, and

1 we have that in our papers and cases, and we're happy to give
2 you more on that if you'd like.

3 The other, the other injury they raise is the impact
4 to their public universities, and again, I think here it's
5 important to realize what is really being challenged: Federal
6 action in the federal space which is committed entirely to the
7 federal government under the separation of powers on the
8 state-federal system we have. So it is the federal government
9 that actually would have this general welfare of the citizenry
10 jurisdiction or standing to speak on behalf of individuals
11 affected by federal law, not Virginia.

12 And I can refer you specifically to cases addressing
13 this very issue. We have them in our papers. One,
14 *Pennsylvania v. Kleppe* (D.C. Cir. 1976), 533 F.2d 668, or if
15 it's easier, I'll just refer you to the pages in the brief
16 where that --

17 THE COURT: That's all right. We've read it.

18 MR. REUVENI: Okay. Very good. I didn't -- I have
19 no doubt you -- the -- so as to the actual individuals,
20 Virginia speaks in generalities, and that's really not what
21 standing requires. We need specific -- for there to be Article
22 III jurisdiction, there needs to be specific articulated injury
23 as to specific individuals, not the commonwealth writ large.

24 Their papers refer to individuals, generally
25 professors or students, and again, these are individuals who

1 are not similarly situated to the individuals that are
2 currently in this case. F-1 visas and J-1 visas, which would
3 refer to students coming to the commonwealth's universities,
4 those are nonimmigrant visas, and this is the issue I alluded
5 to earlier. This is a very different claim, very different
6 issues, very different legal defense the government would make
7 and different arguments that plaintiffs or the commonwealth
8 would make if that issue was in this case.

9 As to some of the other issues, the commonwealth
10 raised an establishment clause violation as a basis for
11 standing in this case. I'd just like to refer the Court to the
12 Ninth Circuit's decision on this very issue. It's called the
13 *Catholic League for Religious and Civil Rights v. City of San*
14 *Francisco*, 624 F.3d 1050. This one is not in our papers.
15 States cannot allege injury based on religious stigma or
16 spiritual or psychological harm derived from federal action or
17 state action based on -- or impacting religion in some way.

18 The commonwealth doesn't really address that in their
19 papers, but that's another impediment to jurisdiction going
20 forward.

21 Intervention as of right and permissive intervention,
22 their papers as to as of right are premised on the same
23 jurisdictional theory that they cannot rely on. That's the
24 general welfare of the citizenry. So I won't spend too much
25 time on that.

1 Permissive joinder, again, this case is winding down.
2 Well, at least the government believes as to the named
3 plaintiffs, it is winding down. Let me be clear on that. As
4 to also the intervenor you just granted intervention to, that
5 we can resolve very quickly.

6 And it is, it is our position that it is in the
7 interests of the United States to resolve these where it is
8 appropriate, and the commonwealth's papers suggest that we're
9 just trying to get out of a lawsuit. That's -- we're being
10 sued right now in ten different courts. We're going to be sued
11 tomorrow in 20 different courts. That's just not the case.
12 We're defending these cases. We're not playing games with the
13 courts. It's just a matter of whether these particular
14 plaintiffs and the issues in this case are the appropriate
15 vehicle for the commonwealth to come into court and have its
16 day in court, particularly where they at this time so far as
17 the government is concerned don't have standing to raise those
18 claims.

19 If you have any more questions on that, that's enough
20 for me.

21 THE COURT: All right. Well, the issue has been very
22 thoroughly briefed and argued. We've had, obviously,
23 relatively short periods of time for both counsel and the Court
24 to look at all this, but I am satisfied at this point that the
25 commonwealth has made a sufficient argument to establish that

1 it does have standing to enter into this lawsuit both under
2 permissive and as of right principles of intervention, and at
3 this point, I'm granting the motion and therefore will allow
4 the commonwealth to enter into this litigation.

5 There have been no objections from either the
6 original plaintiffs or from the new intervenor, and I therefore
7 find that it is not inappropriate to allow the commonwealth in
8 the case.

9 Now, part of the commonwealth's papers, however, and
10 I'm not actually going to hear a lot of argument on this today,
11 the commonwealth has included a motion for an order to show
12 cause, and I'm not going to grant that motion at this time, in
13 part because I am encouraged by the attitude of the government
14 that they're trying to resolve these cases, and I don't want to
15 stir up the waters unnecessarily.

16 This Court has always taken the position in any type
17 of civil litigation that the most successful litigation is that
18 which can be amicably and appropriately settled, and,
19 Mr. Barghaan, I know you and your office have a great deal of
20 experience with that, and I know the Department of Justice does
21 as well.

22 I have to tell you I've been on this bench a long
23 time. I was the judge that handled the September 11 case. I
24 have never had so much public outpouring as I have seen in this
25 case. It is amazing. I have spoken to some of the other

1 judges in the country who have these cases, and their
2 experience has been the same. This order touched something in
3 the United States that I've never seen before. People are
4 really upset.

5 Now, there is no question the president of the United
6 States has almost, almost unfettered discretion in matters of
7 international relations and in protecting the borders. There's
8 no question about that. But it's not unfettered. There are
9 limits.

10 And this case, this order went into -- was issued so
11 quickly, it's quite clear that there were not all the -- not
12 all the thought went into it that should have gone into it. As
13 a result, there has been chaos. I mean, the example being how
14 the, for lawful permanent residents, they were captured in this
15 order, and now the government has recognized that was a
16 mistake, and they have backed off of that.

17 But it is a real problem, it seems to me, when the
18 government has gone through the vetting process, has authorized
19 individuals to come to this country, and then without any kind,
20 from what we can tell, of significant fact-finding or any kind
21 of actual hard evidence that there is a need to rescind those
22 decisions, to revoke them.

23 Human beings have relied upon those decisions that
24 were made by hard-working government authorities. Families
25 have expected family members to be reunited with them.

1 Universities have expected students or faculty to be able to
2 come back. It has obviously thrown hundreds of thousands of
3 people into states of great discomfort, and it's something that
4 the government should think very carefully about how you want
5 to resolve all of these cases globally.

6 Again, I commend you for having taken the steps
7 you've taken so far, but I don't think it's far enough, and I
8 would hope that you would give serious thought to thinking more
9 broadly about how you want to address these issues.

10 In any case, we have this case scheduled for next
11 Friday for a hearing on a more permanent situation. At this
12 point, all I'm going to do, and I'll have some orders that
13 we'll issue at some point today, the injunction, the temporary
14 restraining order which we issued last Saturday was only for
15 seven days. That's how it was presented to the Court. I want
16 to leave that injunction in place, and I'm going to expand it
17 slightly, but only slightly, and you'll get it later today, but
18 it will be in place until next Friday.

19 I want to make sure that there is no slippage, and
20 that is, that lawful permanent residents clearly are allowed to
21 come back in. I understand the government has agreed to do
22 that. I want to make sure that it is done, so I want to
23 definitely keep that within the language of the injunction, and
24 at this point, that would be maintaining the status quo.

25 Plus, I am concerned about the representations in the

1 commonwealth's papers that although the order had clearly said
2 that people who are being held at Dulles should have the
3 opportunity to have access to counsel, that that was not being
4 done. Now, I understand from the government's papers that
5 there was some telephone arrangement that was set up. I don't
6 want to get into the details of that today other than to say
7 that the agents need to be careful at the airport not to
8 violate a court order because there are sanctions that can
9 result from that.

10 I'm not unsympathetic with the poor Customs and
11 Border Patrol officials at the airport Saturday and Sunday. It
12 was chaotic for everybody, and I'm certainly not going to find
13 that the people at the low level, who were just following
14 orders, that was too confusing a time to find that any of them
15 would have been in contempt.

16 Whether or not any of the people who are more in
17 control should have acted differently, I'm not in a position at
18 this point to address, and frankly, I don't think it furthers
19 the goal of trying to get these issues resolved by pushing for
20 contempt citations at this point.

21 It does appear as though the government is now
22 working diligently to resolve many of the ills involved, maybe
23 not all but many of the ills involved in the original case, and
24 that gives the Court some optimism in this respect, all right?
25 So unless there's anything else, I think I've resolved all the

1 issues.

2 Mr. Raphael?

3 MR. RAPHAEL: Yes, Your Honor, thank you. Just a
4 couple minor points. Just to be clear, we weren't seeking to
5 hold the government in contempt. We were seeking to have them
6 account for what they've done.

7 When Your Honor expands slightly the language of the
8 TRO, I would ask that you make clear that the requirement to
9 permit access to lawyers means in person access. The paragraph
10 7, I think it was, of the motion for a TRO made it clear that
11 there were lawyers waiting there to see these people. There
12 was nothing preventing them from seeing them if they were
13 allowed. They were all -- the people were gathered together.

14 And the government has apparently taken the position
15 that it didn't require in person access. So I think you need
16 to clarify that or -- they say maybe, maybe telephone access
17 was okay. We don't have any records --

18 THE COURT: They indicated -- and again, I wasn't
19 there; I don't know what was going on -- that the folks were
20 being held in the secondary inspection locations, and I don't
21 think counsel are permitted into the secondary area. That's
22 the problem.

23 And so -- but access can be -- I mean, prisoners all
24 the time have adequate access to counsel via telephone.

25 MR. RAPHAEL: Right. And my point is that we don't

1 have any records to show that, in fact, people were being
2 granted access, that the named plaintiffs and the intervenors
3 say that their phones were taken away. Mr. Heaphy's client
4 wasn't allowed to call her fiance.

5 Maybe that was before the TRO issued, but I think
6 that there is something very troubling about the fact that
7 there were so many lawyers there waiting to help, and not a
8 single one of them got to talk with any of the detainees. So I
9 would just ask the Court to make it clear that CBP must provide
10 access to lawyers who are on hand, willing and waiting to help,
11 or it's going to be unfair to these people.

12 THE COURT: All right. Let me hear the government's
13 response to that. I'm sorry, was there another thing?

14 MR. RAPHAEL: Yeah, I had a couple more points. Part
15 of the problem -- part of the consequence of the lawyers not
16 having access is there was a restriction on the flow of public
17 information. We know very little about what was going on
18 there. The fact that lawyers weren't involved means the
19 lawyers couldn't tell us what was going on there.

20 As you know, the attorney general sent a letter to
21 the government on last Sunday with these concerns and asking
22 for the names of Virginia residents who have been removed from
23 the country or blocked from entering, and so I would ask the
24 Court today to require the government to tell the commonwealth
25 of Virginia which Virginia residents have been denied entry or

1 have been removed from the country, and I would ask for the
2 name, the Virginia address, the foreign residence address, the
3 type of visa, a phone number where we can get in touch with
4 these Virginia residents, and an e-mail address if they have
5 it.

6 I would ask for that both retrospectively, anybody
7 whose visas were cancelled, and prospectively, any Virginia
8 resident whose visa is cancelled going forward, and the same
9 for people removed. If somebody's been removed from the
10 country, we'd like to know which Virginia residents were
11 removed both retrospectively and prospectively. I don't think
12 that's asking for a lot.

13 And I want to say one thing about the government's
14 good faith. I am, I am pleased that they are willing to whisk
15 people back when they come to our attention. They're not going
16 to come to our attention if we don't have this list because,
17 you know, please stand forward if you're not here, right? It's
18 hard to know who's affected. So I think that list is really
19 important.

20 And I don't, I don't want to be overly critical of
21 the government on this, but I think it's important to point out
22 that there appears to be some strategic maneuvering here not by
23 counsel but by counsel's client. So whenever one of these
24 folks comes forward and files a lawsuit and intervenes, they
25 are immediately presented with a deal that drop your case and

1 I'll bring your person back and dismiss your case with
2 prejudice, which is exactly why you need a vehicle like this
3 case, where you allow permissive intervention, but there's
4 something very troubling about the way this is playing out.

5 These people were excluded based on national origin
6 on the theory that they were a security risk, but if they can
7 file a lawsuit, you get right back unless you are a security
8 risk. So I'm very -- we're very troubled by that.

9 MR. HEAPHY: Your Honor, before the government goes,
10 can I just add one thing?

11 THE COURT: Yes.

12 MR. HEAPHY: Thank you. It's on the scope of your
13 order on counsel, Your Honor. My client now has a lawyer, and
14 that's me, and arguably, we would be protected by the temporary
15 restraining order in terms of access to counsel, and I just
16 want to be clear that I understand the Court's order correctly.
17 It applies to lawyers' access to all legal permanent residents
18 being detained at Dulles International Airport.

19 When it's extended, Your Honor, I would assume that
20 that allows me to have access to Ms. Fadul despite the fact
21 that she's in this K-1 status, not yet a lawful permanent
22 resident, that the Legal Aid Justice Center and Mayer Brown
23 also have access to their clients upon their return.

24 My understanding is that the government, through its
25 good faith efforts to resolve the case, are going to make

1 efforts to reinstate my client's visa, but when she arrives,
2 we'd very much like to be there and facilitate her processing
3 through CBP so that there is no confusion, that the order is
4 enforced.

5 THE COURT: Well, before this order went into effect,
6 what was the arrangement for access to counsel at Dulles
7 Airport?

8 MR. HEAPHY: I don't know, Your Honor.

9 THE COURT: All right.

10 MR. SANDOVAL-MOSHENBERG: If I may address that?

11 THE COURT: All right, Mr. Sandoval-Moshenberg.

12 MR. SANDOVAL-MOSHENBERG: Thank you, Your Honor. My
13 practice, although I've been practicing immigration for
14 eight-and-a-half years, does not generally involve consular
15 processing, bringing people into the country, but I can tell
16 you that it is not the case that lawyers are never allowed to
17 speak with clients when those clients are taken, for example,
18 into credible fear interviews, for example. So it is -- it
19 would certainly not be the first time, you know, in the history
20 of Dulles Airport that attorneys are allowed back into the CBP
21 area.

22 THE COURT: All right.

23 All right?

24 MR. REUVENI: Maybe I can go now?

25 THE COURT: Yeah.

1 MR. REUVENI: Thank you. Let me take these in
2 reverse order, Your Honor, because there are a number of things
3 here, and it looks like we are going to argue some aspect of
4 the commonwealth's motion, even though we weren't going to, but
5 now we are.

6 You hit on this point earlier, and this is a line, I
7 think, that CBP would have to draw, and this is just, lawyers
8 do not get into secondary inspection unless that becomes a
9 custodial interrogation or a criminal investigation occurs and
10 a right to counsel attaches.

11 The INA is very clear on this, and I want to speak to
12 the Aziz attorney's point. Credible fear hearings, those are
13 an adjudicatory proceeding that you actually have by regulation
14 entitlement to counsel. You're not in secondary when that
15 happens. A credible fear hearing does not occur in secondary
16 with CBP. A credible fear hearing occurs in front of the
17 United States Citizenship and Immigration Service. Totally
18 different entity, not part of this lawsuit at least at this
19 time.

20 I am not aware of, no party has cited any case in
21 which any individual, including citizens returning to the
22 United States who would just go through normal secondary
23 process, have a lawyer in secondary. I don't think it's really
24 hard to imagine what sort of operational problems that may
25 present at the border, but more so in terms of trying to move

1 forward with this litigation and just getting past this weekend
2 and addressing the real issues, that's the sort of thing that
3 the government would probably have to look at very closely if
4 the order was expanding to that.

5 Actually, I will say this: The counsel, pro bono
6 counsel, we are not aware of anyone after Your Court -- Your
7 Honor's order was implemented who -- of anyone asking for
8 counsel who was a lawful permanent resident once they received
9 this document, because they were getting waived through very
10 quickly -- why would you want to talk to a lawyer if you're
11 getting admitted to the United States? -- which suggests things
12 were working fine once your order was operationalized.

13 So there's really -- the government would strongly
14 oppose, and this is really the only issue we're left -- we're
15 opposing here, expanding the order to apply to individuals who
16 are in secondary. That's not the law, and the INA doesn't
17 provide for it, and there's no constitutional right to that for
18 anyone, let alone arriving aliens who have never been admitted
19 to the United States before and have no ties or connection to
20 this country.

21 As to the commonwealth's request for a list, that
22 seems way beyond the scope of the TRO you entered, which had to
23 do with access to counsel, and the commonwealth never mentioned
24 this to us when we in good faith were discussing bringing back
25 these potentially one or two individuals they mentioned.

1 I want to -- since I mention that, I take issue with
2 the fact on behalf of the federal government that the
3 commonwealth is suggesting we're mooting cases out
4 strategically. Everyone in this courtroom knows very well we
5 have dozens of these across the country. Some of them we are
6 litigating; some of them we're not.

7 As to the events that happened on the weekend, those
8 seem like cases we're looking to resolve because that is an
9 entirely different scenario than people now trying to come to
10 the United States with a revoked visa. Those we're defending.
11 Those at this time we're continuing to defend. There's no
12 strategic mooting of cases out occurring here from the
13 government's view.

14 Back to the list, I mean, we would oppose that. We
15 don't see any reason for it right now, and frankly, it would
16 complicate moving forward with trying to resolve some of these
17 cases if we have to dig in and look for names, and I don't see
18 its relevance right now. I don't see its helpfulness to where
19 we are in this case right now, and at the very least, we would
20 request, Your Honor, an opportunity to provide a brief opposing
21 that.

22 THE COURT: Well, again, how many people do you think
23 as best you can tell were removed from Dulles over the weekend?

24 MR. REUVENI: So now that we're talking about not
25 just lawful permanent residents --

1 THE COURT: The whole --

2 MR. REUVENI: Everyone --

3 THE COURT: Yeah.

4 MR. REUVENI: -- trying to come into Virginia, I
5 don't know the answer because the answer I had before I came to
6 court today was limited to lawful permanent residents, which
7 was zero people removed over the weekend.

8 So I don't have the answer as to nonimmigrants, and I
9 don't have the answer as to individuals who had immigrant visas
10 but had not yet been admitted to the United States so had not
11 yet been lawful permanent residents.

12 THE COURT: And among -- I'm sorry, among the people
13 who were removed on Saturday and/or Sunday, did that include
14 refugees? If you know. If you don't know, I mean,
15 obviously -- yeah.

16 MR. REUVENI: No, I'd be speculating. I'd like to
17 say no, but I'm speculating.

18 THE COURT: All right.

19 MR. REUVENI: So I'll just go with I don't know right
20 now.

21 THE COURT: Okay.

22 MR. REUVENI: If need be, if necessary, I can find
23 out, but what I do know, not a single lawful permanent resident
24 even before your order was entered, between the time the
25 executive order was signed and your TRO was -- CBP received

1 notice of it, and thereafter, no lawful permanent residents
2 were removed. The government -- every single one has been
3 admitted to the United States that I'm aware of, and those that
4 would now proceed to continue to try to come to Dulles and get
5 on a plane, the way that they're supposed to be working is they
6 get on a plane, they arrive at Dulles, they don't otherwise
7 have some reason under the INA during the secondary inspection,
8 if they get through secondary, to be denied entry, they're
9 admitted to the United States.

10 THE COURT: Are lawful permanent residents normally,
11 normally required to go through secondary?

12 MR. REUVENI: No one is required to go through
13 secondary if they're a lawful permanent resident, but everyone
14 including citizens can be asked to go through secondary.

15 THE COURT: Right. All right, so there has never
16 been an established practice in the past that all LPRs must go
17 through secondary?

18 MR. REUVENI: I'm not aware of one.

19 THE COURT: And is that what's happening now? That
20 is, those LPRs who are being permitted, permitted back in the
21 country from those particular countries, are they all required
22 to go through secondary?

23 MR. REUVENI: Well, no. To be clear, we're talking
24 about two different points in time. So we're talking about the
25 weekend, and yes, at that time, lawful permanent residents were

1 going through secondary and then getting this waiver process
2 that the executive order anticipates and outlines, and they
3 were getting waived through pretty quickly, 15 to 30 minutes
4 after, by Sunday is my understanding.

5 Going forward, no. We have the White House guidance
6 that we attached to our intervention. The way that our --
7 opposition to intervention. The way that is being
8 operationalized, they are not, they are not going through
9 secondary.

10 If there is an independent reason other than the
11 executive order, as it would have been before the order was
12 signed on Friday, to go to secondary, they're going to
13 secondary, as everybody else would if the order didn't exist.

14 THE COURT: So it's your understanding that lawful
15 permanent residents now are being treated exactly the -- from
16 those seven countries are being treated the same as they would
17 have been treated a year ago.

18 MR. REUVENI: Correct. So the guidance and the way
19 that it's being implemented, sections 3(c) and 3(e) of the
20 executive order that would otherwise apply if read that way to
21 lawful permanent residents does not apply to them, so they are
22 to be treated -- are being treated so far as I know as though
23 it was 4:21 Friday.

24 THE COURT: But you would agree with me that within
25 the four corners of that document, that is not included. It

1 required the additional statement by counsel to make it clear
2 that they were not included within the executive order.

3 MR. REUVENI: Well --

4 THE COURT: I didn't see the word "lawful permanent
5 residents" in there.

6 MR. REUVENI: No, that is in there. "I understand
7 that there has been reasonable uncertainty about whether those
8 provisions" -- and I'm reading from the counsel for the
9 president's memorandum, back to the language -- "apply to
10 lawful permanent residents of the United States. Accordingly,
11 to remove any confusion, I now clarify that Sections 3(c) and
12 3(e) do not apply to such individuals. Please immediately
13 convey this interpretive guidance to all individuals
14 responsible for the administration and implementation of the
15 Executive Order."

16 So at least in the government's understanding of
17 this, no lawful permanent residents are going to secondary
18 solely on the basis of the executive order. Again, if there's
19 some independent basis that it preexisted the executive order
20 that's in the INA, yes, they're going to secondary, but other
21 than that, no. The order does not apply to them so far as the
22 government is concerned.

23 THE COURT: All right.

24 MR. REUVENI: Thank you.

25 THE COURT: Mr. Raphael?

1 MR. RAPHAEL: Just a couple points. Just on that
2 last point, section -- as we, as we read the executive order,
3 it does apply to lawful permanent residents. There is an
4 exemption -- an exception in 5(g), but it requires case-by-case
5 review.

6 And so what's happened here is after the chaos
7 developed, I think the government realized they made a mistake
8 or at least it wasn't turning out as they planned, and the
9 secretary has promulgated this sort of categorical decree that
10 if you're an LPR, you can come in. I don't, I don't see how
11 that comports with 5(g), which required case-by-case review.

12 But Your Honor touched on it earlier. Under the
13 voluntary cessation doctrine, they snap their fingers; they
14 change it. They can snap their fingers back, and unless the
15 wrongful conduct is absolutely certain not to recur, they can't
16 moot the case out by changing their -- by changing what they're
17 doing.

18 On the issue of the list, this is no surprise. We
19 asked for this list last Sunday. We might not have gotten in
20 this case if they'd given it to us and we could figure out the
21 full extent of the damage to Virginia residents.

22 We're here seven days after this order was issued,
23 only five business days, and we know of these two students who
24 were stranded that I mentioned earlier, and yeah, we're trying
25 to get them back, but there could be many others, and we can't

1 find them unless we know who they are. It is not an
2 unreasonable request for the government to tell us which
3 Virginia residents they have not let in or who have been
4 removed, and I think that's very reasonable.

5 And the last thing I might ask, Your Honor, given a
6 showing of cooperation here, if Your Honor might consider
7 appointing a magistrate judge who might facilitate mediation
8 efforts, such as Magistrate Judge Buchanan, who's been
9 extremely successful on these things.

10 THE COURT: All right. Well --

11 MR. REUVENI: Your Honor, just one last point?

12 THE COURT: Yeah.

13 MR. REUVENI: I just want to clarify any confusion
14 here. Paragraph 5(g) that counsel refers to applies to
15 refugees. Paragraph 3 applies to lawful permanent residents.
16 That's why the White House guidance says nothing about
17 paragraph 5. Refugees coming here are not lawful permanent
18 residents; they're refugees, different category. Maybe one day
19 they will become lawful permanent residents, but refugees don't
20 have that status when they arrive in the United States.

21 THE COURT: All right, thank you.

22 MR. RAPHAEL: I'm sorry, it's 3(g), not 5(g). 3(g)
23 does apply. 3(g).

24 MR. REUVENI: You said 5(g).

25 THE COURT: You had said 5(g).

1 MR. RAPHAEL: I apologize, it was 3(g). That calls
2 for case-by-case review.

3 THE COURT: All right.

4 MR. REUVENI: On the list, again we would, we would
5 oppose what the commonwealth is proposing, and we think it
6 would change the tenor of this litigation dramatically, but if
7 you would like us to get back to you with a brief on that, we
8 can do so. We just haven't had enough time to think of that or
9 respond to it. It just came up today.

10 THE COURT: All right.

11 MR. REUVENI: As to the letter, I mean, I would say
12 one last thing; I apologize, Your Honor. The letter asked us
13 to respond to ongoing litigation. I think we all understand
14 the position that puts the U.S. government in when we're asked
15 to give information that could affect ongoing litigation.

16 THE COURT: All right. Well, we'll take a look at
17 that issue in chambers, but at this point, then I've allowed --
18 granted the motions to intervene. We're going to extend the
19 temporary restraining order to keep things somewhat in place.

20 The access to counsel issue is a troubling one
21 because I -- my experience having handled many cases at Dulles
22 is that, in fact, the government's position is correct that
23 normally, under normal circumstances, counsel would not have
24 the right to have direct, in person contact with people who are
25 held up in the process there.

1 There are exceptions, and I do believe in one of your
2 sets of papers, there was discussion about reference of people
3 to hotlines or telephone contact with various agencies that
4 provide legal counsel in immigration. So I'll see what makes
5 sense to me.

6 I mean, I do think that probably this issue is
7 somewhat less pressing than it was on Saturday because at this
8 point, I don't think folks are coming to the airport who would
9 be covered by this, right? I mean, are there any more issues
10 of people who have been coming to the airport and being turned
11 around since this weekend?

12 MR. RAPHAEL: Well, I mean, LPRs, I guess after the
13 government's change in position, are now allowed in.

14 THE COURT: LPRs are coming in, and the problem now
15 is from your standpoint, is that everybody else is basically
16 stopped because the airlines won't let -- they aren't getting
17 the visas.

18 MR. RAPHAEL: That's right.

19 THE COURT: Yeah.

20 MR. RAPHAEL: And Your Honor's TRO applied only to
21 LPRs.

22 THE COURT: Correct.

23 MR. RAPHAEL: And so I think the counsel issue is
24 still a live issue if they have problems going forward.

25 THE COURT: If LPRs have problems.

1 MR. RAPHAEL: Yes, yes.

2 MR. REUVENI: Yes. No one is getting turned around
3 at the airport if they're a lawful permanent resident. If
4 they're not and they don't have a valid visa, practically
5 speaking, they're not getting on a plane to get here, so that
6 can't be an issue unless and until they do.

7 THE COURT: All right, thank you.

8 All right, I think that resolves everything for
9 today. We will recess court until 12:00.

10 MR. RAPHAEL: Thank you.

11 (Which were all the proceedings had
12 at this time.)

13

14 CERTIFICATE OF THE REPORTER

15 I certify that the foregoing is a correct transcript of
16 the record of proceedings in the above-entitled matter.

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/s/

Anneliese J. Thomson

From: (b)(6), (b)(7)(C)
Sent: Saturday, February 04, 2017 3:36 PM
To: DURST, CASEY OWEN
Subject: Hearing Transcript
Attachments: (b)(6), (b)(7)(C)

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(b)(6), (b)(7)(C)

CBP Assistant Chief Counsel (Baltimore)

(b)(6), (b)(7)(C)

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

TAREQ AQEL MOHAMMED	.	Civil Action No. 1:17CV116
AZIZ, et al.,	.	
	.	
Petitioners,	.	
	.	
vs.	.	Alexandria, Virginia
	.	February 3, 2017
DONALD TRUMP, President of	.	10:00 a.m.
the United States, et al.,	.	
	.	
Respondents.	.	
	.	
.	.	

TRANSCRIPT OF MOTIONS HEARING
BEFORE THE HONORABLE LEONIE M. BRINKEMA
UNITED STATES DISTRICT JUDGE

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(APPEARANCES CONT'D. ON FOLLOWING PAGE)

(Pages 1 - 54)

COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

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1 P R O C E E D I N G S

2 THE CLERK: Civil Action 17-116, Tareq Agel Mohammed
3 Aziz, et al., v. Donald Trump, President of the United States,
4 et al. Will counsel please note their appearances for the
5 record.

6 MR. RAPHAEL: Good morning, Your Honor. Stuart
7 Raphael from the Commonwealth of Virginia.

8 THE COURT: Good morning.

9 MR. HERRING: Good morning, Your Honor. Mark
10 Herring.

11 THE COURT: Good morning.

12 MR. HEAPHY: Good morning, Your Honor. I'm Jim
13 Heaphy at Hunton & Williams. I'm here for Osman Nasreldin and
14 Sahar Fadul.

15 THE COURT: Good morning.

16 MR. HEAPHY: Good morning.

17 MR. SANDOVAL-MOSHENBERG: Good morning, Your Honor.
18 Simon Sandoval-Moshenberg, Legal Aid Justice Center, appearing
19 pro bono for the Aziz petitioners; and with me is Paul Hughes
20 with the Mayer Brown law firm, who has been admitted pro hac
21 vice.

22 THE COURT: Good morning, counsel. We almost ran out
23 of seats for you-all, didn't we?

24 MR. BARGHAAN: And good morning, Your Honor.
25 Assistant United States Attorney Dennis Barghaan on behalf of

1 the respondents. With me today is Erez Reuveni from the Office
2 of Immigration Litigation at the Department of Justice, the
3 Civil Division, and he will be arguing the cause on behalf of
4 the respondents this morning.

5 THE COURT: Don't you want to do that, Mr. Barghaan?

6 MR. BARGHAAN: Can I plead the fifth?

7 (Laughter.)

8 THE COURT: You realize you'll be quoted on that one,
9 I'm sure. All right.

10 Well, I'm glad everybody is smiling this morning
11 because I hope we can resolve what's before us today in a good
12 and amicable and civil fashion. All right, we have several
13 motions before us, and I want to address the first one, which
14 is the motion to hold in abeyance. It's my understanding that
15 in terms of the two Aziz plaintiffs, they have worked out their
16 dispute with the United States. Is that correct?

17 MR. REUVENI: That is correct, Your Honor.

18 THE COURT: All right. Could you -- how close is
19 that resolution to being finalized?

20 MR. REUVENI: So we have a signed settlement document
21 that both parties have countersigned. It is not finally
22 executed; that will take several days. There are certain
23 conditions in the settlement that need to be -- need to occur
24 before the settlement is finally executed, at which point
25 our -- the terms of the settlement will lead to dismissal of

1 the Aziz brothers' claims.

2 THE COURT: But as you know, there were other, I
3 believe, 60 John Does also named in that complaint --

4 MR. REUVENI: Yes.

5 THE COURT: -- so that there are other claims that
6 still are potentially unresolved.

7 MR. REUVENI: I don't want to speak on behalf of
8 plaintiffs' counsel, but there is language in there that the
9 government believes addresses those claims as well. It just
10 leads -- it would lead to a dismissal without prejudice, and if
11 those claims are picked up again, if individuals are identified
12 that can raise those claims, they'd be free to bring them
13 before the Court.

14 THE COURT: All right. Well, that, I think, then is
15 a segue into the motion from the commonwealth to intervene in
16 this case. Mr. Raphael?

17 MR. RAPHAEL: Your Honor, if I may, I think
18 Mr. Heaphy has a motion to intervene. It would make sense for
19 sequencing purposes for him to -- for the Court to address
20 that. I think he's going to be very brief.

21 THE COURT: All right, that's fine.

22 MR. HEAPHY: Thank you, Your Honor. Your Honor, good
23 morning again. I'm Tim Heaphy, and I'm here representing the
24 proposed intervenors Osman Nasreldin and Sahar Fadul.

25 We have filed a motion to intervene in this matter

1 because our clients are in a very same position as the
2 petitioner-plaintiffs, the Aziz brothers. Very briefly, Your
3 Honor, our clients are an American citizen, Mr. Nasreldin, and
4 his Somali fiancée, Ms. Fadul. She was on the very same flight
5 with the Aziz brothers from Ethiopia to Dulles Airport on
6 Friday, January 28.

7 She was detained at the airport, asked to sign a
8 paper, we believe, withdrawing her K-1 visa, which she had been
9 lawfully issued by the embassy in Sudan, and when she did sign
10 that document, despite the fact that she doesn't speak English
11 and did not understand it, she was immediately returned to
12 Ethiopia, and it is on that basis that we have filed the motion
13 to intervene and seek the Court's leave to help us reverse that
14 action and get her admitted on that lawfully issued K-1 visa.

15 THE COURT: So she's within those 60 John Does that
16 were part of the original case.

17 MR. HEAPHY: I believe so, Your Honor, but again --

18 THE COURT: Well, if she was at Dulles Airport --

19 MR. HEAPHY: She was.

20 THE COURT: -- she was among those.

21 MR. HEAPHY: She was. I think she was actually on
22 the same flight, Your Honor, yes. But again, we also represent
23 her American citizen husband, who is a resident of Colorado.

24 Now, we have also been offered a proposed resolution
25 by the United States. I think it is exactly the same

1 resolution that is offered the Aziz brothers, and that
2 essentially would be to return Ms. Fadul to the United States
3 on that originally executed K-1 visa, and we are inclined to
4 work with the United States to have that occur, but we do not
5 believe that the litigation should be held in abeyance.

6 Our preference is for Your Honor to grant our motion
7 to intervene because there are common questions of law and fact
8 at issue with our clients and the Aziz brothers, but until our
9 client is returned to the United States pursuant to that
10 agreement, this is a very live controversy.

11 THE COURT: All right.

12 MR. HEAPHY: As a matter of fact, we actually asked
13 the Court to set a deadline by which we would file a
14 substantive complaint, and if Ms. Fadul has been returned,
15 obviously, that would moot that, and we would withdraw for --
16 or seek to dismiss our case, but we believe, Your Honor, it's a
17 very live controversy, and unless and until Ms. Fadul is
18 returned to this country pursuant to this negotiated settlement
19 that we are attempting to work out with the government.

20 We don't have a signed document. We have had
21 discussions, but essentially, it would be to return our client
22 to the United States, which would then moot her substantive
23 claims.

24 THE COURT: Thank you.

25 MR. HEAPHY: So, Your Honor, again, we would just

1 move to formally intervene, and hopefully, the Court will grant
2 our motion.

3 THE COURT: All right.

4 MR. REUVENI: Good morning again, Your Honor. This
5 can be very short. We have an agreement in principle.
6 However, in case that doesn't come together, which I don't have
7 any reason to believe it should, there are very similar terms
8 that, as her counsel indicated, if that does not follow
9 through, intervention would not be appropriate in this case.

10 The individual who we are seeking to bring back
11 pursuant to this settlement we have in principle is not an
12 unlawful permanent resident is and not an immigrant visa
13 holder.

14 THE COURT: But she is somebody who went through a
15 carefully vetted review process, correct, before she got the
16 authorization to come here?

17 MR. REUVENI: That's absolutely correct.

18 THE COURT: That's absolutely correct, all right.

19 MR. REUVENI: She is a -- well, actually, sorry, let
20 me clarify.

21 THE COURT: All right.

22 MR. REUVENI: There are different levels.

23 THE COURT: I'm fully aware of that.

24 MR. REUVENI: A K-1 visa is a nonimmigrant visa that
25 fiances can use to come to the United States and within 90

1 days get married once they arrive here. It is not the same
2 level of rigorous review that may occur in the context of
3 refugees or in other sorts of review scenarios.

4 And the issues that would arise if this case -- and
5 we're not saying they can't bring their case. They can
6 certainly bring their case. It's just not the same nexus of
7 facts or events. It's not the same type of visa. It's not the
8 same type of legal issues. It's not the same sort of due
9 process rights that may be in play.

10 It would unnecessarily complicate this case and
11 essentially set up, if this case moves forward, which we very
12 much hope it does not at least not respect to the Aziz brothers
13 and with respect to the additional individual who wishes to
14 intervene, but it would set up two separate tracks before Your
15 Honor of a nonimmigrant track, an immigrant visa track, and a
16 lawful permanent resident track, so you'd have three separate
17 sets of legal issues.

18 THE COURT: Well, I don't know why it should. If, in
19 fact, the proper way of looking at this case is to simply draw
20 a line in the sand and say that any visas or other
21 authorizations to come into the United States that had gone
22 through the then existing appropriate processes before the
23 executive order went into effect should be implemented, and --
24 so that anybody, whether they're a refugee or they've got a K-1
25 visa or they've got a -- or they're a lawful permanent

1 resident, if that paperwork had gone through, they've been
2 properly vetted through the processes that we've had in place
3 up to this point, why should they not get the benefit of that?

4 Going forward is another question because the
5 executive order has changed that situation, but I'm looking
6 right now and I think most of the -- all of the issues in this
7 case right now are focused essentially on that, that people who
8 have already gotten the permission to be in this country or to
9 come to this country, why should that not be honored?

10 MR. REUVENI: Before I answer that, just one global
11 response to that. I don't know that the issues that the
12 commonwealth wishes to raise, but we'll talk about that later,
13 fall into that category, but with respect to the Aziz
14 plaintiffs and with respect to the individual with the K-1
15 visa, yes, our understanding is they all arrived here over the
16 weekend, which is why the United States government is looking
17 to resolve those particular issues.

18 If I may perhaps just suggest this as a course
19 forward with respect to the motion to intervene, we do have an
20 agreement in principle. At this point, we're simply
21 wordsmithing. There's no principle terms that are in
22 disagreement at this point between the parties.

23 Perhaps we table the motion to intervene for a short
24 period of time, allow us to reach a settlement, and we may not
25 even need to deal with these issues, but we can do that on a

1 short turnaround, if you don't object to that, of course, and
2 we don't have to address this on the legal matter -- on the
3 legal merits.

4 MR. HEAPHY: If I may, Your Honor, I do object to
5 that. We need to be intervened in this case.

6 THE COURT: You want a stake in this litigation just
7 in case.

8 MR. HEAPHY: We need to be in the case. We see it
9 exactly as Your Honor just articulated in your question. This
10 is a matter of whether or not people with lawful visas vetted
11 carefully by the United States government were wrongly and
12 unconstitutionally denied access. That's the situation
13 involving our client with the K-1 visa and those with the
14 immigrant visas.

15 There may be subtle factual distinctions that would
16 be relevant, but the common issues of law and fact in our view
17 compel intervention. We need to be a party in this case,
18 frankly, for leverage to enforce whatever settlement may ensue,
19 and we don't have a settlement until Ms. Fadul sets foot back
20 in the United States, and that has not happened yet.

21 THE COURT: I understand. Well, first of all, I want
22 to commend -- I want to commend the government for working so
23 quickly in trying to resolve these cases. That's great. And I
24 don't want to do anything that's going to interfere with that,
25 but I do agree with Mr. Heaphy that, number one, I think that

1 his clients have alleged sufficient common facts and issues of
2 law that are already included in the amended papers that have
3 been filed in the original case to justify the Court's exercise
4 of its discretion and to allow them to intervene, so the motion
5 is granted, all right?

6 MR. REUVENI: Your Honor, I understand the order, but
7 I just want to verify something for the record.

8 THE COURT: Yeah.

9 MR. REUVENI: I mean, we'll work this out going
10 forward, of course.

11 It is the government's understanding that
12 Mr. Heaphy's client is not in either of the two classes before
13 you in the current -- in the current state of this case. A
14 nonimmigrant visa is very different than an immigrant visa.
15 Very different equities attach. Very different processes
16 occur.

17 THE COURT: Yes, and --

18 MR. REUVENI: Putting that aside --

19 THE COURT: Right.

20 MR. REUVENI: Putting that aside, going forward if we
21 need to, we'll elaborate on that.

22 THE COURT: Thank you.

23 All right, Mr. Raphael?

24 MR. RAPHAEL: Thank you, Your Honor. I stood up
25 before because the permissive intervention and intervention of

1 right issues that you were just talking about are obviously at
2 issue in our case with our motion as well. So we do have a
3 motion to intervene. We filed that on Tuesday. On Wednesday,
4 we filed a proposed complaint in intervention.

5 And I think it's important to start from the
6 standpoint that at this stage of the proceeding, there are now
7 two parties in the case that are in that have, that clearly
8 have standing, and the law is clear, as I believe the
9 government cited in its papers, that you only need one
10 plaintiff to have standing in order for the Court to be able to
11 exercise its Article III jurisdiction.

12 So I'm going to get to in a second why it's
13 absolutely clear that Virginia has standing because of direct
14 injuries to Virginia, but the government argued last night in
15 their brief that we don't have standing, and given that there
16 are now several parties who are plaintiffs in the case, the
17 Aziz brothers and Mr. Heaphy's clients, standing is just not a
18 question.

19 And the case I would cite for that is *Rumsfeld v.*
20 *Forum for Academic and Institution Rights*. It's 547 U.S. 47,
21 at -- pinpoint is 52, note 2, from 2006, where the Court said
22 the presence of one party with standing is sufficient to
23 satisfy Article III's case or controversy requirement.

24 So the government's principal objection to our motion
25 to intervene is that we don't have standing. It's just not an

1 issue given the current posture of the case.

2 They also suggest that the case is somehow mooted now
3 because they're working out a deal to whisk these other
4 plaintiffs back in exchange for their promising to dismiss
5 their cases once they get back to U.S. soil. That's just not
6 accurate as far as the law goes.

7 We cited to the Court *CVLR v. Wynne* in the papers we
8 filed last night. That's 792 F.3d 469, 475. And I have a copy
9 of that. If it would help the Court, I have a copy of that.

10 THE COURT: It's all right.

11 MR. RAPHAEL: Okay. Two sentences that appear at
12 page 475 of that, of that opinion, the first one is that most
13 courts -- this is in footnote 2 -- "Most courts that have
14 considered situations similar to Tosco" -- which was a Tenth
15 Circuit case -- "agree that when the motion to intervene is not
16 filed until after the underlying case is fully resolved, that
17 motion is moot."

18 The underlying case here is obviously not fully
19 resolved. The Aziz brothers and Mr. Heaphy's clients are in
20 the case, and it's not fully resolved, but more importantly, I
21 think this is sort of the -- the important language is further
22 down the page. The Fourth Circuit said, "To the contrary, the
23 case was live when Appellants moved to intervene, and remained
24 so when the district court denied the motion"

25 So if the intervention motion is filed when the case

1 is a live controversy, that is all that is needed, even if the
2 underlying case later becomes moot. So you measure this as of
3 the time the motion to intervene was filed, and that was filed
4 on Tuesday, when this was absolutely a live controversy, and
5 still is.

6 Now, I'm going to address standing. We don't need to
7 because we've got existing parties that have it, but I want the
8 Court to be comfortable that we absolutely have direct injury
9 here. To have standing, you need an injury that's caused by
10 the conduct at issue and that would be redressed by the relief
11 that you're seeking, and we satisfy all three of those
12 requirements.

13 And I point out, by the way, that the federal court
14 in Massachusetts just yesterday in the *Louhghalam v. Trump*
15 case, docket 17-10154, granted Massachusetts' motion to
16 intervene in a case that has a very similar posture, and I
17 actually brought a copy of that order, which I'd be
18 delighted --

19 THE COURT: We've also seen that.

20 MR. RAPHAEL: Okay. Very good.

21 So what is the direct injury here? You know, in the
22 Massachusetts case, Massachusetts was arguing for a much sort
23 of broader notion of standing, to just protect citizens, you
24 know, allowing refugees to come to the state.

25 We're not, we're not challenging the refugee

1 provision in this case. We're here based on direct injury to
2 Virginia, and it's laid out in Taylor Reveley's declaration,
3 which we filed yesterday. That's ECF 32.

4 In the commonwealth, in our 14 colleges and
5 universities, not to mention our community colleges, there are
6 more than 350 students alone at VCU, Virginia Tech, George
7 Mason, UVA, and William & Mary, 350 students who come from
8 these banned countries. There are numerous others at other
9 schools. We haven't been able to tally them all up yet, but
10 that's a lot of students coming to our public schools.

11 We know at this point based on Mr. Reveley's
12 declaration, and this is paragraph 5, there are dozens of
13 employees and faculty who have work visas or LPR status who
14 come from these banned countries.

15 We know of at least two students who are trapped and
16 cannot get back to the United States. One of them is an
17 Iranian doctoral candidate who needs to come back to have his
18 examination for his dissertation, and he was planning to come
19 with his wife. They've been issued visas, and then they were
20 cancelled. They can't get here. And they need to do that this
21 semester.

22 And then we know of a young lady who is a student at
23 George Mason University who's from Libya. Her visa was
24 cancelled when she was in Turkey, and she's stuck in Turkey.

25 Now, to the government's credit, they've been working

1 with us to try to get the information needed so they can free
2 her to come back, and that's one reason why we were willing to
3 set the TRO -- the preliminary injunction hearing for next
4 Friday rather than for, for this Friday, but I think that
5 demonstrates the irreparable harm and injury to Virginia's
6 interests that the executive order is causing right now.

7 There are other harms that are laid out in
8 Mr. Reveley's declaration. For example, a number of scholars
9 have cancelled their travel plans to international conferences.
10 They're afraid to leave the country because they won't be able
11 to get back, and those include some Iranian-born faculty and
12 students. That's paragraph 7 of Mr. Reveley's declaration.

13 We have examples of visiting scholars who've
14 cancelled their plans to come here. There are five people in
15 that category, paragraph 9 of Mr. Reveley's declaration.

16 There are a number of students who have now withdrawn
17 their applications to come to our schools. We're aware of two
18 Sudanese applicants and a handful of Iranian engineering
19 students who, who have withdrawn their applications. That's
20 lost opportunity and lost -- and if you have to put it in
21 monetary terms, obviously, this is much bigger than that, but
22 if you have to put it in monetary terms, that's lost revenue to
23 the commonwealth.

24 All of those direct injuries are plainly caused by
25 the executive order, and they will plainly be redressed by the

1 injunction that we're seeking. We absolutely have standing.

2 Now, the primary group we're here to protect are the
3 students and faculty at our universities and colleges, but we
4 are also here to protect Virginia residents who are here on LPR
5 or work or student visas even if they're not going to our
6 schools, and we have standing for that, too, because they are
7 taxpayers.

8 Under IRS Publication 519, at page 3 to 4, the IRS
9 rules provide that green card holders and others who have been
10 substantially present in the U.S. are considered U.S. residents
11 for tax purposes, and Virginia follows that rule. It's on our
12 Web site under the residency status page at the Department of
13 Taxation Web site. It says, "If you are a resident or a
14 nonresident alien required to file a federal income tax return,
15 and you meet the definition of a Virginia resident, part-year
16 resident or nonresident and other filing requirements, you must
17 file a Virginia return, unless exempted from the requirement by
18 federal treaty."

19 So they're taxpayers, and if they can't be here, we
20 lose that tax revenue. And that kind of trivializes what's
21 really important here, but that's plainly a pecuniary interest
22 that the commonwealth has.

23 And if you need case law to back that up, I've got
24 two suggestions. Number one, *Corr v. MWAA*. That was the
25 Dulles Toll Road case which Judge Trenga decided; and, you

1 know, when I represented MWAA on that case, I argued that the
2 toll payers didn't have standing because a zillion people pay
3 tolls, and that it's not adequate to restrict who the
4 plaintiffs could be, and I persuaded him I was right, but the
5 Fourth Circuit reversed in that case.

6 The Fourth Circuit held -- and this is at 740 F.3d
7 295 (2014) -- the Fourth Circuit held that paying like a \$2
8 toll was enough to give them standing to complain that MWAA was
9 unconstitutional, and the Fourth Circuit let that case go
10 forward. And so if paying \$2 is enough for standing, certainly
11 everything that the commonwealth is losing here is enough for
12 standing.

13 And one other case I'd cite is *Texas v. United*
14 *States*, the Fifth Circuit case from 2015, 787 F.3d 733. You
15 know, Texas challenged President Obama's DAPA policy, and their
16 basis for standing was that because the federal government
17 deemed these people from other countries to be lawfully
18 present, Texas had to spend \$131 on each of them in order to
19 issue them a license or some kind of identifying paper, and
20 that was enough for standing in Texas.

21 So given that low bar, we amply meet it here. We
22 clearly have standing, but again, we don't need it because
23 there are two parties in the case who have it.

24 Now, we have sought both permissive standing --
25 permissive intervention and as of right intervention, and I

1 think I'm going to flip it and take permissive first because
2 it's really, frankly, the easiest way for the Court to decide
3 it. It's totally in your discretion to do it, and this is
4 where I was going to stand up for Mr. Heaphy's client, because
5 I think it's easy to think of his motion to intervene in a very
6 narrow way like we're just dealing with his two clients.

7 This is a much bigger issue, and I think there's a
8 very good chance that you're going to be seeing a lot more
9 motions to intervene, and that's why it's important to
10 understand what permissive intervention is all about.

11 There are three elements. The first one, 24(b)(1),
12 has to be timely. We're here in two days after the original
13 complaint was filed. That is clearly timely.

14 Number two, it has to involve a claim or defense that
15 share with the main action a common question of fact or law.
16 That's 24(b)(1)(B). We only need one of those elements.

17 Both of those elements are satisfied here. There's a
18 common legal claim that the executive order is
19 unconstitutional. We've pleaded the same theories as the
20 underlying complaint. There are also common facts arising from
21 the events this past weekend at Dulles. So for both of those
22 reasons, you clearly have permissive standing under element 2.

23 And there's a third one. The third element is
24 prejudice to the parties. This is 24(b)(3). It says: "In
25 exercising its discretion, the court must consider whether the

1 intervention will unduly delay or prejudice the adjudication of
2 the original parties' rights."

3 Well, there's plainly no prejudice to adjudicating
4 the Aziz brothers' rights. In fact, they consent to our
5 intervention. They're happy for us to be in this case. So no
6 prejudice to their rights.

7 Is there any prejudice to the government's rights?
8 Obviously not. Forcing the government to have to adjudicate
9 the constitutionality of the executive order sooner than they
10 would like to does not prejudice their rights. You're not
11 entitled to do a delay for delay's sake. So permissive
12 intervention is plainly established.

13 We cited a case at page 7 of our brief on this, ECF
14 No. 15, footnote 17, I want to bring to the Court's attention:
15 *Feller v. Brock*. It's 802 F.2d 722, 729 (4th Cir. 1986), and
16 it really captures the purpose of permissive standing --
17 permissive intervention.

18 The court said: ". . . [L]iberal intervention is
19 desirable" -- desirable -- "to dispose of as much of a
20 controversy 'involving as many apparently concerned persons as
21 is compatible with efficiency and due process.'" That was
22 tailor -- in other words, permissive intervention is
23 tailor-designed for exactly this kind of controversy, because
24 when it gets out that what the government is really doing is
25 anybody who comes forward to sue them will be allowed back in

1 the United States, there are a lot of people who are going to
2 want to come forward to take that deal, and you shouldn't make
3 them file a new lawsuit to do that. That's exactly what
4 permissive intervention is for.

5 Let me turn to intervention of right. The federal
6 court in Massachusetts, I know Your Honor is familiar with
7 that, granted Massachusetts' intervention of right as opposed
8 to discretion. It granted it as of right. Similar elements.
9 It has to be timely. We are, two days. You have to show that
10 the intervenor shares -- claims an interest relating to the
11 property or transaction that's the subject of the action and is
12 so situated that disposing of the action may as a practical
13 matter impair or impede the movant's ability to protect its
14 interest unless existing parties adequately represent that
15 interest.

16 I have articulated Virginia's substantial interest.
17 I think that's clearly satisfied. Virginia's interests will be
18 adversely affected were this executive order upheld, and as a
19 sovereign entity, we are plainly not represented by the Aziz
20 brothers or by Mr. Heaphy's clients, so all of those elements
21 are satisfied.

22 Now, you've heard the government say, well, the
23 claims by these plaintiffs and by Virginia are kind of
24 different claims so they shouldn't be in this case. That is
25 not the test for intervention. In the *CVLR* case, you had

1 different plaintiffs who were injured differently by the
2 defendants' common racketeering scheme.

3 Of course they were different claims. The issue is
4 is there a common claim of law or a common claim of fact, and
5 you plainly have that here.

6 Practicality is also a critical aspect of the
7 decision whether to allow intervention, and the Ninth Circuit
8 said in *Citizens for Balanced Use*, 648 F.3d 893, 897: "In
9 addition to mandating broad construction" -- and they're
10 talking about intervention of right -- "our review is guided
11 primarily by practical considerations, not technical
12 distractions."

13 Again, you should be using this vehicle to address
14 this controversy in a broader way than simply focusing on a
15 specific plaintiff's claim.

16 THE COURT: All right, thank you, Mr. Raphael.

17 Let me hear, Mr. Reuveni -- is that how you pronounce
18 your name?

19 MR. REUVENI: Yes, Your Honor.

20 THE COURT: All right. Mr. Reuveni, do you know --
21 first of all, since you are senior litigation counsel, are you
22 overseeing this litigation as a whole, or are you just
23 addressing it in this court?

24 MR. REUVENI: At the moment, I'm just addressing it
25 in this court, but we are, we are, as you know --

1 THE COURT: You're litigating all over the country.

2 MR. REUVENI: We're litigating everywhere right now.

3 THE COURT: Okay. So I would assume down the road,
4 there's going to be some uniform approach to this case -- these
5 cases.

6 MR. REUVENI: I would clearly hope so. It would
7 allow me to sleep more.

8 THE COURT: All right. Do you have any sense at this
9 point as to how many people have been affected by this, that
10 is, how many people to whom -- from these seven countries, how
11 many people had gotten some kind of visa or authorization to
12 enter the United States? Any idea? Are we talking thousands,
13 tens of thousands, hundreds of thousands, or you don't know?

14 MR. REUVENI: Well, I think it's important to
15 distinguish two things here in answering this question. There
16 are the group of people that made their plans, had their visas,
17 and attempted to come over right after the order was signed or
18 may have already been in the air. Let's call that the events
19 of the weekend, January 27th to the 29th. It's a very small
20 number. I don't have the exact figures. It's in the ballpark
21 of between 100 and 200 people. It's a very small --

22 THE COURT: Nationwide, not just coming to Dulles.

23 MR. REUVENI: Don't hold me to that, but let me make
24 sure that's correct as to Dulles versus nationwide, and I can
25 get that to you very quickly afterwards, but that's a much

1 smaller number than the folks that are abroad and can't come
2 here currently because their visas have been revoked, and so
3 the government has submitted in two separate lawsuits, the one
4 in Massachusetts and the one in New York, a notice -- we didn't
5 submit it here because we didn't believe it was relevant to the
6 specific facts at issue in this case, because it involved
7 immigrant visas and lawful permanent resident visas that had
8 come over over the weekend. Visas have been revoked. Over
9 100,000 visas have been revoked. That's the scope of this
10 thing. Those were revoked on Friday at 6:30 p.m.

11 That is not this lawsuit. It is not the lawsuit
12 Virginia wishes to bring, and it is not the lawsuit the
13 plaintiffs -- the named plaintiffs that are already in the case
14 wish to bring, and it is certainly not the lawsuit that the
15 intervenor who you've granted leave to participate, the K-1
16 visa, wishes to bring. Those two individuals and others
17 similarly situated, at least in this case, we are attempting to
18 bring them back and resolve those claims.

19 The individuals abroad who did not get on a plane
20 before any of this happened and are now trying to come into the
21 United States, a very different case, and the government at
22 this time is defending those cases.

23 THE COURT: But what's the logical difference?

24 MR. REUVENI: The logical difference is they are
25 folks that made plans and had sort of just call it a reliance

1 interest. While we were implementing this thing, our clients
2 were implementing the order, and it was a very chaotic 48 hours
3 for all of us, those folks seem to be the ones that have the
4 better argument from the government's perspective as to
5 something not completely perfect from the government's view
6 happened.

7 Those folks that are abroad right now and their visas
8 have been revoked, that's a totally different case, and if we
9 are given the opportunity, if that issue arises in this case
10 and it's certainly already arisen in the Massachusetts case and
11 potentially in the Washington case that the attorney general of
12 Washington is bringing, we would argue, the government would
13 argue that that visa revocation is a non-reviewable
14 discretionary decision committed to the executive discretion.
15 That's by statute, 8 U.S.C. 1201 and 8 U.S.C. 1155, but
16 obviously, we're getting ahead of ourselves here. That's not
17 this case, but that's why we would think that will be a very
18 different lawsuit.

19 So to the extent Your Honor is contemplating that as
20 being part of what you have before you right now, there are no
21 claims to that effect in this case, no plaintiffs in this case
22 with those types of claims. Virginia, I don't believe -- I've
23 seen the complaint that they filed last night or was it two
24 days ago, they don't raise those claims. That would be a very
25 different lawsuit, and there's already other cases addressing

1 that issue -- or where that issue is raised.

2 As to this case, as to the commonwealth and the
3 motion for intervention, I think it's absolutely fundamental
4 that they demonstrate standing if they want to participate in
5 this case or any case. If they were to file their own lawsuit,
6 they would have to have standing. If you grant them
7 intervention, they would still need to have standing because
8 when the Aziz plaintiffs and when the K-1 visa plaintiff, their
9 matters are resolved, there's no one left with standing, and
10 standing has to exist at every step of the lawsuit -- at its
11 commencement, at the motion for preliminary injunction stage,
12 at the motion to dismiss stage, and so on all the way up on
13 appeal. So if they don't have standing, they can't get in this
14 case. They can't bring any case.

15 So this is a pivotal issue to address, and it may not
16 be this venue in which it should be addressed. It should be in
17 their own case, with their own issues, with their own
18 plaintiffs or individuals they've identified through
19 declarations.

20 The issues here are not at all interrelated with the
21 issues I believe the commonwealth is attempting to bring before
22 Your Honor. The LPR issue that they raise, it's a moot point
23 now. We've all seen at this point, I think, the White House
24 guidance on that, and we submitted it with our papers last
25 night on the opposition --

1 THE COURT: But, you know, there's case law that just
2 because there has been a response to alleged illegal activity
3 doesn't get the parties totally off the hook.

4 MR. REUVENI: That's certainly true. I'm familiar
5 with that, Your Honor, but I would say in this case involving
6 the things that happened at Dulles, not a single lawful
7 permanent resident was turned around. They've all been
8 admitted into the United States. They're all in the United
9 States presently.

10 Not a single individual was turned around, so there
11 is no live controversy as to any lawful permanent resident,
12 including the Doe plaintiffs -- or the unnamed Doe plaintiffs.
13 They've all been admitted. We've confirmed that with our
14 client. Not a single lawful permanent resident arriving in
15 Dulles before your order came in and after you had entered Your
16 Honor's order, they've not been turned around. They have been
17 admitted. They're here in the United States.

18 And going forward, lawful permanent residents who
19 wish to come to the United States, the executive order is not
20 being applied to them. They are coming in. They're getting
21 into the United States.

22 So the lawful permanent resident issue from the
23 government's view in this case is a moot point. There are no
24 lawful permanent residents' interests at stake in this case any
25 longer, and so to the extent the commonwealth wishes to

1 piggyback on those interests to get into this case, that would
2 be inappropriate because those claims are moot, and there's no
3 live controversy as to any lawful permanent resident.

4 I do want to talk for a minute about the case that
5 the commonwealth raised with you a number of times concerning
6 its presentation, the *CVLR* case. So that's a very different
7 case. I've had an opportunity to see it as well as the
8 commonwealth. That is a case where a party moved to intervene,
9 and that motion was denied while the case was live. They
10 appealed the denial of the motion to intervene after the case
11 was resolved by the actual named parties.

12 The Court of Appeals said it could exercise its
13 appellate jurisdiction to address the issue of whether that was
14 an erroneous denial of the motion to intervene, and I think
15 it's important, the commonwealth left this part out when it was
16 reading various language to you, that case cites an earlier
17 case from the Fourth Circuit, *Atkins v. State Board*, 418 F.2d
18 at 876, that's a 1969 case: ". . . [A] court may treat
19 intervention as a separate action" only when "the intervenor
20 has an independent basis for jurisdiction."

21 So it's arguable whether that case has any bearing
22 here at all. The cases that are more relevant are those cases
23 cited in the federal government's brief at pages 3 through 4.
24 I'm referring to the Eleventh Circuit, the Tenth Circuit, the
25 Seventh Circuit, and the Ninth Circuit, all of which hold --

1 and the Ninth Circuit en banc at that -- the intervenor has to
2 have standing throughout the litigation. They can't piggyback
3 on standing, particularly where, as here, the actual parties to
4 the case, including the other intervenor who is now in the
5 case, want to resolve the case and move on.

6 We will meet Virginia in court; I have no doubt about
7 that. The question is simply is this case, with very different
8 issues of the actual named plaintiffs, the place to do that.

9 As I mentioned, we are defending these cases
10 nationwide. We're not trying to run and hide from Virginia.
11 We know we're going to be defending this in Virginia and
12 elsewhere. The question simply is whether it should be here in
13 this case.

14 As to the standing itself in this case, from what we
15 know now, Virginia seems to raise two theories as to standing.
16 They wish to sue on behalf of their citizens generally, but
17 that's a settled issue. The Supreme Court settled that in the
18 1920s in the *Mellon* case, and *Massachusetts v. E.P.A.* case in
19 2007 similarly revisited the issue and made clear *Mellon* is
20 still good law.

21 The fact that the federal government 's action causes
22 a general tax burden on your citizens does not provide you
23 parens -- and I'm going to mispronounce this; I'm terrible at
24 latin -- parens patriae jurisdiction or standing. That just
25 doesn't -- that is a nonstarter in the government's view, and

1 we have that in our papers and cases, and we're happy to give
2 you more on that if you'd like.

3 The other, the other injury they raise is the impact
4 to their public universities, and again, I think here it's
5 important to realize what is really being challenged: Federal
6 action in the federal space which is committed entirely to the
7 federal government under the separation of powers on the
8 state-federal system we have. So it is the federal government
9 that actually would have this general welfare of the citizenry
10 jurisdiction or standing to speak on behalf of individuals
11 affected by federal law, not Virginia.

12 And I can refer you specifically to cases addressing
13 this very issue. We have them in our papers. One,
14 *Pennsylvania v. Kleppe* (D.C. Cir. 1976), 533 F.2d 668, or if
15 it's easier, I'll just refer you to the pages in the brief
16 where that --

17 THE COURT: That's all right. We've read it.

18 MR. REUVENI: Okay. Very good. I didn't -- I have
19 no doubt you -- the -- so as to the actual individuals,
20 Virginia speaks in generalities, and that's really not what
21 standing requires. We need specific -- for there to be Article
22 III jurisdiction, there needs to be specific articulated injury
23 as to specific individuals, not the commonwealth writ large.

24 Their papers refer to individuals, generally
25 professors or students, and again, these are individuals who

1 are not similarly situated to the individuals that are
2 currently in this case. F-1 visas and J-1 visas, which would
3 refer to students coming to the commonwealth's universities,
4 those are nonimmigrant visas, and this is the issue I alluded
5 to earlier. This is a very different claim, very different
6 issues, very different legal defense the government would make
7 and different arguments that plaintiffs or the commonwealth
8 would make if that issue was in this case.

9 As to some of the other issues, the commonwealth
10 raised an establishment clause violation as a basis for
11 standing in this case. I'd just like to refer the Court to the
12 Ninth Circuit's decision on this very issue. It's called the
13 *Catholic League for Religious and Civil Rights v. City of San*
14 *Francisco*, 624 F.3d 1050. This one is not in our papers.
15 States cannot allege injury based on religious stigma or
16 spiritual or psychological harm derived from federal action or
17 state action based on -- or impacting religion in some way.

18 The commonwealth doesn't really address that in their
19 papers, but that's another impediment to jurisdiction going
20 forward.

21 Intervention as of right and permissive intervention,
22 their papers as to as of right are premised on the same
23 jurisdictional theory that they cannot rely on. That's the
24 general welfare of the citizenry. So I won't spend too much
25 time on that.

1 Permissive joinder, again, this case is winding down.
2 Well, at least the government believes as to the named
3 plaintiffs, it is winding down. Let me be clear on that. As
4 to also the intervenor you just granted intervention to, that
5 we can resolve very quickly.

6 And it is, it is our position that it is in the
7 interests of the United States to resolve these where it is
8 appropriate, and the commonwealth's papers suggest that we're
9 just trying to get out of a lawsuit. That's -- we're being
10 sued right now in ten different courts. We're going to be sued
11 tomorrow in 20 different courts. That's just not the case.
12 We're defending these cases. We're not playing games with the
13 courts. It's just a matter of whether these particular
14 plaintiffs and the issues in this case are the appropriate
15 vehicle for the commonwealth to come into court and have its
16 day in court, particularly where they at this time so far as
17 the government is concerned don't have standing to raise those
18 claims.

19 If you have any more questions on that, that's enough
20 for me.

21 THE COURT: All right. Well, the issue has been very
22 thoroughly briefed and argued. We've had, obviously,
23 relatively short periods of time for both counsel and the Court
24 to look at all this, but I am satisfied at this point that the
25 commonwealth has made a sufficient argument to establish that

1 it does have standing to enter into this lawsuit both under
2 permissive and as of right principles of intervention, and at
3 this point, I'm granting the motion and therefore will allow
4 the commonwealth to enter into this litigation.

5 There have been no objections from either the
6 original plaintiffs or from the new intervenor, and I therefore
7 find that it is not inappropriate to allow the commonwealth in
8 the case.

9 Now, part of the commonwealth's papers, however, and
10 I'm not actually going to hear a lot of argument on this today,
11 the commonwealth has included a motion for an order to show
12 cause, and I'm not going to grant that motion at this time, in
13 part because I am encouraged by the attitude of the government
14 that they're trying to resolve these cases, and I don't want to
15 stir up the waters unnecessarily.

16 This Court has always taken the position in any type
17 of civil litigation that the most successful litigation is that
18 which can be amicably and appropriately settled, and,
19 Mr. Barghaan, I know you and your office have a great deal of
20 experience with that, and I know the Department of Justice does
21 as well.

22 I have to tell you I've been on this bench a long
23 time. I was the judge that handled the September 11 case. I
24 have never had so much public outpouring as I have seen in this
25 case. It is amazing. I have spoken to some of the other

1 judges in the country who have these cases, and their
2 experience has been the same. This order touched something in
3 the United States that I've never seen before. People are
4 really upset.

5 Now, there is no question the president of the United
6 States has almost, almost unfettered discretion in matters of
7 international relations and in protecting the borders. There's
8 no question about that. But it's not unfettered. There are
9 limits.

10 And this case, this order went into -- was issued so
11 quickly, it's quite clear that there were not all the -- not
12 all the thought went into it that should have gone into it. As
13 a result, there has been chaos. I mean, the example being how
14 the, for lawful permanent residents, they were captured in this
15 order, and now the government has recognized that was a
16 mistake, and they have backed off of that.

17 But it is a real problem, it seems to me, when the
18 government has gone through the vetting process, has authorized
19 individuals to come to this country, and then without any kind,
20 from what we can tell, of significant fact-finding or any kind
21 of actual hard evidence that there is a need to rescind those
22 decisions, to revoke them.

23 Human beings have relied upon those decisions that
24 were made by hard-working government authorities. Families
25 have expected family members to be reunited with them.

1 Universities have expected students or faculty to be able to
2 come back. It has obviously thrown hundreds of thousands of
3 people into states of great discomfort, and it's something that
4 the government should think very carefully about how you want
5 to resolve all of these cases globally.

6 Again, I commend you for having taken the steps
7 you've taken so far, but I don't think it's far enough, and I
8 would hope that you would give serious thought to thinking more
9 broadly about how you want to address these issues.

10 In any case, we have this case scheduled for next
11 Friday for a hearing on a more permanent situation. At this
12 point, all I'm going to do, and I'll have some orders that
13 we'll issue at some point today, the injunction, the temporary
14 restraining order which we issued last Saturday was only for
15 seven days. That's how it was presented to the Court. I want
16 to leave that injunction in place, and I'm going to expand it
17 slightly, but only slightly, and you'll get it later today, but
18 it will be in place until next Friday.

19 I want to make sure that there is no slippage, and
20 that is, that lawful permanent residents clearly are allowed to
21 come back in. I understand the government has agreed to do
22 that. I want to make sure that it is done, so I want to
23 definitely keep that within the language of the injunction, and
24 at this point, that would be maintaining the status quo.

25 Plus, I am concerned about the representations in the

1 commonwealth's papers that although the order had clearly said
2 that people who are being held at Dulles should have the
3 opportunity to have access to counsel, that that was not being
4 done. Now, I understand from the government's papers that
5 there was some telephone arrangement that was set up. I don't
6 want to get into the details of that today other than to say
7 that the agents need to be careful at the airport not to
8 violate a court order because there are sanctions that can
9 result from that.

10 I'm not unsympathetic with the poor Customs and
11 Border Patrol officials at the airport Saturday and Sunday. It
12 was chaotic for everybody, and I'm certainly not going to find
13 that the people at the low level, who were just following
14 orders, that was too confusing a time to find that any of them
15 would have been in contempt.

16 Whether or not any of the people who are more in
17 control should have acted differently, I'm not in a position at
18 this point to address, and frankly, I don't think it furthers
19 the goal of trying to get these issues resolved by pushing for
20 contempt citations at this point.

21 It does appear as though the government is now
22 working diligently to resolve many of the ills involved, maybe
23 not all but many of the ills involved in the original case, and
24 that gives the Court some optimism in this respect, all right?
25 So unless there's anything else, I think I've resolved all the

1 issues.

2 Mr. Raphael?

3 MR. RAPHAEL: Yes, Your Honor, thank you. Just a
4 couple minor points. Just to be clear, we weren't seeking to
5 hold the government in contempt. We were seeking to have them
6 account for what they've done.

7 When Your Honor expands slightly the language of the
8 TRO, I would ask that you make clear that the requirement to
9 permit access to lawyers means in person access. The paragraph
10 7, I think it was, of the motion for a TRO made it clear that
11 there were lawyers waiting there to see these people. There
12 was nothing preventing them from seeing them if they were
13 allowed. They were all -- the people were gathered together.

14 And the government has apparently taken the position
15 that it didn't require in person access. So I think you need
16 to clarify that or -- they say maybe, maybe telephone access
17 was okay. We don't have any records --

18 THE COURT: They indicated -- and again, I wasn't
19 there; I don't know what was going on -- that the folks were
20 being held in the secondary inspection locations, and I don't
21 think counsel are permitted into the secondary area. That's
22 the problem.

23 And so -- but access can be -- I mean, prisoners all
24 the time have adequate access to counsel via telephone.

25 MR. RAPHAEL: Right. And my point is that we don't

1 have any records to show that, in fact, people were being
2 granted access, that the named plaintiffs and the intervenors
3 say that their phones were taken away. Mr. Heaphy's client
4 wasn't allowed to call her fiance.

5 Maybe that was before the TRO issued, but I think
6 that there is something very troubling about the fact that
7 there were so many lawyers there waiting to help, and not a
8 single one of them got to talk with any of the detainees. So I
9 would just ask the Court to make it clear that CBP must provide
10 access to lawyers who are on hand, willing and waiting to help,
11 or it's going to be unfair to these people.

12 THE COURT: All right. Let me hear the government's
13 response to that. I'm sorry, was there another thing?

14 MR. RAPHAEL: Yeah, I had a couple more points. Part
15 of the problem -- part of the consequence of the lawyers not
16 having access is there was a restriction on the flow of public
17 information. We know very little about what was going on
18 there. The fact that lawyers weren't involved means the
19 lawyers couldn't tell us what was going on there.

20 As you know, the attorney general sent a letter to
21 the government on last Sunday with these concerns and asking
22 for the names of Virginia residents who have been removed from
23 the country or blocked from entering, and so I would ask the
24 Court today to require the government to tell the commonwealth
25 of Virginia which Virginia residents have been denied entry or

1 have been removed from the country, and I would ask for the
2 name, the Virginia address, the foreign residence address, the
3 type of visa, a phone number where we can get in touch with
4 these Virginia residents, and an e-mail address if they have
5 it.

6 I would ask for that both retrospectively, anybody
7 whose visas were cancelled, and prospectively, any Virginia
8 resident whose visa is cancelled going forward, and the same
9 for people removed. If somebody's been removed from the
10 country, we'd like to know which Virginia residents were
11 removed both retrospectively and prospectively. I don't think
12 that's asking for a lot.

13 And I want to say one thing about the government's
14 good faith. I am, I am pleased that they are willing to whisk
15 people back when they come to our attention. They're not going
16 to come to our attention if we don't have this list because,
17 you know, please stand forward if you're not here, right? It's
18 hard to know who's affected. So I think that list is really
19 important.

20 And I don't, I don't want to be overly critical of
21 the government on this, but I think it's important to point out
22 that there appears to be some strategic maneuvering here not by
23 counsel but by counsel's client. So whenever one of these
24 folks comes forward and files a lawsuit and intervenes, they
25 are immediately presented with a deal that drop your case and

1 I'll bring your person back and dismiss your case with
2 prejudice, which is exactly why you need a vehicle like this
3 case, where you allow permissive intervention, but there's
4 something very troubling about the way this is playing out.

5 These people were excluded based on national origin
6 on the theory that they were a security risk, but if they can
7 file a lawsuit, you get right back unless you are a security
8 risk. So I'm very -- we're very troubled by that.

9 MR. HEAPHY: Your Honor, before the government goes,
10 can I just add one thing?

11 THE COURT: Yes.

12 MR. HEAPHY: Thank you. It's on the scope of your
13 order on counsel, Your Honor. My client now has a lawyer, and
14 that's me, and arguably, we would be protected by the temporary
15 restraining order in terms of access to counsel, and I just
16 want to be clear that I understand the Court's order correctly.
17 It applies to lawyers' access to all legal permanent residents
18 being detained at Dulles International Airport.

19 When it's extended, Your Honor, I would assume that
20 that allows me to have access to Ms. Fadul despite the fact
21 that she's in this K-1 status, not yet a lawful permanent
22 resident, that the Legal Aid Justice Center and Mayer Brown
23 also have access to their clients upon their return.

24 My understanding is that the government, through its
25 good faith efforts to resolve the case, are going to make

1 efforts to reinstate my client's visa, but when she arrives,
2 we'd very much like to be there and facilitate her processing
3 through CBP so that there is no confusion, that the order is
4 enforced.

5 THE COURT: Well, before this order went into effect,
6 what was the arrangement for access to counsel at Dulles
7 Airport?

8 MR. HEAPHY: I don't know, Your Honor.

9 THE COURT: All right.

10 MR. SANDOVAL-MOSHENBERG: If I may address that?

11 THE COURT: All right, Mr. Sandoval-Moshenberg.

12 MR. SANDOVAL-MOSHENBERG: Thank you, Your Honor. My
13 practice, although I've been practicing immigration for
14 eight-and-a-half years, does not generally involve consular
15 processing, bringing people into the country, but I can tell
16 you that it is not the case that lawyers are never allowed to
17 speak with clients when those clients are taken, for example,
18 into credible fear interviews, for example. So it is -- it
19 would certainly not be the first time, you know, in the history
20 of Dulles Airport that attorneys are allowed back into the CBP
21 area.

22 THE COURT: All right.

23 All right?

24 MR. REUVENI: Maybe I can go now?

25 THE COURT: Yeah.

1 MR. REUVENI: Thank you. Let me take these in
2 reverse order, Your Honor, because there are a number of things
3 here, and it looks like we are going to argue some aspect of
4 the commonwealth's motion, even though we weren't going to, but
5 now we are.

6 You hit on this point earlier, and this is a line, I
7 think, that CBP would have to draw, and this is just, lawyers
8 do not get into secondary inspection unless that becomes a
9 custodial interrogation or a criminal investigation occurs and
10 a right to counsel attaches.

11 The INA is very clear on this, and I want to speak to
12 the Aziz attorney's point. Credible fear hearings, those are
13 an adjudicatory proceeding that you actually have by regulation
14 entitlement to counsel. You're not in secondary when that
15 happens. A credible fear hearing does not occur in secondary
16 with CBP. A credible fear hearing occurs in front of the
17 United States Citizenship and Immigration Service. Totally
18 different entity, not part of this lawsuit at least at this
19 time.

20 I am not aware of, no party has cited any case in
21 which any individual, including citizens returning to the
22 United States who would just go through normal secondary
23 process, have a lawyer in secondary. I don't think it's really
24 hard to imagine what sort of operational problems that may
25 present at the border, but more so in terms of trying to move

1 forward with this litigation and just getting past this weekend
2 and addressing the real issues, that's the sort of thing that
3 the government would probably have to look at very closely if
4 the order was expanding to that.

5 Actually, I will say this: The counsel, pro bono
6 counsel, we are not aware of anyone after Your Court -- Your
7 Honor's order was implemented who -- of anyone asking for
8 counsel who was a lawful permanent resident once they received
9 this document, because they were getting waived through very
10 quickly -- why would you want to talk to a lawyer if you're
11 getting admitted to the United States? -- which suggests things
12 were working fine once your order was operationalized.

13 So there's really -- the government would strongly
14 oppose, and this is really the only issue we're left -- we're
15 opposing here, expanding the order to apply to individuals who
16 are in secondary. That's not the law, and the INA doesn't
17 provide for it, and there's no constitutional right to that for
18 anyone, let alone arriving aliens who have never been admitted
19 to the United States before and have no ties or connection to
20 this country.

21 As to the commonwealth's request for a list, that
22 seems way beyond the scope of the TRO you entered, which had to
23 do with access to counsel, and the commonwealth never mentioned
24 this to us when we in good faith were discussing bringing back
25 these potentially one or two individuals they mentioned.

1 I want to -- since I mention that, I take issue with
2 the fact on behalf of the federal government that the
3 commonwealth is suggesting we're mooted cases out
4 strategically. Everyone in this courtroom knows very well we
5 have dozens of these across the country. Some of them we are
6 litigating; some of them we're not.

7 As to the events that happened on the weekend, those
8 seem like cases we're looking to resolve because that is an
9 entirely different scenario than people now trying to come to
10 the United States with a revoked visa. Those we're defending.
11 Those at this time we're continuing to defend. There's no
12 strategic mooted cases out occurring here from the
13 government's view.

14 Back to the list, I mean, we would oppose that. We
15 don't see any reason for it right now, and frankly, it would
16 complicate moving forward with trying to resolve some of these
17 cases if we have to dig in and look for names, and I don't see
18 its relevance right now. I don't see its helpfulness to where
19 we are in this case right now, and at the very least, we would
20 request, Your Honor, an opportunity to provide a brief opposing
21 that.

22 THE COURT: Well, again, how many people do you think
23 as best you can tell were removed from Dulles over the weekend?

24 MR. REUVENI: So now that we're talking about not
25 just lawful permanent residents --

1 THE COURT: The whole --

2 MR. REUVENI: Everyone --

3 THE COURT: Yeah.

4 MR. REUVENI: -- trying to come into Virginia, I
5 don't know the answer because the answer I had before I came to
6 court today was limited to lawful permanent residents, which
7 was zero people removed over the weekend.

8 So I don't have the answer as to nonimmigrants, and I
9 don't have the answer as to individuals who had immigrant visas
10 but had not yet been admitted to the United States so had not
11 yet been lawful permanent residents.

12 THE COURT: And among -- I'm sorry, among the people
13 who were removed on Saturday and/or Sunday, did that include
14 refugees? If you know. If you don't know, I mean,
15 obviously -- yeah.

16 MR. REUVENI: No, I'd be speculating. I'd like to
17 say no, but I'm speculating.

18 THE COURT: All right.

19 MR. REUVENI: So I'll just go with I don't know right
20 now.

21 THE COURT: Okay.

22 MR. REUVENI: If need be, if necessary, I can find
23 out, but what I do know, not a single lawful permanent resident
24 even before your order was entered, between the time the
25 executive order was signed and your TRO was -- CBP received

1 notice of it, and thereafter, no lawful permanent residents
2 were removed. The government -- every single one has been
3 admitted to the United States that I'm aware of, and those that
4 would now proceed to continue to try to come to Dulles and get
5 on a plane, the way that they're supposed to be working is they
6 get on a plane, they arrive at Dulles, they don't otherwise
7 have some reason under the INA during the secondary inspection,
8 if they get through secondary, to be denied entry, they're
9 admitted to the United States.

10 THE COURT: Are lawful permanent residents normally,
11 normally required to go through secondary?

12 MR. REUVENI: No one is required to go through
13 secondary if they're a lawful permanent resident, but everyone
14 including citizens can be asked to go through secondary.

15 THE COURT: Right. All right, so there has never
16 been an established practice in the past that all LPRs must go
17 through secondary?

18 MR. REUVENI: I'm not aware of one.

19 THE COURT: And is that what's happening now? That
20 is, those LPRs who are being permitted, permitted back in the
21 country from those particular countries, are they all required
22 to go through secondary?

23 MR. REUVENI: Well, no. To be clear, we're talking
24 about two different points in time. So we're talking about the
25 weekend, and yes, at that time, lawful permanent residents were

1 going through secondary and then getting this waiver process
2 that the executive order anticipates and outlines, and they
3 were getting waived through pretty quickly, 15 to 30 minutes
4 after, by Sunday is my understanding.

5 Going forward, no. We have the White House guidance
6 that we attached to our intervention. The way that our --
7 opposition to intervention. The way that is being
8 operationalized, they are not, they are not going through
9 secondary.

10 If there is an independent reason other than the
11 executive order, as it would have been before the order was
12 signed on Friday, to go to secondary, they're going to
13 secondary, as everybody else would if the order didn't exist.

14 THE COURT: So it's your understanding that lawful
15 permanent residents now are being treated exactly the -- from
16 those seven countries are being treated the same as they would
17 have been treated a year ago.

18 MR. REUVENI: Correct. So the guidance and the way
19 that it's being implemented, sections 3(c) and 3(e) of the
20 executive order that would otherwise apply if read that way to
21 lawful permanent residents does not apply to them, so they are
22 to be treated -- are being treated so far as I know as though
23 it was 4:21 Friday.

24 THE COURT: But you would agree with me that within
25 the four corners of that document, that is not included. It

1 required the additional statement by counsel to make it clear
2 that they were not included within the executive order.

3 MR. REUVENI: Well --

4 THE COURT: I didn't see the word "lawful permanent
5 residents" in there.

6 MR. REUVENI: No, that is in there. "I understand
7 that there has been reasonable uncertainty about whether those
8 provisions" -- and I'm reading from the counsel for the
9 president's memorandum, back to the language -- "apply to
10 lawful permanent residents of the United States. Accordingly,
11 to remove any confusion, I now clarify that Sections 3(c) and
12 3(e) do not apply to such individuals. Please immediately
13 convey this interpretive guidance to all individuals
14 responsible for the administration and implementation of the
15 Executive Order."

16 So at least in the government's understanding of
17 this, no lawful permanent residents are going to secondary
18 solely on the basis of the executive order. Again, if there's
19 some independent basis that it preexisted the executive order
20 that's in the INA, yes, they're going to secondary, but other
21 than that, no. The order does not apply to them so far as the
22 government is concerned.

23 THE COURT: All right.

24 MR. REUVENI: Thank you.

25 THE COURT: Mr. Raphael?

1 MR. RAPHAEL: Just a couple points. Just on that
2 last point, section -- as we, as we read the executive order,
3 it does apply to lawful permanent residents. There is an
4 exemption -- an exception in 5(g), but it requires case-by-case
5 review.

6 And so what's happened here is after the chaos
7 developed, I think the government realized they made a mistake
8 or at least it wasn't turning out as they planned, and the
9 secretary has promulgated this sort of categorical decree that
10 if you're an LPR, you can come in. I don't, I don't see how
11 that comports with 5(g), which required case-by-case review.

12 But Your Honor touched on it earlier. Under the
13 voluntary cessation doctrine, they snap their fingers; they
14 change it. They can snap their fingers back, and unless the
15 wrongful conduct is absolutely certain not to recur, they can't
16 moot the case out by changing their -- by changing what they're
17 doing.

18 On the issue of the list, this is no surprise. We
19 asked for this list last Sunday. We might not have gotten in
20 this case if they'd given it to us and we could figure out the
21 full extent of the damage to Virginia residents.

22 We're here seven days after this order was issued,
23 only five business days, and we know of these two students who
24 were stranded that I mentioned earlier, and yeah, we're trying
25 to get them back, but there could be many others, and we can't

1 find them unless we know who they are. It is not an
2 unreasonable request for the government to tell us which
3 Virginia residents they have not let in or who have been
4 removed, and I think that's very reasonable.

5 And the last thing I might ask, Your Honor, given a
6 showing of cooperation here, if Your Honor might consider
7 appointing a magistrate judge who might facilitate mediation
8 efforts, such as Magistrate Judge Buchanan, who's been
9 extremely successful on these things.

10 THE COURT: All right. Well --

11 MR. REUVENI: Your Honor, just one last point?

12 THE COURT: Yeah.

13 MR. REUVENI: I just want to clarify any confusion
14 here. Paragraph 5(g) that counsel refers to applies to
15 refugees. Paragraph 3 applies to lawful permanent residents.
16 That's why the White House guidance says nothing about
17 paragraph 5. Refugees coming here are not lawful permanent
18 residents; they're refugees, different category. Maybe one day
19 they will become lawful permanent residents, but refugees don't
20 have that status when they arrive in the United States.

21 THE COURT: All right, thank you.

22 MR. RAPHAEL: I'm sorry, it's 3(g), not 5(g). 3(g)
23 does apply. 3(g).

24 MR. REUVENI: You said 5(g).

25 THE COURT: You had said 5(g).

1 MR. RAPHAEL: I apologize, it was 3(g). That calls
2 for case-by-case review.

3 THE COURT: All right.

4 MR. REUVENI: On the list, again we would, we would
5 oppose what the commonwealth is proposing, and we think it
6 would change the tenor of this litigation dramatically, but if
7 you would like us to get back to you with a brief on that, we
8 can do so. We just haven't had enough time to think of that or
9 respond to it. It just came up today.

10 THE COURT: All right.

11 MR. REUVENI: As to the letter, I mean, I would say
12 one last thing; I apologize, Your Honor. The letter asked us
13 to respond to ongoing litigation. I think we all understand
14 the position that puts the U.S. government in when we're asked
15 to give information that could affect ongoing litigation.

16 THE COURT: All right. Well, we'll take a look at
17 that issue in chambers, but at this point, then I've allowed --
18 granted the motions to intervene. We're going to extend the
19 temporary restraining order to keep things somewhat in place.

20 The access to counsel issue is a troubling one
21 because I -- my experience having handled many cases at Dulles
22 is that, in fact, the government's position is correct that
23 normally, under normal circumstances, counsel would not have
24 the right to have direct, in person contact with people who are
25 held up in the process there.

1 There are exceptions, and I do believe in one of your
2 sets of papers, there was discussion about reference of people
3 to hotlines or telephone contact with various agencies that
4 provide legal counsel in immigration. So I'll see what makes
5 sense to me.

6 I mean, I do think that probably this issue is
7 somewhat less pressing than it was on Saturday because at this
8 point, I don't think folks are coming to the airport who would
9 be covered by this, right? I mean, are there any more issues
10 of people who have been coming to the airport and being turned
11 around since this weekend?

12 MR. RAPHAEL: Well, I mean, LPRs, I guess after the
13 government's change in position, are now allowed in.

14 THE COURT: LPRs are coming in, and the problem now
15 is from your standpoint, is that everybody else is basically
16 stopped because the airlines won't let -- they aren't getting
17 the visas.

18 MR. RAPHAEL: That's right.

19 THE COURT: Yeah.

20 MR. RAPHAEL: And Your Honor's TRO applied only to
21 LPRs.

22 THE COURT: Correct.

23 MR. RAPHAEL: And so I think the counsel issue is
24 still a live issue if they have problems going forward.

25 THE COURT: If LPRs have problems.

1 MR. RAPHAEL: Yes, yes.

2 MR. REUVENI: Yes. No one is getting turned around
3 at the airport if they're a lawful permanent resident. If
4 they're not and they don't have a valid visa, practically
5 speaking, they're not getting on a plane to get here, so that
6 can't be an issue unless and until they do.

7 THE COURT: All right, thank you.

8 All right, I think that resolves everything for
9 today. We will recess court until 12:00.

10 MR. RAPHAEL: Thank you.

11 (Which were all the proceedings had
12 at this time.)

13

14 CERTIFICATE OF THE REPORTER

15 I certify that the foregoing is a correct transcript of
16 the record of proceedings in the above-entitled matter.

17

18

19

20

21

22

23

24

25

/s/
Anneliese J. Thomson

From: DURST, CASEY OWEN
Sent: Saturday, February 04, 2017 1:35 PM
To: HUTTON, JAMES R; (b)(6), (b)(7)(C)
Cc: (b)(6), (b)(7)(C)
Subject: RE: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

(b)(5)

Casey Owen Durst
Director, Field Operations
Baltimore Field Office

From: HUTTON, JAMES R
Sent: Saturday, February 04, 2017 1:31:49 PM
To: (b)(6), (b)(7)(C); DURST, CASEY OWEN
Cc: (b)(6), (b)(7)(C)
Subject: RE: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

(b)(5)

Thanks!!

From: (b)(6), (b)(7)(C)
Sent: Saturday, February 04, 2017 1:26:51 PM
To: HUTTON, JAMES R; DURST, CASEY OWEN
Cc: (b)(6), (b)(7)(C)
Subject: RE: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

Ryan,

(b)(5)

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)
Deputy Associate Chief Counsel
Enforcement and Operations
Office of the Chief Counsel
U.S. Customs and Border Protection

(b)(6), (b)(7)(C)

This document, and any attachment(s), may contain information which is law enforcement sensitive, attorney-client privileged, attorney work product, or U.S. Government information. It is not for release, review, retransmission, dissemination, or use by anyone other than the intended recipient. Please consult with the CBP Office of Chief Counsel before disclosing any information contained in this message or any attachment(s).

From: HUTTON, JAMES R

Sent: Friday, February 03, 2017 10:30 PM

To: DURST, CASEY OWEN (b)(6), (b)(7)(C)

Cc: (b)(6), (b)(7)(C)

Subject: RE: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

(b)(5), (b)(6), (b)(7)(C)

From: DURST, CASEY OWEN

Sent: Friday, February 03, 2017 9:58:16 PM

To: HUTTON, JAMES R

Subject: FW: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

(b)(5)

Casey Owen Durst
Director, Field Operations
Baltimore Field Office

From: (b)(6), (b)(7)(C)

Sent: Friday, February 03, 2017 9:54:39 PM

To: DURST, CASEY OWEN

Subject: RE: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

(b)(5)

From: (b)(6), (b)(7)(C)

Sent: Friday, February 03, 2017 9:51 PM

To: DURST, CASEY OWEN (b)(6), (b)(7)(C)

Subject: RE: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

(b)(5)

(b)(6), (b)(7)(C)

CBP Assistant Chief Counsel (Baltimore)

(b)(6), (b)(7)(C)

** Attorney Work Product / Attorney-Client Privileged **

From: DURST, CASEY OWEN
Sent: Friday, February 03, 2017 9:36 PM
To: (b)(6), (b)(7)(C)
Subject: RE: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

Thanks

Casey Owen Durst
 Director, Field Operations
 Baltimore Field Office

From: (b)(6), (b)(7)(C)
Sent: Friday, February 03, 2017 9:20:05 PM
To: DURST, CASEY OWEN
Cc: (b)(6), (b)(7)(C)
Subject: RE: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

(b)(5)

(b)(6), (b)(7)(C)
 Assistant Chief Counsel (Baltimore)
 U.S. Customs and Border Protection
 Ph: (b)(6), (b)(7)(C)

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From: DURST, CASEY OWEN
Sent: Friday, February 03, 2017 9:12:39 PM
To: (b)(6), (b)(7)(C)
Cc: (b)(6), (b)(7)(C)
Subject: FW: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

(b)(6), (b)(7)(C)

(b)(5)

Casey Owen Durst

Director, Field Operations
Baltimore Field Office

From: (b)(6), (b)(7)(C)
Sent: Friday, February 03, 2017 9:10:07 PM
To: DURST, CASEY OWEN
Subject: RE: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

(b)(5)

Sent via mobile device

(b)(6), (b)(7)(C)
 Port Director
 Dulles Airport
 U.S. Customs and Border Protection

(b)(6), (b)(7)(C) Port Office Desk
 Terminal Desk
 Cell

From: DURST, CASEY OWEN
Sent: Friday, February 03, 2017 8:29:05 PM

To: (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

Cc: BFO REPORTING
Subject: FW: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

Port Directors,

See the direction below and modify your operations immediately. Please confirm receipt.

Casey Owen Durst
 Director, Field Operations
 Baltimore Field Office

From: MCALEENAN, KEVIN K
Sent: Friday, February 03, 2017 8:23:19 PM
To: Owen, Todd C (AC OFO); WAGNER, JOHN P; HOFFMAN, TODD A; DIRECTORS FIELD OPS
Cc: ALLES, RANDOLPH D; (b)(6), (b)(7)(C) HUTTON,
 JAMES R; FLANAGAN, PATRICK S; (b)(6), (b)(7)(C)
Subject: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

All,

Per the Department of Justice:

(b)(5)

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This will include actions to suspend targeting system rules that flag travelers for operational action subject to the Executive Order including the State Department’s letter revoking visas based on that Executive Order (attached).

Please communicate this suspension as appropriate with key stakeholders such as airlines.

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update you with further guidance as soon as it is received.

Thank you,



Kevin K. McAleenan
Acting Commissioner
U.S. Customs and Border Protection

(b)(6), (b)(7)(C)

*We are the guardians of our Nation’s borders.
We are America’s frontline.*

Vigilance • Service • Integrity

From: HUTTON, JAMES R
Sent: Saturday, February 04, 2017 1:32 PM
To: (b)(6), (b)(7)(C) DURST, CASEY OWEN
Cc: (b)(6), (b)(7)(C)
Subject: RE: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

(b)(5)

Thanks!!

From: (b)(6), (b)(7)(C)
Sent: Saturday, February 04, 2017 1:26:51 PM
To: HUTTON, JAMES R; DURST, CASEY OWEN
Cc: (b)(6), (b)(7)(C)
Subject: RE: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

Ryan,

(b)(5)

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)
 Deputy Associate Chief Counsel
 Enforcement and Operations
 Office of the Chief Counsel
 U.S. Customs and Border Protection

(b)(6), (b)(7)(C)

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From: HUTTON, JAMES R
Sent: Friday, February 03, 2017 10:30 PM
To: DURST, CASEY OWEN (b)(6), (b)(7)(C)
Cc: (b)(6), (b)(7)(C)
Subject: RE: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

(b)(5), (b)(6), (b)(7)(C)

From: DURST, CASEY OWEN
Sent: Friday, February 03, 2017 9:58:16 PM
To: HUTTON, JAMES R
Subject: FW: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

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 Director, Field Operations
 Baltimore Field Office

From: (b)(6), (b)(7)(C)
Sent: Friday, February 03, 2017 9:54:39 PM
To: DURST, CASEY OWEN
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Sent: Friday, February 03, 2017 9:51 PM
To: DURST, CASEY OWEN (b)(6), (b)(7)(C)
Subject: RE: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

(b)(5)

(b)(6), (b)(7)(C)
 CBP Assistant Chief Counsel (Baltimore)

(b)(6), (b)(7)(C)
 ** Attorney Work Product / Attorney-Client Privileged **

From: DURST, CASEY OWEN
Sent: Friday, February 03, 2017 9:36 PM
To: (b)(6), (b)(7)(C)
Subject: RE: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

Thanks

Casey Owen Durst

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Baltimore Field Office

From: (b)(6), (b)(7)(C)
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To: DURST, CASEY OWEN
Cc: (b)(6), (b)(7)(C)
Subject: RE: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

(b)(5)

(b)(6), (b)(7)(C)
 Assistant Chief Counsel (Baltimore)
 U.S. Customs and Border Protection
 Ph: (b)(6), (b)(7)(C)

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From: DURST, CASEY OWEN
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To: (b)(6), (b)(7)(C)
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(b)(5)

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 Director, Field Operations
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From: (b)(6), (b)(7)(C)
Sent: Friday, February 03, 2017 9:10:07 PM
To: DURST, CASEY OWEN
Subject: RE: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

(b)(5)

Sent via mobile device

(b)(6), (b)(7)(C)

Port Director
Dulles Airport
U.S. Customs and Border Protection

(b)(6), (b)(7)(C)	Port Office Desk
	Terminal Desk
	Cell

From: DURST, CASEY OWEN

Sent: Friday, February 03, 2017 8:29:05 PM

To: (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

Cc: BFO REPORTING

Subject: FW: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

Port Directors,

See the direction below and modify your operations immediately. Please confirm receipt.

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Director, Field Operations
Baltimore Field Office

From: MCALEENAN, KEVIN K

Sent: Friday, February 03, 2017 8:23:19 PM

To: Owen, Todd C (AC OFO); WAGNER, JOHN P; HOFFMAN, TODD A; DIRECTORS FIELD OPS

Cc: ALLES, RANDOLPH D; (b)(6), (b)(7)(C) HUTTON,
JAMES R; FLANAGAN, PATRICK S; (b)(6), (b)(7)(C)

Subject: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

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Per the Department of Justice:

(b)(5)

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Acting Commissioner
U.S. Customs and Border Protection

(b)(6), (b)(7)(C)

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We are America’s frontline.*

Vigilance • Service • Integrity

From: (b)(6), (b)(7)(C)
Sent: Saturday, February 04, 2017 1:27 PM
To: HUTTON, JAMES R; DURST, CASEY OWEN
Cc: (b)(6), (b)(7)(C)
Subject: RE: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

Ryan,

(b)(5)

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)
 Deputy Associate Chief Counsel
 Enforcement and Operations
 Office of the Chief Counsel
 U.S. Customs and Border Protection

(b)(6), (b)(7)(C)

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From: HUTTON, JAMES R
Sent: Friday, February 03, 2017 10:30 PM
To: DURST, CASEY OWEN (b)(6), (b)(7)(C)
Cc: (b)(6), (b)(7)(C)
Subject: RE: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

(b)(5), (b)(6), (b)(7)(C)

From: DURST, CASEY OWEN
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To: HUTTON, JAMES R
Subject: FW: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

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Director, Field Operations
Baltimore Field Office

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Sent: Friday, February 03, 2017 9:54:39 PM
To: DURST, CASEY OWEN
Subject: RE: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

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From: (b)(6), (b)(7)(C)
Sent: Friday, February 03, 2017 9:51 PM
To: DURST, CASEY OWEN (b)(6), (b)(7)(C)
Subject: RE: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

(b)(5)

(b)(6), (b)(7)(C)
 CBP Assistant Chief Counsel (Baltimore)
 (b)(6), (b)(7)(C)
 ** Attorney Work Product / Attorney-Client Privileged **

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Sent: Friday, February 03, 2017 9:36 PM
To: (b)(6), (b)(7)(C)
Subject: RE: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

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Sent: Friday, February 03, 2017 9:20:05 PM
To: DURST, CASEY OWEN
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Subject: RE: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

(b)(5)

(b)(6), (b)(7)(C)

Assistant Chief Counsel (Baltimore)

U.S. Customs and Border Protection

Ph: (b)(6), (b)(7)(C)

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(b)(6), (b)(7)(C)

(b)(5)

Casey Owen Durst
Director, Field Operations
Baltimore Field Office

From: (b)(6), (b)(7)(C)**Sent:** Friday, February 03, 2017 9:10:07 PM**To:** DURST, CASEY OWEN**Subject:** RE: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

(b)(5)

Sent via mobile device

(b)(6), (b)(7)(C)

Port Director

Dulles Airport

U.S. Customs and Border Protection

(b)(6), (b)(7)(C) Port Office Desk
Terminal Desk
Cell

From: DURST, CASEY OWEN**Sent:** Friday, February 03, 2017 8:29:05 PM**To:** (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

Cc: BFO REPORTING

Subject: FW: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

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Casey Owen Durst
Director, Field Operations
Baltimore Field Office

From: MCALEENAN, KEVIN K

Sent: Friday, February 03, 2017 8:23:19 PM

To: Owen, Todd C (AC OFO); WAGNER, JOHN P; HOFFMAN, TODD A; DIRECTORS FIELD OPS

Cc: ALLES, RANDOLPH D; (b)(6), (b)(7)(C) HUTTON,
JAMES R; FLANAGAN, PATRICK S; (b)(6), (b)(7)(C)

Subject: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

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Per the Department of Justice:

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We will

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Thank you,



Kevin K. McAleenan
Acting Commissioner
U.S. Customs and Border Protection

(b)(6), (b)(7)(C)

*We are the guardians of our Nation's borders.
We are America's frontline.*

Vigilance • Service • Integrity

From: DURST, CASEY OWEN
Sent:
To:

(b)(6), (b)(7)(C)

Cc: WEINBERGER, MARC (OCC)
Subject: FW: EO Reporting

FYSA

Casey Owen Durst
 Director, Field Operations
 Baltimore Field Office

From: (b)(6), (b)(7)(C)
Sent: Saturday, February 04, 2017 12:55:43 PM
To: DIRECTORS FIELD OPS; BORDER SECURITY ASST DIRECTORS
Cc: (b)(6), (b)(7)(C) ENFORCEMENT
 PROGRAMS DIVISION
Subject: FW: EO Reporting

Directors:

As a result of CBP halting all actions implementing the affected sections of Executive Order, "Protecting the Nation from Foreign Terrorist Entry into the United States"; the EO-CAT is suspending reporting requirements associated with said order.

We will advise the field with updates as soon as they become available.

Thank you all for your continued support.

(b)(6), (b)(7)(C)
 (A) Director
 Enforcement Programs Division
 US Customs and Border Protection
 Washington, DC

(b)(6), (b)(7)(C)

From: HUTTON, JAMES R
Sent: Friday, February 03, 2017 8:55 PM
To: DIRECTORS FIELD OPS (b)(7)(E) BORDER SECURITY ASST DIRECTORS

(b)(7)(E)

Cc: ENFORCEMENT PROGRAMS DIVISION

(b)(7)(E)

(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

Subject: EO Reporting**Importance:** High

DFO's

Kindly request that all POEs within your AOR provide report to Enforcement Program Division for all encounters of those individuals subject to EO from last reporting period (noon - February 3rd) to 21:30EST.

Thank you

J. Ryan Hutton
Deputy Executive Director
Admissibility and Passenger Programs

(b)(6), (b)(7)(C)



(b)(6), (b)(7)(C)



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From: DURST, CASEY OWEN
Sent: Saturday, February 04, 2017 11:23 AM
To: (b)(6), (b)(7)(C)
Cc:
Subject: FW: CLEARED STATEMENT REGARDING EXEC ORDER

All:
FYI.

Casey Owen Durst
Director, Field Operations
Baltimore Field Office

From: (b)(6), (b)(7)(C)
Sent: Saturday, February 04, 2017 11:20:28 AM
To: DURST, CASEY OWEN
Cc: (b)(6), (b)(7)(C)
Subject: FW: CLEARED STATEMENT REGARDING EXEC ORDER

Good morning DFO Durst. FYSA, DHS issued the following statement in response to last night's court ruling on POTUS EO.

All media queries still come to me. Thank you. v/r (b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)
Sent: Saturday, February 04, 2017 10:34:18 AM
To: CBPPAO
Subject: CLEARED STATEMENT REGARDING EXEC ORDER

All,
Here's a statement just released –feel free to respond to your local outlets attributable to a DHS spokesperson. If they want a name provide Gillian Christensen – DHS spokesperson.

"In accordance with the judge's ruling, DHS has suspended any and all actions implementing the affected sections of the Executive Order entitled, "Protecting the Nation from Foreign Terrorist Entry into the United States."

This includes actions to suspend passenger system rules that flag travelers for operational action subject to the Executive Order.

DHS personnel will resume inspection of travelers in accordance with standard policy and procedure.

At the earliest possible time, the Department of Justice intends to file an emergency stay of this order and defend the President's Executive Order, which is lawful and appropriate. The Order is intended to protect the homeland and the American people, and the President has no higher duty and responsibility than to do so."

(b)(6), (b)(7)(C)

Director, Media Division
Office of Public Affairs
U.S. Customs & Border Protection

From: (b)(6), (b)(7)(C)
Sent: Saturday, February 04, 2017 11:20 AM
To: DURST, CASEY OWEN
Cc: (b)(6), (b)(7)(C)
Subject: FW: CLEARED STATEMENT REGARDING EXEC ORDER
Importance: High

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(b)(6), (b)(7)(C)

Director, Media Division
 Office of Public Affairs
 U.S. Customs & Border Protection

From: (b)(6), (b)(7)(C)
Sent: Saturday, February 04, 2017 9:58 AM
To: CBP IAD Management; BFO REPORTING; (b)(6), (b)(7)(C)
(b)(6), (b)(7)(C)
Subject: Port of Baltimore EO Projections 2/4/2017 1200
Attachments: EO Projections for BFO 02042017.xlsx

All,

Please see attached EO Projections for BWI/Port of Baltimore. No POI found.

- Manifests for International arrivals up to 2/10/2017 have been reviewed and reveal no subjects matching the EO criteria. We will continue to monitor incoming manifests regularly.
- All vessels have been targeted with negative results for encounters with crewmembers from the 7 countries.

Thank you

(b)(6), (b)(7)(C)

Supervisor

U.S. Customs and Border Protection

Baltimore, MD

(O)

(M) (b)(6), (b)(7)(C)

PORT	Date	Flight #	Last name	First Name	DOB	COC (write out country name)	Document Type	Doc Country	Doc #	Applicant Status (use drop down box)	Classification	Lookout Placed (Y/N)	UPAX Event #	Derog Y/N	Comments
BWI	2/4/2017	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A		

From: HUTTON, JAMES R
Sent: Friday, February 03, 2017 10:30 PM
To: DURST, CASEY OWEN
Cc: (b)(6), (b)(7)(C)
Subject: RE: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

(b)(5), (b)(6), (b)(7)(C)

From: DURST, CASEY OWEN
Sent: Friday, February 03, 2017 9:58:16 PM
To: HUTTON, JAMES R
Subject: FW: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

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Baltimore Field Office

From: (b)(6), (b)(7)(C)
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To: DURST, CASEY OWEN
Subject: RE: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

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From: (b)(6), (b)(7)(C)
Sent: Friday, February 03, 2017 9:51 PM
To: DURST, CASEY OWEN (b)(6), (b)(7)(C)
Subject: RE: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

(b)(5)

(b)(6), (b)(7)(C)
CBP Assistant Chief Counsel (Baltimore)

(b)(6), (b)(7)(C)

** Attorney Work Product / Attorney-Client Privileged **

From: DURST, CASEY OWEN**Sent:** Friday, February 03, 2017 9:36 PM**To:** (b)(6), (b)(7)(C)**Subject:** RE: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

Thanks

Casey Owen Durst
 Director, Field Operations
 Baltimore Field Office

From: (b)(6), (b)(7)(C)**Sent:** Friday, February 03, 2017 9:20:05 PM**To:** DURST, CASEY OWEN**Cc:** (b)(6), (b)(7)(C)**Subject:** RE: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

(b)(5)

(b)(6), (b)(7)(C)

Assistant Chief Counsel (Baltimore)

U.S. Customs and Border Protection

Ph: (b)(6), (b)(7)(C)

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From: DURST, CASEY OWEN**Sent:** Friday, February 03, 2017 9:12:39 PM**To:** (b)(6), (b)(7)(C)**Cc:****Subject:** FW: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

(b)(6), (b)(7)(C)

(b)(5)

Casey Owen Durst

Director, Field Operations
Baltimore Field Office

From: (b)(6), (b)(7)(C)
Sent: Friday, February 03, 2017 9:10:07 PM
To: DURST, CASEY OWEN
Subject: RE: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

(b)(5)

Sent via mobile device

(b)(6), (b)(7)(C)
 Port Director
 Dulles Airport
 U.S. Customs and Border Protection

(b)(6), (b)(7)(C) Port Office Desk
 Terminal Desk
 Cell

From: DURST, CASEY OWEN
Sent: Friday, February 03, 2017 8:29:05 PM

To: (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

Cc: BFO REPORTING
Subject: FW: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

Port Directors,

See the direction below and modify your operations immediately. Please confirm receipt.

Casey Owen Durst
 Director, Field Operations
 Baltimore Field Office

From: MCALEENAN, KEVIN K
Sent: Friday, February 03, 2017 8:23:19 PM
To: Owen, Todd C (AC OFO); WAGNER, JOHN P; HOFFMAN, TODD A; DIRECTORS FIELD OPS
Cc: ALLES, RANDOLPH D; (b)(6), (b)(7)(C) HUTTON,
 JAMES R; FLANAGAN, PATRICK S; (b)(6), (b)(7)(C)
Subject: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

All,

Per the Department of Justice:

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Thank you,



Kevin K. McAleenan
Acting Commissioner
U.S. Customs and Border Protection

(b)(6), (b)(7)(C)

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We are America’s frontline.*

Vigilance • Service • Integrity

From: DURST, CASEY OWEN
Sent: Friday, February 03, 2017 9:58 PM
To: HUTTON, JAMES R
Subject: FW: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

FYSA (b)(5)
 (b)(5)

Casey Owen Durst
 Director, Field Operations
 Baltimore Field Office

From: (b)(6), (b)(7)(C)
Sent: Friday, February 03, 2017 9:54:39 PM
To: DURST, CASEY OWEN
Subject: RE: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

(b)(5)

From: (b)(6), (b)(7)(C)
Sent: Friday, February 03, 2017 9:51 PM
To: DURST, CASEY OWEN (b)(6), (b)(7)(C)
Subject: RE: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

(b)(5)

(b)(6), (b)(7)(C)
 CBP Assistant Chief Counsel (Baltimore)

(b)(6), (b)(7)(C)
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From: DURST, CASEY OWEN
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Baltimore Field Office

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Cc: (b)(6), (b)(7)(C)
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(b)(6), (b)(7)(C)
Assistant Chief Counsel (Baltimore)
U.S. Customs and Border Protection
Ph: (b)(6), (b)(7)(C)

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Sent via mobile device

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Port Director
Dulles Airport
U.S. Customs and Border Protection

(b)(6), (b)(7)(C) Port Office Desk
Terminal Desk
Cell

From: DURST, CASEY OWEN

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Subject: FW: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

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To: Owen, Todd C (AC OFO); WAGNER, JOHN P; HOFFMAN, TODD A; DIRECTORS FIELD OPS

Cc: ALLES, RANDOLPH D; (b)(6), (b)(7)(C) HUTTON,
JAMES R; FLANAGAN, PATRICK S; (b)(6), (b)(7)(C)

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Vigilance • Service • Integrity

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To: DURST, CASEY OWEN
Subject: RE: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

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Sent: Friday, February 03, 2017 9:51 PM
To: DURST, CASEY OWEN (b)(6), (b)(7)(C)
Subject: RE: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

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 CBP Assistant Chief Counsel (Baltimore)

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 U.S. Customs and Border Protection
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Subject: FW: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

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From: (b)(6), (b)(7)(C)
Sent: Friday, February 03, 2017 9:55 PM
To: DURST, CASEY OWEN
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Subject: RE: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

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Thoughts?

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(b)(6), (b)(7)(C)
 Port Director
 Dulles Airport
 U.S. Customs and Border Protection

(b)(6), (b)(7)(C) Port Office Desk
 (b)(6), (b)(7)(C) Terminal Desk
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Vigilance • Service • Integrity

From: DURST, CASEY OWEN
Sent: Friday, February 03, 2017 9:43 PM

To: (b)(6), (b)(7)(C)
Cc:

Subject: RE: (b)(6), (b)(7)(C), (b)(7)(E)

10-4

Casey Owen Durst
Director, Field Operations
Baltimore Field Office

From: (b)(6), (b)(7)(C)
Sent: Friday, February 03, 2017 9:38:15 PM
To: DURST, CASEY OWEN; (b)(6), (b)(7)(C)
Cc: (b)(6), (b)(7)(C)
Subject: (b)(6), (b)(7)(C), (b)(7)(E)

(b)(6), (b)(7)(C), (b)(7)(E)

(b)(6), (b)(7)(C)
Acting Assistant Port Director
U.S. Customs & Border Protection
Passenger Operations
Philadelphia International Airport
Cell: (b)(6), (b)(7)(C)
Email: (b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C)
Sent: Friday, February 03, 2017 9:38 PM
To: DURST, CASEY OWEN; (b)(6), (b)(7)(C)
Cc: (b)(6), (b)(7)(C)
Subject: (b)(6), (b)(7)(C), (b)(7)(E)

(b)(6), (b)(7)(C), (b)(7)(E)

(b)(6), (b)(7)(C)
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Vigilance • Service • Integrity



United States Department of State

*Deputy Assistant Secretary
for Visa Services*

Washington, D.C. 20520

February 3, 2017

Pursuant to the authority delegated to me under section 221(i) of the Immigration and Nationality Act, and taking into account the nationwide injunction issued by a federal district court in Washington State on enforcing section 3(c) of the January 27, 2017, Executive Order on Protecting the Nation from Foreign Terrorist Entry into the United States, I hereby reverse the provisional revocation of all visas provisionally revoked by my letter of January 27, 2017, which implemented section 3(c) of the Executive Order on Protecting the Nation from Terrorist Attacks by Foreign Nationals.

This document is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(b)(6)

Deputy Assistant Secretary
Bureau of Consular Affairs
Department of State

Message

From: (b)(6), (b)(7)(C) (b)(7)(E) (b)(6), (b)(7)(C)

Sent: 2/4/2017 2:34:32 AM

To: OFO-OPS-CAT (b)(7)(E) (b)(7)(E) OFO-FIELD
LIAISON (b)(7)(E) ENFORCEMENT
PROGRAMS DIVISION (b)(7)(E) BFO
REPORTING (b)(7)(E) (b)(6), (b)(7)(C)
(b)(7)(E) (b)(6), (b)(7)(C)

CC: CBP IAD Manager (b)(7)(E)

Subject: 02/03/2017 2130 Reporting Guidance for Actions Taken Related to Executive Order

Attachments: 02032017 2130 Executive Order Reporting.xlsx; FO EO Individuals Being Held 02032017 - 2130.xlsx

Importance: High

Good evening:

Baltimore Field Office Update

No individuals subject to Executive Order encountered since last report.

No individuals being held.

Executive Order Tracking - Cumulative Totals

Field
Office: Baltimore

Date: 2/3/2017

Report
Time: 2130

Country	Number of Non-Immigrant Visa Encounters	Number of Immigrant Visa Encounters	Number of LPR Encounters	Number of Refugees Encounters	Number of Withdrawals Granted	Number of Expedited Removals	Number of Expedited Removals with Fear Claim	Number of Non-Immigrants not granted waivers	Number of Non-Immigrants granted waivers	Number of Immigrants not granted waivers	Number of Immigrants granted waivers	Number of LPRs not granted waivers	Number of LPR Waivers Granted by DFO
Iran	3	3	66	0	1	0	0	0	2	0	3	0	66
Iraq	0	9	30	0	0	0	0	0	0	0	9	0	30
Libya	0	3	1	0	0	0	0	0	0	0	3	0	1
Somalia	0	4	2	0	0	0	0	0	0	0	4	0	2
Sudan	1	0	33	0	1	0	0	0	0	0	0	0	33
Syria	6	10	4	0	11	0	0	0	0	1	4	0	4
Yemen	0	15	1	0	9	0	0	0	0	0	6	0	1

Executive Order Tracking - Reporting Period Totals

Country	Number of Non-Immigrant Encounters	Number of Immigrant Encounters	Number of LPR Encounters	Number of Refugees Encounters	Number of Widthdrawls Granted	Number of Expedited Removals	Number of Expedited Removals with Fear Claim	Number of Non-Immigrants not granted waivers	Number of Non-Immigrants granted waivers	Number of Immigrants not granted waivers	Number of Immigrants granted waivers	Number of LPRs not granted waivers	Number of LPR Waivers Granted by DFO
Iran	0	0	0	0	0	0	0	0	0	0	0	0	0
Iraq	0	2	0	0	0	0	0	0	0	0	2	0	0
Libya	0	0	0	0	0	0	0	0	0	0	0	0	0
Somalia	0	0	0	0	0	0	0	0	0	0	0	0	0
Sudan	0	0	0	0	0	0	0	0	0	0	0	0	0
Syria	0	0	0	0	0	0	0	0	0	0	0	0	0
Yemen	0	0	0	0	0	0	0	0	0	0	0	0	0

Thanks,

(b)(6), (b)(7)(C)

Watch Commander
 CBP Passenger Operations
 Washington Dulles International Airport
 Department of Homeland Security

Tele: (b)(6), (b)(7)(C)
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Executive Order Tracking - Cumulative Totals

Field Office: ALL

Date: 1/27/2017 -1/29/2017

Report Time: 0500

Cumulative

Country	Number of Non-Immigrant Visa Encounters	Number of Immigrant Visa Encounters	Number of LPR Encounters	Number of Refugees Encounters	Number of Withdrawals Granted	Number of Expedited Removals	Number of Expedited Removals with Fear Claim	Number of Non-Immigrants not granted	Number of Non-Immigrants granted waivers	Number of Immigrants not granted waivers	Number of Immigrants granted waivers	Number of LPRs not granted waivers	Number of LPR Waivers Granted by DFO
Iran	62	33	296	1	54	0	(b)(6), (b)(7)(C)	0	2	0	3	1	308
Iraq	55	64	125	0	56	0		0	0	0	9	0	172
Libya	0	3	4	0	0	0		0	0	0	3	0	4
Somalia	0	7	4	0	1	0		0	0	0	4	0	6
Sudan	15	15	45	0	25	0		0	0	0	0	0	46
Syria	28	22	38	0	31	2		0	0	1	4	0	42
Yemen	12	18	8	0	13	0		0	0	0	6	0	9
Total	172	162	520	1	180	2		0	2	1	29	1	587

Executive Order Tracking - Reporting Period Totals

2100-0500 January 29, 2017

Country	Number of Non-Immigrant Encounters	Number of Immigrant Encounters	Number of LPR Encounters	Number of Refugees Encounters	Number of Withdrawals Granted	Number of Expedited Removals	Number of Expedited Removals with Fear Claim	Number of Non-Immigrants not granted	Number of Non-Immigrants granted waivers	Number of Immigrants not granted waivers	Number of Immigrants granted waivers	Number of LPRs not granted waivers	Number of LPR Waivers Granted by DFO
Iran	9	6	66	1	7	0	0	0	0	0	0	0	68
Iraq	6	23	66	0	5	0	0	0	0	0	2	0	80
Libya	0	0	1	0	0	0	0	0	0	0	0	0	1
Somalia	0	0	1	0	0	0	0	0	0	0	0	0	1
Sudan	1	0	3	0	0	0	0	0	0	0	0	0	3
Syria	3	2	12	0	1	0	0	0	0	0	0	0	12
Yemen	3	1	4	0	0	0	0	0	0	0	0	0	4
Total	22	32	153	1	13	0	0	0	0	0	2	0	169

Executive Order Tracking - Cumulative Totals

Field Office: Atlanta Date: 1/29/2017 Report Time: 500

Country	Number of Non-Immigrant Visa Encounters	Number of Immigrant Visa Encounters	Number of LPR Encounters	Number of Refugees Encounters	Number of Withdrawals Granted	Number of Expedited Removals	Number of Expedited Removals with Fear Claim	Number of Non-Immigrants not granted waivers	Number of Non-Immigrants granted waivers	Number of Immigran ts not granted waivers	Number of Immigran ts granted waivers	Number of LPRs not granted waivers	Number of LPR Waivers Granted by DFO
Iran	0	0	11	0	0	0	0	0	0	0	0	0	11
Iraq	0	0	0	0	0	0	0	0	0	0	0	0	0
Libya	0	0	0	0	0	0	0	0	0	0	0	0	0
Somalia	0	0	0	0	0	0	0	0	0	0	0	0	0
Sudan	0	0	0	0	0	0	0	0	0	0	0	0	0
Syria	0	0	1	0	0	0	0	0	0	0	0	0	1
Yemen	0	0	0	0	0	0	0	0	0	0	0	0	0

Executive Order Tracking - Reporting Period Totals

Country	Number of Non-Immigrant Encounters	Number of Immigrant Encounters	Number of LPR Encounters	Number of Refugees Encounters	Number of Withdrawals Granted	Number of Expedited Removals	Number of Expedited Removals with Fear Claim	Number of Non-Immigrants not granted waivers	Number of Non-Immigrants granted waivers	Number of Immigran ts not granted waivers	Number of Immigran ts granted waivers	Number of LPRs not granted waivers	Number of LPR Waivers Granted by DFO
Iran	0	0	2	0	0	0	0	0	0	0	0	0	3
Iraq	0	0	0	0	0	0	0	0	0	0	0	0	0
Libya	0	0	0	0	0	0	0	0	0	0	0	0	0
Somalia	0	0	0	0	0	0	0	0	0	0	0	0	0
Sudan	0	0	0	0	0	0	0	0	0	0	0	0	0
Syria	0	0	0	0	0	0	0	0	0	0	0	0	0
Yemen	0	0	0	0	0	0	0	0	0	0	0	0	0

Executive Order Tracking - Cumulative Totals

Field Office: Baltimore

Date: 2/3/2017

Report Time: 2130

Country	Number of Non-Immigrant Visa Encounters	Number of Immigrant Visa Encounters	Number of LPR Encounters	Number of Refugees Encounters	Number of Withdrawals Granted	Number of Expedited Removals	Number of Expedited Removals with Fear Claim	Number of Non-Immigrants not granted waivers	Number of Non-Immigrants granted waivers	Number of Immigrant s not granted waivers	Number of Immigrant s granted waivers	Number of LPRs not granted waivers	Number of LPR Waivers Granted by DFO
Iran	3	3	66	0	1	0	0	0	2	0	3	0	66
Iraq	0	9	30	0	0	0	0	0	0	0	9	0	30
Libya	0	3	1	0	0	0	0	0	0	0	3	0	1
Somalia	0	4	2	0	0	0	0	0	0	0	4	0	2
Sudan	1	0	33	0	1	0	0	0	0	0	0	0	33
Syria	6	10	4	0	11	0	0	0	0	1	4	0	4
Yemen	0	15	1	0	9	0	0	0	0	0	6	0	1

Executive Order Tracking - Reporting Period Totals

Country	Number of Non-Immigrant Encounters	Number of Immigrant Encounters	Number of LPR Encounters	Number of Refugees Encounters	Number of Withdrawals Granted	Number of Expedited Removals	Number of Expedited Removals with Fear Claim	Number of Non-Immigrants not granted waivers	Number of Non-Immigrants granted waivers	Number of Immigrant s not granted waivers	Number of Immigrant s granted waivers	Number of LPRs not granted waivers	Number of LPR Waivers Granted by DFO
Iran	0	0	0	0	0	0	0	0	0	0	0	0	0
Iraq	0	2	0	0	0	0	0	0	0	0	2	0	0
Libya	0	0	0	0	0	0	0	0	0	0	0	0	0
Somalia	0	0	0	0	0	0	0	0	0	0	0	0	0
Sudan	0	0	0	0	0	0	0	0	0	0	0	0	0
Syria	0	0	0	0	0	0	0	0	0	0	0	0	0
Yemen	0	0	0	0	0	0	0	0	0	0	0	0	0

Executive Order Tracking - Cumulative Totals

Field Office: Boston Date: 1/29/2017 Report Time: 500

Country	Number of Non-Immigrant Visa Encounters	Number of Immigrant Visa Encounters	Number of LPR Encounters	Number of Refugees Encounters	Number of Withdrawals Granted	Number of Expedited Removals	Number of Expedited Removals with Fear Claim	Number of Non-Immigrants not granted waivers	Number of Non-Immigrants granted waivers	Number of Immigrants not granted waivers	Number of Immigrants granted waivers	Number of LPRs not granted waivers	Number of LPR Waivers Granted by DFO
Iran	3	0	8	0	0	0	0	0	0	0	0	0	8
Iraq	0	0	3	0	0	0	0	0	0	0	0	0	3
Libya	0	0	0	0	0	0	0	0	0	0	0	0	0
Somalia	0	0	0	0	0	0	0	0	0	0	0	0	0
Sudan	0	0	0	0	0	0	0	0	0	0	0	0	0
Syria	0	0	0	0	0	0	0	0	0	0	0	0	0
Yemen	0	0	0	0	0	0	0	0	0	0	0	0	0

Executive Order Tracking - Reporting Period Totals

Country	Number of Non-Immigrant Encounters	Number of Immigrant Encounters	Number of LPR Encounters	Number of Refugees Encounters	Number of Withdrawals Granted	Number of Expedited Removals	Number of Expedited Removals with Fear Claim	Number of Non-Immigrants not granted waivers	Number of Non-Immigrants granted waivers	Number of Immigrants not granted waivers	Number of Immigrants granted waivers	Number of LPRs not granted waivers	Number of LPR Waivers Granted by DFO
Iran	0	0	5	0	0	0	0	0	0	0	0	0	5
Iraq	0	0	1	0	0	0	0	0	0	0	0	0	1
Libya	0	0	0	0	0	0	0	0	0	0	0	0	0
Somalia	0	0	0	0	0	0	0	0	0	0	0	0	0
Sudan	0	0	0	0	0	0	0	0	0	0	0	0	0
Syria	0	0	0	0	0	0	0	0	0	0	0	0	0
Yemen	0	0	0	0	0	0	0	0	0	0	0	0	0

Executive Order Tracking - Cumulative Totals

Field Office: BUFFALO, NY Date: 1/27/2017 -1/29/2017 Report Time: 0500

Country	Number of Non-Immigrant Visa Encounters	Number of Immigrant Visa Encounters	Number of LPR Encounters	Number of Refugees Encounters	Number of Widthdrawls Granted	Number of Expedited Removals	Number of Expedited Removals with Fear Claim	Number of Non-Immigrants not granted waivers	Number of Non-Immigrants granted waivers	Number of Immigrants not granted waivers	Number of Immigrants granted waivers	Number of LPRs not granted waivers	Number of LPR Waivers Granted by DFO
Iran	2	1	10	0	3	0	0	0	0	0	0	1	9
Iraq	0	0	6	0	0	0	0	0	0	0	0	0	6
Libya	0	0	1	0	0	0	0	0	0	0	0	0	1
Somalia	0	0	2	0	0	0	0	0	0	0	0	0	2
Sudan	0	0	1	0	0	0	0	0	0	0	0	0	1
Syria	1	0	0	0	1	0	0	0	0	0	0	0	0
Yemen	0	0	1	0	0	0	0	0	0	0	0	0	1

Executive Order Tracking - Reporting Period Totals

2100-0300

Country	Number of Non-Immigrant Encounters	Number of Immigrant Encounters	Number of LPR Encounters	Number of Refugees Encounters	Number of Widthdrawls Granted	Number of Expedited Removals	Number of Expedited Removals with Fear Claim	Number of Non-Immigrants not granted waivers	Number of Non-Immigrants granted waivers	Number of Immigrants not granted waivers	Number of Immigrants granted waivers	Number of LPRs not granted waivers	Number of LPR Waivers Granted by DFO
Iran	1	0	2	0	1	0	0	0	0	0	0	0	2
Iraq	0	0	0	0	0	0	0	0	0	0	0	0	0
Libya	0	0	1	0	0	0	0	0	0	0	0	0	1
Somalia	0	0	1	0	0	0	0	0	0	0	0	0	1
Sudan	0	0	1	0	0	0	0	0	0	0	0	0	1
Syria	0	0	0	0	0	0	0	0	0	0	0	0	0
Yemen	0	0	1	0	0	0	0	0	0	0	0	0	1

Executive Order Tracking - Cumulative Totals

Field Office: Chicago Date: 01/29/2017

Country	Number of Non-Immigrant Visa Encounters	Number of Immigrant Visa Encounters	Number of LPR Encounters	Number of Refugees Encounters	Number of Withdrawals Granted	Number of Expedited Removals	Number of Expedited Removals with Fear Claim	Number of Non-Immigrants not granted waivers	Number of Non-Immigrants granted waivers	Number of Immigrants not granted waivers	Number of Immigrants granted waivers	Number of LPRs not granted waivers	Number of LPR Waivers Granted by DFO
Iran	0	4	0	0	0	0	0	0	0	0	0	0	4
Iraq	0	1	0	0	0	0	0	0	0	0	0	0	1
Libya	0	0	0	0	0	0	0	0	0	0	0	0	0
Somalia	0	2	0	0	0	0	0	0	0	0	0	0	2
Sudan	0	1	0	0	0	0	0	0	0	0	0	0	1
Syria	1	4	0	0	1	0	0	0	0	0	0	0	4
Yemen	0	1	0	0	0	0	0	0	0	0	0	0	1

Executive Order Tracking Reporting Period Total

Field Office: Chicago Date: 01/29/2017 Reporting Period: 1400-2000 hrs CST

Country	Number of Non-Immigrant Visa Encounters	Number of Immigrant Visa Encounters	Number of LPR Encounters	Number of Refugees Encounters	Number of Withdrawals Granted	Number of Expedited Removals	Number of Expedited Removals with Fear Claim	Number of Non-Immigrants not granted waivers	Number of Non-Immigrants granted waivers	Number of Immigrants not granted waivers	Number of Immigrants granted waivers	Number of LPRs not granted waivers	Number of LPR Waivers Granted by DFO
Iran	0	0	0	0	0	0	0	0	0	0	0	0	0
Iraq	0	0	0	0	0	0	0	0	0	0	0	0	0
Libya	0	0	0	0	0	0	0	0	0	0	0	0	0
Somalia	0	0	0	0	0	0	0	0	0	0	0	0	0
Sudan	0	0	0	0	0	0	0	0	0	0	0	0	0
Syria	0	0	0	0	0	0	0	0	0	0	0	0	0
Yemen	0	0	0	0	0	0	0	0	0	0	0	0	0

Executive Order Tracking - Cumulative Totals

Field Office: Detroit Date: 1/29/2017 Report Time: 0500 hours

Country	Number of Non-Immigrant Visa Encounters	Number of Immigrant Visa Encounters	Number of LPR Encounters	Number of Refugees Encounters	Number of Widthdrawls Granted	Number of Expedited Removals	Number of Expedited Removals with Fear Claim	Number of Non-Immigrants not granted waivers	Number of Non-Immigrants granted waivers	Number of Immigrants not granted waivers	Number of Immigrants granted waivers	Number of LPRs not granted waivers	Number of LPR Waivers Granted by DFO
Iran	0	0	10	0	0	0	0	0	0	0	0	0	10
Iraq	36	0	51	0	36	0	0	0	0	0	0	0	51
Libya	0	0	1	0	0	0	0	0	0	0	0	0	1
Somalia	0	0	0	0	0	0	0	0	0	0	0	0	0
Sudan	0	0	1	0	0	0	0	0	0	0	0	0	1
Syria	2	0	1	0	3	0	0	0	0	0	0	0	0
Yemen	2	0	4	0	2	0	0	0	0	0	0	0	4

Executive Order Tracking - Reporting Period Totals

Country	Number of Non-Immigrant Encounters	Number of Immigrant Encounters	Number of LPR Encounters	Number of Refugees Encounters	Number of Widthdrawls Granted	Number of Expedited Removals	Number of Expedited Removals with Fear Claim	Number of Non-Immigrants not granted waivers	Number of Non-Immigrants granted waivers	Number of Immigrants not granted waivers	Number of Immigrants granted waivers	Number of LPRs not granted waivers	Number of LPR Waivers Granted by DFO
Iran	1	0	1	0	1	0	0	0	0	0	0	0	1
Iraq	5	0	48	0	5	0	0	0	0	0	0	0	48
Libya	0	0	0	0	0	0	0	0	0	0	0	0	0
Somalia	0	0	0	0	0	0	0	0	0	0	0	0	0
Sudan	0	0	0	0	0	0	0	0	0	0	0	0	0
Syria	1	0	0	0	1	0	0	0	0	0	0	0	0
Yemen	0	0	2	0	0	0	0	0	0	0	0	0	2

Executive Order Tracking - Cumulative Totals

Field Office: Houston Date: 1/29/2017 Report Time: 500

Country	Number of Non-Immigrant Visa Encounters	Number of Immigrant Visa Encounters	Number of LPR Encounters	Number of Refugees Encounters	Number of Widthdrawls Granted	Number of Expedited Removals	Number of Expedited Removals with Fear Claim	Number of Non-Immigrants not granted waivers	Number of Non-Immigrants granted waivers	Number of Immigran ts not granted waivers	Number of Immigran ts granted waivers	Number of LPRs not granted waivers	Number of LPR Waivers Granted by DFO
Iran	3	2	13	0	5	0	0	0	0	0	0	0	13
Iraq	1	0	4	0	1	0	0	0	0	0	0	0	4
Libya	0	0	0	0	0	0	0	0	0	0	0	0	0
Somalia	0	0	0	0	0	0	0	0	0	0	0	0	0
Sudan	2	0	1	0	2	0	0	0	0	0	0	0	1
Syria	2	0	1	0	0	2	0	0	0	0	0	0	1
Yemen	0	0	0	0	0	0	0	0	0	0	0	0	0

Executive Order Tracking - Reporting Period Totals

Country	Number of Non-Immigrant Encounters	Number of Immigrant Encounters	Number of LPR Encounters	Number of Refugees Encounters	Number of Widthdrawls Granted	Number of Expedited Removals	Number of Expedited Removals with Fear Claim	Number of Non-Immigrants not granted waivers	Number of Non-Immigrants granted waivers	Number of Immigran ts not granted waivers	Number of Immigran ts granted waivers	Number of LPRs not granted waivers	Number of LPR Waivers Granted by DFO
Iran	3	2	7	0	5	0	0	0	0	0	0	0	7
Iraq	0	0	1	0	0	0	0	0	0	0	0	0	1
Libya	0	0	0	0	0	0	0	0	0	0	0	0	0
Somalia	0	0	0	0	0	0	0	0	0	0	0	0	0
Sudan	0	0	1	0	0	0	0	0	0	0	0	0	1
Syria	0	0	0	0	0	0	0	0	0	0	0	0	0
Yemen	0	0	0	0	0	0	0	0	0	0	0	0	0

Executive Order Tracking - Cumulative Totals

Field Office: Laredo Date: 1/29/2017 Report Time: 0500 hours (EST)

Country	Number of Non-Immigrant Visa Encounters	Number of Immigrant Visa Encounters	Number of LPR Encounters	Number of Refugees Encounters	Number of Withdrawals Granted	Number of Expedited Removals	Number of Expedited Removals with Fear Claim	Number of Non-Immigrants not granted waivers	Number of Non-Immigrants granted waivers	Number of Immigrants not granted waivers	Number of Immigrants granted waivers	Number of LPRs not granted waivers	Number of LPR Waivers Granted by DFO
Iran	0	0	0	0	0	0	0	0	0	0	0	0	0
Iraq	0	0	0	0	0	0	0	0	0	0	0	0	0
Libya	0	0	0	0	0	0	0	0	0	0	0	0	0
Somalia	0	0	0	0	0	0	0	0	0	0	0	0	0
Sudan	0	0	0	0	0	0	0	0	0	0	0	0	0
Syria	0	0	0	0	0	0	0	0	0	0	0	0	0
Yemen	0	0	0	0	0	0	0	0	0	0	0	0	0

Executive Order Tracking - Reporting Period Totals

Country	Number of Non-Immigrant Encounters	Number of Immigrant Encounters	Number of LPR Encounters	Number of Refugees Encounters	Number of Withdrawals Granted	Number of Expedited Removals	Number of Expedited Removals with Fear Claim	Number of Non-Immigrants not granted waivers	Number of Non-Immigrants granted waivers	Number of Immigrants not granted waivers	Number of Immigrants granted waivers	Number of LPRs not granted waivers	Number of LPR Waivers Granted by DFO
Iran	0	0	0	0	0	0	0	0	0	0	0	0	0
Iraq	0	0	0	0	0	0	0	0	0	0	0	0	0
Libya	0	0	0	0	0	0	0	0	0	0	0	0	0
Somalia	0	0	0	0	0	0	0	0	0	0	0	0	0
Sudan	0	0	0	0	0	0	0	0	0	0	0	0	0
Syria	0	0	0	0	0	0	0	0	0	0	0	0	0
Yemen	0	0	0	0	0	0	0	0	0	0	0	0	0

Executive Order Tracking - Cumulative Totals

Field Office: LOS Date: 1/28/2017 Report Time: 1800

Country	Number of Non-Immigrant Visa Encounters	Number of Immigrant Visa Encounters	Number of LPR Encounters	Number of Refugees Encounters	Number of Widthdrawls Granted	Number of Expedited Removals	Number of Expedited Removals with Fear Claim	Number of Non-Immigrants not granted waivers	Number of Non-Immigrants granted waivers	Number of Immigran ts not granted waivers	Number of Immigran ts granted waivers	Number of LPRs not granted waivers	Number of LPR Waivers Granted by DFO
Iran	6	2	71	1	2	0	0	0	0	0	0	0	71
Iraq	3	0	4	0	1	0	0	0	0	0	0	0	4
Libya	0	0	0	0	0	0	0	0	0	0	0	0	0
Somalia	0	0	0	0	0	0	0	0	0	0	0	0	0
Sudan	1	0	2	0	0	0	0	0	0	0	0	0	2
Syria	2	1	6	0	0	0	0	0	0	0	0	0	6
Yemen	7	0	0	0	0	0	0	0	0	0	0	0	0

Executive Order Tracking - Reporting Period Totals

Country	Number of Non-Immigrant Encounters	Number of Immigrant Encounters	Number of LPR Encounters	Number of Refugees Encounters	Number of Widthdrawls Granted	Number of Expedited Removals	Number of Expedited Removals with Fear Claim	Number of Non-Immigrants not granted waivers	Number of Non-Immigrants granted waivers	Number of Immigran ts not granted waivers	Number of Immigran ts granted waivers	Number of LPRs not granted waivers	Number of LPR Waivers Granted by DFO
Iran	4	0	22	1	0	0	0	0	0	0	0	0	22
Iraq	1	1	0	0	0	0	0	0	0	0	0	0	0
Libya	0	0	0	0	0	0	0	0	0	0	0	0	0
Somalia	0	0	0	0	0	0	0	0	0	0	0	0	0
Sudan	1	0	0	0	0	0	0	0	0	0	0	0	0
Syria	2	1	1	0	0	0	0	0	0	0	0	0	1
Yemen	3	0	0	0	0	0	0	0	0	0	0	0	0

Executive Order Tracking - Cumulative Totals

Field Office: Miami/Tampa Date: 1/29/2017

Country	Number of Non-Immigrant Encounters	Number of Immigrant Encounters	Number of LPR Encounters	Number of Refugees Encounters	Number of Withdrawals Granted	Number of Expedited Removals	Number of Expedited Removals with Fear Claim	Number of Non-Immigrants not granted waivers	Number of Non-Immigrants granted waivers	Number of Immigrants not granted waivers	Number of Immigrants granted waivers	Number of LPRs not granted waivers	Number of LPR Waivers Granted by DFO
Iran	0	1	3	0	1	0	0	0	0	0	0	0	3
Iraq	0	0	1	0	0	0	0	0	0	0	0	0	1
Libya	0	0	0	0	0	0	0	0	0	0	0	0	0
Somalia	0	0	0	0	0	0	0	0	0	0	0	0	0
Sudan	5	0	1	0	5	0	0	0	0	0	0	0	1
Syria	4	0	0	0	4	0	0	0	0	0	0	0	0
Yemen	0	0	0	0	0	0	0	0	0	0	0	0	0

Executive Order TrackingReporting Period Total

Field Office: Miami/Tampa Date: 1/29/2017 Reporting Period: 5:00

Country	Number of Non-Immigrant Encounters	Number of Immigrant Encounters	Number of LPR Encounters	Number of Refugees Encounters	Number of Withdrawals Granted	Number of Expedited Removals	Number of Expedited Removals with Fear Claim	Number of Non-Immigrants not granted waivers	Number of Non-Immigrants granted waivers	Number of Immigrants not granted waivers	Number of Immigrants granted waivers	Number of LPRs not granted waivers	Number of LPR Waivers Granted by DFO
Iran	0	0	1	0	0	0	0	0	0	0	0	0	0
Iraq	0	0	0	0	0	0	0	0	0	0	0	0	0
Libya	0	0	0	0	0	0	0	0	0	0	0	0	0
Somalia	0	0	0	0	0	0	0	0	0	0	0	0	0
Sudan	0	0	0	0	0	0	0	0	0	0	0	0	0
Syria	0	0	0	0	0	0	0	0	0	0	0	0	0
Yemen	0	0	0	0	0	0	0	0	0	0	0	0	0

Executive Order Tracking - Cumulative Totals

Field Office: New Orleans Date: 1292017 Report Time: 0500 EST

Country	Number of Non-Immigrant Visa Encounters	Number of Immigrant Visa Encounters	Number of LPR Encounters	Number of Refugees Encounters	Number of Widthdrawls Granted	Number of Expedited Removals	Number of Expedited Removals with Fear Claim	Number of Non-Immigrants not granted waivers	Number of Non-Immigrants granted waivers	Number of Immigrants not granted waivers	Number of Immigrants granted waivers	Number of LPRs not granted waivers	Number of LPR Waivers Granted by DFO
Iran	0	0	0	0	0	0	0	0	0	0	0	0	0
Iraq	0	0	0	0	0	0	0	0	0	0	0	0	0
Libya	0	0	0	0	0	0	0	0	0	0	0	0	0
Somalia	0	0	0	0	0	0	0	0	0	0	0	0	0
Sudan	0	0	0	0	0	0	0	0	0	0	0	0	0
Syria	0	0	0	0	0	0	0	0	0	0	0	0	0
Yemen	0	0	0	0	0	0	0	0	0	0	0	0	0

Executive Order Tracking - Reporting Period Totals

Country	Number of Non-Immigrant Encounters	Number of Immigrant Encounters	Number of LPR Encounters	Number of Refugees Encounters	Number of Widthdrawls Granted	Number of Expedited Removals	Number of Expedited Removals with Fear Claim	Number of Non-Immigrants not granted waivers	Number of Non-Immigrants granted waivers	Number of Immigrants not granted waivers	Number of Immigrants granted waivers	Number of LPRs not granted waivers	Number of LPR Waivers Granted by DFO
Iran	0	0	0	0	0	0	0	0	0	0	0	0	0
Iraq	0	0	0	0	0	0	0	0	0	0	0	0	0
Libya	0	0	0	0	0	0	0	0	0	0	0	0	0
Somalia	0	0	0	0	0	0	0	0	0	0	0	0	0
Sudan	0	0	0	0	0	0	0	0	0	0	0	0	0
Syria	0	0	0	0	0	0	0	0	0	0	0	0	0
Yemen	0	0	0	0	0	0	0	0	0	0	0	0	0

Executive Order Tracking - Cumulative Totals

Field Office: NYFO Date: 1/29/2017 Report Time: 0500 hours

Country	Number of Non-Immigrant Visa Encounters	Number of Immigrant Visa Encounters	Number of LPR Encounters	Number of Refugees Encounters	Number of Withdrawals Granted	Number of Expedited Removals	Number of Expedited Removals with Fear Claim	Number of Non-Immigrants not granted waivers	Number of Non-Immigrants granted waivers	Number of Immigran ts not granted waivers	Number of Immigran ts granted waivers	Number of LPRs not granted waivers	Number of LPR Waivers Granted by DFO
Iran	12	0	14	0	1	0	0	0	0	0	0	0	14
Iraq	3	1	16	0	6	0	0	0	0	0	0	0	16
Libya	0	0	1	0	0	0	0	0	0	0	0	0	1
Somalia	0	0	0	0	0	0	0	0	0	0	0	0	0
Sudan	1	0	5	0	0	0	0	0	0	0	0	0	5
Syria	2	2	14	0	0	0	0	0	0	0	0	0	14
Yemen	2	2	2	0	1	0	0	0	0	0	0	0	2

Executive Order Tracking - Reporting Period Totals

Country	Number of Non-Immigrant Encounters	Number of Immigrant Encounters	Number of LPR Encounters	Number of Refugees Encounters	Number of Withdrawals Granted	Number of Expedited Removals	Number of Expedited Removals with Fear Claim	Number of Non-Immigrants not granted waivers	Number of Non-Immigrants granted waivers	Number of Immigran ts not granted waivers	Number of Immigran ts granted waivers	Number of LPRs not granted waivers	Number of LPR Waivers Granted by DFO
Iran	0	0	4	0	0	0	0	0	0	0	0	0	4
Iraq	0	0	13	0	0	0	0	0	0	0	0	0	13
Libya	0	0	0	0	0	0	0	0	0	0	0	0	0
Somalia	0	0	0	0	0	0	0	0	0	0	0	0	0
Sudan	0	0	1	0	0	0	0	0	0	0	0	0	1
Syria	0	0	6	0	0	0	0	0	0	0	0	0	6
Yemen	0	1	1	0	0	0	0	0	0	0	0	0	1

Executive Order Tracking - Cumulative Total

Field Office: PR Date: 1/29/2017 Report Time: 0500 hours

Country	Number of Non-Immigrant Visa Encounters	Number of Immigrant Visa Encounters	Number of LPR Encounters	Number of Refugees Encounters	Number of Withdrawals Granted	Number of Expedited Removals	Number of Expedited Removals with Fear Claim	Number of Non-Immigrants not granted waivers	Number of Non-Immigrants granted waivers	Number of Immigran ts not granted waivers	Number of Immigran ts granted waivers	Number of LPRs not granted waivers	Number of LPR Waivers Granted by DFO
Iran	0	0	0	0	0	0	0	0	0	0	0	0	0
Iraq	0	0	0	0	0	0	0	0	0	0	0	0	0
Libya	0	0	0	0	0	0	0	0	0	0	0	0	0
Somalia	0	0	0	0	0	0	0	0	0	0	0	0	0
Sudan	0	0	0	0	0	0	0	0	0	0	0	0	0
Syria	0	0	0	0	0	0	0	0	0	0	0	0	0
Yemen	0	0	0	0	0	0	0	0	0	0	0	0	0

Executive Order Tracking - Reporting Period Total

Country	Number of Non-Immigrant Encounters	Number of Immigrant Encounters	Number of LPR Encounters	Number of Refugees Encounters	Number of Withdrawals Granted	Number of Expedited Removals	Number of Expedited Removals with Fear Claim	Number of Non-Immigrants not granted waivers	Number of Non-Immigrants granted waivers	Number of Immigran ts not granted waivers	Number of Immigran ts granted waivers	Number of LPRs not granted waivers	Number of LPR Waivers Granted by DFO
Iran	0	0	0	0	0	0	0	0	0	0	0	0	0
Iraq	0	0	0	0	0	0	0	0	0	0	0	0	0
Libya	0	0	0	0	0	0	0	0	0	0	0	0	0
Somalia	0	0	0	0	0	0	0	0	0	0	0	0	0
Sudan	0	0	0	0	0	0	0	0	0	0	0	0	0
Syria	0	0	0	0	0	0	0	0	0	0	0	0	0
Yemen	0	0	0	0	0	0	0	0	0	0	0	0	0

Executive Order Tracking - Cumulative Totals

Field Office: San Diego FO Date: 1/28/2017

Country	Number of Non-Immigrant Visa Encounters	Number of Immigrant Visa Encounters	Number of LPR Encounters	Number of Refugees Encounters	Number of Widthdrawls Granted	Number of Expedited Removals	Number of Expedited Removals with Fear Claim	Number of Non-Immigrants not granted waivers	Number of Non-Immigrants granted waivers	Number of Immigrants not granted waivers	Number of Immigrants granted waivers	Number of LPRs not granted waivers	Number of LPR Waivers Granted by DFO
Iran	0	11	0	0	0	0	0	0	0	0	0	0	9
Iraq	0	53	0	0	0	0	0	0	0	0	0	0	46
Libya	0	0	0	0	0	0	0	0	0	0	0	0	0
Somalia	0	0	0	0	0	0	0	0	0	0	0	0	0
Sudan	0	0	0	0	0	0	0	0	0	0	0	0	0
Syria	0	2	0	0	0	0	0	0	0	0	0	0	1
Yemen	0	0	0	0	0	0	0	0	0	0	0	0	0

Executive Order Tracking Reporting Period Total

Field Office: San Diego FO Date: 1/28/2017 Reporting Period: 1600-2400

Country	Number of Non-Immigrant Visa Encounters	Number of Immigrant Visa Encounters	Number of LPR Encounters	Number of Refugees Encounters	Number of Widthdrawls Granted	Number of Expedited Removals	Number of Expedited Removals with Fear Claim	Number of Non-Immigrants not granted waivers	Number of Non-Immigrants granted waivers	Number of Immigrants not granted waivers	Number of Immigrants granted waivers	Number of LPRs not granted waivers	Number of LPR Waivers Granted by DFO
Iran	0	4	0	0	0	0	0	0	0	0	0	0	2
Iraq	0	20	0	0	0	0	0	0	0	0	0	0	14
Libya	0	0	0	0	0	0	0	0	0	0	0	0	0
Somalia	0	0	0	0	0	0	0	0	0	0	0	0	0
Sudan	0	0	0	0	0	0	0	0	0	0	0	0	0
Syria	0	1	0	0	0	0	0	0	0	0	0	0	0
Yemen	0	0	0	0	0	0	0	0	0	0	0	0	0

Executive Order Tracking - Cumulative Totals

San Francisco Field Office

Date:1/29/2017

Report Time:5:00 AM

Country	Number of Non-Immigrant Visa Encounters	Number of Immigrant Visa Encounters	Number of LPR Encounters	Number of Refugees Encounters	Number of Withdrawals Granted	Number of Expedited Removals	Number of Expedited Removals with Fear Claim	Number of Non-Immigrants not granted waivers	Number of Non-Immigrants granted waivers	Number of Immigrants not granted waivers	Number of Immigrants granted waivers	Number of LPRs not granted waivers	Number of LPR Waivers Granted by DFO
Iran	5	0	34	0	4	0	(b)(6), (b)(7)(C)	0	0	0	0	0	34
Iraq	0	0	3	0	0	0		0	0	0	0	0	3
Libya	0	0	0	0	0	0		0	0	0	0	0	0
Somalia	0	0	0	0	0	0		0	0	0	0	0	0
Sudan	0	0	0	0	0	0		0	0	0	0	0	0
Syria	1	0	7	0	1	0		0	0	0	0	0	7
Yemen	0	0	0	0	0	0		0	0	0	0	0	0

Executive Order Tracking - Reporting Period Totals

Country	Number of Non-Immigrant Encounters	Number of Immigrant Encounters	Number of LPR Encounters	Number of Refugees Encounters	Number of Withdrawals Granted	Number of Expedited Removals	Number of Expedited Removals with Fear Claim	Number of Non-Immigrants not granted waivers	Number of Non-Immigrants granted waivers	Number of Immigrants not granted waivers	Number of Immigrants granted waivers	Number of LPRs not granted waivers	Number of LPR Waivers Granted by DFO
Iran	0	0	22	0	0	0	0	0	0	0	0	0	22
Iraq	0	0	3	0	0	0	0	0	0	0	0	0	3
Libya	0	0	0	0	0	0	0	0	0	0	0	0	0
Somalia	0	0	0	0	0	0	0	0	0	0	0	0	0
Sudan	0	0	0	0	0	0	0	0	0	0	0	0	0
Syria	0	0	5	0	0	0	0	0	0	0	0	0	5
Yemen	0	0	0	0	0	0	0	0	0	0	0	0	0

Executive Order Tracking - Cumulative Totals

Field Office: Blaine AOR Date: 1/28/2017

Country	Number of Non-Immigrant Visa Encounters	Number of Immigrant Visa Encounters	Number of LPR Encounters	Number of Refugees Encounters	Number of Widthdrawls Granted	Number of Expedited Removals	Number of Expedited Removals with Fear Claim	Number of Non-Immigrants not granted waivers	Number of Non-Immigrants granted waivers	Number of Immigrants not granted waivers	Number of Immigrants granted waivers	Number of LPRs not granted waivers	Number of LPR Waivers Granted by DFO
Iran	8	0	18	0	8	0	0	0	0	0	0	0	18
Iraq	10	0	1	0	10	0	0	0	0	0	0	0	1
Libya	0	0	0	0	0	0	0	0	0	0	0	0	0
Somalia	0	1	0	0	1	0	0	0	0	0	0	0	0
Sudan	1	0	1	0	1	0	0	0	0	0	0	0	1
Syria	0	0	0	0	0	0	0	0	0	0	0	0	0
Yemen	1	0	0	0	1	0	0	0	0	0	0	0	0

Executive Order Track Reporting Period Total

Field Office: Seattle Field Office Date: 1/28/2017 Reporting Period: 1600-2400

Country	Number of Non-Immigrant Visa Encounters	Number of Immigrant Visa Encounters	Number of LPR Encounters	Number of Refugees Encounters	Number of Widthdrawls Granted	Number of Expedited Removals	Number of Expedited Removals with Fear Claim	Number of Non-Immigrants not granted waivers	Number of Non-Immigrants granted waivers	Number of Immigrants not granted waivers	Number of Immigrants granted waivers	Number of LPRs not granted waivers	Number of LPR Waivers Granted by DFO
Iran	0	0	0	0	0	0	0	0	0	0	0	0	0
Iraq	0	0	0	0	0	0	0	0	0	0	0	0	0
Libya	0	0	0	0	0	0	0	0	0	0	0	0	0
Somalia	0	0	0	0	0	0	0	0	0	0	0	0	0
Sudan	0	0	0	0	0	0	0	0	0	0	0	0	0
Syria	0	0	0	0	0	0	0	0	0	0	0	0	0
Yemen	0	0	0	0	0	0	0	0	0	0	0	0	0

Executive Order Tracking - Cumulative Totals

Field Office: TUCSON Date: 1/29/2017 Report Time: 500

Country	Number of Non-Immigrant Visa Encounters	Number of Immigrant Visa Encounters	Number of LPR Encounters	Number of Refugees Encounters	Number of Withdrawals Granted	Number of Expedited Removals	Number of Expedited Removals with Fear Claim	Number of Non-Immigrants not granted waivers	Number of Non-Immigrants granted waivers	Number of Immigrants not granted waivers	Number of Immigrants granted waivers	Number of LPRs not granted waivers	Number of LPR Waivers Granted by DFO
Iran	0	0	0	0	0	0	0	0	0	0	0	0	0
Iraq	0	0	0	0	0	0	0	0	0	0	0	0	0
Libya	0	0	0	0	0	0	0	0	0	0	0	0	0
Somalia	0	0	0	0	0	0	0	0	0	0	0	0	0
Sudan	0	0	0	0	0	0	0	0	0	0	0	0	0
Syria	0	0	0	0	0	0	0	0	0	0	0	0	0
Yemen	0	0	0	0	0	0	0	0	0	0	0	0	0

Executive Order Tracking - Reporting Period Totals

Country	Number of Non-Immigrant Encounters	Number of Immigrant Encounters	Number of LPR Encounters	Number of Refugees Encounters	Number of Withdrawals Granted	Number of Expedited Removals	Number of Expedited Removals with Fear Claim	Number of Non-Immigrants not granted waivers	Number of Non-Immigrants granted waivers	Number of Immigrants not granted waivers	Number of Immigrants granted waivers	Number of LPRs not granted waivers	Number of LPR Waivers Granted by DFO
Iran	0	0	0	0	0	0	0	0	0	0	0	0	0
Iraq	0	0	0	0	0	0	0	0	0	0	0	0	0
Libya	0	0	0	0	0	0	0	0	0	0	0	0	0
Somalia	0	0	0	0	0	0	0	0	0	0	0	0	0
Sudan	0	0	0	0	0	0	0	0	0	0	0	0	0
Syria	0	0	0	0	0	0	0	0	0	0	0	0	0
Yemen	0	0	0	0	0	0	0	0	0	0	0	0	0

Executive Order Tracking - Cumulative Totals

Field Office: PreClearance

Date: 1/29/2017

Report Time: 500

Country	Number of Non-Immigrant Visa Encounters	Number of Immigrant Visa Encounters	Number of LPR Encounters	Number of Refugees Encounters	Number of Withdrawals Granted	Number of Expedited Removals	Number of Expedited Removals with Fear Claim	Number of Non-Immigrants not granted waivers	Number of Non-Immigrants granted waivers	Number of Immigrants not granted waivers	Number of Immigrants granted waivers	Number of LPRs not granted waivers	Number of LPR Waivers Granted by DFO
Iran	20	9	38	0	29	0	0	0	0	0	0	0	38
Iraq	2	0	6	0	2	0	0	0	0	0	0	0	6
Libya	0	0	0	0	0	0	0	0	0	0	0	0	0
Somalia	0	0	0	0	0	0	0	0	0	0	0	0	0
Sudan	4	14	0	0	16	0	0	0	0	0	0	0	0
Syria	7	3	4	0	10	0	0	0	0	0	0	0	4
Yemen	0	0	0	0	0	0	0	0	0	0	0	0	0

Executive Order Tracking - Reporting Period Totals

Country	Number of Non-Immigrant Encounters	Number of Immigrant Encounters	Number of LPR Encounters	Number of Refugees Encounters	Number of Withdrawals Granted	Number of Expedited Removals	Number of Expedited Removals with Fear Claim	Number of Non-Immigrants not granted waivers	Number of Non-Immigrants granted waivers	Number of Immigrants not granted waivers	Number of Immigrants granted waivers	Number of LPRs not granted waivers	Number of LPR Waivers Granted by DFO
Iran	0	0	0	0	0	0	0	0	0	0	0	0	0
Iraq	0	0	0	0	0	0	0	0	0	0	0	0	0
Libya	0	0	0	0	0	0	0	0	0	0	0	0	0
Somalia	0	0	0	0	0	0	0	0	0	0	0	0	0
Sudan	0	0	0	0	0	0	0	0	0	0	0	0	0
Syria	0	0	0	0	0	0	0	0	0	0	0	0	0
Yemen	0	0	0	0	0	0	0	0	0	0	0	0	0

Executive Order Tracking - Cumulative Totals

Field Office: Preclearance--Shannon, Ireland Date: 1/29/2017 Report Time: 500

Country	Number of Non-Immigrant Visa Encounters	Number of Immigrant Visa Encounters	Number of LPR Encounters	Number of Refugees Encounters	Number of Withdrawals Granted	Number of Expedited Removals	Number of Expedited Removals with Fear Claim	Number of Non-Immigrants not granted waivers	Number of Non-Immigrants granted waivers	Number of Immigrants not granted waivers	Number of Immigrants granted waivers	Number of LPRs not granted waivers	Number of LPR Waivers Granted by DFO
Iran	0	0	0	0	0	0	0	0	0	0	0	0	0
Iraq	0	0	0	0	0	0	0	0	0	0	0	0	0
Libya	0	0	0	0	0	0	0	0	0	0	0	0	0
Somalia	0	0	0	0	0	0	0	0	0	0	0	0	0
Sudan	0	0	0	0	0	0	0	0	0	0	0	0	0
Syria	0	0	0	0	0	0	0	0	0	0	0	0	0
Yemen	0	0	0	0	0	0	0	0	0	0	0	0	0

Executive Order Tracking - Reporting Period Totals

Country	Number of Non-Immigrant Encounters	Number of Immigrant Encounters	Number of LPR Encounters	Number of Refugees Encounters	Number of Withdrawals Granted	Number of Expedited Removals	Number of Expedited Removals with Fear Claim	Number of Non-Immigrants not granted waivers	Number of Non-Immigrants granted waivers	Number of Immigrants not granted waivers	Number of Immigrants granted waivers	Number of LPRs not granted waivers	Number of LPR Waivers Granted by DFO
Iran	0	0	0	0	0	0	0	0	0	0	0	0	0
Iraq	0	0	0	0	0	0	0	0	0	0	0	0	0
Libya	0	0	0	0	0	0	0	0	0	0	0	0	0
Somalia	0	0	0	0	0	0	0	0	0	0	0	0	0
Sudan	0	0	0	0	0	0	0	0	0	0	0	0	0
Syria	0	0	0	0	0	0	0	0	0	0	0	0	0
Yemen	0	0	0	0	0	0	0	0	0	0	0	0	0

From:
Sent:
To:

(b)(6), (b)(7)(C)

Friday, February 03, 2017 9:23 PM

(b)(6), (b)(7)(C)

Cc:

Subject:

PHILA 2400(2/4/17) E.O.INDIVIDUALS BEING HELD (Negative) & E.O. PROJECTION REPORT

Attachments:

EO Projections for BFO 02042017 2400 HRS.xlsx; FO EO Individuals Being Held - Philadelphia 02042017-0400.xlsx

Please see the attached 2400 hour – E.O. Projection report for Philadelphia (Negative) along with the 0400 E.O Individuals Being Held (Negative).

Respectfully,

(b)(6), (b)(7)(C)

(A)Chief

Office of Field Operations
Philadelphia International Airport
Terminal A West
Philadelphia, PA 19153

(b)(6), (b)(7)(C)

PORT	Date	Flight #	Last name	First Name	DOB	COC (write out country name)	Document type	Doc Country	Doc #	Applicant Status (use drop down box)	Classification	(b)(6), (b)(7)(C), (b)(7)(E)			Comments
PHI	2/3/2017	N/A	N/A												

Field Office/Location	Name	Status	Disposition	Departure Flight/Time
BFO-PHL	N/A			

From: (b)(6), (b)(7)(C)
Sent: Friday, February 03, 2017 9:17 PM
To: DURST, CASEY OWEN; (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

Cc: CBP IAD WATCH COMMANDER
Subject: RE: EO Reporting

Acknowledged, awaiting PHL update and will send report to Enforcement Program Division.

Thanks,

(b)(6), (b)(7)(C)
 Watch Commander
 CBP Passenger Operations
 Washington Dulles International Airport
 Department of Homeland Security
 Tele: (b)(6), (b)(7)(C)
 Cell: (b)(6), (b)(7)(C)
 Fax: (b)(6), (b)(7)(C)

WARNING: This document and any attachment(s) may contain restricted, sensitive, and/or law enforcement-sensitive information belonging to the US. Government. It is not for release, review, retransmission, dissemination, or use by anyone other than the intended recipient. If you received this communication in error, please immediately notify the sender and delete or destroy this communication and all attachments. Any disclosure of this document must be approved by U.S. Customs and Border Protection prior to further dissemination

From: DURST, CASEY OWEN
Sent: Friday, February 03, 2017 8:58 PM
To: (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

Cc: CBP IAD WATCH COMMANDER <(b)(7)(E)>
Subject: FW: EO Reporting

FYA

Casey Owen Durst
Director, Field Operations
Baltimore Field Office

From: HUTTON, JAMES R
Sent: Friday, February 03, 2017 8:55:02 PM
To: DIRECTORS FIELD OPS; BORDER SECURITY ASST DIRECTORS
Cc: ENFORCEMENT PROGRAMS DIVISION; (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)
Subject: EO Reporting

DFO's

Kindly request that all POEs within your AOR provide report to Enforcement Program Division for all encounters of those individuals subject to EO from last reporting period (noon - February 3rd) to 21:30EST.

Thank you

J. Ryan Hutton
Deputy Executive Director
Admissibility and Passenger Programs

(b)(6), (b)(7)(C)



(b)(6), (b)(7)(C)



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From: (b)(6), (b)(7)(C)
Sent: Friday, February 03, 2017 9:15 PM
To: (b)(6), (b)(7)(C) BFO REPORTING; (b)(6), (b)(7)(C)
 (b)(6), (b)(7)(C) CBP IAD Management; (b)(6), (b)(7)(C)
(b)(6), (b)(7)(C)
Subject: Port of Baltimore - EO Report - 0001(2/4/17)
Attachments: SPECIAL VettingFINAL1 (003).xlsx

Please see attached. No encounters for the reporting period

(b)(7)(E) run for the next 7 days shows no subject of Executive Order arriving at Baltimore airport or seaport
 We will monitor airport and seaport arrivals continuously to check for any last minute reservations

Thank you

(b)(6), (b)(7)(C)
 Supervisor, CBP
 U.S. Customs and Border Protection
 BWI Airport, Baltimore MD
 Office (b)(6), (b)(7)(C)
 Fax (b)(6), (b)(7)(C)
 Cell (b)(6), (b)(7)(C)



WARNING: The above communication and attachments are covered by Federal and state laws and regulations governing electronic communication. The communication and attachments may contain confidential or privacy protected information that is legally privileged or operationally sensitive and remains the property of the United States Government. If you are not an addressee or it is apparent that you have received this communication in error, you are hereby notified that any dissemination, distribution, copying, or other use of this message is strictly prohibited. Regardless of how you received the information contained in this communication and accompanying attachments, any use by you must be for official purposes only and misuse may subject you to Federal prosecution. If you have received this communication in error, you should immediately notify the sender of this circumstance and delete or destroy this communication and all attachments.

DATE	PORT	Airline Code/ Vessel	Flight Number /IMO	Last Name	First Name	Date of Birth	COC (write out Country	Document Type	Document Country	Document ID	Applicant Status	Classification	DISPOSITION	CHARGE	OUTBOUN D AIRLINE	FLIGHT NUMBE R	Depart DATE
1/31/2017	BWI	BA	229	(b)(6), (b)(7)(C)			Iraq	P	IQ	(b)(6), (b)(7)(C)	LPR	F43	ADMIT	N/A	N/A	N/A	N/A

1/28/2017	IAB	BA	293	(b)(6), (b)(7)(C)	Iraq	P	IQ	A6242088	LPR	LPR	ADMIT	N/A	N/A	N/A	N/A	EXAMPLE
1/28/2017	IAB	EK	231		Syria	P	SY	4273668	NIV	J2	WD	7A	EK	232	1/28/2017	EXAMPLE

[REDACTED]

From: DURST, CASEY OWEN
Sent: Friday, February 03, 2017 9:13 PM
To: (b)(6), (b)(7)(C)
Subject: RE: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

(b)(5)

Casey Owen Durst
 Director, Field Operations
 Baltimore Field Office

From: (b)(6), (b)(7)(C)
Sent: Friday, February 03, 2017 9:10:07 PM
To: DURST, CASEY OWEN
Subject: RE: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

(b)(5)

Sent via mobile device

(b)(6), (b)(7)(C)
 Port Director
 Dulles Airport
 U.S. Customs and Border Protection

(b)(6), (b)(7)(C) Port Office Desk
 Terminal Desk
 Cell

From: DURST, CASEY OWEN
Sent: Friday, February 03, 2017 8:29:05 PM
To: (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

Cc: BFO REPORTING
Subject: FW: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

Port Directors,

See the direction below and modify your operations immediately. Please confirm receipt.

Casey Owen Durst
 Director, Field Operations
 Baltimore Field Office

From: MCALEENAN, KEVIN K
Sent: Friday, February 03, 2017 8:23:19 PM
To: Owen, Todd C (AC OFO); WAGNER, JOHN P; HOFFMAN, TODD A; DIRECTORS FIELD OPS
Cc: ALLES, RANDOLPH D; (b)(6), (b)(7)(C) HUTTON,
 JAMES R; FLANAGAN, PATRICK S; (b)(6), (b)(7)(C)
Subject: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

All,

Per the Department of Justice:

(b)(5)

Accordingly, effective immediately, U.S. Customs and Border Protection will suspend any and all actions implementing the affected sections of the Executive Order 13769 entitled, “*Protecting the Nation from Foreign Terrorist Entry into the United States*” (January 27, 2017). Field Offices are instructed to immediately resume inspection of travelers in accordance with standard policy and procedure.

This will include actions to suspend targeting system rules that flag travelers for operational action subject to the Executive Order including the State Department’s letter revoking visas based on that Executive Order (attached).

Please communicate this suspension as appropriate with key stakeholders such as airlines.

(b)(5) We will
 update you with further guidance as soon as it is received.

Thank you,



Kevin K. McAleenan
 Acting Commissioner
 U.S. Customs and Border Protection

(b)(6), (b)(7)(C)

*We are the guardians of our Nation's borders.
We are America's frontline.*

Vigilance • Service • Integrity

From: DURST, CASEY OWEN
Sent: Friday, February 03, 2017 9:13 PM
To: (b)(6), (b)(7)(C)
Cc: (b)(6), (b)(7)(C) HUNT, ROBERT D
Subject: FW: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

(b)(6), (b)(7)(C)

(b)(5)

Casey Owen Durst
 Director, Field Operations
 Baltimore Field Office

From: (b)(6), (b)(7)(C)
Sent: Friday, February 03, 2017 9:10:07 PM
To: DURST, CASEY OWEN
Subject: RE: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

(b)(5)

Sent via mobile device

(b)(6), (b)(7)(C)
 Port Director
 Dulles Airport
 U.S. Customs and Border Protection

(b)(6), (b)(7)(C) Port Office Desk
 Terminal Desk
 Cell

From: DURST, CASEY OWEN
Sent: Friday, February 03, 2017 8:29:05 PM
To: (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

Cc: BFO REPORTING
Subject: FW: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

Port Directors,

See the direction below and modify your operations immediately. Please confirm receipt.

Casey Owen Durst
 Director, Field Operations
 Baltimore Field Office

From: MCALEENAN, KEVIN K
Sent: Friday, February 03, 2017 8:23:19 PM
To: Owen, Todd C (AC OFO); WAGNER, JOHN P; HOFFMAN, TODD A; DIRECTORS FIELD OPS
Cc: ALLES, RANDOLPH D; (b)(6), (b)(7)(C) HUTTON,
 JAMES R; FLANAGAN, PATRICK S; (b)(6), (b)(7)(C)
Subject: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

All,

Per the Department of Justice:

(b)(5)

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Thank you,



Kevin K. McAleenan
 Acting Commissioner
 U.S. Customs and Border Protection

(b)(6), (b)(7)(C)

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Vigilance • Service • Integrity

From: DURST, CASEY OWEN
Sent: Friday, February 03, 2017 9:12 PM
To: (b)(6), (b)(7)(C)
Cc: (b)(6), (b)(7)(C)
Subject: RE: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

Thanks

Casey Owen Durst
 Director, Field Operations
 Baltimore Field Office

From: (b)(6), (b)(7)(C)
Sent: Friday, February 03, 2017 9:08:46 PM
To: DURST, CASEY OWEN
Cc: (b)(6), (b)(7)(C)
Subject: RE: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

DFO Durst,

In addition to our airport actions as Steve acknowledged already we will comply at our seaport as well and ensure stakeholder outreach in both environments.

(b)(6), (b)(7)(C)
 Area Port Director
 Area Port of Baltimore
 U.S. Customs and Border Protection
 (b)(6), (b)(7)(C) cell

From: DURST, CASEY OWEN
Sent: Friday, February 03, 2017 8:29:05 PM
To: (b)(6), (b)(7)(C)
 (b)(6), (b)(7)(C)
Cc: BFO REPORTING
Subject: FW: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

Port Directors,

See the direction below and modify your operations immediately. Please confirm receipt.

Casey Owen Durst

Director, Field Operations
Baltimore Field Office

From: MCALEENAN, KEVIN K
Sent: Friday, February 03, 2017 8:23:19 PM
To: Owen, Todd C (AC OFO); WAGNER, JOHN P; HOFFMAN, TODD A; DIRECTORS FIELD OPS
Cc: ALLES, RANDOLPH D; (b)(6), (b)(7)(C) HUTTON,
JAMES R; FLANAGAN, PATRICK S; (b)(6), (b)(7)(C)
Subject: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

All,

Per the Department of Justice:

(b)(5)

Accordingly, effective immediately, U.S. Customs and Border Protection will suspend any and all actions implementing the affected sections of the Executive Order 13769 entitled, "Protecting the Nation from Foreign Terrorist Entry into the United States" (January 27, 2017). Field Offices are instructed to immediately resume inspection of travelers in accordance with standard policy and procedure.

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Thank you,

[Department of Homeland Security Logo] <<http://www.cbp.gov/>>

Kevin K. McAleenan
Acting Commissioner
U.S. Customs and Border Protection

(b)(6), (b)(7)(C)

We are the guardians of our Nation's borders. We are America's frontline.

Vigilance • Service • Integrity

From: (b)(6), (b)(7)(C)
Sent: Friday, February 03, 2017 9:10 PM
To: DURST, CASEY OWEN
Subject: RE: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

(b)(5)

Sent via mobile device

(b)(6), (b)(7)(C)
 Port Director
 Dulles Airport
 U.S. Customs and Border Protection

(b)(6), (b)(7)(C) Port Office Desk
 Terminal Desk
 Cell

From: DURST, CASEY OWEN
Sent: Friday, February 03, 2017 8:29:05 PM
To: (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

Cc: BFO REPORTING
Subject: FW: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

Port Directors,

See the direction below and modify your operations immediately. Please confirm receipt.

Casey Owen Durst
 Director, Field Operations
 Baltimore Field Office

From: MCALEENAN, KEVIN K
Sent: Friday, February 03, 2017 8:23:19 PM
To: Owen, Todd C (AC OFO); WAGNER, JOHN P; HOFFMAN, TODD A; DIRECTORS FIELD OPS
Cc: ALLES, RANDOLPH D; (b)(6), (b)(7)(C) HUTTON,
 JAMES R; FLANAGAN, PATRICK S; (b)(6), (b)(7)(C)
Subject: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

All,

Per the Department of Justice:

(b)(5)

Accordingly, effective immediately, U.S. Customs and Border Protection will suspend any and all actions implementing the affected sections of the Executive Order 13769 entitled, “*Protecting the Nation from Foreign Terrorist Entry into the United States*” (January 27, 2017). Field Offices are instructed to immediately resume inspection of travelers in accordance with standard policy and procedure.

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Thank you,



Kevin K. McAleenan
Acting Commissioner
U.S. Customs and Border Protection

(b)(6), (b)(7)(C)

*We are the guardians of our Nation's borders.
We are America's frontline.*

Vigilance • Service • Integrity

From: (b)(6), (b)(7)(C)
Sent: Friday, February 03, 2017 9:09 PM
To: DURST, CASEY OWEN
Cc: (b)(6), (b)(7)(C)
 HUNT, ROBERT D
Subject: RE: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

DFO Durst,

In addition to our airport actions as (b)(6), (b)(7)(C) acknowledged already we will comply at our seaport as well and ensure stakeholder outreach in both environments.

(b)(6), (b)(7)(C)
 Area Port Director
 Area Port of Baltimore
 U.S. Customs and Border Protection
 (b)(6), (b)(7)(C) cell

From: DURST, CASEY OWEN
 Sent: Friday, February 03, 2017 8:29:05 PM
 To: (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

Cc: BFO REPORTING
 Subject: FW: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

Port Directors,

See the direction below and modify your operations immediately. Please confirm receipt.

Casey Owen Durst
 Director, Field Operations
 Baltimore Field Office

From: MCALEENAN, KEVIN K
 Sent: Friday, February 03, 2017 8:23:19 PM
 To: Owen, Todd C (AC OFO); WAGNER, JOHN P; HOFFMAN, TODD A; DIRECTORS FIELD OPS
 Cc: ALLES, RANDOLPH D; (b)(6), (b)(7)(C) HUTTON,
 JAMES R; FLANAGAN, PATRICK S; (b)(6), (b)(7)(C)
 Subject: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

All,

Per the Department of Justice:

(b)(5)

(b)(5)

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(b)(5) We will update you with further guidance as soon as it is received.

Thank you,

[Department of Homeland Security Logo] <<http://www.cbp.gov/>>

Kevin K. McAleenan
Acting Commissioner
U.S. Customs and Border Protection

(b)(6), (b)(7)(C)

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Vigilance • Service • Integrity

From: DURST, CASEY OWEN
Sent: Friday, February 03, 2017 8:58 PM
To:

(b)(6), (b)(7)(C)

Cc: CBP IAD WATCH COMMANDER
Subject: FW: EO Reporting

FYA

Casey Owen Durst
Director, Field Operations
Baltimore Field Office

From: HUTTON, JAMES R
Sent: Friday, February 03, 2017 8:55:02 PM
To: DIRECTORS FIELD OPS; BORDER SECURITY ASST DIRECTORS
Cc: ENFORCEMENT PROGRAMS DIVISION; (b)(6), (b)(7)(C)
(b)(6), (b)(7)(C)
Subject: EO Reporting

DFO's

Kindly request that all POEs within your AOR provide report to Enforcement Program Division for all encounters of those individuals subject to EO from last reporting period (noon - February 3rd) to 21:30EST.

Thank you

J. Ryan Hutton
Deputy Executive Director
Admissibility and Passenger Programs

(b)(6), (b)(7)(C)

   (b)(6), (b)(7)(C)



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From: DURST, CASEY OWEN
Sent: Friday, February 03, 2017 8:51 PM
To: (b)(6), (b)(7)(C)
Subject: RE: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

Thanks

Casey Owen Durst
Director, Field Operations
Baltimore Field Office

From: (b)(6), (b)(7)(C)
Sent: Friday, February 03, 2017 8:43:31 PM
To: DURST, CASEY OWEN; (b)(6), (b)(7)(C)
(b)(6), (b)(7)(C)
Cc: BFO REPORTING
Subject: RE: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

Got it. Will muster and implement immediately.

From: DURST, CASEY OWEN
Sent: Friday, February 03, 2017 11:29:05 PM
To: (b)(6), (b)(7)(C)
(b)(6), (b)(7)(C)
Cc: BFO REPORTING
Subject: FW: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

Port Directors,

See the direction below and modify your operations immediately. Please confirm receipt.

Casey Owen Durst
Director, Field Operations
Baltimore Field Office

From: MCALEENAN, KEVIN K
Sent: Friday, February 03, 2017 8:23:19 PM
To: Owen, Todd C (AC OFO); WAGNER, JOHN P; HOFFMAN, TODD A; DIRECTORS FIELD OPS
Cc: ALLES, RANDOLPH D; (b)(6), (b)(7)(C) HUTTON,

JAMES R; FLANAGAN, PATRICK S; (b)(6), (b)(7)(C)

Subject: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

All,

Per the Department of Justice:

(b)(5)

Accordingly, effective immediately, U.S. Customs and Border Protection will suspend any and all actions implementing the affected sections of the Executive Order 13769 entitled, “*Protecting the Nation from Foreign Terrorist Entry into the United States*” (January 27, 2017). Field Offices are instructed to immediately resume inspection of travelers in accordance with standard policy and procedure.

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Please communicate this suspension as appropriate with key stakeholders such as airlines.

(b)(5)

We will update you with further guidance as soon as it is received.

Thank you,



Kevin K. McAleenan
Acting Commissioner
U.S. Customs and Border Protection

(b)(6), (b)(7)(C)

*We are the guardians of our Nation’s borders.
We are America’s frontline.*

Vigilance • Service • Integrity

From: (b)(6), (b)(7)(C)
Sent: Friday, February 03, 2017 8:44 PM
To: DURST, CASEY OWEN; (b)(6), (b)(7)(C)
Cc: BFO REPORTING
Subject: RE: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

Got it. Will muster and implement immediately.

From: DURST, CASEY OWEN
Sent: Friday, February 03, 2017 11:29:05 PM
To: (b)(6), (b)(7)(C)
Cc: BFO REPORTING
Subject: FW: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

Port Directors,

See the direction below and modify your operations immediately. Please confirm receipt.

Casey Owen Durst
Director, Field Operations
Baltimore Field Office

From: MCALEENAN, KEVIN K
Sent: Friday, February 03, 2017 8:23:19 PM
To: Owen, Todd C (AC OFO); WAGNER, JOHN P; HOFFMAN, TODD A; DIRECTORS FIELD OPS
Cc: ALLES, RANDOLPH D; (b)(6), (b)(7)(C) HUTTON, JAMES R; FLANAGAN, PATRICK S; (b)(6), (b)(7)(C)
Subject: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

All,

Per the Department of Justice:

(b)(5)

(b)(5)

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Please communicate this suspension as appropriate with key stakeholders such as airlines.

(b)(5)

update you with further guidance as soon as it is received. We will

Thank you,



Kevin K. McAleenan
Acting Commissioner
U.S. Customs and Border Protection

(b)(6), (b)(7)(C)

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We are America’s frontline.*

Vigilance • Service • Integrity

From: DURST, CASEY OWEN
Sent: Friday, February 03, 2017 8:33 PM
To: (b)(6), (b)(7)(C)
Subject: RE: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

Thanks

Casey Owen Durst
 Director, Field Operations
 Baltimore Field Office

From: (b)(6), (b)(7)(C)
Sent: Friday, February 03, 2017 8:32:53 PM
To: DURST, CASEY OWEN; (b)(6), (b)(7)(C)
 (b)(6), (b)(7)(C)
Cc: BFO REPORTING
Subject: RE: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

Receipt noted..will muster out wb

Sent via mobile device

(b)(6), (b)(7)(C)
 Port Director
 Dulles Airport
 U.S. Customs and Border Protection

(b)(6), (b)(7)(C) Port Office Desk
 Terminal Desk
 Cell

From: DURST, CASEY OWEN
Sent: Friday, February 03, 2017 8:29:05 PM
To: (b)(6), (b)(7)(C)
 (b)(6), (b)(7)(C)
Cc: BFO REPORTING
Subject: FW: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

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See the direction below and modify your operations immediately. Please confirm receipt.

Casey Owen Durst
Director, Field Operations
Baltimore Field Office

From: MCALEENAN, KEVIN K
Sent: Friday, February 03, 2017 8:23:19 PM
To: Owen, Todd C (AC OFO); WAGNER, JOHN P; HOFFMAN, TODD A; DIRECTORS FIELD OPS
Cc: ALLES, RANDOLPH D; (b)(6), (b)(7)(C) HUTTON, JAMES R; FLANAGAN, PATRICK S; (b)(6), (b)(7)(C)
Subject: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

All,

Per the Department of Justice:

(b)(5)

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Acting Commissioner
U.S. Customs and Border Protection

(b)(6), (b)(7)(C)

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Vigilance • Service • Integrity

From: (b)(6), (b)(7)(C)
Sent: Friday, February 03, 2017 8:33 PM
To: DURST, CASEY OWEN; (b)(6), (b)(7)(C)
Cc: BFO REPORTING
Subject: RE: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

Receipt noted..will muster out (b)(6), (b)(7)(C)

Sent via mobile device

(b)(6), (b)(7)(C)
 Port Director
 Dulles Airport
 U.S. Customs and Border Protection

(b)(6), (b)(7)(C) Port Office Desk
 Terminal Desk
 Cell

From: DURST, CASEY OWEN
Sent: Friday, February 03, 2017 8:29:05 PM
To: (b)(6), (b)(7)(C)
Cc: BFO REPORTING
Subject: FW: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

Port Directors,

See the direction below and modify your operations immediately. Please confirm receipt.

Casey Owen Durst
 Director, Field Operations
 Baltimore Field Office

From: MCALEENAN, KEVIN K
Sent: Friday, February 03, 2017 8:23:19 PM
To: Owen, Todd C (AC OFO); WAGNER, JOHN P; HOFFMAN, TODD A; DIRECTORS FIELD OPS
Cc: ALLES, RANDOLPH D; (b)(6), (b)(7)(C) HUTTON,

JAMES R; FLANAGAN, PATRICK S; (b)(6), (b)(7)(C)

Subject: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

All,

Per the Department of Justice:

(b)(5)

Accordingly, effective immediately, U.S. Customs and Border Protection will suspend any and all actions implementing the affected sections of the Executive Order 13769 entitled, “*Protecting the Nation from Foreign Terrorist Entry into the United States*” (January 27, 2017). Field Offices are instructed to immediately resume inspection of travelers in accordance with standard policy and procedure.

This will include actions to suspend targeting system rules that flag travelers for operational action subject to the Executive Order including the State Department’s letter revoking visas based on that Executive Order (attached).

Please communicate this suspension as appropriate with key stakeholders such as airlines.

(b)(5) We will
update you with further guidance as soon as it is received.

Thank you,



Kevin K. McAleenan
Acting Commissioner
U.S. Customs and Border Protection

(b)(6), (b)(7)(C)

*We are the guardians of our Nation’s borders.
We are America’s frontline.*

Vigilance • Service • Integrity

From: DURST, CASEY OWEN
Sent: Friday, February 03, 2017 8:33 PM
To: (b)(6), (b)(7)(C)
Subject: RE: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

Thanks

Casey Owen Durst
 Director, Field Operations
 Baltimore Field Office

From: (b)(6), (b)(7)(C)
Sent: Friday, February 03, 2017 8:32:24 PM
To: DURST, CASEY OWEN; (b)(6), (b)(7)(C)
Cc: BFO REPORTING
Subject: RE: IMMEDIATE ACTION: District Court Ruling Enjoining the Executive Order

Confirmed and will be forwarded

(b)(6), (b)(7)(C)
 (A) Area Port Director
 Area Port of Philadelphia
 US Customs and Border Protection
 Office: (b)(6), (b)(7)(C)
 Airport: (b)(6), (b)(7)(C)
 Cell: (b)(6), (b)(7)(C)

From: DURST, CASEY OWEN
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 JAMES R; FLANAGAN, PATRICK S; (b)(6), (b)(7)(C)
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 Acting Commissioner
 U.S. Customs and Border Protection

(b)(6), (b)(7)(C)

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