

Presentation Outline

- I. Trump's Executive Order – Sara Urch
- II. Executive Order Legalities – Alecia Darm
- III. Baby Fatemeh – Jennifer Morrissey
- IV. Travel Ban – Tyler Francis
- V. Search & Disclosure – Marisa Moneyhun

April 2015

February 25, 2016

January 4, 2017

January 7, 2017

**Thursday,
January 26, 2017**

Friday, January 27, 2017



Friday, January 27, 2017 –
Holocaust Remembrance Day
which honors the millions of people
killed during WWII, many of whom
tried to flee to the U.S. but were
turned away.



Executive Order No. 13769 –
Protecting the Nation From Foreign Terrorist Entry
Into the United States, signed by President Trump
January 27, 2017 (7 days after coming into office).

Saturday, January 28, 2017 8am

The real-life consequences of President Trump's executive order on Friday banning Syrian refugees and immigrants from seven majority-Muslim nations became apparent within hours after he signed it.

After President Trump signed his executive order suspending aliens from Syria, Iran, Iraq, Libya, Somalia, Sudan, and Yemen from entering the United States for 90 days, lawful immigrants were trapped at airports around the country. Between 50 and 60 people were held at Washington Dulles International Airport in Virginia, detained by U.S. Customs and Border Protection agents. For most of the day they were forbidden from meeting with their attorneys.

Saturday, January 28, 2017

- Petitioners, two Aziz brothers who are lawful permanent residents of Yemeni nationality were detained at Washington Dulles International Airport as a result of Executive Order 13769. The brothers, through the Legal Aid Justice Center's Immigrant Advocacy Program, filed a habeas corpus petition, *Aziz v. Trump*, and an application for a temporary restraining order in federal court on behalf of themselves and others detained at Dulles.

Saturday, January 28, 2017 9 PM

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

Case No. 1:17-cv-115

Imad Adel Mohamed Aziz
and
Amr Adel Mohamed Aziz,
by their next friend,
Adel Mohamed Aziz,
and
Jeha Doss 1-60,

Date: January 28, 2017

Petitioners.

v.

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

Respondents.

TEMPORARY RESTRAINING ORDER

Pursuant to Federal Rule of Civil Procedure 65, the Court orders that:

- a) respondents shall permit travelers access to all legal permanent residents being detained at Dallas International Airport;
- b) respondents are forbidden from removing petitioners — lawful permanent residents at Dallas International Airport—for a period of 7 days from the issuance of this Order.

Date: January 28, 2017

M. Aziz
Attorney for Petitioners

- In the short term, at least some of the plaintiffs detained at airports across the country received some judicial relief since Saturday (1/28/17) night. The two named plaintiffs in an ACLU suit filed in New York, Hameed Khalid Darweesh and Haider Sameer Abdulkaleq Alshawi, were released by Saturday night.
- The two named plaintiffs in a Massachusetts lawsuit, Mazdak Pourabdollah Tootkaboni and Arghavan Louhghalam, both associate professors at the University of Massachusetts-Dartmouth, were also allowed to leave Boston's Logan Airport Saturday night.

But that wasn't the case for Tareq Aqel Mohammed Aziz and Ammar Aqel Mohammed Aziz. The two young men, citizens of Yemen and lawful holders of U.S. green cards, were refused entry to the United States at Dulles Airport on Saturday, and were then trapped in what their lawyer described as "Tom Hanks limbo" at the Addis Ababa airport in Ethiopia.

Sunday, January 29, 2017 1:00 AM



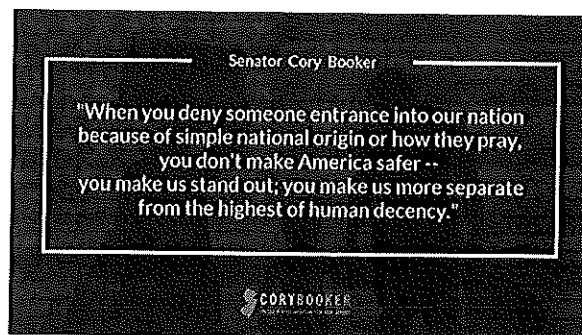
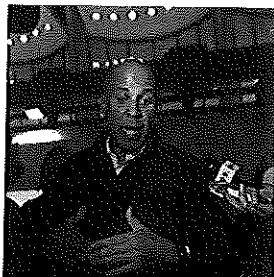
Passengers wait in the departures lounge of the Erbil International Airport, in Iraq.

President Trump stated: "I am establishing new vetting measures to keep radical Islamic terrorists out of the United States of America. **We don't want them here,**" he said at a swearing-in ceremony at the Pentagon for Secretary of Defense James Mattis. "We don't want to admit into our country the very threats we are fighting overseas."

Despite the court order, Customs and Border Officials Defy Court Order on Lawful Residents

"We have a constitutional crisis today. Four Members of Congress asked CBP officials to enforce a federal court order and were turned away." Rep. Don Beyer (D-VA)

Senator Cory Booker (D-NJ)



https://twitter.com/Curious_Kurz/status/825574478419722242

Sunday, January 29, 2017

- By about 1 a.m. Sunday, it appeared that all but one of the people held had been allowed to enter the country, in part because Sen. Cory Booker (D-NJ) went to Dulles at midnight and demanded that he be allowed to communicate with the detainees.
- That was around the time that Simon Sandoval-Moshenberg, legal director of the Legal Aid Justice Center's Immigrant Advocacy Program, found out that his two Yemeni clients, the Aziz brothers, had been sent back to Addis Ababa (Ethiopia).

Monday, January 30, 2017

- The Aziz brothers filed an amended petition for habeas corpus on behalf of themselves and others detained at Dulles (Aziz v. Trump).

Friday, February 3, 2017

The court granted the Commonwealth of Virginia's Motion to Intervene and ordered that Virginia's Complaint in Intervention be filed. The court also issued an order extending the temporary restraining order until February 10, 2017 and directing that the defendants provide Virginia with a list of all residents of Virginia denied entry or removed from the United States since the Executive Order.

Monday, February 6, 2017



Tareq Aziz (L) and his brother Ammar Aziz (R) reunited with their father Aqel Aziz, Feb. 6, 2017



While the lawsuit remains ongoing, last week the U.S. government reached a settlement with the Aziz family, and another Yemeni family on the same flight, the al-Murisis, who were all turned away despite status as lawful permanent residents.

Aqel Aziz couldn't stop smiling after his two sons, ages 19 and 21, were finally able to join him in the United States Monday. "America is for everybody," he said, after greeting his boys, Tareq and Ammar, at Dulles International Airport.

Parts:

1. Aqel Aziz (AQ)
2. Tareq Aziz (TA)
3. Ammar Aziz (AA)
4. TSA Security (TSAS)

(Slide 1)

April 2015

Aqel Aziz (AQ) – Sons, I have just applied for a petition for you to obtain U.S. immigration visas. You are both very young: Tareq, you are only 19, and your brother Ammar is 17. I want you to come live with me in Flint, Michigan because our country, Yemen, is not safe. Because I am a naturalized U.S. citizen, I can apply for you to come and live with me.

Tareq Aziz (TA) & Ammar Aziz (AA) – Great!

(Slide 2)

February 25, 2016

AQ – Sons, your U.S. visa petitions have just been approved. You will be scheduled for in-person interviews soon.

TA – We have already waited nearly a year, how much longer will we have to wait?

AQ – Be patient. We will soon be together, have faith – America is a wonderful place!

(Slide 3)

January 4, 2017

TA – Brother, we have finally been given an interview date.

AA – And we both passed! When can we pick up our passports?

TA – Hopefully very soon.

(Slide 4)

January 7, 2017

TA - Brother! I became eligible for a passport, but for some reason yours hasn't been approved yet. I am going to wait for you.

AA – I'm sure it will happen soon. You should go without me.

TA – No, I'm waiting so we can go together, and we will all be reunited as a family in the U.S.

(Slide 5)

Thursday, January 26, 2017

AA – My passport has finally come through. Let's call Father!

TA – Father! We both have passports now. What should we do?

AQ – Go pick up your passports, sons. I am looking into flights as we speak. It looks like I can get you onto a flight tomorrow.

(Slide 6)

Friday, January 27, 2017

TA [On plane] – I'm so excited, we have been planning this trip for nearly two years!

AA – I know, I can't wait to be reunited with our father Aqel Aziz, who we have not seen for many years now. Our father lives in Flint, Michigan where he runs several gas stations. I am so looking forward to living with our father and helping him with the family business.

TA – I can't believe after all our preparations, we are finally leaving Ethiopia, and will be arriving at the Washington, D.C. Dulles Airport tomorrow morning!

(Slide 7)

TSA Security (TSAS) – January 27, 2017 is Holocaust Remembrance Day which honors the millions of people killed during WWII, many of whom tried to flee to the U.S. but were turned away.

(Slide 8)

Friday, January 27, 2017

TSAS – After Tareq and Ammar's plane left Ethiopia, President Trump signed Executive Order No. 13769 – entitled "Protecting the Nation From Foreign Terrorist Entry Into the United States," on January 27, 2017, 7 days after he entered office.

(Slide 9)

Saturday, January 28, 2017 8am

TSAS – The real-life consequences of President Trump's executive order on Friday banning Syrian refugees and immigrants from seven majority-Muslim nations became apparent within hours after he signed it. After President Trump signed his executive order suspending aliens from Syria, Iran, Iraq, Libya, Somalia, Sudan, and Yemen from entering the United States for 90 days, lawful immigrants were trapped at airports around the country. Between 50 and 60 people were held at Washington Dulles International Airport in Virginia, detained by U.S. Customs and Border Protection agents. For most of the day they were forbidden from meeting with their attorneys.

AA – We made it. We have just landed and are finally here in the U.S.A.

TSAS – Please show me your identification.

TA – Here you go, my brother and I both have valid immigrant visas and passports. We are on our way to come and live with our father in Flint, Michigan.

TSA – You’re going to need to come with me.

AA – Why? Have we done something wrong?

TSA – You two apparently haven’t heard about the Executive Order issued by U.S. President Trump yesterday January 27th.

TA – We have been on a flight since yesterday. What are you talking about?

TSA – President Trump’s Executive Order No. 13769 is in effect. The Order prevents immigrants and nonimmigrants aliens from certain countries from entering the United States.

TA – But we have valid immigrant visas and passports.

TSA – I don’t think you’re listening. People from your country—Yemen, as well as Iraq, Sudan, Libya, Somalia, Iran and Syria are banned pursuant to the President’s Executive Order, and you’re going to need to come with me.

TA – This doesn’t seem right. Please, we want to speak to our father’s lawyer!

TSA – Well, that’s not happening. Come with me! You are being detained. Security – come and put handcuffs on these two young men!

TA – Please, there has to be a valid reason for you to bar us from entry to the U.S. We have valid passports. We want to speak to a lawyer!

(Slide 10)

Saturday, January 28, 2017

AQ - Petitioners, the two Aziz brothers who are lawful permanent residents of Yemeni nationality were detained at Washington Dulles International Airport as a result of Executive Order 13769. The brothers, through a U.S. nonprofit group, the Legal Aid Justice Center’s Immigrant Advocacy Program, filed a habeas corpus petition, *Aziz v. Trump*, and an application for a temporary restraining order in federal court, Eastern District of Virginia on behalf of themselves and others detained at Dulles.

(Slide 11)

Saturday, January 28, 2017 9:00 PM

TSAS – At about 9 p.m. Saturday night, federal judge for the Eastern District of Virginia, Leonie Brinkema, issued a TRO that expressly provided respondents (the U.S. government) must “permit lawyers access to all legal permanent residents being detained at Dulles International Airport.” Despite that order, throughout the evening it was reported that attorneys still hadn’t been let into the areas in which the detainees were being held by CBP.

<Restraining Order>

(Slide 12)

TSAS - In the short term, at least some of the plaintiffs detained at airports across the country received some judicial relief since Saturday (1/28/17) night. The two named plaintiffs in an ACLU suit filed in New York, were released by Saturday night. The two named plaintiffs in a Massachusetts lawsuit, both associate professors at the University of Massachusetts, were also allowed to leave Boston's Logan Airport Saturday night.

(Slide 13)

AQ – But that wasn't the case for Tareq and Ammar Aziz. The two young men, Yemeni citizens and lawful holders of U.S. Green Cards, were refused entry to the United States at Dulles Airport on Saturday, and were then trapped in what their lawyer described as “Tom Hanks limbo” at the Addis Ababa airport in Ethiopia.

(Slide 14)

Sunday, January 29, 2017 1:00 AM

TSA – You two are headed back to Ethiopia. In fact, before we even release you to return to Africa, we are stamping “cancelled” on your passports, and you are signing these documents which state that you abandon your lawful U.S. permanent resident status. Finally, you are being sent back to Ethiopia—at your own expense.

AA– How can that be the case? I thought America was the land of the free? We have valid passports. You can't send us back!

TSA – U.S.A. is the land of the free, but not for you. As I told you, President Trump's Executive Order bans people from certain Muslim countries, including Yemen because as our President recently stated: “I am establishing new vetting measures to keep radical Islamic terrorists out of the United States of America. **We don't want them here.** We don't want to admit into our country the very threats we are fighting overseas.”

(Slide 15 -16)

AZ – Newspapers reported across the country that Customs and Border Officials continued to defy Judge Brinkema's Court Order on Lawful Residents, as Democratic Congressman from Virginia, Don Beyer stated: “We have a constitutional crisis today. Four Members of Congress asked CBP officials to enforce a federal court order and were turned away.”

<Play Cory Booker clip>

Slide 17)

Sunday, January 29, 2017 1:00 AM

AQ – By about 1 a.m. Sunday, it appeared that all but one of the people held had been allowed to enter the country, in part because Sen. Cory Booker (D-NJ) went to Dulles at midnight and demanded that he be allowed to communicate with the detainees.

TSAS – That was around the time that Simon Sandoval-Moshenberg, legal director of the Legal Aid Justice Center’s Immigrant Advocacy Program, found out that his two Yemenis clients, the Aziz brothers, had been sent back to Ethiopia.

(Slide 18)

Monday, January 30, 2017

TA – On Monday, January 30, 2017, the Aziz brothers filed an amended petition for habeas corpus on behalf of themselves and others detained at Dulles.

February 3, 2017

(Slide 19)

AQ – By Friday, February 3rd, the court granted the Commonwealth of Virginia's Motion to Intervene and ordered that Virginia's Complaint in Intervention be filed. The court also issued an order extending the TRO until February 10th and directing that the U.S. government provide Virginia with a list of all Virginia residents denied entry or removed from the U.S since the Executive Order.

AA – Brother, now that the court granted this important motion, does this mean we can attempt to return to the U.S.?

TA – Well, happily, the District Court of Virginia granted the Commonwealth of Virginia’s Motion to Intervene and extended the TRO. But I don’t know what’s going to happen to us.

(Slide 20)

February 6, 2017

TA – While the lawsuit remains ongoing, 3 days later, the US government reached a settlement with the Aziz family, and another Yemeni family on the same flight, the al-Murisis, who were all turned away despite lawful permanent resident status.

(Slide 21)

TSAS - Aqel Aziz couldn’t stop smiling after his two sons, ages 19 and 21, were finally able to join him in the United States Monday.

AA - “America is for everybody,” my father said, after greeting my brother Tareq and me, at Dulles International Airport February 6, 2017.

Executive Order 13760 of January 27, 2017

Protecting the Nation from Foreign Terrorists Entry into the United States

➤ *Purpose: Section 1*

- *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 would oppress Americans of any race, gender or sexual orientation.*

Effects of the Ban

Section 3 – Suspension of Issuance of Visas & Other Immigration Benefits to Nationals of Countries of Particular Concern

➤ *Countries Effected by the Ban:*

- *Iran*
- *Iraq*
- *Libya*
- *Somalia*
- *Sudan*
- *Syria*
- *Yemen*

***Authority for the Executive Order – Immigration & Nationality
Act of 1952***

- *Whenever the president finds the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate.*

Individuals Effected by the Ban – Sections 3 & 5

- *Individuals Denied Access into the United States*
 - *Section 3(c): The immigrant & nonimmigrant entry into the United States of aliens from countries referred to in section 217(a)(12) of 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 this foreign nationals travelling 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).*
 - *Section 5(a): The Secretary of State shall suspend the U.S. Refugee Admissions Program (USRAP) for 120 days.*
 - *Section 5(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 determine that additional admissions would be in the national interest.*
 - *Section 5(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.*

Protesters at Dulles Airport on January 29, 2017

<http://www.dcmidiagroup.us/2017/01/29/dulles-and-bwi-overwhelmed-protests-muslim-ban/>



State of Washington vs. Donald J. Trump, et. Al – Background

- January 27, 2017 – The President issued Executive Order- Protecting the Nation from Foreign Terrorists Entry into the United States.
- January 30, 2017 – The state of Washington filed a complaint seeking declaratory and injunctive relief against defendant Donald L. Trump, the United States Department of Homeland Security (DHS), John F. Kelly as Secretary of DHS, Tom Shannon as Secretary of State, and the United States of America (collectively, Federal Defendants).
- February 1, 2017 – State of Washington filed an amended complaint adding the state of Minnesota as a plaintiff.
- Relief Sought – The States seek declaratory relief invalidating portions of the Executive Order of January 27, 2017, & an order enjoining Federal Defendants from enforcing those same portions of the executive order.
- The States (Washington & Minnesota) filed an emergency motion for temporary restraining order (TRO) against the Defendants on February 3, 2017.

State of Washington vs. Donald J. Trump, et. Al – Outcome

- *The Executive Order adversely affects the States' residents in areas of employment, education, business, family relations and freedom of travel.*
- *States themselves harmed by virtue of the damage of the implementation that the Executive Order has inflicted upon the operations & missions of their public universities and other institutions of higher learning, as well as injury to the States' operations, tax bases & public funds.*
- *Federal Defendants and their respective officers, agents, servants, employees, attorneys, and persons acting in concert or participation with them are hereby enjoined and restrained from:*
 - *Enforcing sections 3(c), 5(a) – (c), & 5(e) of the Executive Order.*
- *The TRO is granted on a nation-wide basis.*

9th Circuit Decision – State of Washington/Minnesota v. Trump – Background

- *Following the entry of the TRO on February 3, 2017, the Government filed a notice of appeal on February 4, 2017, and sought an emergency stay in this court.*
- *The request for an immediate stay was denied and deadlines were set for the filing responsive & reply briefs on the emergency stay motion over the next two days.*

Three Provisions of the Executive Order at Issue

- 1) Section 3(c) – Suspends for 90 days the entry of aliens from seven countries – Iraq, Iran, Libya, Somalia, Sudan, Syria & Yemen.*
- 1) Section 5(a) – Suspends for 120 days the the U.S. Refugee Admissions Program & 5(c) directs the Secretary of State to prioritize refugee claims based on religious persecution where a refugee's religion in the country of his or her nationality.*
- 1) Section 5(c) – Suspends indefinitely the entry of all Syrian refugees.*

Standing – Whether the States had Standing to Sue - Arguments

- *Article III Standing: A plaintiff must show it has suffered a concrete and particularized injury that is either actual or imminent, that the injury is fairly traceable to the defendant, and that it is likely a favorable decision will redress that injury.*
- *State's Argument:*
 - *The Executive Order causes a concrete & particularized injury to their public universities, which are branches of the States under state law.*
 - *The teaching & research mission of their universities are harmed by the Executive Order's effect on their faculty and students who are nationals of the seven affected countries.*
 - *These students & faculty cannot travel for research, academic collaboration, or for personal reasons, and their families abroad cannot visit.*
 - *Some have been stranded outside the country – unable to return at all.*

Standing – Outcome

- *Under the third party standing doctrine – these injuries to the state universities give the States standing to assert the rights of students, scholars & faculty affected by the Executive Order.*

The States have alleged harm to their proprietary interests traceable to the Executive Order – connection drawn in two logical steps:

1. *The Executive Order prevents nationals of seven countries from entering Washington & Minnesota.*
2. *As a result, some of these people will not enter state universities, some will not join those universities as faculty, some will be prevented from performing research, and some will not be permitted to return if they leave.*

States have standing because:

The State's injuries would be redressed if they could obtain the relief they ask for: a declaration that the Executive Order violates the Constitution & an injunction barring its enforcement.

Reviewability of the Executive Order – Whether the District Court had the authority to review the Executive Order?

- *Government argues – The district court lacked the authority to enjoin enforcement of the Executive Order because the President had unreviewable authority to suspend the admission of any class of aliens.*
- *While our jurisprudence has long counseled deference to the political branches on matters of immigration and national security, neither the Supreme Court or 9th circuit has ever held that courts lack the authority to review executive decisions in those arenas for compliance with the Constitution.*
- *Federal courts routinely review the constitutionality of and even invalidate actions taken by the executive to promote national security, and have done so even in times of conflict.*
- *The Federal Judiciary retains the authority to adjudicate constitutional challenges to executive actions.*

Legal Standard for Seeking a Stay

- *Legal Test for Determining if Stay should be Granted*
 1. *Whether the stay applicant has made a strong showing that he is likely to succeed on the merits;*
 2. *Whether the applicant will be irreparably injured absent a stay;*
 3. *Whether issuance of the stay will substantially injure the other parties interested in the proceeding; and*
 4. *Where the public interest lies.*

Stay – Analysis- Likely to Succeed on the Merits – Due Process

- *Likely to Succeed on the Merits: The Government has not shown that the Executive Order provides what due process requires, such as notice and a hearing prior to restricting an individual's ability to travel. The Executive Order violates the due process rights of various aliens in at least three independent ways:*
 - *Section 3(c) – denies re-entry to certain lawful permanent residents & non-immigrant visa holders without constitutionally sufficient notice & an opportunity to respond,*
 - *Section 3(c) – prohibits certain lawful permanent residents and non-immigrant visa holders from exercising their separate and independent constitutionally protected liberty interests in travelling abroad and thereafter re-entering the United States.*
 - *Section 5 – contravenes the procedures provided by federal statute for refugees seeking asylum & related relief in the United States.*

Stay – Analysis- Likely to Succeed on the Merits – Due Process

- *Procedural Protections of the 5th Amendment Due Process Clause – apply to all persons within the United States including aliens, regardless of whether their presence here is lawful, unlawful, temporary or permanent. These rights also apply to certain aliens attempting to re-enter the United States.*
- *Government's Argument: The State's challenge to Section 3(c) based on its application to lawful permanent residents is moot because several days after the Executive Order was issued – White House Counsel Donald F. McGahn II issued "authoritative guidance" stating the ban does not apply to lawful permanent residents.*
- *However, no evidence that: 1) White House counsel has authority to issue amended order; 2) Or that the White House counsel's interpretation of the order is binding on all executive branch officials responsible for enforcing the Order.*
- *Even if amendment is valid – possible due process claims for non-immigrant visa holders.*

Stay – Analysis- Likely to Succeed on the Merits – Overly Broad TRO

- *Government Argument – Even if States have shown likely to succeed on some of their procedural due process claims, the district court erred by issuing an overly broad TRO:*
 1. *The TRO extends beyond lawful permanent residents & covers aliens who cannot assert cognizable liberty interests in connection with travelling into & out of the United States.*
 2. *The TRO applies nationwide & enjoins application of the Executive Order outside Washington & Minnesota.*
- *9th Circuit Decline to Limit Scope of the Order:*
 - *Unwilling to limit the scope of the TRO to certain individuals – will still impact some people who have viable due process claims.*
 - *Unwilling to limit the geographic scope of the Order – need for uniform immigration law and policy.*
 - *Even if TRO is overbroad – not the judiciary's responsibility to rewrite it.*

Stay – Analysis – Likelihood of Success – Religious Discrimination

- *State's Argument: The Executive Order violates the Establishment & Equal Protection Clauses – intended to disfavor Muslims.*
 - *Support for Argument: President's consistent statements about issuing a "Muslim ban."*
- *The States' claims raise serious allegations & present significant constitutional questions.*
- *Likelihood of Success Outcome: The Government has not met its burden on showing likelihood of success on appeal on its arguments.*

Stay – Analysis – The Balance of Hardships & the Public Interest

- *Irreparable Injury: The Government has not shown that a stay is necessary to avoid irreparable injury*
- *While the Government's interest in combatting terrorism is an urgent objective of the highest order – no evidence has been submitted by the Government to rebut that the district court's order merely returned the nation temporarily to the position it has occupied for many previous years.*
- *Rather than present evidence to explain the need for the Executive Order, the Government has taken the position that we must not review its decision at all.*
- *States' Evidence: The States have offered ample evidence that if the Executive Order were reinstated even temporarily, it would substantially injure the States & multiple other parties interested the proceeding.*
- *Case Outcome: The emergency motion for stay is denied.*

SNL Skit -- Trump People's Court

<https://www.youtube.com/watch?v=dLYfwprjtog>

(Slide 1)

January 28, 2017

Student (S) – That was a close call, I was worried we were going to miss our flight.

Permanent Resident (PR) – Well, we still have to get through security.

S – The security line doesn't look too bad, we should be fine. I have an exam on Monday & I really need to get back to campus to meet with my study group.

TSA – Please provide your identification. (Looking at student) You have a student visa?

S – Yes, I was visiting family here in Iran over a school break & now I'm heading back to the University of Oregon. I'm a sophomore.

TSA – And what about you?

PR – I'm a green card holder, I've lived in Portland for the last 30 years. I own a home – my entire life including my family are in Portland. All my cats are in Portland.....

TSA – Interesting

S – Sir, may we proceed? We're going to miss our flight.

TSA - Yeah, you are.

PR – Excuse me?

TSA – You two apparently haven't heard about the executive order Trump issued on January 27th.

S – Nope, sure haven't. I'm sure it's fascinating, may we go?

TSA – No, you can't. Today is January 28th & to my knowledge, the ban is still in effect. The Order prevents immigrants and nonimmigrant aliens from certain countries from entering the United States.

PR – But we were just there? What is the purpose of this?

TSA – The purpose is to protect Americans by prohibiting individuals from entering the country who do not support the Constitution or those who would place violent ideologies over American law.

S – Well, we don't fall in that category so you don't need to worry about us. Plus, do you have any idea how many American citizens don't support the Constitution?

(Slide 2)

TSA – Regardless of your beliefs, I can't let you through security, nor can I let you board the flight returning to the United States. You're not American citizens & you're from Iran, one of the 7 countries to which the ban applies. The countries effected by the Order include Iran, Iraq, Libya, Somalia, Sudan, Syria & Yemen. Trump is just trying to effectively deal with the aftermath of 9/11.

S – 9/11? You do realize that none of the 9/11 hijackers were from the countries that fall under the ban, right?

PR – Yeah, that's ridiculous, out of the 154 foreign born nationals who were convicted of carrying out or attempting to carry out a terrorist attack in the United States from 1975-2015, only 17 were from one of these foreign countries.

S- Moreover, none of the 17 were responsible for any deaths even though the 7 countries combined represent 40% of all refugees accepted into the United States in the last 10 years.

(Slide 3)

TSA – It is what it is ladies. The president has the authority to under the Immigration and Nationality Act of 1952. Whenever the president finds that the entry of any aliens into the United States is detrimental to the interests of the United States, he may by proclamation, and for as long as he wants, suspend the entry of all aliens.

PR – Are there no exceptions to the ban? Like I said, I'm a permanent resident & it's imperative that I get back to feed my cats. The cat sitter is only available through tomorrow morning.

TSA – Oh I forgot to ask, are you travelling on diplomatic visas or North Atlantic Treaty Organization visas?

S- Seriously? We've already been over the type of visas we have.

(Slide 4)

TSA – That's what I thought. So again, under the ban – except for some limited exceptions, immigrant and non-immigrant aliens are currently denied access into the United States.

PR – What other terrible provisions are included under this ban?

TSA – The Refugee Admission Program is suspended for 120 days & Syrian refugees can't enter the United States.....ever again. You'll be pleased to hear, that despite the suspension of the Refugees Admission Program that the Secretaries of State & Homeland

Security may still admit individuals to the United States 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.

S – Yeah, that sounds super helpful.....

PR – Well, we're going to take this up with the embassy, we'll be back. How is the rest of the world reacting to this ban?

(Slide 5 – video of people reacting to the Ban)

Announcer: Here is a video of how people at the Dulles airport reacted to the Ban on January 29th.

February 10

(Slide 6)

TSA – You two again? I thought I made it clear that while the Executive Order is in effect, you're stuck here in Iran.

S – Apparently you haven't heard about the recent legal developments over the past 10 days. The 940 people with visas from the seven countries affected by the ban who were denied boarding of in-bound flights to the US are fighting back.

TSA – What are you talking about? I take a few days off.....

PR – Well, the state of Washington filed a complaint seeking declaratory & injunctive relief against defendant Donald Trump & some other key players.

TSA – So what were the states seeking?

S – They asked that certain portions of the Order be invalidated and unenforceable.

PR – Then on February 3rd, they filed an emergency motion for temporary restraining order (TRO) against the defendants.

TSA – I've heard these TROs are hard to get – how'd they pull it off?

(Slide 7)

S – The courts consider a couple of tests such as the Winter test. There are four factors that are considered, but the court primarily focused on the detrimental & significant effect of the ban on the states.

PR – Judge Robart specifically highlighted how the order negatively affects the states' residents in the areas of employment, education, business, family, relations & freedom of travel.

S – Yeah, the states themselves were harmed by the Order because of its impact on the operations & missions of the public universities & other institutions of higher learning – like U of O. (point to shirt)

TSA – All right, all right, so what does all of this have to do with you two?

PR – Under the TRO, certain portions of the Executive Order, most importantly section 3(c) which prevents us from returning to the United States are not enforceable & effectively invalidated.

TSA – I'm assuming this is temporary though?

S- Correct but that leads us to the 9th circuit decision.

(Slide 8)

TSA – Right, because Trump likely wasn't willing to live with Robart's decision.

PR – Correct – following the entry of the TRO– the Government filed a notice of appeal & sought an emergency stay of the court's order. The primary sections under review by the court were the provisions pertaining to the Refugees Admissions Program & the entry of Syrian refugees and aliens from the 7 designated countries into the U.S.

TSA – Well, the Government must have been able to get this all thrown out quickly because the States didn't have standing to seek the TRO.

S – False. The states, the plaintiffs were able to show they had been injured by the ban & that a favorable decision would redress the injury.

TSA – How'd they prove that?

PR – The public universities are branches of the state under state law. And the state universities are severely impacted by this ban – the students and faculty who are nationals of the seven effected countries cannot travel for research, academic collaboration or personal reasons & their families abroad cannot visit.

S – some, like myself have been stranded outside of the country unable to return at all.

PR – Moreover, the injuries would disappear if the ban was no longer in effect.

(Slide 9)

TSA – All right, fine on standing. But why was the 9th circuit permitted to review an executive order pertaining to immigration & national security? Doesn't the president have the unreviewable authority to suspend the admission of any class of aliens?

S – False again. Federal courts routinely review the constitutionality of & even invalidate actions taken by the executive to promote national security, & have done so even in times of conflict.

PR – While the courts should give deference to the political branches on matters of national security & immigration – the Supreme Court nor the 9th circuit has ever held that courts lack the authority to review executive decisions to ensure compliance with the Constitution.

TSA – Understood – let's get back to whether the Government was able to effectively seek the stay.

(Slide 10)

S – The test for determining whether a stay should be granted is basically the same as the test for whether a TRO should be granted. The 9th circuit focused on all 4 factors of the test, but primarily on likelihood of success on the merits or rather likelihood of failure.....

TSA – It seems the government shouldn't have any issues getting the stay since they implemented the Order for national security purposes.

(Slide 11)

S – Well due process was the main issue that took the government down. Under the Executive Order – those effected are denied their due process rights – they don't get their day in court.

PR – The Order violates due process rights of various aliens - those who left can't reenter the U.S. & those who want to leave the U.S., can't for fear they won't be able to return.

TSA – But not everyone in the United States is entitled to due process under the Constitution.

S – Actually, due process protections apply to anyone in the United States, whether they are there lawfully or unlawfully.

PR – These rights apply to certain aliens attempting to reenter the U.S. as well.

TSA – Well, due process shouldn't be an issue because of the authoritative guidance offered by White House Counsel Donald F. McGahn after the ban was issued. He said that the ban doesn't apply to lawful permanent residents.

S – Does he even have the authority to issue an amended order?

PR – And if so, is his statement binding on the executive branch officials?

S – And even if the amendment was valid there are still due process claims for non-immigrant visa holders.

TSA – What about the fact the TRO was overly broad?

S – The court wasn't too worried about it– more specifically even if the TRO was overbroad, it's not the judiciary's responsibility to rewrite it.

PR – The 9th circuit was also unwilling to limit the scope of the TRO – it needs to apply nation-wide, not just to Washington & Minnesota. Moreover, no matter how far you go to narrow the group effected – it will still impact people who have viable due process claims.

(Slide 12)

S – The government was also unable to prove likelihood of success because the Order violates the Establishment & Equal Protection Clauses – it is intended to disfavor Muslims.

TSA – The president doesn't have anything against Muslims.

PR – Yeah, that never came up during his campaign.

TSA – So what other factors were discussed? Balance of hardship? Public interest?

S – The government failed to show the ban was necessary to avoid irreparable injury. While the combatting terrorism is an urgent objective – they failed to rebut the state's argument that the TRO merely returned the nation temporarily to the position it has occupied for many years.

PR – Rather than making an effort to explain the need for the Executive Order, the government took the position that the Order not be reviewed at all.

TSA While the states offered ample evidence that if the Executive Order were reinstated even temporarily, it would substantially injure the states & multiple other parties interested in the proceeding.

S- Exactly.

PR – So the emergency motion for stay was denied, the TRO is still in effect, & we get to go home.

(Slide 13)

Announcer – Video showing Trumps reaction to the 9th circuit decision

ON THE GROUND IN OREGON

THE RACE FOR BABY FATEMEH

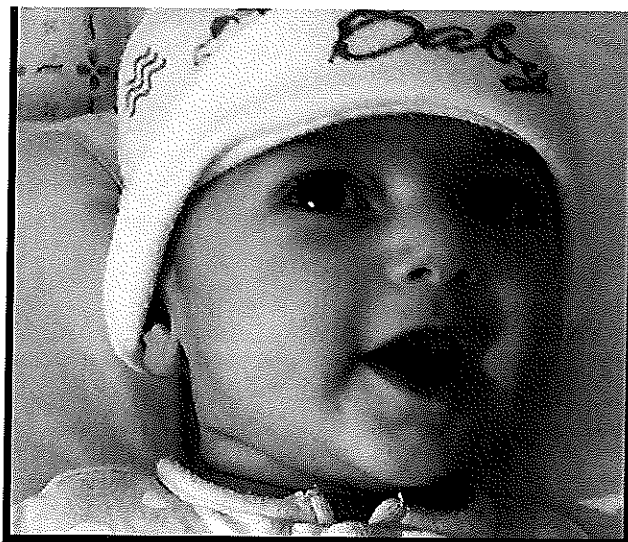
January 27th: Travel Ban

Executive Order Details

- Blocked all entries from passport holders from 7 countries:
 - Iraq
 - Iran
 - Syria
 - Somalia
 - Sudan
 - Yemen
 - Libya
- Indefinitely suspended Syrian refugees from entering the US
- Waiver on a case by case basis



**Family of 4-month-old set to have surgery at OHSU
impacted by Trump's executive order**



- <https://www.youtube.com/watch?v=BCgXa3D8Nfc>

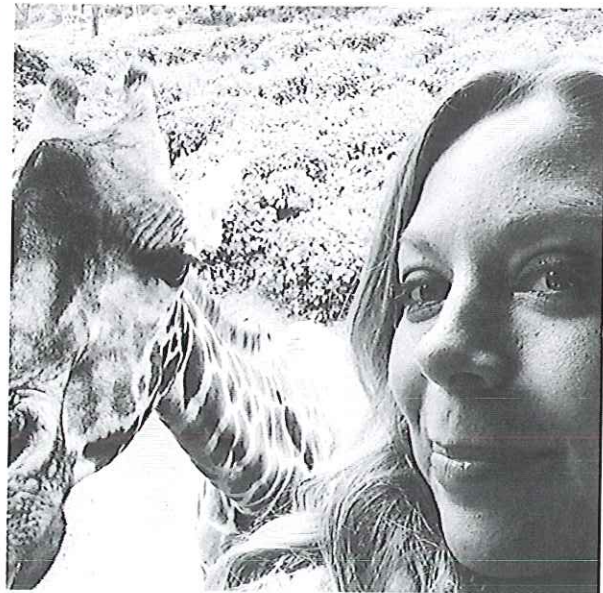
Teaming Up

- Lawyers for Good Government Facebook page was the catalyst!
 - Amber Murray – DC immigration attorney – member of L4GG
 - Dr. Mary Pao Seideman - PA doctor – member of L4GG (assisting on medical issues)
- Oregon Congressional delegation and other state officials
- Media
- OHSU

Amber Murray

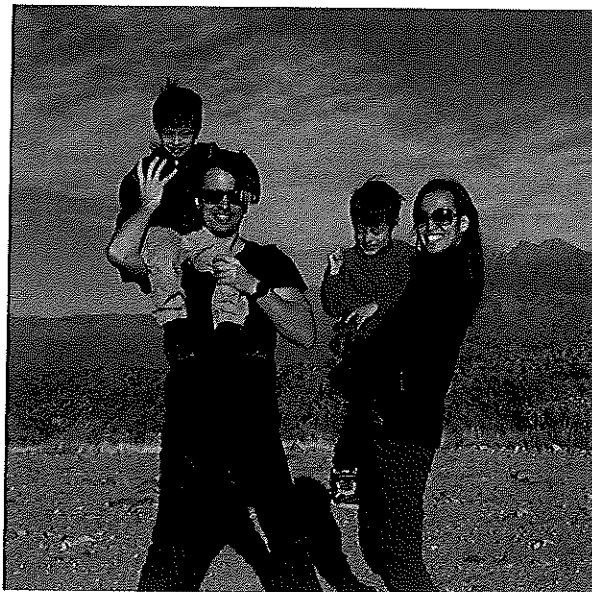
And Stacy the giraffe
(who insisted on the
selfie)

- lawyer
- eternal optimist
- global nomad
- giraffe whisper



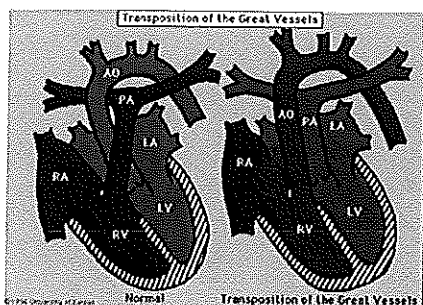
Mary Pao
Seideman
MD PhD

- Former pediatric oncologist
- Immunologist
- Slow skier
- Meat braiser
- Cookie baker



Medical Resources: Defining the Problem

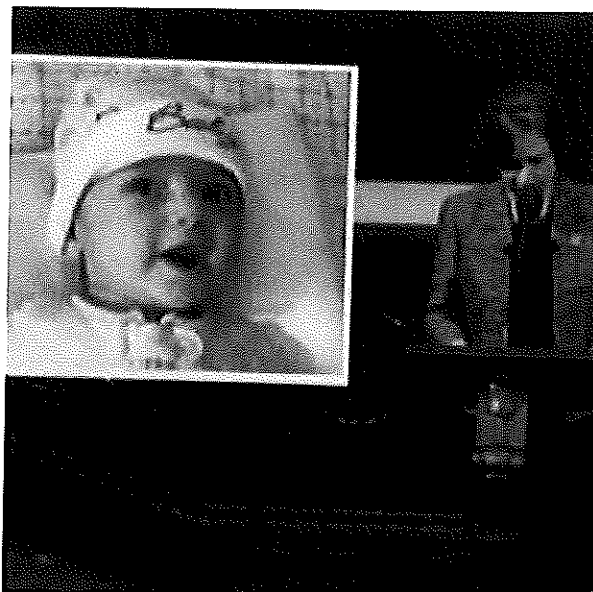
• Initial Assessment



- Medical records reviewed by 6 pediatric cardiologists from top programs across the U.S.
- Israel
- Canada
- Dominican Republic

Congressional Support

Senator Merkley
Senator Wyden
Congresswoman
Bonamici
Congressman
Blumenauer
Governor Kate
Brown
Governor Cuomo



WAIVER GRANTED

- Department of Homeland Security grants waiver of Executive Order on Friday, February 3, 2017
- Admission was pursuant to the exemption authority granted under Section 3(g) of the Executive Order to the Secretary of Homeland Security and further delegated to Customs and Border Protection.
- The family also received waivers of the requirement to have a visa before traveling.

OHSU Physicians Donate Cost of Surgery and Follow-up Care



- <http://www.king5.com/news/local/attorney-iranian-infant-needs-visa-waiver-for-heart-surgery/398773932>



FINAL RESOLUTION

<http://koin.com/2017/02/27/ohsu-docs-update-baby-fatemehs-condition>

SLIDE ONE – The Race for Fatemeh

- I want to tell you a story about how the Travel Ban affected me – professionally and personally.
- I've practiced immigration law for the last 14 years – and when the travel ban hit, it was unlike anything I've seen.
- I've seen massive changes in immigration laws over the last decade, but nothing so big, announced with no notice, that impacted so many people. My phone rang off the hook. My office was filled with immigrants, both the undocumented and perfectly documented, who were fearful.

SLIDE TWO – Airport Photo

- Starting January 27th, I saw immigration attorneys across the country rise up, and when I say rise up, I mean head to airports in huge numbers to protect and try to provide help to immigrants
- Our local chapter of the American Immigration Lawyers Association organized groups of lawyers to go to PDX
- There was a massive amount of solidarity, but a lack of reliable information. Attorneys were winging it. I was about to become one of those attorneys. And for the record, winging it is not really my style.

SLIDE THREE – Headline with Fatemeh's picture

- In the mist of the chaos, I saw that a local Portland family had been affected by the travel ban. An extremely adorably four-month-old from Iran had been trying to get to Portland, where her uncle, Sam (yes, Uncle Sam) and her grandparents lived. The baby's name was Fatemeh, and Baby Fatemeh, as I came to call her, had a very serious heart condition. Her condition was fatal without surgery. Her parents were trying to get her to OHSU for surgery. Unfortunately, their visa appointments had been canceled after the announcement of the travel ban. Suddenly, Baby Fatemeh was all over the news. She was even being discussed on House Floor.

SLIDE FOUR – 1:08 – Oregonian video

SLIDE FIVE – Teaming Up

- A few days later, I was trying to reduce my overall stress level by browsing the Lawyers for Good Government facebook page. Another Oregon lawyer posted one of the news clips of Fatemeh's story and asked if any Oregon attorneys were working on the case. It turned out, no one was, although there was a lawyer in DC who had contacted the family with an offer to help. Her name was Amber Murray, and she mostly worked with refugees from Iraq and Afghanistan. I sent her a quick email to offer help. We decided to join forces.

SLIDE 6 - Amber

- Amber Murray is full of energy. She refused to believe we couldn't find a solution, even though our first conversation went something like this:

Amber: I have no idea how we even apply for a waiver of the ban. Do you?

Me: No, I have no idea. The family doesn't even have visas yet. We have to get them a waiver of the ban, and then we have to get them visas, or a separate waiver of the visas. That seems impossible.

Amber: There must be a way. We'll just wing it!

I told Amber I really hated winging it, but agreed there didn't seem to be any other option. And then I started calling Oregon's congressional representatives.

SLIDE 7 – Mary

- Amber introduced me to Dr. Mary Pao Seideman, a former pediatric oncologist. They had “met” on the Lawyers for Good Government facebook page. Dr. Mary, as we call her, wasn't a lawyer, but she liked activist lawyers, Dr. Mary, as we called her, was our volunteer medical specialist, helping us understand Baby Fatemeh's heart condition so that we could explain it to reporters in lay terms. She also was a big fan of reminding us to eat, when it became obviously that we were not sleeping or eating, and mostly surviving on adrenaline and caffeine.

SLIDE 8 – Heart slide

And the medical issues were serious. Fatemeh had three holes in her heart. We got medical records from Fatemeh's doctors in Iran. With Dr. Mary's help, we had those medical records reviewed by six cardiologists in the U.S., but also in Israel, Canada and the Dominican Republic. We knew the family wanted to come to OHSU for the surgery, but we weren't sure if we could really get around the travel ban, so we decided to talk to any hospital who would consider providing care. At the same time, we decided we would try an all-out media blitz, to try to get national media to pay attention. We figured the more high-profile Baby Fatemeh's case was, the better shot we had we had at getting a waiver. It worked. CNN, the Associated Press, Reuters, The Chicago Tribune, the Guardian, and countless other media picked up the story.

SLIDE 9 – Congressional Support

- But even as the media coverage became more intense, other things became clear. The most obvious was that we had no idea how on earth to get a waiver of the ban. We didn't even know where we should file the application. There was no form – and you know when there is no form for an immigration application, the world has truly turned upside down.
- We leaned on the Oregon Congressional delegation for help and support, especially regarding how to apply for the waiver. Since there was no application form or even guidance, we made it up. The Oregon delegation, with the exception of Congressman Walden, wrote a joint appeal to the Department of State to submit with our waiver application.

SLIDE 10 - WAIVER GRANTED

- And then, on Friday afternoon, February 3, just a few hours before Judge Robart issued his ruling blocking the ban nationwide, we got a call from the Department of Homeland Security.

- I cannot tell you how strange this was. The Department of Homeland Security simply does not call applicants or their attorneys. I thought seriously that it might be a prank. I will admit to googling the alleged caller's name as he spoke. He seemed legit.....
- In the end, it was real. The Department of Homeland Security granted a waiver of the Executive Order, and additionally waived the requirement that the family have visas to travel. Baby Fatemeh was coming to Portland.

SLIDE 11 – OHSU Physicians Donate Cost of Surgery and Follow-up Care

- And, in the end, the family's original plan came true. Although Mt. Sinai offered to perform the surgery for free, OHSU did the same, and the family chose to have the surgery at OHSU so that they could be near Uncle Sam and Baby Fatemeh's grandparents in Portland. Baby Fatemeh made headlines again.

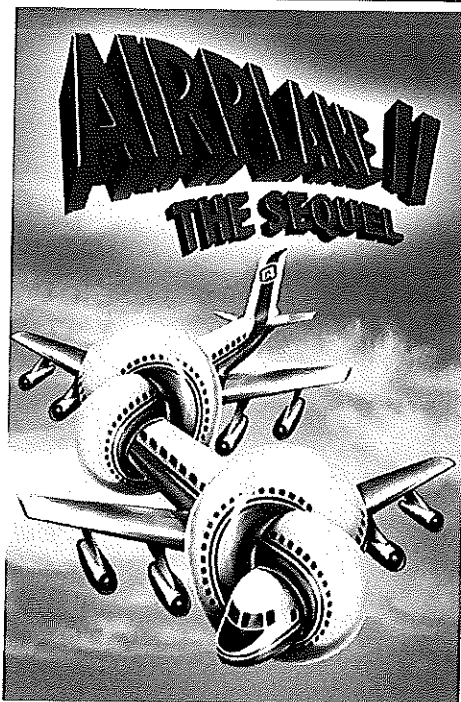
SLIDE 12 - KGW video

SLIDE 13 – Airport group photos

- On February 6th, at midnight, I greeted Baby Fatemeh and her mother and father at Portland International Airport, along with doctors and staff from OHSU, Uncle Sam, and baby Fatemeh's grandparents.
- The family had traveled 33 hours. They had one small suitcase. They had very little idea that baby Fatemeh had become the face of the travel ban. The next day, Fatemeh was admitted to Doernbecher. And on February 17th, doctors and Uncle Sam provided an update.

SLIDE 14 – KOIN video

And that is how I fought the travel ban, and Trump, and won. It was definitely a highlight of my life.



Iraq left off the list of 7 countries ...

13212

Federal Register/Vol. 82, No. 45/Thursday, March 9, 2017/Presidential Documents

reduced due to the efforts and sacrifices of the Iraqi government and armed forces, working along with a United States-led coalition, the ongoing conflict has impacted the Iraqi government's capacity to secure its borders and to identify fraudulent travel documents. Nevertheless, the close cooperative relationship between the United States and the democratically elected Iraqi government, the strong United States diplomatic presence in Iraq, the significant presence of United States forces in Iraq, and Iraq's commitment to combat ISIS justify different treatment for Iraq. In particular, those Iraqi government forces that have fought to regain more than half of the territory previously dominated by ISIS have shown steadfast determination and earned enduring respect as they battle an armed group that is the common enemy of Iraq and the United States. In addition, since Executive Order 13769 was issued, the Iraqi government has expressly undertaken steps to enhance travel documentation, information sharing, and the return of Iraqi nationals subject to final orders of removal. Decisions about issuance of visas or granting admission to Iraqi nationals should be subjected to additional scrutiny to determine if applicants have connections with ISIS or other terrorist organizations, or otherwise pose a risk to either national security or public

Immigration officials coerced Yemenis to sign away green cards, suit claims

Brothers were detained and forced to sign papers revoking US residency. They neither read nor understood and placed on flight back to Ethiopia, lawyers say.



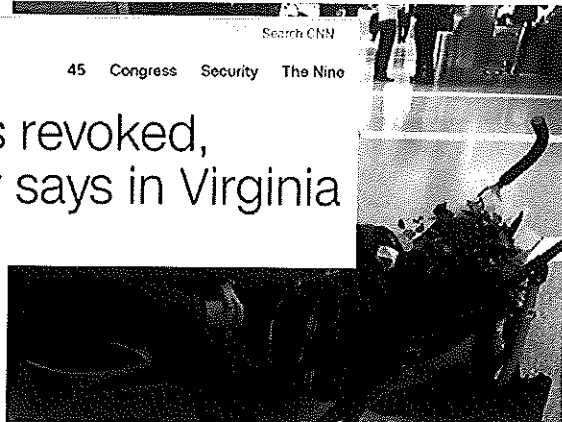
Two Yemeni brothers de unlawfully coerced into Ethiopia just hours after Donald Trump signed an executive order banning travel from seven Muslim majority countries, a lawsuit has claimed.

Tareq Aziz, 21, and Ammar Aziz, 19, were handcuffed, detained and "forced to sign papers that they neither read nor understood" and then placed on a flight back to Addis Ababa hours after arriving at Dulles international airport in Virginia on Saturday morning, lawyers contend. The brothers were en route to Michigan to reunite with their father, Agel Aziz, a US citizen based in Flint.

KQED News TOPICS PROGRAMS & BLOGS SPECIAL COVERAGE

THE CALIFORNIA REPORT

LAX Immigration Agents Asked Detainees to Sign Away Their Legal Residency Status, Attorneys Say



CNN politics

Over 100,000 visas revoked, government lawyer says in Virginia court

The "FATEMEH EXCEPTION"



(iv) the foreign national seeks to enter the United States to visit or reside with a close family member (e.g., a spouse, child, or parent) who is a United States citizen, lawful permanent resident, or alien lawfully admitted on a valid nonimmigrant visa, and the denial of entry during the suspension period would cause undue hardship;

(v) the foreign national is an infant, a young child or adoptee, an individual needing urgent medical care, or someone whose entry is otherwise justified by the special circumstances of the case;

(vi) the foreign national has been employed by, or on behalf of, the United States Government (or is an eligible dependent of such an employee) and the employee can document that he or she has provided faithful and valuable service to the United States Government;



13209

Federal Register

Presidential Documents

Vol. 82, No. 45

Thursday, March 9, 2017

Title 3—

Executive Order 13780 of March 6, 2017

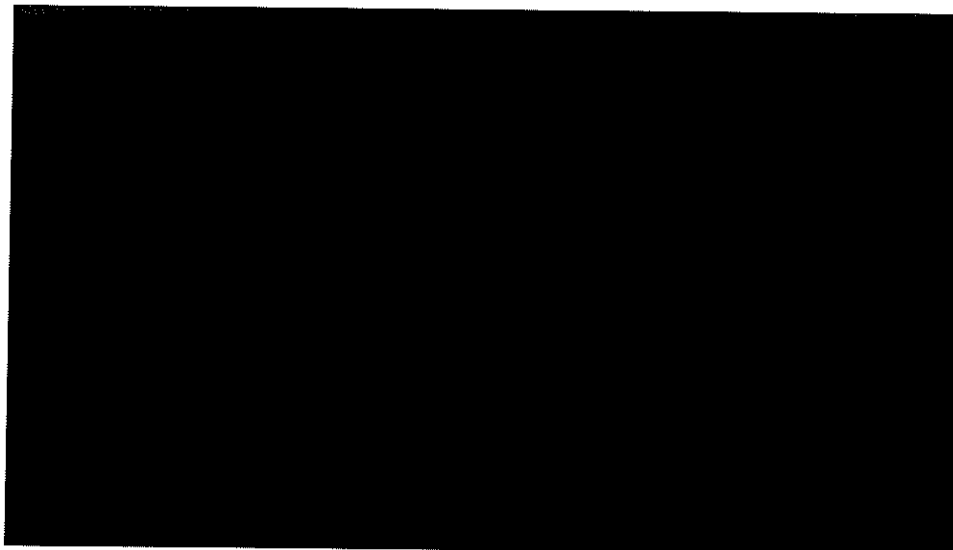
The President

Protecting the Nation From Foreign Terrorist Entry Into the United States

Sec. 14. *Effective Date.* This order is effective at 12:01 a.m., eastern daylight time on March 16, 2017.

Nine days later ...

Donald Trump on Anderson Cooper, March 9, 2016



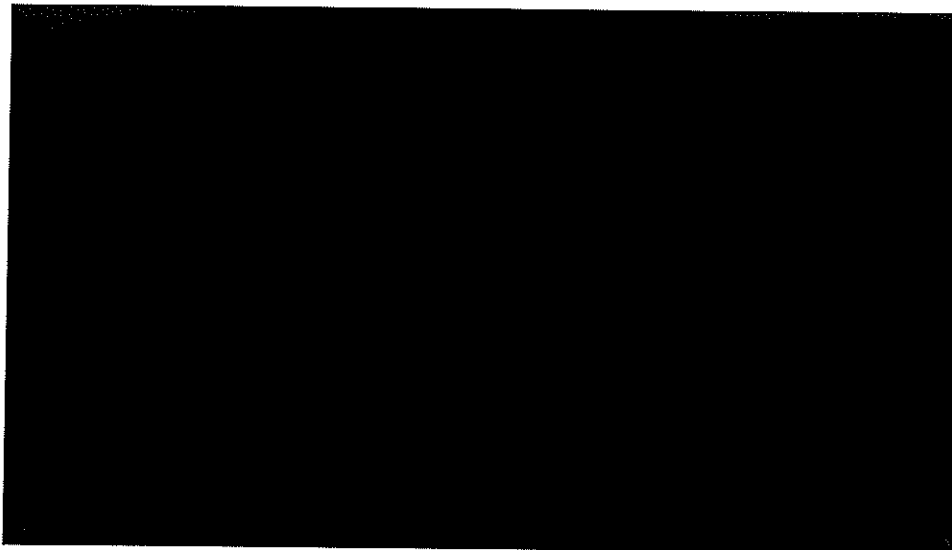
- DECEMBER 07, 2015 -

DONALD J. TRUMP STATEMENT ON PREVENTING MUSLIM IMMIGRATION

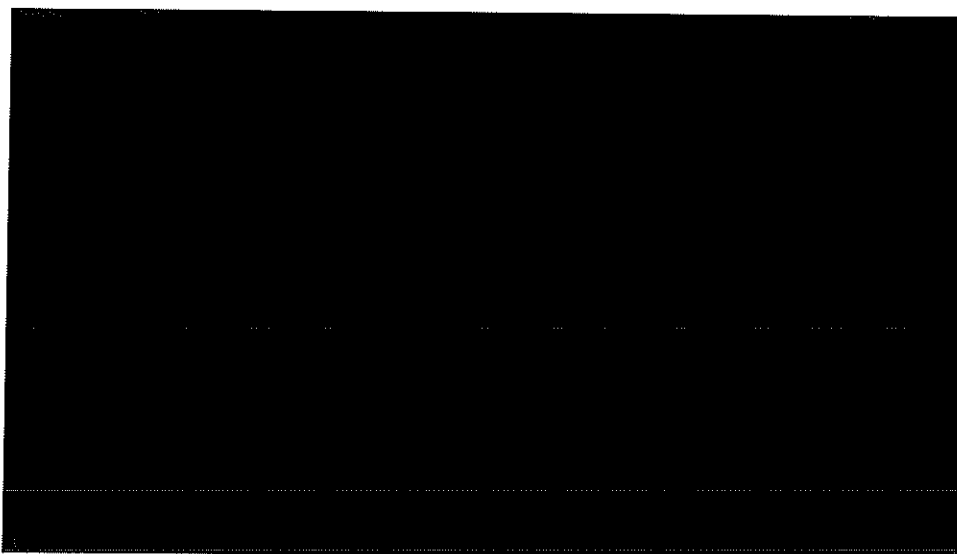
(New York, NY) December 7th, 2015, -- Donald J. Trump is calling for a total and complete shutdown of Muslims entering the United States until our country's representatives can figure out what is going on. According to Pew Research, among others, there is great hatred towards Americans by large segments of the Muslim population. Most recently, a poll from the Center for Security Policy released data showing '25% of those polled agreed that violence against Americans here in the United States is justified as a part of the global jihad' and 51% of those polled, 'agreed that Muslims in America should have the choice of being governed according to Shariah.' Shariah authorizes such atrocities as murder against non-believers who won't convert, beheadings and more unthinkable acts that pose great harm to Americans, especially women.

Mr. Trump stated, 'Without looking at the various polling data, it is obvious to anybody the hatred is beyond comprehension. Where this hatred comes from and why we will have to determine. Until we are able to determine and understand this problem and the dangerous threat it poses, our country cannot be the victims of horrendous attacks by people that believe only in Jihad, and have no sense of reason or respect for human life. If I win the election for President, we are going to Make America Great Again.' - Donald J. Trump

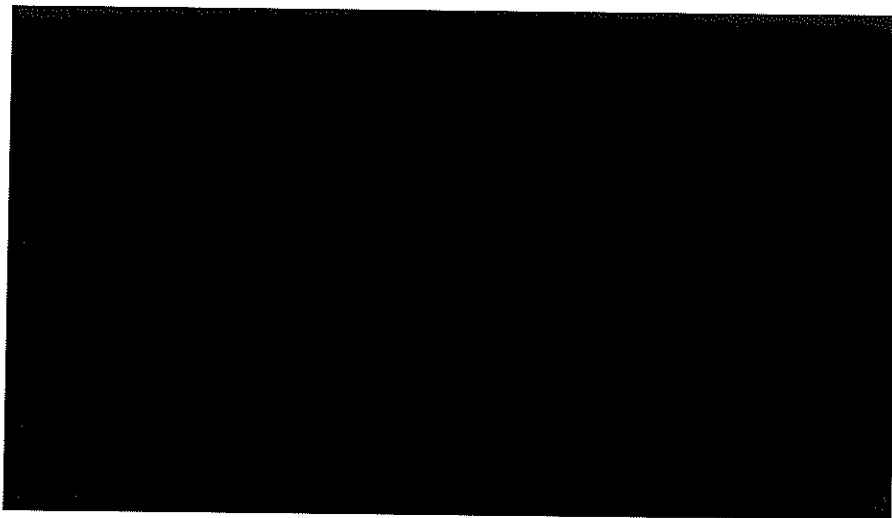
Donald Trump on Meet the Press, July 24, 2016



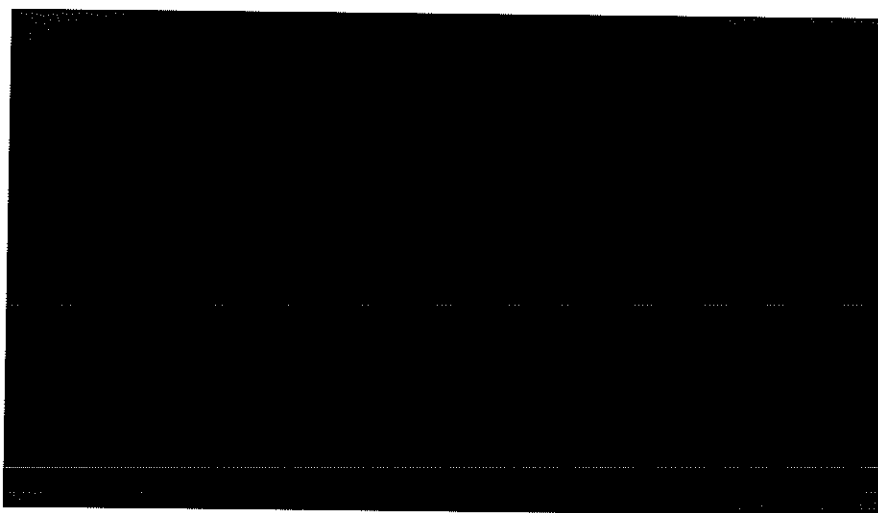
Donald Trump at the Second Presidential Debate



Oh Rudy ...



Stephen Miller, February 21, 2017



CPB Agent: Finally, we have a new Muslim Ban, err--- Executive Order Protecting the Nation for Foreign Terrorists! Now to find somebody to use it on ... you there! Where are you coming from?

Iraqi: Iraq.

CPB: Aha! Out you go. Iraq is on the list of countries referred to in, or designated under, section 217(a)(12) of the INA, in which Congress restricted use of the Visa Waiver Program. Iraq was also one of the countries listed in the first Executive Order!

Iraqi: Nice try. Iraq is specifically excluded from the list of countries in the second executive order.

CPB (clearly disappointed): Oh. Hey, is this because there were a bunch of sympathetic Iraqis who helped our troops in Iraq, but then were barred from the United States under the first Executive Order and it was really embarrassing for the President?

[Slide]

Iraqi: No. Nothing to do with that at all. It's because of the "close cooperative relationship" between the Iraqi government and the United States. See you later.

(Iraqi walks through)

CPB: Man, maybe I'll get the next one. You there! Where are you coming from?

Iranian: Iran.

CPB: Iran, perfect. Clearly you cannot come into the United States.

Iranian: Actually, I can. I'm a lawful permanent resident of the United States—I was just in Iran to visit relatives.

CPB: But I clearly remember that we got to kick out a lot of green card holders back when the first Executive Order was signed.

Iranian: Right, I think I remember seeing that on the news. And of course, that was the basis for the 9th Circuit decision in *Washington v. Trump*, that the first Executive Order denied due process rights to lawful permanent residents. But in the new Executive Order, they've explicitly stated that it doesn't apply to lawful permanent residents.

CPB: Who else is excluded from this new order?

Iranian: The order only applies to those who were outside the U.S. on the date the Executive Order takes effect, and didn't already have a valid visa on that date, and didn't have a valid visa as of the date of the prior executive order.

CPB: Wait, you mean even if we managed to revoke someone's visa under the prior Executive Order, this new order doesn't apply to them?

CPB: Fine, fine, fine. Go on, this is just too much to handle for me right now.

Iranian: Thank you!

CPB: Next!

Syrian: Hi there. I'm trying to get into the United States from Syria.

CPB: Do you have a green card?

Syrian: No.

CPB: Are you a baby?

Syrian: No.

CPB: Aha! Ma'am, I'm delighted to inform you that because of an executive order that President Trump signed yesterday, you cannot enter the United States.

Syrian: Wait, did you say yesterday? What day is it right now?

CPB: March 7

Syrian: That executive order doesn't even take effect until March 16th!

[slide]

CPB: What??? I thought this was an emergency measure to keep out terrorists?

Syrian: That's what the order says

CPB: And didn't we argue that we had to implement the last executive order with no advance notice so that muslims, err- I mean, terrorists wouldn't rush in at the last minute?

Syrian: I believe you did make that argument, yes.

CPB: That's it, I'm out of here. I'll be back on March 16th once this order has taken effect.

[slide]

CPB: Alright, I'm back. OK, where are you from?

Yemeni: Yemen.

CPB: Perfect. Green card?

Yemeni: No.

CPB: Baby?

Yemeni: What?

CPB: Never mind. Now that Trump's executive order has taken effect, you are barred from entering the country.

Yemeni: Wait, didn't you hear? The State of Hawaii sued and a federal judge there issued a TRO, and later a preliminary injunction blocking the executive order from ever taking effect?

CPB: What??? Why did they do that?

Yemeni: Well, the first Executive Order was struck down on due process grounds. And while the Ninth Circuit kind of ducked the issue about whether the travel ban violated the establishment clause, Hawaii district judge Watson took the issue head on and held that the order likely violated the establishment clause by discriminating on the basis of religion

CPB: Hold on – how did the judge figure out--- err, I mean, decide that the order discriminated against Muslims? It doesn't say anything about religion anywhere in the order?

Yemeni: That's true – the law is facially neutral. But that's not the end of the inquiry. A facially neutral law enacted for a discriminatory purpose violates the constitution as well. And Judge Watson held that this order represented the implementation of Trump's long-promised "Muslim ban."

CPB: How can a court even decide what the "intent" behind the order was? It's not as if the judge can suddenly read minds

Yemeni: Yeah, but you don't exactly have to be a mind reader to figure out what President Trump was up to here.

[Slide]

Yemeni: And this wasn't just something he said in off the cuff statements. Here's a press release from last year: "Donald J. Trump is calling for a total and complete shutdown of Muslims entering the United States until our country's representatives can figure out what is going on."

[Slide]

CPB: Well, OK, but that was the Muslim Ban. These executive orders have nothing to do with that whatsoever!

Yemeni: Yeah, I think we've got that on tape too. Here he is on Meet the Press explaining how we got from a "muslim ban" to banning people from certain countries:

[Slide]

Yemeni: And here he is at the second presidential debate explaining how the muslim ban "morphed" into extreme vetting from certain parts of the world.

[Slide]

Yemeni: And then ... there's Rudy:

[Slide]

CPB: Ok, but that was the first executive order. But now we're talking about the second executive order. That's a brand new order! Totally separate from the first order, so we can ignore all those things that the Trump administration said, right?

Yemeni: Perhaps, but then White House advisor Steve Miller went on TV and said this:

[slide]

CPB: Oh wow, I totally see how they figured out this was supposed to be the Muslim ban now.

Yemeni: Yeah, doesn't seem like it was exactly a state secret. Can I go now?

CPB: Yeah. Welcome to the United States!

8 U.S.C. § 1357(c) – Search without warrant

Any officer or employee . . . shall have power to conduct a search, without warrant, of the person, and of the personal effects in the possession of any person seeking admission to the United States, . . . whom such officer or employee may have reasonable cause to suspect that grounds exist for denial of admission to the United States

19 U.S.C. § 1958 – Tariff Act of 1930, Search of Persons and Baggage:

The Secretary of the Treasury may prescribe regulations for the search of persons and baggage . . . and all persons coming into the United States from foreign countries shall be liable to detention and search by authorized officers or agents of the Government under such regulations.

18 U.S.C. § 1905 – Disclosure of Confidential Information Generally.

Whoever, being an officer or employee of the United States . . . discloses, or makes known in any manner . . . any information coming to him in the course of his employment or official duties or by reason of any examination or investigation . . . which information concerns or relates to the trade secrets . . . shall be fined under this title, or imprisoned not more than one year, or both; and shall be removed from office or employment.

Part 5

Search of Electronic Devices

U.S. Citizen approaches security.

TSA: Please provide your identification.

C: Here's my passport, I'm so glad to be home.

TSA: I'll also need to inspect your phone and computer as part of your entry into the United States, so you need to provide me with the passwords to access both.

C: Why?

TSA: By inspecting your phone and your computer, I will be able to determine whether you, your admission, or any of the items in your possession pose a threat. So hand them over.

C: But I am a U.S. Citizen. I am just returning from a quick work trip and this is my work phone and my work computer. Don't I have a fourth amendment right against unreasonable searches and seizures? Don't you need a warrant to access these devices?

TSA: Actually, under federal law, any immigration officer has the power to conduct a warrantless search of the people and the items in their possession, of any person seeking to enter the United States. This is known as the "border search exception" to the Fourth Amendment's requirement to probable cause. So I don't need a warrant to search your phone and computer.

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8 U.S.C. § 1357 (c) Search without warrant

Any officer or employee . . . shall have power to conduct a search, without warrant, of the person, and of the personal effects in the possession of any person seeking admission to the United States, . . . whom such officer or employee may have reasonable cause to suspect that grounds exist for denial of admission to the United States . . .

C: But I heard that in *Riley v. California*, the Supreme Court ruled that law enforcement needed a warrant to search electronic devices during an arrest.

TSA: I'm not arresting you. I'm conducting a border search to determine whether you pose a threat to the US. Plus, according to Department of Homeland Security John Kelly, there's an old Tarriff Act from 1930 that also allows me to search you and your baggage.

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19 U.S.C. § 1958 – Tariff Act of 1930, Search of Persons and Baggage:

The Secretary of the Treasury may prescribe regulations for the search of persons and baggage . . . and all persons coming into the United States from foreign countries shall be liable to detention and search by authorized officers or agents of the Government under such regulations.

C: But I am a U.S citizen, in fact, I work for NASA and have passed extensive background checks so that I can work for the federal government. Because I travel so much for work, I am even a member of the Customs and Border Protection Global Entry Program. This means that the CBP has already completed an extensive background check on me and maintains a copy of my fingerprints on record.

The items that you want to search were provided to me by NASA and they contain sensitive information that I am not authorized to disclose. I'm pretty sure that all of the information contained on these devices is above your security clearance.

TSA: Don't worry, you have nothing to worry about – all CBP officers strictly adhere to The Trade Secrets Act which prevents CBP officers from disclosing privileged, personal or business confidential information that we obtain during the course of our duties. So clearly, I won't tell anyone about the information I find on your phone and computer.

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18 U.S.C. § 1905 – Disclosure of Confidential Information Generally.

Whoever, being an officer or employee of the United States . . . discloses, or makes known in any manner . . . any information coming to him in the course of his employment or official duties or by reason of any examination or investigation . . . which information concerns or relates to the trade secrets . . . shall be fined under this title, or imprisoned not more than one year, or both; and shall be removed from office or employment

TSA: Plus, cooperation is mandatory. If you don't willing provide me with your phone and your computer, you will forfeit the property and I can seize these items.

C: So if I don't do this willingly, you'll just take my devices and keep them?

TSA: That's right and you might as well give me your passwords to your social media accounts because I am also going to look at those along with your photos and e-mails.

C: *** hands over phone *** Well I guess I don't have a choice this time. However, I heard that new legislation was just introduced in early April by Senators Ron Wyden and Rand Paul that would protect American citizens from warrantless searches of their phones and laptops when crossing the border.