

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

AMER AL HOMSSI,)	
)	
<i>Plaintiff,</i>)	
)	
v.)	Case No. 17-801
)	
DONALD TRUMP, President of the)	
United States; U.S. DEPARTMENT OF)	
HOMELAND SECURITY (“DHS”);)	
U.S. CUSTOMS AND BORDER)	
PROTECTIONS (“CBP”); JOHN KELLY,)	
Secretary of DHS; and KEVIN K.)	
MCALEENAN, Acting Commissioner of)	
CBP,)	
<i>Defendants.</i>)	

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

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INTRODUCTION

Dr. Amer Al Homssi is collateral damage in President Donald J. Trump's ill-planned and discriminatory Executive Order entitled "Protecting the Nation From Foreign Terrorist Entry Into the United States." Dr. Al Homssi is a resident in Internal Medicine at the University of Illinois Chicago/Advocate Christ Hospital in Oak Lawn, Illinois. On January 18, 2017, Dr. Al Homssi returned to the United Arab Emirates to get married, which he did on January 23, 2017. In order to return to his residency program timely, on January 29, 2017, he attempted to board his flight to Chicago O'Hare on Etihad Airways at the Abu Dhabi International Airport. At the U.S. Pre-Clearance Security, a U.S. officer seized Dr. Al Homssi's passport, form DS-2019, and boarding pass, and ordered him to secondary screening. At secondary screening, Dr. Al Homssi was asked a number of questions by U.S. Pre-Clearance Security Officers, and he voluntarily provided the U.S. officers his cellular telephones and other personal belongings for inspection. Included on one of his cell phones was a mobile prayer app entitled "Islamona," a screenshot of which is attached as Exhibit A and made part hereof. At no time was Dr. Al Homssi asked any questions pertaining to terrorism, terrorism related activity, affiliation with any international terrorist organizations, or any other conceivable question related to his being someone who should be denied entry to the U.S. because he is suspected of being a terrorist. In fact, Dr. Al Homssi, age 24, has an impeccable background and no criminal record whatsoever. In the words of his supervisor, Dr. Armand Krikorian of the University of Illinois Advocate Christ Medical Center, Dr. Al Homssi "is in good standing in the program and his performance has been excellent at all levels."

Nevertheless, after being questioned and having his belongings searched, one of the U.S. Officers returned his documents, including his valid J-1 and B1/B2 Visas. Remarkably, the Visas had black marking pen drawn through them with the hand-written notation "Cancelled E.O."

59447v.8.” Copies of said Visas, marked Exhibits B, are also attached hereto and made part hereof. The U.S. Officers then informed Dr. Al Homssi that he could not board his flight because he was not able to return to the United States based upon President Trump’s Executive Order. The U.S. Officers also told Dr. Al Homssi that it might be 90 days or longer before he could ever expect to board a flight to the U.S. Dr. Al Homssi now finds himself unable to return to his residency program at UIC, and if he cannot complete this program he faces the risk of being excluded from the UAE and forced to return to war-torn Syria—where he has not been since he was 17 years old on vacation, and where he has never lived. All of these dreadful consequences, the foregoing Complaint will show, are the result of his being a member of the Muslim faith that is now being treated differently in the United States in stark violation of the First Amendment’s Establishment Clause. His treatment and the Executive Order also violate a number of other constitutional and statutory provisions discussed below.

JURISDICTION AND VENUE

1. Under U.S. Const. Art. III §2, this Court has jurisdiction because the rights sought to be protected herein are secured by the United States Constitution and federal common law. Jurisdiction is proper pursuant to 28 U.S.C. § 1331, 1332, and 1361, 5 U.S.C. § 702, 5 U.S.C. § 706, the United States Constitution, and federal common law. This court has further remedial authority pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*

2. Venue properly lies within the Northern District of Illinois because Dr. Al Homssi works and resides in Oak Lawn, Illinois.

PARTIES

3. Amer Al Homssi, Plaintiff, is a citizen of Syria. He also holds legal residency in the United Arab Emirates. Despite being currently domiciled in Oak Lawn, Illinois, and in

possession of a valid J-1 visa issued to complete his residency at the University of Illinois College of Medicine/Christ Advocate Hospital, Plaintiff was briefly detained at Abu Dhabi International Airport on Sunday, January 29, 2017, and subsequently refused entry onto an Etihad Airways flight bound for Chicago, O'Hare International Airport. During his detention, Plaintiff's J-1 and B1/B2 visa was "cancelled."

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

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

6. Defendant John Kelly is the Secretary of DHS. He is sued in his official capacity.

7. Defendant Kevin K. McAleenan is the Acting Commissioner of CBP. He is sued in his official capacity.

8. Defendant Donald Trump is the President of the United States. He is sued in his official capacity.

STATEMENT OF FACTS

9. On December 7, 2015, during Defendant Trump's presidential campaign, he issued the following press release, which reads, in relevant part:

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.

Donald J Trump Statement on Preventing Muslim Immigration, December 7, 2015, available at <https://www.donaldjtrump.com/press-releases/donald-j.-trump-statement-on-preventing-muslim-immigration>.

10. On January 14, 2016, at the Sixth Republican Presidential Debate, Defendant Trump had the following colloquy with the moderator, Maria Bartiromo:

Bartiromo: Mr. Trump -- Mr. Trump, your comments about banning Muslims from entering the country created a firestorm. According to Facebook, it was the most-talked-about moment online of your entire campaign, with more than 10 million people talking about the issue. Is there anything you've heard that makes you want to rethink this position?

Trump: No. Look, we have to stop with political correctness. We have to get down to creating a country that's not going to have the kind of problems that we've had with people flying planes into the World Trade Centers, with the -- with the shootings in California, with all the problems all over the world."

See <https://www.lawfareblog.com/highlights-6th-gop-presidential-debate>.

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

12. One week later, on January 27, President Trump signed an executive order entitled, "Protecting the Nation from Foreign Terrorist Entry into the United States," which is attached hereto as Exhibit C and is hereinafter referred to as the "EO." The Executive Order has already gained national and international media attention and nationwide protests, and has been dubbed uniformly as the "Muslim Ban" because its underlying motive has been clearly broadcast to the general public by the Trump Administration.

13. The EO was written in a pretextual way to avoid using the term "Muslim," but is targeted at Muslim-majority countries (Iraq, Iran, Libya, Somalia, Sudan, Syria and Yemen). The EO directs a variety of changes to the manner and extent to which non-citizens may seek and

obtain admission to the United States, particularly (although not exclusively) as refugees. Among other things, the EO imposes a 120-day moratorium on the refugee resettlement program as a whole; proclaims “that the entry of nationals of Syria as refugees is detrimental to the interests of the United States,” and therefore “suspend[s]” indefinitely their entry to the country; similarly proclaims that “the entry of more than 50,000 refugees in fiscal year 2017 would be detrimental to the interests” of the country.

14. Most relevant to the instant action is Section 3(c) of the EO, in which President Trump proclaims “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 that he is therefore “suspend[ing] entry into the United States, as immigrants and nonimmigrants, of such persons for 90 days from the date of this order,” with narrow exceptions not relevant here.

15. According to the terms of the EO, therefore, the “entry into the United States” of non-citizens from Iraq, Iran, Libya, Somalia, Sudan, Syria, and Yemen is “suspended” from 90 days from the date of the EO.

Plaintiff

16. Plaintiff Amer Al Homssi is a 24-year-old citizen of Syria, who is married, with no children. Plaintiff was born in Syria, but holds legal residency in the United Arab Emirates (“UAE”), which is contingent upon his enrollment in his medical residency program.

17. Plaintiff is a graduate of the University of Sarjah in the United Arab Emirates, where he received his degree in Medicine in June of 2016. (See Ex. D). After the completion of his medical degree, the Illinois College of Medicine at Chicago accepted Plaintiff as a resident in their internal medicine residency program at Advocate Christ Hospital, where he has now been an

active resident since August 2, 2016. (See Ex. E, Dr. Al Homssi's temporary medical license to practice medicine in the State of Illinois). Plaintiff obtained a J-1 visa, including a DS-2019 form, valid from August 3, 2016 – August 2, 2017, for that purpose.¹ (See Ex. F).

18. Dr. Al Homssi is currently in good standing at the University of Illinois at Chicago/ Advocate Christ Medical Center and is desperately needed there. Dr. Armand Krikorian of the University of Illinois Advocate Christ Medical Center attests to his good standing and excellence, emphasizing that "his performance has been excellent at all levels. His timely presence is critically needed to continue providing patient care at our hospital serving a wide community in Oak Lawn, Illinois." (See Ex. G).

19. Plaintiff arrived in the United States to complete his residency in internal medicine at the University of Illinois Chicago/Christ Advocate Hospital on August 2, 2016. He rented an apartment in Oak Lawn, Illinois, and obtained an Illinois Driver's License and Illinois Identification Card.

20. On January 18, 2017, after almost six months of his medical residency in the United States, Plaintiff flew back to the UAE to get married.

21. On January 28, 2017, Plaintiff purchased a round-trip flight from the UAE to the United States; departing the UAE for Chicago on January 29, 2017, and returning to the UAE on June 24, 2017, at the conclusion of his J-1 visa and the first year of his residency.

22. On the morning of January 29, 2017, Plaintiff's father, a pathologist living in the UAE, drove his son to the Abu Dhabi International Airport. Plaintiff's father dropped off his son at approximately 1:00 AM to board his 4:00 AM Etihad Airways flight direct to Chicago, O'Hare International Airport.

¹ Plaintiff also previously traveled in the United States on (B1/B2) visas in June 2015 and January 2016.

23. At the airline counter, the airline representative for Etihad Airways noticed Dr. Al Homssi's Syrian passport and stepped aside to make a call. The representative came back from the call, checked Dr. Al Homssi's luggage, gave Dr. Al Homssi his passport and boarding pass, and told him to go to U.S. Pre-Clearance to get his stamp of approval to leave the country.

24. At U.S. Pre-Clearance, Dr. Al Homssi spoke with a U.S. Pre-Clearance security officer. Dr. Al Homssi explained that he was returning to Chicago to continue his medical residency. The officer took his passport, his form DS-2019 (a supplementary document to his J-1 visa), and his boarding pass. The officer took his fingerprints and then ordered him to a secondary security check room, an enclosed area for which one needed to be escorted in and out.

25. Dr. Al Homssi was then taken by another officer into an individual closed private room, along with his carry-on luggage. The U.S. security officer asked questions about Dr. Al Homssi's work, place of birth, travel, father, mother, brother, and wife. The U.S. security officer then asked Dr. Al Homssi to unlock his two mobile phones (his U.S. and UAE phones). The officer took the phones and looked at the photographs on the phones and went through the applications on the phones. The officer saw on Dr. Al Homssi's U.S. mobile phone an application called "Islamona," which is a mobile Quran prayer app. According to the Islamona app details from the Google app store, this app is "Recognized by more than 30 million Muslims around the world as the most accurate prayer time & azan application," and "features the full Quran with Arabic scripts, phonetics, translations and audio recitations as well as a Qibla locator, an Islamic Hijri calendar, a map of halal restaurants and Mosques, etc..." The officer asked a few more questions, but *no questions* about whether Dr. Al Homssi was affiliated in any way with a designated terrorist organization. The officer then went through Dr. Al Homssi's wallet and took the number of his Illinois ID and IL Driver's License; searched the rest of the wallet; searched inside his carry-on

luggage; reviewed his university transcript, medical certificate, and work contract. Dr. Al Homssi was then escorted back to the enclosed group area.

26. Dr. Al Homssi was then called by a third U.S. Pre-Clearance officer and directed to a counter, where he was told that he was being refused entry into the U.S. because of the executive order. Dr. Al Homssi said that he had to return for his medical residency. The officer told him there was nothing he could do except wait 90 days and follow up with the U.S. Embassy. If Dr. Al Homssi does not complete his medical residency in the United States, he will lose his legal residency status in the UAE, and will be returned to Syria.

27. Dr. Al Homssi was then escorted out of the enclosed Pre-Clearance area, along with another Syrian citizen, and allowed to get his two pieces of checked luggage.

28. At that point, an airline officer returned to Dr. Al Homssi his passport and form DS-2019, along with a printed paper that states that he was refused entry into the U.S.

29. When Dr. Al Homssi looked at his passport, he noticed that the J-1 visa page had been marked diagonally with a fat black marker pen drawn through it, and in blue pen along that black mark, it was written: "Cancelled E.O. 59447v8." His other visa (B1/B2) was also marked cancelled. The stamp to leave the UAE was also cancelled.

30. Dr. Al Homssi is currently in the UAE and his J-1 visa has been cancelled. He is expected at work at the University of Illinois Chicago/Christ Advocate Hospital to be on duty as a resident doctor tomorrow, Tuesday, February 1, 2017. His absence will put him at severe risk of losing his medical residency, which in turn will cause him to lose his legal residency status in the UAE, and would force him to return to war-torn Syria.

CAUSES OF ACTION

COUNT ONE

FIRST AMENDMENT – ESTABLISHMENT OF RELIGION

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

32. The Establishment Clause of the First Amendment prohibits the United States government from establishing a religion, giving preference to persons of one religion, discriminating on the basis of religion, or prohibiting the free exercise of one's religion. This is true regardless of whether the intent to discriminate on the basis of religion is hidden behind pretextual religious neutrality, such as discrimination on the basis of nationality. See *Church of the Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 534 (1993) (“Facial neutrality is not determinative.”); *id.* at 540 (discussing the Establishment Clause and citing *Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 266 (1977)); *Larson v. Valente*, 456 U.S. 228, 232 n.3 (1982)); *Children's Healthcare Is a Legal Duty, Inc. v. Min DeParle*, 212 F.3d 1084, 1090 (8th Cir. 2000).

33. It is unmistakably clear that the Executive Order in question targets Muslims. This is evident from (1) the public statements from the Trump campaign that, if elected, President Trump would “ban Muslims”; (2) the selection of the seven Muslim-majority countries that were selected to be banned; and (3) the language in the order stating that, after the 120 day freeze, the Secretary of State will “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.” The purpose of this last clause is evidently to protect Christians refugees from Muslim-majority countries over Muslim

refugees, as indicated by members of the White House. On both a textual and structural level, President Trump's order discriminates between refugees on the basis of religion, privileging Christian refugees over Muslim refugees because of their religion. This is a clear violation of the Establishment Clause.

34. In addition to burdening First Amendment rights to religion, the Executive Order burdens First Amendment rights to speech, as well as First Amendment rights to political, cultural, and familial associations. Discrimination on the basis of religion is not a facially legitimate basis for burdening protected rights. *See Kleindienst v. Mandel*, 408 U.S. 753 (1972).

COUNT TWO INTERNATIONAL LAW

35. Plaintiffs repeat and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

36. If Dr. Al Homssi is denied reentry into the United States to complete his medical residency, he will be excluded from the UAE and forced to return to war-torn Syria, where he has never lived.

37. Banning Dr. Al Homssi on the hidden basis of his Muslim faith would violate U.S. obligations under international law as well as under domestic law. It would violate U.S. obligations in individual cases under international law, including the Refugee Convention and Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and it would conflict with numerous U.S. statutes concerning refugee protection. *See, e.g.*, 8 U.S.C. §§ 1158, 1231(b)(3); 8 C.F.R. §§ 1208.16-17.

COUNT THREE

FIFTH AMENDMENT – PROCEDURAL DUE PROCESS DENIAL OF RIGHT TO WITHHOLDING/CAT PROTECTION

38. Plaintiff repeats and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein. Under United States law as well as human rights conventions, the United States may not force a noncitizen to a country where he may face torture or persecution. *See* 8 U.S.C. § 1231(b); United Nations Convention Against Torture (“CAT”), implemented in the Foreign Affairs Reform and Restructuring Act of 1998 (“FARRA”), Pub. L. No. 105-277, div. G, Title XXII, § 2242, 112 Stat. 2681, 2681-822 (1998) (codified as Note to 8 U.S.C. § 1231).

39. Defendants’ actions in seeking to effectively return Plaintiff to Syria, taken pursuant to the EO, deprive Plaintiff of his rights under 8 U.S.C. § 1231(b) and the Convention Against Torture without due process of law.

COUNT FOUR

THE IMMIGRATION AND NATIONALITY ACT, THE CONVENTION AGAINST TORTURE, THE FOREIGN AFFAIRS REFORM AND RESTRUCTURING ACT OF 1998, IMPLEMENTING REGULATIONS

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

41. The Immigration and Nationality Act and implementing regulations, including 18 U.S.C. § 1225(b)(1) (expedited removal), 8 C.F.R. §§ 235.3(b)(4), 208.30, and 1003.42; 8 U.S.C. § 1158 (asylum), and 8 U.S.C. § 1231(b)(3) (withholding of removal), and the United Nations Convention Against Torture (“CAT”), implemented in the Foreign Affairs Reform and Restructuring Act of 1998 (“FARRA”), Pub.L. No. 105-277, div. G, Title XXII, § 2242, 112 Stat.

2681, 2681-822 (1998) (codified at 8 U.S.C. § 1231 note), entitle Plaintiff to an opportunity to apply for asylum, withholding of removal, and CAT relief. These provisions also entitle Plaintiff to a grant of withholding of removal and CAT relief upon a showing that he meets the applicable legal standards. Defendants' actions in seeking to effectively return Plaintiff to Syria, taken pursuant to the EO, deprive Plaintiff of his statutory and regulatory rights.

COUNT FIVE

FIFTH AMENDMENT – EQUAL PROTECTION

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

43. The EO discriminates against Plaintiff on the basis of his country of origin, and without sufficient justification, and therefore violates the equal protection component of the Due Process Clause of the Fifth Amendment.

44. Additionally, the EO was substantially motivated by animus toward—and has a disparate effect on—Muslims, which also violates the equal protection component of the Due Process Clause of the Fifth Amendment.

COUNT SIX

ADMINISTRATIVE PROCEDURE ACT

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

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

47. Defendants' detention and arbitrary treatment of Plaintiff and others similarly situated (members of a proposed class) pursuant to the January 27 EO, as set forth above, is not authorized by the INA.

48. Defendants' actions in detaining and arbitrarily mistreating Plaintiff and other members of the proposed class as set forth above were arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; contrary to constitutional right, power, privilege, or immunity; in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; and without observance of procedure required by law, in violation of the Administrative Procedure Act, 5 U.S.C. §§ 706(2)(A)-(D).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court grant the following relief

- (1) Issue an injunction ordering Defendants to rescind the cancellation of Plaintiff's J-1 visa and allow Plaintiff into the country on his J-1 visa so that he may be allowed to continue his residency at the University of Illinois at Chicago/Advocate Christ Medical Center;
- (2) Enter a judgment declaring that Defendants' actions toward Plaintiff are and will be unauthorized by statute and contrary to law;
- (3) Issue an injunction enjoining the enforcement of the Executive Order "Protecting the Nation From Foreign Terrorist Entry Into the United States";
- (4) Award Plaintiff reasonable costs and attorney's fees; and
- (5) Grant any other and further relief that this Court may deem fit and proper.

DATED: January 31, 2017
Chicago, Illinois

Respectfully submitted,

/s/ Thomas Anthony Durkin
THOMAS ANTHONY DURKIN

/s/ Robin V. Waters
ROBIN V. WATERS

/s/ Bernard E. Harcourt
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