

1 East Bay Law  
2 Andrew W. Shalaby sbn 206841  
3 1417 Solano Avenue  
4 Albany, CA 94706  
5 Tel. 510-551-8500  
6 Fax: 510-725-4950  
7 email: andrew@eastbaylaw.com

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10 Attorneys for Plaintiffs  
11 The People of the State of California, and  
12 The People of the United States of America

13  
14 IN THE UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA  
16 SAN FRANCISCO

17  
18 People of the United States of  
19 America and the State of California,

20 Plaintiffs,

21 vs.

22 Donald Trump; United States of  
23 America,

24 Defendants.

25 Case Number: 3:17-cv-00451-JD

26 FIRST AMENDED COMPLAINT FOR  
27 INJUNCTION AND REPEAL OF  
28 UNCONSTITUTIONAL SEGMENTS  
OF THE PRESIDENTIAL  
EXECUTIVE ORDER DATED  
MARCH 6, 2017 SUSPENDING  
ENTRY OF TARGET PERSONS  
INTO THE UNITED STATES

The Hon. James Donato, Presiding.

29 I. JURISDICTION

30 This action, which was the first constitutional challenge to the President's  
31 Executive Order number 13769 issued on January 27, 2017, was filed several hours  
32 later, on January 28, 2017. The claims arise under the Constitution, laws, or treaties  
33 of the United States, and is specific to the Executive Order of the President issued  
34

March 6, 2017, and captioned:

## Executive Order Protecting The Nation From Foreign Terrorist Entry Into The United States

Jurisdiction is pursuant to Federal Question under 28 U.S.C. § 1331. The Executive Order at issue shall hereinafter be referenced as “SUBJECT EXECUTIVE ORDER.” A true and correct copy of the SUBJECT EXECUTIVE ORDER is attached as Exhibit A hereto.

## VENUE

Defendant is the United States. Venue is proper in any judicial district pursuant to 28 U.S.C. § 1391(e).

## PARTIES

1. Plaintiffs are the People of the United States of America and the State of California (hereinafter “THE PEOPLE”), by way of the Private Attorney General statutes of the State of California and United States. The action is on behalf of all persons in the United States, who are negatively and adversely impacted by the SUBJECT EXECUTIVE ORDER, in protection of their civil rights, pursuant to 42 U.S.C. § 1988. THE PEOPLE include persons within the purview of Sections 2(c) and 3(a) of the SUBJECT EXECUTIVE ORDER, as well as professionals, educators, persons of varying religious beliefs and backgrounds, and persons of all ethnicity. The term, “THE PEOPLE,” therefore references all interests OPPOSED to the challenged LIMITED PROVISIONS of the SUBJECT EXECUTIVE ORDER, including but not limited to those persons who have filed declarations as presented with the Requests for Judicial Notices dated 2/10/2017 (doc. 16) and 2/19/17 (doc. 20). Said declarations represent a sampling of the affected persons, and include doctors, lawyers, educators, other professionals, Christians, Catholics, Jews, Muslims, persons of other religious beliefs, companies and business entities, and persons otherwise directly and adversely affected by the SUBJECT EXECUTIVE ORDER.

1       2. Defendant, the Honorable Mr. Donald Trump, aka Mr. Donald John  
2       Trump (“Mr. Trump”), is the forty fifth president of the united states, inaugurated on  
3       January 20, 2017. He is named as an indispensable party with regard to this action to  
4       enjoin enforcement of his executive order issued on March 6, 2017, banning and  
5       restricting entry into the United States for a select group of persons, based on possible  
6       affiliation with six designated countries.

7       3.     Defendant, the United States of America, is the United States  
8 Government, generally, and is named as a defendant for the purpose of enjoining  
9 enforcement of the Executive Order of Mr. Trump.

## **STATEMENT OF LIMITATION**

1       4. Because Mr. President did a commendable job in revising Executive  
2 Order 13769, this case presents a LIMITED challenge to the SUBJECT EXECUTIVE  
3 ORDER, and only to accomplish the following with respect to Section 3:

15 (a) Expansion of the narrow scope of countries listed on the SUBJECT  
16 EXECUTIVE ORDER, to include all countries from which potential terrorists  
17 may infiltrate the United States, or terminate the geographical specificity, so as  
18 to put an end to the discrimination, polarization, and national divide which  
19 followed issuance of the January 27, 2017 Executive Order 13769; and

21 (b) Amendment of Section 3(a)(iii) so that the restriction applies only to foreign  
22 nationals, of any country from which infiltration by terrorists may be possible,  
23 who do not have a valid visa, and removing the words “on the effective date of  
24 this order.”

The request for expansion of scope of countries is necessary to resolve the well-established and non-discriminatory intent of the Equal Protection clause of U.S.

1 Constitution, Amendment 14. The request for removal of the words “on the effective  
 2 date of this order” on Section 3(a)(iii) is to prevent the harm and inadvertent injustice  
 3 in denying entry to persons simply because of administrative and other delays which  
 4 would cause the issuance of their visas to take place after the March 16, 2017  
 5 deadline.

6 The provisions for bolstering of the vetting process to include background  
 7 investigations, interviews, and other measures to assure that persons coming into the  
 8 country from any of the designated countries are not being challenged, although it is  
 9 requested that the vetting process be expanded to include vetting of persons from any  
 10 country accessible to terrorists, rather than from just the six designated countries.  
 11

12 **FIRST CAUSE OF ACTION FOR INJUNCTIVE RELIEF TO  
 13 REMEDY EQUAL PROTECTION CONCERN BY REMOVING  
 14 REFERENCE TO DESIGNATED COUNTRIES**

15 5. THE PEOPLE identify the non-compliance of the SUBJECT  
 16 EXECUTIVE ORDER with the Equal Protection Clause of the Fourteenth  
 17 Amendment with respect to Section 2, which is based on the countries identified on  
 18 Section 1(f) as follows:

19 Section 1(f): [...] Accordingly, while that assessment is ongoing, I am  
 20 imposing a temporary pause on the entry of nationals from Iran, Libya,  
 Somalia, Sudan, Syria, and Yemen, subject to categorical exceptions and  
 case-by-case waivers, as described in section 3 of this order.

21 The unconstitutional provision is Section 2(c), which reads in relevant part:

22 I therefore direct that the entry into the United States of nationals of  
 23 those six countries be suspended for 90 days from the effective date of  
 24 this order, subject to the limitations, waivers, and exceptions set forth in  
 sections 3 and 12 of this order.

25 The provision violates the Equal Protection clause and adversely affects those persons  
 26 whom remain on U.S. soil and are deprived of access to their family members,  
 27 business associates, employees (as discussed pp. 10 and 28 of the Ninth Circuit order  
 28 in Washington v. Trump, case number 17-35105 (2/9/17)), and others, and is generally

1 discriminatory, because it limits scrutiny to six countries, excluding many other  
 2 countries from which terrorists may come into the United States. To remedy this  
 3 violation, the scope should simply be expanded to all countries. This is resolved by  
 4 removal of the specificity of the six designated countries.

5

6 Concrete Harm From E.O. 13769 Carries Over to New E.O.

7       6. The specificity of select countries on the Executive Order has already  
 8 resulted in actual and severe harm and personal injuries to individuals throughout the  
 9 United States. The harm is evident now in the actual discrimination, and national  
 10 polarization of the people, as widely reported immediately following issuance of  
 11 Executive Order 13769. The most recent was a “Trump Rally” in Berkeley,  
 12 California, on March 4, 2017, in which bloodshed took place when proponents and  
 13 opponents of the President’s Immigration Order (*inter alia*) clashed at a public park  
 14 opposite City Hall. The harm is evidenced in public schools nationwide, where a  
 15 large albeit unspecified number of students have shunned their fellow co-students of  
 16 Muslim or Middle East decent. The injuries have ranged from profound sadness and  
 17 depression experienced by the young victim students, to actual physical injury.  
 18 Attacks on Muslims have been reported on the news in subways and other public  
 19 locations. The problem is of grave National concern because of preexisting volatility.  
 20 The inception of this discrimination and polarization began with Mr. Trump’s  
 21 presidential campaign promises to ban Muslims from entry to the U.S., as evidenced  
 22 by post-election hostilities, i.e. an incident on the NY subway where a woman wearing  
 23 a hijab was verbally attacked, on December 6, 2016. The news story disclosed in  
 24 relevant part:

25

26       New York City police are looking for three men who taunted a Muslim  
 27 woman aboard a subway train, yelling “Donald Trump” and calling her  
 28 a terrorist.

The victim stated:

"They kept saying, 'you don't belong here, get out of this country, go back to your country,' and finally they came really close and they were like, 'take that rag off your head,'" she said.

The discrimination fostered by specificity of a select group of predominantly Muslim countries on the SUBJECT EXECUTIVE ORDER was also evident by recent actions of Enforcement Officers whom had adopted general discriminatory practices and detained persons whom were not otherwise subject to the travel ban. An example was the February 25, 2017 detention of the late Mr. Muhammad Ali's son, Mr. Muhammad Ali Jr., a Muslim. Despite having been born and raised in the U.S., Mr. Ali was detained by immigration officials at a Florida airport and questioned about his ancestry and religion simply because he was Muslim. Mr. Ali's mother Mrs. Khalila Camacho Ali was also detained. In yet another recent incident on or about 2/27/17, former renown soccer player Mr. Dwight Yorke, a Tobagonian, was denied entry into the U.S. under Executive Order 13769, even though enforcement of it had been suspended by the Court of Appeals, simply because his passport contained an Iranian stamp.

17        The injuries extend to strained relations between the Honorable President  
18 Donald Trump on the one hand, and the Judiciary on the other hand, evidenced by Mr.  
19 Trump's upset statement of February 4, 2017, directed to the Honorable Federal Judge  
20 James Robart, to wit:

21        "The opinion of this so-called judge, which essentially takes  
22        law-enforcement away from our country, is ridiculous and will be  
                overturned!"

23 In response, on or about February 6, 2017, the several people in disagreement with  
24 Mr. President Trump, including famed film-maker Mr. Michael Moore, resorted  
25 to referring to Mr. President as the “so-called president.” The combination of pre-  
26 election promises to ban Muslim entry, issuance of Executive Order 13769 and  
27 resulting protests and attacks on persons of Muslim beliefs or Middle East appearance,

1 and the new March 6, 2017 Executive Order, all serve to foster discrimination,  
 2 national polarization, and attacks and injuries on innocent people of the United States.  
 3 The remedy is simply to remove the specificity of the six predominantly Muslim  
 4 countries of designation on the Executive Order.

5 **SECOND CAUSE OF ACTION FOR INJUNCTIVE RELIEF TO  
 6 REMEDY EQUAL PROTECTION CONCERN BY REMOVING  
 TIME RESTRICTION FOR OBTAINING VISAS**

7 7. THE PEOPLE identify the non-compliance of the SUBJECT  
 8 EXECUTIVE ORDER with the Equal Protection Clause of the Fourteenth  
 9 Amendment with respect to Section 2, which is based on the ban of entry provision  
 10 premised on the date of obtaining a travel visa, identified on Section 2(a)(iii) as  
 11 follows:

12 [(a) Scope. Subject to the exceptions set forth in subsection (b) of this  
 13 section and any waiver under subsection (c) of this section, the  
 14 suspension of entry pursuant to section 2 of this order shall apply only  
 to foreign nationals of the designated countries who:

15 (i) are outside the United States on the effective date of this order;  
 16 (ii) did not have a valid visa at 5:00p.m., eastern standard time on  
 January 27, 2017; and]

17  
 18 (iii) do not have a valid visa **on the effective date of this order.**  
 [Emphasis added.]

19 The Equal Protection violation is in the disparate treatment of persons who may suffer  
 20 delays due to administrative backlog or error, or for any other reason, which equally  
 21 translates to harms suffered by family members and affiliates in the United States who  
 22 suffer inaccessibility to their family members, friends, employees and the like, as  
 23 articulated in part on the Ninth Circuit decision referenced above. Those who do not  
 24 suffer delays will be permitted entry, while those who suffer delays will be subjected  
 25 to entry on a discretionary basis as articulated in Section 3(c):

26  
 27 Waivers. Notwithstanding the suspension of entry pursuant to section 2  
 28 of this order, a consular officer, or, as appropriate, the Commissioner,  
 U.S. Customs and Border Protection (CBP), or the Commissioner's

delegatee, may, in the consular officer's or the CBP official's discretion, decide on a case-by-case basis to authorize the issuance of a visa to, or to permit the entry of, a foreign national for whom entry is otherwise suspended if the foreign national has demonstrated to the officer's satisfaction that denying entry during the suspension period would cause undue hardship, and that his or her entry would not pose a threat to national security and would be in the national interest.

To resolve this Equal Protection violation, the provision prohibiting or restricting entry based on whether a valid visa was obtained on or after March 16, 2017 should be stricken.

## **RELIEF REQUESTED**

A concrete harm and injury to THE PEOPLE has resulted due to the manifestation of discrimination arising out of the issuance of Executive Order 13769. The SUBJECT EXECUTIVE ORDER likewise contains the same provisions which have caused this harm, namely the specificity of the six designated countries. Moreover, banning or restricting entry based on whether visas were issued before or after March 16, 2017 has no rational basis and mounts to an Equal Protection violation. The remedy to terrorism is education, not segregation. The United States is a region which was originally occupied only by the American Indian, while all persons from all other countries of origin effectively immigrated onto the continent. All persons are created equal, and are inevitably related to one-another. No class of persons should be segregated and discriminated-against due to religious beliefs, ethnicity, or appearance.

For the foregoing reasons, THE PEOPLE move for injunctive relief to remove the specificity of the six designated countries from the scope of the Executive Order, and remove the provision for banning or restricting entry based on the date of issuance of the subject traveler's visa.

Dated: March 10, 2017

s/Andrew W. Shalaby  
Andrew W. Shalaby, Attorney for THE  
PEOPLE

## **CERTIFICATE OF SERVICE**

I, Sonia Dunn-Ruiz, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the within entitled action. I am employed at 7525 Leviston Ave, El Cerrito, CA. On March 10, 2017 I served the attached:

**FIRST AMENDED COMPLAINT FOR INJUNCTION  
AND REPEAL OF UNCONSTITUTIONAL  
SEGMENTS OF THE PRESIDENTIAL EXECUTIVE  
ORDER DATED MARCH 6, 2017 SUSPENDING  
ENTRY OF TARGET PERSONS INTO THE UNITED  
STATES; Exhibit A**

on the interested parties in said action, by placing a true copy thereof in sealed envelope(s) addressed as follows:

United States Attorney  
450 Golden Gate Avenue  
San Francisco, CA 94102

and served the named document in the manner indicated below:

**BY MAIL:** I am familiar with the practices of the U.S. Postal Service, and I caused true and correct copies of the above documents, by following ordinary business practices, to be placed and sealed in envelopes(s) addressed to the addressees, at an office of the U.S. Postal Service in El Cerrito, California, for collection and mailing by first class mail with the United States Postal Service.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed March 10, 2017, at El Cerrito, California.

Sonja Dunn-Ruiz