

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**MOHAMMED ABDULLAH)
TAWFEEQ,)**

Plaintiff.)

v.)

Case No. _____

**U.S. DEPARTMENT OF HOMELAND)
SECURITY (“DHS”); JOHN F. KELLY,)
Secretary of DHS; U.S. CUSTOMS AND)
BORDER PROTECTION (“CBP”);)
KEVIN K. MCALEENAN, Acting)
Commissioner of CBP; CAREY DAVIS,)
Port Director, CBP ; ANDY PRYOR,)
Manager, CBP; SHANA WELLS,)
Manager, CBP; U.S. DEPARTMENT)
OF STATE (“Department of State”);)
THOMAS A. SHANNON, JR., Acting)
Secretary of State, Department of State.)**

**COMPLAINT FOR
DECLARATORY,
MANDAMUS, AND
INJUNCTIVE RELIEF**

Defendants.)

INTRODUCTION

1. Plaintiff Mohammed Abdullah Tawfeeq is an Iraqi national, an award-winning Middle Eastern journalist, and now a Manager of the International Desk for Cable News Network, Inc. (“CNN”). While now based permanently in the United States, as part of his regular duties, Mr. Tawfeeq travels abroad to conduct reporting on the ground from the Middle East.

2. Since 2013, Mr. Tawfeeq has been a legal permanent resident of the United States and has entered the United States on numerous occasions without incident.

3. Mr. Tawfeeq has been a crucial part of CNN's reporting regarding North Africa and the Middle East for over a decade. He has filed hundreds of reports from the field, has worked alongside prominent CNN journalists such as Christiane Amanpour and Anderson Cooper, and has covered numerous major world events such as the withdrawal of U.S. troops from Iraq, the fall of Muamar Quadafi in Libya, and the rise of ISIS.

4. On January 27, 2017, President Donald J. Trump signed an Executive Order entitled "Protecting the Nation from Foreign Terrorist Entry Into the United States." *See* Ex. A (hereinafter the "Executive Order" or the "Order").

5. That Executive Order purported to order the immediate suspension of every "entry into the United States" by alien nationals of one of several countries for a period of 90 days. The Order specifically applied to entries by both "immigrants and nonimmigrants" and to aliens from Iraq.

6. Whatever the validity of the Executive Order as applied to those aliens visiting temporarily, the application of the Order to immigrants like Mr. Tawfeeq—*i.e.* lawful permanent residents or green card holders returning after a

brief trip abroad—violates the Immigration and Nationality Act (“INA”), the Administrative Procedure Act (“APA”), and the U.S. Constitution.

7. Lawful permanent residents (*i.e.* immigrants) like Mr. Tawfeeq are entitled under the INA to greater procedural protections than aliens visited temporarily (*i.e.* non-immigrants).

8. Congress has by statute laid out careful guidance concerning when and how lawful permanent residents such as Mr. Tawfeeq can be removed from the country, and the Federal Courts have on numerous occasions noted that such residents are entitled to robust constitutional protections.

9. On information and belief, Defendants have nevertheless used the Executive Order as the sole basis for refusing the entry of numerous immigrant aliens covered by the Executive Order and to subject returning residents like Mr. Tawfeeq to inappropriate exercises of discretion with regard to their right to return to the United States, and to lengthy delays and interrogations at ports of entry, including at Atlanta Hartsfield/Jackson International Airport.

10. The Executive Order has greatly increased the uncertainty involved in current and future international travel for returning lawful permanent residents like Mr. Tawfeeq. Defendants have sent conflicting signals regarding how and whether the Executive Order will be applied to permanent residents like Mr. Tawfeeq.

11. On January 28, 2017, Defendant Department of State, through its spokespersons to the media and its various consulates abroad, issued statements that the Executive Order would apply to returning resident immigrants such as Mr. Tawfeeq, in violation of law.

12. On the morning of January 29, 2017, President Donald J. Trump's Chief of Staff, Reince Priebus disagreed. He stated on national television that "As far as green card holders moving forward, [the Executive Order] doesn't affect them."

13. Defendant Department of Homeland Security ("DHS"), however, confirmed on January 29, 2017, in its "Response to Recent Litigation" that "it will continue to enforce all of President Trump's Executive Orders." This defiant response is surprising given the orders of at least two Federal District Court judges on January 28, 2017, that DHS cease engaging in certain of its removal actions pursuant to the Executive Order.

14. Then, late in the day on January 29, 2017, Defendant DHS Secretary John Kelly issued a press release suggesting that the Executive Order would not be applied to lawful permanent residents "absent the receipt of significant derogatory information indicating a serious threat to public safety and welfare." That press release is not a formal statement of agency policy can be revoked at any time by

the Secretary in his discretion, and it is unclear whether Defendants' guidance to their employees matches that statement.

15. Further clarification of the law by the Federal Courts is clearly required as to Defendants. Such clarification is necessary to ensure that the Executive Order is not improperly applied to returning legal permanent residents like Mr. Tawfeeq.

16. On January 29, 2017, Defendants on information and belief used the Executive Order as the sole basis for detaining Mr. Tawfeeq and subjecting him to additional screening at Atlanta Hartsfield/Jackson International Airport, which delayed his entry into the United States. On information and belief, Defendants made a determination under the Executive Order concerning whether they would exercise their discretion to permit Mr. Tawfeeq to enter the United States.

17. Application of the Executive Order to Mr. Tawfeeq exceeds Defendants' authority under the Immigration and Nationality Act because, under the Immigration and Nationality Act, Congress has not provided the immigration agencies with legal authority to prevent the return of permanent resident aliens like Mr. Tawfeeq into the United States.

18. Mr. Tawfeeq seeks a declaration of his rights under the Immigration and Nationality Act, a declaration that Defendant executive agencies are violating

his rights under the Administrative Procedure Act, a declaration that Defendant executive agencies are violating his rights under the U.S. Constitution, an injunction against the application of the Executive Order to returning immigrants like Mr. Tawfeeq, a writ of mandamus instructing DHS to instruct its employees inspecting aliens at U.S. ports of entry to exclude returning resident immigrants such as Mr. Tawfeeq from the Order, and any other appropriate remedies to which the Court determines that he is entitled.

PARTIES

19. Plaintiff Mohammed Abdullah Tawfeeq was born in 1971 in Iraq and is an Iraqi citizen. Mr. Tawfeeq was resettled as refugee in the United States and, on June 20, 2013, Mr. Tawfeeq became a legal permanent resident in the United States.

20. Defendant U.S. Department of Homeland Security (“DHS”) is a federal agency bearing responsibility for the administration and enforcement of the nation’s immigration laws.

21. Defendant John F. Kelly is sued in his official capacity as Secretary of DHS, in which capacity he is charged with the just administration and enforcement of the immigration laws. 8 U.S.C. § 1103(a).

22. Defendant U.S. Customs and Border Protection (“CBP”), a agency within DHS, is responsible for detecting and preventing the unlawful entry of persons and goods into the United States.

23. Defendant Kevin A. McAleenan is the Acting Commissioner of CBP and is sued in his official capacity.

24. On information and belief, Defendant Carey Davis is CBP’s Port Director for Atlanta and is sued in his official capacity. On information and belief, he is responsible for the processing of aliens arriving to the United States through Atlanta Hartsfield/Jackson International Airport.

25. On information and belief, Defendant Andy Pryor is a Manager of CBP’s Atlanta Port and is sued in his official capacity. On information and belief, he is responsible for the processing of aliens arriving to the United States through Atlanta Hartsfield/Jackson International Airport.

26. On information and belief, Defendant Shana Wells is a Manager of CBP’s Atlanta Port and is sued in her official capacity. On information and belief, she is responsible for the processing of aliens arriving to the United States through Atlanta Hartsfield/Jackson International Airport.

27. Defendant U.S. Department of State is a federal agency bearing responsibility for the administration and enforcement of the immigration laws.

28. Defendant Thomas A. Shannon, Jr., is sued in his official capacity as Acting Secretary of State.

JURISDICTION AND VENUE

29. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331. See *Califano v. Sanders*, 430 U.S. 99, 105 (1977) (except where statutes preclude review, 28 U.S.C. § 1331 “confer[s] jurisdiction on federal courts to review agency action”). See also 5 U.S.C. § 702; 28 U.S.C. § 1361; 28 U.S.C. §§ 2201–2202.

30. Defendants have a non-discretionary duty to inspect for return to the United States legal permanent residents eligible for treatment as “returning residents” and not otherwise barred. Because this duty is not discretionary, neither the immigration laws (*see, e.g.*, 8 U.S.C. § 1252(a)(2)(B)(ii)) nor the Administrative Procedure Act (“APA”) withdraws jurisdiction.

31. The aid of the Court is invoked under 28 U.S.C. §§ 2201 and 2202, authorizing declaratory judgment.

32. Plaintiff seeks costs and attorneys fees pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, and 28 U.S.C. § 2412(d), *et seq.*

33. Venue properly lies in this judicial district under 28 U.S.C. § 1391(e). Defendants are agencies and officers of agencies of the United States sued in their

official capacities. As such, venue is proper because a substantial part of the events or omissions giving rise to these claims occurred in this District. Venue is also proper because Plaintiff resides in this District, and no real property is involved in this action.

EXHAUSTION OF REMEDIES

34. Plaintiff has no other adequate remedy available for the harm that he seeks to redress—the overly broad application by Defendants DHS and CBP of the Executive Order to returning resident immigrants such as Plaintiff.

FACTS

35. Plaintiff Mohammed Abdullah Tawfeeq was born in 1971 in Iraq and is a citizen of Iraq.

36. Mr. Tawfeeq was resettled as a refugee in the United States because of direct threats against him in Iraq because of his work as a reporter.

37. On June 20, 2013, the United States government made Mr. Tawfeeq a legal permanent resident. The green card in his possession expires on January 11, 2026.

38. Mr. Tawfeeq owns a condominium in Atlanta, Georgia.

39. Mr. Tawfeeq's brother is an American citizen and lives in Kentucky.

40. Mr. Tawfeeq is a journalist by trade. He has over 10 years of experience as an international news editor and producer specializing in the Middle East and North Africa (MENA) region.

41. Mr. Tawfeeq has covered several significant historical events within that region, including the U.S.-led invasion of Iraq and subsequent sectarian violence, the toppling of Muamar Quadafi in Libya, and the rise of ISIS.

42. Since 2004, Mr. Tawfeeq has worked for Cable News Network, Inc. ("CNN"). He worked for CNN first as a freelancer before being hired as a full-time employee in 2006.

43. Mr. Tawfeeq has been placed on CNN special assignments along the Syria-Lebanon border and in Jordan, Saudi Arabia, and Libya.

44. From February 2004 to November 2011, Mr. Tawfeeq was a Field Producer for CNN. In that capacity, he contributed to hundreds of CNN stories in the field and to several specials with CNN reporters and anchors including Christiane Amanpour and Anderson Cooper.

45. From December 2011 to June 2013, Mr. Tawfeeq was CNN's Baghdad Bureau Chief. In that capacity, he oversaw all managerial duties of CNN's Baghdad office and produced countless stories concerning topics such as the U.S. troop withdrawal from Iraq.

46. In July 2013, Mr. Tawfeeq was transferred to CNN's U.S. offices in Atlanta. He was a news editor through February 2016, when he became an International Desk Producer.

47. While Mr. Tawfeeq primarily performs his duties from the United States, he still regularly travels to the Middle East to facilitate CNN's reporting there.

48. On October 17, 2016, Mr. Tawfeeq left the United States bound for Iraq. After completing an assignment for CNN in northern Iraq, Mr. Tawfeeq spent time with family members in that country.

49. On January 29, 2017 at approximately 9:05am local time, Mr. Tawfeeq departed from Baghdad, Iraq en route to Atlanta, Georgia, with a layover in Istanbul, Turkey.

50. On January 29, 2017 at approximately 7:20pm Eastern Standard Time, Mr. Tawfeeq landed at Atlanta Hartsfield/Jackson International Airport.

51. When Mr. Tawfeeq presented himself for inspection at Atlanta Hartsfield/Jackson International Airport, the CBP officer in primary inspection notified him that he could be refused entry under the President's recently-signed Executive Order.

52. That CBP official scanned his passport and green card, asked him why he was in Iraq for such a long period of time, asked whether his trip to Iraq was for business or to visit family, and asked what he did for a living. He was then sent to secondary inspection

53. CBP officials then told Mr. Tawfeeq to wait because they needed to seek “an e-mail” concerning whether he would be allowed into the United States.

54. After approximately 30 minutes of waiting, CBP officials at the airport asked Mr. Tawfeeq whether he had ever been fingerprinted. Mr. Tawfeeq told officials that he had been repeatedly fingerprinted by the U.S. government when embedded with the U.S. military in Iraq.

55. CBP officials came back to Mr. Tawfeeq a few minutes later and indicated that he was free to enter the United States.

56. CBP officials gave Mr. Tawfeeq no explanation for their decision, no documents relating to his entry, nor did they stamp his passport.

The Executive Order

57. On January 27, 2017, President Donald J. Trump signed an Executive Order entitled “Protecting the Nation from Foreign Terrorist Entry Into the United States.” *See* Ex. A.

58. The Executive Order purports to rest on “authority vested...as President by the Constitution and laws of the United States of America, including the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et. seq*, and section 301 of title 3, United States code.”

59. The Order requires Defendant Secretary of Homeland Security to conduct a review concerning information needed from “any country to adjudicate any visa” in consultation with Defendant Secretary of State and the U.S. Director of National Intelligence within 30 days after the Order’s signing.

60. The Order also imposes a 90-day ban on entry into the United States by aliens of certain nationalities:

*I hereby proclaim that the immigrant and nonimmigrant entry into the United States of aliens from countries referred to in section 217(a)(12) of the INA, 8 U.S.C. 1187(a)(12), would be detrimental to the interests of the United States, and I hereby suspend entry into the United States, as **immigrants and nonimmigrants**, of such persons for 90 days from the date of this order (excluding those foreign nationals traveling on diplomatic visas, North Atlantic Treaty Organization visas, C-2 visas for travel to the United Nations, and G-1, G-2, G-3, and G-4 visas).*

Order at § 3(c) (emphasis added). Under the INA, the term “immigrants” refers to lawful permanent resident aliens, such as Mr. Tawfeeq.

61. Iraq is on the list of countries whose aliens are prohibited from “entry” into the United States for 90 days from the signing of the order. *See* INA § 217(a)(12)(A)(i)(I), 8 U.S.C. § 1187(a)(12)(A)(i)(I).

62. On its face, the Order applies to immigrants like Mr. Tawfeeq.

63. On information and belief, Defendant DHS originally determined that it could not legally apply the Executive Order to all legal permanent residents.

64. On information and belief, the staff of President Donald J. Trump overruled DHS’s legal determination, and DHS subsequently applied the Executive Order to legal permanent residents as well as to non-immigrants.

65. The spokeswoman for Defendant DHS told the Reuters news agency on January 28, 2017, that the Executive Order would be applied to bar lawful permanent residents from entering the United States.

66. The Department of State has also confirmed to the press that the Executive Order will be applied to bar lawful permanent residents from entering the United States.

67. The President’s Chief of Staff, Reince Priebus, appeared to contradict Defendant agencies on the applicability of the Executive Order to lawful

permanent residents, stating on Meet the Press on January 29, 2017: “As far as green card holders moving forward, [the Executive Order] doesn’t affect them.”

68. DHS Secretary John Kelly issued a press release on January 29, 2017 that stated:

In applying the provisions of the president's executive order, I hereby deem the entry of lawful permanent residents to be in the national interest.

Accordingly, absent the receipt of significant derogatory information indicating a serious threat to public safety and welfare, lawful permanent resident status will be a dispositive factor in our case-by-case determinations.

69. On information and belief, Defendants have continued applying the Order to encumber or bar the entry of numerous legal permanent residents from the United States at various ports of entry in the United States, including Atlanta Hartsfield/Jackson International Airport.

70. On information and belief, Defendants have also spoken publicly about the Order to international airlines, which has resulted in the prevention of numerous legal permanent residents from boarding flights bound for the United States, including flights bound for Atlanta Hartsfield/Jackson International Airport.

**The Executive Order Cannot Legally Be Applied to
Returning Legal Permanent Residents Like Plaintiff
Whom the Statute Does Not Even Treat as Seeking Admission**

71. Section 212(f) of the INA states:

(f) Suspension of entry or imposition of restrictions by President

Whenever the President finds that 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.

Whenever the Attorney General finds that a commercial airline has failed to comply with regulations of the Attorney General relating to requirements of airlines for the detection of fraudulent documents used by passengers traveling to the United States (including the training of personnel in such detection), the Attorney General may suspend the entry of some or all aliens transported to the United States by such airline.

8 U.S.C. § 1182(f).

72. Historically the President has exercised his authority under INA § 212(f) to ban discrete groups of aliens, such as those participating in human rights abuses in other countries, or those leaving from their home countries for the United States without a visa or other authorization to enter.

73. On information and belief, no President has ever suspended all aliens from an entire country from entering the United States under Section 212(f), much less from numerous countries as the current Executive Order purports to do.

74. A report summarizing previous exercises of the President's authority under this section, prepared by the Congressional Research Service and dated January 23, 2017, identifies no instance of a prior exercise of this authority in so broad a manner. *See* Kate M. Manuel, *Executive Authority to Exclude Aliens: In Brief*, Congressional Research Service (Jan. 23, 2017), *available at* <https://fas.org/sgp/crs/homsec/R44743.pdf>.

75. INA § 212(f) has been a part of the INA since its enactment in 1952.

76. In 1996—long after the addition of INA § 212(f), Congress made several overhauls to the INA. *See* Illegal Immigration Reform and Immigrant Responsibility Act of 1996, P.L. 104-208, Div. C (“IIRAIRA”).

77. Among those overhauls in IIRAIRA, Congress eliminated the concept of “entry” and provided in its place a new definition for “admission” and “admitted” at 8 U.S.C. § 1101(a)(13).

78. That provision draws a distinction between “applicants for admission”—such as all nonimmigrants and some immigrants—and returning permanent resident alien aliens, like Mr. Tawfeeq, who are not deemed to be seeking admission. *See* 8 U.S.C. § 1101(a)(13)(C).

79. Specifically, a legal permanent resident returning from abroad is not an applicant for “admission” unless that resident:

- (i) *has abandoned or relinquished that status*
- (ii) *has been absent from the United States for a continuous period in excess of 180 days,*
- (iii) *has engaged in illegal activity after having departed the United States,*
- (iv) *has departed from the United States while under legal process seeking removal of the alien from the United States, including removal proceedings under this chapter and extradition proceedings,*

- (v) *has committed an offense identified in section 1182(a)(2) of this title, unless since such offense the alien has been granted relief under section 1182(h) or 1229b(a) of this title, or*
- (vi) *is attempting to enter at a time or place other than as designated by immigration officers or has not been admitted to the United States after inspection and authorization by an immigration officer.*

8 U.S.C. § 1101(a)(13)(C)(i-vi).

80. The Federal Courts have since equated the pre-1996 concept of “entry,” over which INA § 212(f) provides authority to the President, with current law’s concept of “admission,” which does not apply to returning permanent immigrants such as Mr. Tawfeeq. This line of cases does so in part by construing 8 U.S.C. § 1101(a)(13)(A)’s definition of “admission,” which incorporates the term “entry.”

81. Mr. Tawfeeq did not abandon or relinquish his legal permanent residence status before returning to the United States.

82. Mr. Tawfeeq was not absent from the United States for a continuous period in excess of 180 days.

83. Mr. Tawfeeq did not engage in illegal activity after departing the United States.

84. Mr. Tawfeeq did not depart from the United States while under legal process seeking his removal.

85. Mr. Tawfeeq has not committed a criminal offense identified in 8 U.S.C. § 1182(a)(2).

86. Mr. Tawfeeq sought to return to the United States through Atlanta Hartsfield/Jackson International Airport on January 29, 2017. He did not then attempt and has never attempted to enter the United States at a time or place other than as designated by immigration officers and has never been admitted to the United States without inspection or authorization by an immigration officer.

87. Because he was a returning resident alien who met none of the disqualifying conditions described in 8 U.S.C. § 1101(a)(13)(C)(i-vi), Mr. Tawfeeq did not on January 29, 2017 seek “admission” to the United States of America.

88. Through the elimination of the concept of “entry” and the addition of 8 U.S.C. § 1101(a)(13)(C) in 1996, and with full knowledge of the terms of INA Section 212(f) as enacted in 1952, Congress has determined that the President’s ability to ban the entry of certain aliens under INA § 212(f) does not extend to returning legal permanent residents as described in 8 U.S.C. § 1101(a)(13)(C).

89. The President's INA § 212(f) authority therefore cannot be applied to returning residents who by law do not seek "admission" as set forth in 8 U.S.C. § 101(a)(13)(C), and therefore Defendants DHS, CBP, and Department of State, may not implement the Executive Order in a manner that includes Plaintiff.

90. Defendants, by their actions and public statement, however, have indicated their intention to disregard 8 U.S.C. 1101(a)(13)(C), and to apply INA § 212(f) in an overly broad manner, and thus the assistance of this Court is requested, through the relief requested herein.

91. On information and belief, CBP admitted Mr. Tawfeeq on January 29, 2017, based on an improper analysis of whether he was entitled to a case-by-case exception to the Executive Order.

92. On information and belief, CBP did not admit Mr. Tawfeeq on January 29, 2017, based on a proper analysis under INA § 101(a)(13)(C). Such an analysis would have required the conclusion that Mr. Tawfeeq was not an alien seeking "admission" into the United States.

Application of the Executive Order to Returning Legal Permanent Residents Like Plaintiff Violate Their Due Process Rights

93. Application of the Executive Order to returning legal permanent residents like Plaintiff also violates their rights to statutory process under the INA, as well as their procedural due process rights under the U.S. Constitution.

94. Once lawful permanent residents present themselves for inspection at a port of entry, they cannot lawfully be removed from the United States without due process of law.

95. The INA provides carefully crafted statutory mechanisms whereby aliens can be removed. Some of those mechanisms with the least amount of process, such as “expedited removal” under INA § 235, cannot be applied at all to legal permanent residents. *See* 8 U.S.C. § 1225; 8 C.F.R. § 235.3(b)(5)(ii).

96. At a minimum, a legal permanent resident presenting himself at a port is entitled to the robust removal procedures under INA § 240. *See* 8 U.S.C. § 1229a. At such a removal hearing, Defendants would bear the burden of showing that the legal permanent resident should be removed and would be required to state the basis for that removal. Such removal would be subject to administrative appellate review, and to further review in the Federal Courts.

97. Courts have long recognized that legal permanent residents, including those returning from trips abroad, are entitled to Fifth Amendment due process

protections. *See, e.g., Kwong Hai Chew v. Colding*, 344 U.S. 590, 601 (1953) (“While it may be that a resident alien's ultimate right to remain in the United States is subject to alteration by statute or authorized regulation because of a voyage undertaken by him to foreign ports, it does not follow that he is thereby deprived of his constitutional right to procedural due process. His status as a person within the meaning and protection of the Fifth Amendment cannot be capriciously taken from him.”).

98. Application of the Executive Order to lawful permanent immigrants provides them with almost no process—much less the process to which they are entitled by both the INA and the Constitution.

99. INA § 212(f) does not allow the President or Defendants to override the INA’s carefully crafted procedural protections, including the right for a legal permanent resident to challenge his removability in a proceeding under INA § 240.

100. Nevertheless, on information and belief, Defendants have continued removing or otherwise encumbering or barring the return of legal permanent residents like Mr. Tawfeeq in violation of these statutory protections and without the procedural hearing required by INA § 240 and the process mandated by the Constitution.

101. Application of the Executive Order to Plaintiff would rob him of the procedural protections due him under the INA. In its place, the Executive Order substitutes only a “case-by-case” discretionary exception to the blanket ban with no mechanism for appeal. *See* Executive Order at § 3(g). Such a mechanism is constitutionally infirm and statutorily prohibited.

102. Nevertheless, on information and belief, Defendants improperly did admit Plaintiff pursuant to the Executive Order on January 29, 2017.

103. Despite any recent public guidance to the contrary, Defendants could without notice begin applying the Executive Order to bar or otherwise encumber the return of legal permanent residents, as they did on information and belief for at least the period of January 28, 2017 through January 30, 2017.

104. As such, the Executive Order could be applied to Plaintiff when he presents himself for inspection after a trip abroad. Plaintiff is regularly required to engage in international travel to perform his job duties.

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

Deprivation of Rights Under the INA

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

106. Defendants have a non-discretionary legal duty under INA § 101(a)(13)(C) to permit the Plaintiff to return the United States without “admission.”

107. On information and belief, rather than inspecting Plaintiff and allowing him to proceed into the United States as a returning resident, Defendant CBP improperly admitted Plaintiff under the Executive Order.

108. By on information and belief applying the Executive Order to Plaintiff’s entry on January 29, 2017, Defendants deprived Plaintiff of his rights as a legal permanent resident, including his rights under INA § 101(a)(13)(C). 8 U.S.C. § 1101(a)(13)(C).

SECOND CAUSE OF ACTION

Violations of the APA

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

110. Defendants’ refusal to permit Plaintiff to return to the United States without admission was arbitrary and capricious and not otherwise in accordance with law. 5 U.S.C. § 706(2).

111. Defendant's decision to apply the Executive Order to Plaintiff as a legal permanent resident was arbitrary and capricious and not otherwise in accordance with law. 5 U.S.C. § 706(2).

112. The INA forbids discrimination in the 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).

113. Defendant CBP's application of the Executive Order to Plaintiff, which occurred on information and belief the night of January 29, 2017, was not authorized by the INA. Further, Defendants actions with respect to Plaintiff were arbitrary, capricious, an abuse of discretion, and not otherwise 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).

THIRD CAUSE OF ACTION

Declaratory Judgment

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

115. Plaintiff is entitled to a declaration of his rights, which shall have the force and effect of a final judgment, in accordance with 28 U.S.C. § 2201(a).

116. In particular, Plaintiff is entitled to a declaration that the Executive Order's ban on entry does not extend to returning permanent resident aliens who satisfy the conditions set forth in INA § 101(a)(13)(C). 8 U.S.C. § 1101(a)(13)(C).

FOURTH CAUSE OF ACTION

Mandamus

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

118. Mandamus lies in the present action because Defendants owe Plaintiff a non-discretionary legal duty to permit his return to the United States without admission.

119. Defendants failure to permit Plaintiff's return pursuant to INA § 101(a)(13)(C) constitutes a violation of a duty owed to him. *See* 8 U.S.C. § 1101(a)(13)(C).

120. Defendants owe Plaintiff a duty to obey applicable law, and to instruct its employees at border ports of entry, notwithstanding the language of the Executive Order, to exclude from the Order's coverage those returning residents within INA § 101(a)(13)(C).

121. Plaintiff has no other adequate remedy to address Defendants' failure to permit his return to the United States.

122. The Court therefore has authority under the Mandamus Act, 28 U.S.C. § 1361, to compel the Government to permit Plaintiff's return to the United States under the terms of INA § 101(a)(13)(C), rather than under the case-by-case authority granted to Defendants under the Executive Order.

FIFTH CAUSE OF ACTION

Deprivation of Procedural Due Process

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

124. Returning legal permanent residents like Plaintiff are entitled to statutory and regulatory procedural rights before they can be removed from the United States.

125. On information and belief, those statutory and procedural rights are being violated by Defendants' continued removal of legal permanent residents from the United States without the process due them under, *inter alia*, INA § 240. *See* 8 U.S.C. § 1229a.

126. If Plaintiff leaves the United States, he too could be subject to a violation of those statutory rights.

127. In addition, procedural due process requires that the government be constrained before it acts in a way that deprives individuals of liberty interests protected under the Due Process Clause of the Fifth Amendment.

128. Application of the Executive Order to lawful permanent residents like Plaintiff deprives them of the process due them under the Fifth Amendment.

129. Defendants' actions in threatening to exclude Plaintiff under the Executive Order and on information and belief in applying their discretion under the Executive Order to admit him on January 30, 2017, violated Plaintiff's procedural due process rights guaranteed by the Fourteenth Amendment.

SIXTH CAUSE OF ACTION

Equal Access to Justice Act

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

131. Plaintiff is entitled to recoup his reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412(d), *et seq.*

132. Plaintiff's net worth does not and has not exceeded \$2,000,000 at any relevant time.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court grant the following relief:

1. Issue an injunction ordering Defendants not to detain or apply a discretionary admissions assessment to any returning legal permanent resident including Plaintiff solely on the basis of the Executive Order;
2. Enter a judgment declaring unlawful Defendants' refusal to permit Plaintiff's return into the United States without admission pursuant to INA § 101(a)(13)(C);
3. Enter a judgment declaring Defendants' conduct to be a violation of Plaintiff's rights under the INA, the APA, and the U.S. Constitution;
4. Issue an order of mandamus to Defendants preventing them from applying the Executive Order to returning legal permanent residents like Plaintiff who meet the criteria in INA § 101(a)(13)(C);
5. Award Plaintiff's reasonable costs and attorney's fees; and
6. Grant any other and further relief that this Court may deem fit and proper.

DATED January 30, 2017

Respectfully submitted,

/s/ Theresia Moser

Theresia M. Moser

Georgia Bar No. 526514

Moser Law Co.
112 Krog Street N.E., Suite 26
Atlanta, GA 30307
Phone: (404) 537-5339
Fax: (404) 537-5340
tmoser@moserlawco.com

Carl W. Hampe (*pro hac vice forthcoming*)
Daniel P. Pierce (*pro hac vice forthcoming*)
Fragomen, Del Rey, Bernsen & Loewy LLP
1101 15th St. NW, Suite 700
Washington, DC 20005
Phone: (202) 223-5515
Fax: (202) 371-2898
champe@fragomen.com
dpierce@fragomen.com

Attorneys for Plaintiff