IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Basam ABOU ASALI,
Jozfin ALSHAAR, Hassan
ABOU ASALI, Jurjeet
ABOU ASALI, Sara ABOU
ASALI and
M.A.A., a minor, by his parents, Hassan and
Jurjeet Abou Asali,

Case No. _____

Petitioners/Plaintiffs,

v.

U.S. Department of Homeland Security
("DHS"),
U.S. Customs and Border Protection ("CBP"),
John KELLY, Secretary of DHS,
Kevin K. MCALEENAN, Acting
Commissioner of CBP,
Kevin DONOHUE, Port Director of the
Philadelphia Field Office of CBP,
Donald J. TRUMP, President of United States, And
JOHN DOES 1-5,

Respondents/Defendants.

ORDER

Upon consideration of the Plaintiffs-Petitioners' Motion for Temporary Restraining Order, the Court finds that:

1. Plaintiffs-Petitioners have demonstrated a likelihood of success on the merits of their claims that Plaintiffs were denied entry to the United States in violation of their federal statutory and constitutional rights.

2. Plaintiffs-Petitioners are likely to suffer irreparable harm in the absence of interim injunctive relief.

3. The balance of equities weighs sharply in favor of Plaintiffs-Petitioners and granting interim injunctive relief.

4. The public interest weighs in favor of Plaintiffs-Petitioners and granting interim injunctive relief.

In light of the foregoing, it is hereby **ORDERED** that:

1. Defendants-Respondents are enjoined and restrained from barring Plaintiffs-Petitioners' return to the United States.
2. Defendants-Respondents shall within 48 hours reinstate Plaintiffs-Petitioners' revoked visas or issue Plaintiffs-Petitioners new visas for Lawful Permanent Residence.
3. Defendants-Respondents shall transport Plaintiffs-Petitioners back to the United States at government expense.
4. Defendants-Respondents shall admit Plaintiffs-Petitioners to the United States under the terms of their previously approved visas for Lawful Permanent Residence.
5. Defendants-Respondents shall communicate the terms of this Court's Order immediately to officers in Damascus, Syria and to authorities at the airport from which Plaintiffs-Petitioners shall depart for the United States.

IT IS SO ORDERED.

Dated: _____ _____

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MOTION FOR TEMPORARY RESTRAINING ORDER

Plaintiffs-Petitioners, by and through undersigned Counsel respectfully request that the Court issue a Temporary Restraining Order under Federal Rule of Civil Procedure 65(b). For the reasons stated in the accompanying Memorandum of Law in Support of Motion for Temporary Restraining Order, incorporated herein, Plaintiffs-Petitioners respectfully request that the Court grant the following interim relief as set forth in the foregoing proposed Order: (1) Defendants-Respondents are enjoined and restrained from barring Plaintiffs-Petitioners' return to the United States; (2) Defendants-Respondents shall within 48 hours reinstate Plaintiffs-Petitioners' revoked visas or issue Plaintiffs-Petitioners new visas for Lawful Permanent Residence; (3) Defendants-Respondents shall transport Plaintiffs-Petitioners back to the United States at government expense; (4) Defendants-Respondents shall admit Plaintiffs-Petitioners to the United

States under the terms of their previously approved visas for Lawful Permanent Residence; and (5) Defendants-Respondents shall communicate the terms of this Court's order immediately to officers in Damascus, Syria and to authorities at the airport from which Plaintiffs-Petitioners shall depart for the United States.

Wherefore, for the reasons set forth in the accompanying memorandum of law, Plaintiffs-Petitioners respectfully request that the Court grant this motion.

Respectfully submitted,

Dated: January 31, 2017

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MEMORANDUM OF LAW IN SUPPORT OF
MOTION FOR TEMPORARY RESTRAINING ORDER

Plaintiffs-Petitioners, by and through undersigned counsel, respectfully request that the Court issue a temporary restraining order enjoining the government Defendants-Respondents from barring Plaintiffs-Petitioners' entry into the United States pursuant to the unlawful executive order entitled, "Protecting the Nation from Foreign Terrorist Entry into the United States" (hereinafter, "EO" or "executive order") issued by the President on January 27, 2017. Specifically, the Plaintiffs-Petitioners request the reinstatement of their previously approved visas and their immediate return at government expense and admission into the United States, as set forth in the accompanying proposed order.

The relief requested in this Memorandum is fully consistent with that granted in other cases decided in the four days since the issuance of the EO. In *Vayeghan v. Kelly*, No. 17-702 (C.D. Cal. Jan. 29, 2017), Judge Gee ordered the return of an Iranian who was similarly returned to his country of origin pursuant to the EO, finding that "Petitioner has demonstrated a strong likelihood of success in establishing that removal violates the Establishment Clause, the Immigration and Nationality Act, and his rights to Equal Protection guaranteed by the United States Constitution." Order at 2. Each of the other courts to address challenges to implementation of the EO has granted preliminary relief. *See Darweesh v. Trump*, No. 17-480, 2017 WL 388504, at *1 (E.D.N.Y. Jan. 28, 2017) ("The petitions have a strong likelihood of success in establishing that the removal of the petitioner and others similarly situated violates their rights to Due Process and Equal Protection guaranteed by the United States Constitution"); *Tootkaboni v. Trump*, No. 17-10154, 2017 WL 386550 (D. Mass. Jan. 29, 2017); *Doe v. Trump*, No. 17-126, 2017 WL 388532 (W.D. Wash. Jan. 28, 2017).

I. FACTUAL BACKGROUND

Plaintiffs-Petitioners are natives of Syria. After waiting 13 years, they were approved for Lawful Permanent Resident visas by the U.S. consulate. In reliance on these approved visas, they arrived at Philadelphia International Airport—their first port of entry in the United States—at approximately 7:45 AM on Saturday, January 28, 2017 on a flight from Qatar. They were returned to Qatar less than three hours later.

While their plane was at the gate, they were taken off the plane and placed directly into a "secondary inspection." Two Customs and Border Protection ("CBP") officers effected the family's removal from the plane and then detained them. The Petitioners-Plaintiffs, Basam Abou Asali and Jozfin Alshaaf, were taken out first and the other family members were placed

with them approximately 15 minutes later. During the time of the family's detention CBP officers directly refused their requests to speak with the family member, Ghassan Abou Asali, who was waiting for them at the airport gate. The CBP officers also failed to provide any interpreter for the family who do not speak English fluently.

The CBP officers informed the family that they had only two options: 1) returning on the same plane on which they had just traveled or 2) being arrested and imprisoned with their visas taken away and an order that they could not return for 5 years. The officers implied that if the family chose to return immediately the LPR visas would be able to be used within 90 days. The officers stated that their actions were taken in accordance with the EO that had just been issued.

At no time did the CBP officers ask the Petitioners-Plaintiffs anything other than to confirm their country of origin as Syria. No questions were asked about fear of return; no information was provided as to asylum or asylum processes; and no individual review of any of the already approved Permanent Resident visas was conducted. The sealed envelopes from the U.S. consulate were never opened and remain sealed to this day. This is relevant because, for the purpose of any individualized review as contemplated by section 3(g) of the EO, a review of the internal contents of the package is essential.

II. ARGUMENT

The standards for evaluating motions for a temporary restraining order or a preliminary injunction are the same and are well established. The Court must consider 1) whether movant has a likelihood of success on the merits; 2) whether irreparable harm will occur in the absence of an injunction; 3) whether the opposing party will be harmed by a stay; and 4) whether a stay would be in the public interest. *See Nken v. Holder*, 129 S. Ct. 1749, 1754-55 (2009).

Each of these factors supports the issuance of a temporary restraining order here.

A. Plaintiffs-Petitioners Are Likely to Succeed on the Merits

Plaintiffs-Petitioners are unquestionably likely to succeed on the merits. The executive order is so plainly illegal that yesterday, the then-Acting Attorney General of the United States, announced that she would refuse to defend it in court. Letter from Sally Yates, Jan. 30, 2017, *available at*, https://www.nytimes.com/interactive/2017/01/30/us/document-Letter-From-Sally-Yates.html.

1. Plaintiffs-Petitioners' Procedural Due Process Claims Are Likely To Succeed.

CBP acting pursuant to the EO, unlawfully denied Plaintiffs-Petitioners' liberty interests under the due process clause of the Fifth Amendment. Petitioners were physically present in the United States with valid Lawful Permanent Resident visas, but were denied entry. While applications for additional relief from deportation should have been unnecessary given the existence of their Lawful Permanent Resident visas, they were also prevented from applying for asylum or withholding protections under the Convention Against Torture ("CAT").

Additionally, due process requires that arriving immigrants be afforded those statutory rights granted by Congress and the principle that "[m]inimum due process rights attach to statutory rights." *Dia v. Ashcroft*, 353 F.3d 228, 239 (3d Cir. 2003) (quoting *Marincas v. Lewis*, 92 F.3d 195, 203 (3d Cir. 1996)). *See also Clark v. Martinez*, 543 U.S. 371 (2005) (demonstrating that immigrants who have not yet been admitted are not categorically excluded from these protections). The Immigration and Nationality Act provides that "[a]ny alien who is physically present in the United States or who arrives in the United States. . . irrespective of such alien's status, may apply for asylum in accordance with this section or, where applicable, section 235(b)." 8 U.S.C. § 1158(a)(1).

In particular, Congress has given asylum seekers the right to present evidence to an Immigration Judge, 8 U.S.C. § 1229a(b)(4)(B), the right to move to reconsider any decision that the applicant is removable, 8 U.S.C. § 1229a(c)(5), and the right to judicial review by a court of appeals of final agency orders denying asylum on the merits and directing removal, 8 U.S.C. § 1252(a)(2)(B)(ii). Under United States law as well as human rights conventions, the United States may not return ("refoul") a noncitizen to a country where she may face torture or persecution. *See* 8 U.S.C. § 1231(b); United Nations Convention Against Torture, 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).

The due process clause therefor requires that Plaintiffs-Petitioners have the ability to apply for asylum and withholding under CAT before they may be subject to removal. The EO, however, imposes a categorical prohibition on evaluating asylum and CAT claims and deprives petitioners of any legal process. In *Landon v. Plasencia* , the Supreme Court held that in evaluating immigrants' procedural due process rights when seeking admission to the United States that "the courts must consider the interest at stake for the individual, the risk of an erroneous deprivation of the interest through the procedures used as well as the probable value of additional or different procedural safeguards." *Landon v. Plasencia*, 459 U.S. 21, 34 (1982).

Plaintiffs-Petitioners' interests in this case are weighty: they both stand to lose the right to live and work in "this land of freedom." *Id*.; *see also Bridges v. Wixon*, 326 U.S. 135, 154 (1945) (noting that individuals have a liberty interest in proper procedures being applied in deportation proceedings). Plaintiffs-Petitioners also have considered interests in avoiding deprivation of life and torture if forced to return to Syria, and have strong family connections to

the United States. *Landon*, 459 U.S at 34 (recognizing family and personal connections within the United States as an individual interest). Additionally, because Plaintiffs-Petitioners have already been through substantial procedural screenings and approved for admission with immigrant visas, the government's interest "in efficient administration of the immigration laws" has already been satisfied. *Landon v. Plasencia*, 459 U.S. at 34. The liberty interests of Plaintiffs-Petitioners and extreme risks of injury that will result from arbitrary deprivation of Plaintiffs-Petitioners' rights are therefore substantial and well-recognized by existing precedent, and their denial of admission without the ability to apply for asylum or withholding under CAT offends due process clause of the Fifth Amendment.

2. Plaintiffs-Petitioners' *Accardi* Claims Are Likely To Succeed.

Defendants-Respondents' actions in returning Plaintiffs-Petitioners to Syria, taken pursuant to the EO, deprived Plaintiffs-Petitioners of their statutory and regulatory rights in violation of *Accardi v. Shaughnessy*, 347 U.S. 260 (1954), which stands for the principle that agencies must comply with their own regulations. *See Leslie v. Att'y Gen.*, 611 F.3d 171, 175 (3d Cir. 2010) (recognizing "the long-settled principle that rules promulgated by a federal agency that regulate the rights and interests of others are controlling upon the agency"); *see also Vitarelli v. Seaton*, 359 U.S. 535 (1959) (reinstating Interior Department employee after removal in violation of Department regulations). The Supreme Court has explained that this principle is grounded in the Fifth Amendment's guarantee of due process, as well as administrative common law and the nature of legislative rulemaking.

In the Third Circuit, *Accardi* relief is available when the agency fails to follow regulations "protecting fundamental statutory or constitutional rights of parties appearing before

it," *or* where the Plaintiff is prejudiced by the failure. *Leslie*, 611 F.3d at 180. Only where statutory or constitutional rights are not implicated must the plaintiff show prejudice. *Id.*

The Immigration and Nationality Act and implementing regulations, including 8 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, 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 Plaintiffs-Petitioners to an opportunity to apply for asylum, withholding of removal, and CAT relief. These provisions also entitle Plaintiffs-Petitioners to a grant of withholding of removal and CAT relief upon a showing that they meet the applicable legal standards.

Defendants-Respondents' actions in returning Petitioners to Syria, taken pursuant to the EO, deprived Plaintiffs-Petitioners of their statutory and regulatory rights under the above provision. This error was clearly prejudicial in that Plaintiffs-Petitioners were denied the opportunity to apply for the above relief and were wrongfully deprived of liberty and placed at serious risk. In particular, DHS's failure to follow its own regulations in affording Plaintiffs-Petitioners an opportunity to apply for asylum and other forms of humanitarian relief constitute an *Accardi* violation and should be set aside.

3. Plaintiffs-Petitioners' Equal Protection Claims Are Likely To Succeed.

Plaintiffs-Petitioners claim a violation of the equal protection component of the Due Process Clause of the Fifth Amendment, on the ground that the EO constitutes intentional discrimination by the federal government on the basis of religion and national origin.

The Supreme Court has identified three ways in which a litigant may demonstrate intentional discrimination by a government actor. First, a law is discriminatory on its face if it expressly classifies persons on the basis of a protected category. *See Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 213, 227-29 (1995). Second, a law that is facially neutral nonetheless violates equal protection if it is applied in a discriminatory way. *See Yick Wo v. Hopkins*, 118 U.S. 356, 373-74 (1886). Third, a law that is facially neutral and applied evenhandedly nonetheless violates equal protection if it was motivated by discriminatory animus and its application has discriminatory effects. *See Village of Arlington Heights v. Metro. Housing Dev. Corp*., 429 U.S. 252, 264-65 (1977).

Discrimination on the basis of religion is a violation of equal protection. *See City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976) (citing religion as an "inherently suspect distinction"); *see also Bd. of Educ. of Kiryas Joel Vill. Sch. Dist. v. Grumet*, 512 U.S. 687, 715 (1994) (O'Connor, J., concurring); *McDaniel v. Paty*, 435 U.S. 618, 644 (1978) ("In my view, the Religion Clauses—the Free Exercise Clause, the Establishment Clause, the Religious Test Clause, Art. VI, cl. 3, and the Equal Protection Clause as applied to religion—all speak with one voice on this point: Absent the most unusual circumstances, one's religion ought not affect one's legal rights or duties or benefits.").

Similarly, "national origin . . . [is] so seldom relevant to the achievement of any legitimate state interest that laws grounded in such considerations are deemed to reflect prejudice

and antipathy." *City of Cleburne, Tex. v. Cleburne Living Ctr*., 473 U.S. 432, 440 (1985). Therefore, a government action based on animus against, and that has a discriminatory effect on, Muslims, perceived Muslims, or individuals from the countries in question violates the equal protection component of the Due Process Clause.

Though Plaintiffs are Christians, and not Muslims, a majority of Syrians are Muslim. Petitioners allege that their rights under the equal protection component of the Due Process Clause have been violated by government action requiring discriminatory action, on the basis of their national origin and *perceived* religion. Discrimination on the basis of a suspect classification violates the Due Process Clause. *Yick Wo*, 118 U.S. at 373-74. The EO specifically grants priority to non-Muslims. It is clear from the President's public statements that the EO will result in the differential treatment of individuals and perceived members of one religious group, Islam, and will favor individuals of other religious groups. This differential treatment violates the equal protection component of the Due Process Clause.

Petitioners allege that their rights under the equal protection component of the Due Process Clause were violated by government action motivated by forbidden discriminatory animus against individuals from Syrians and Muslims and perceived Muslims. *See Antonelli v. New Jersey*, 419 F.3d 267, 274 (3d Cir. 2005) ("Intentional discrimination can be shown when … a facially neutral law or policy that is applied evenhandedly is motivated by discriminatory intent and has a racially discriminatory impact"); *Jana-Rock Const., Inc. v. N.Y. State Dep't of Econ. Dev.*, 438 F.3d 195, 204 (2d Cir. 2006) ("Government action . . . violates principles of equal protection 'if it was motivated by discriminatory animus and its application results in a discriminatory effect.'"); *see also Hunter v. Underwood*, 471 U.S. 222 (1985); *Mhany Mgmt., Inc. v. Cty. of Nassau*, 819 F.3d 581, 605-13 (2d Cir. 2016).

"When there is a proof that a discriminatory purpose has been a motivating factor in the decision, . . . judicial deference is no longer justified." *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp*., 429 U.S. 252, 265–66 (1977). Petitioners challenging such facially neutral laws on equal protection grounds bear the burden of making out a "prima facie case of discriminatory purpose." Courts evaluate whether a plaintiff has established a *prima facie* case of discriminatory purpose by examining the factors the Supreme Court set out in *Village of Arlington Heights v. Metropolitan Housing Development Corporation*, 429 U.S. 252, 266-7 (1977). The *Arlington Heights* test looks to the impact of the official action, whether there has been a clear pattern unexplainable on other grounds besides discrimination, the historical background of the decision, the specific sequence of events leading up to the challenged decision, and departures from the normal procedural sequence. Substantive departures may also be relevant "if the factors usually considered important by the decision maker strongly favor a decision contrary to the one reached." *Vill. of Arlington Heights*., 429 U.S. at 266-7.

In this case, the *Arlington Heights* factors are clearly met. The impact of the EO will clearly fall disproportionately on individuals from the countries cited in the EO and Muslims and those perceived to be Muslim. As an initial matter, when asked about his proposed ban on Muslims in a July 2016 interview with NBC's Meet the Press, the then Republican presidential nominee explained, "I'm looking now at territory. People were so upset when I used the word 'Muslim': 'Oh, you can't use the word "Muslim."' Remember this. And I'm okay with that, because I'm talking territory instead of Muslim." *See* Jenna Johnson, Donald Trump Is Expanding His Muslim Ban, Not Rolling It Back, Washington Post (July 24, 2016), https://www.washingtonpost.com/news/postpolitics/wp/2016/07/24/donald-trump-is-expanding-his-muslim-ban-not-rolling-itback/?utm_term=.139272f67dd2. Consistent with this statement,

the countries targeted by the EO are all majority Muslim. Indeed, on January 28, 2017, Rudy Giuliani, who is acting as an aide to Donald Trump, revealed on Fox News that he was involved in drafting the EO and that the president had tasked him with creating a "Muslim ban" that could work legally. Rob Tornoe, Rudy Giuliani: President Trump asked me to create a legal 'Muslim ban', Phila. Inquirer (Jan. 29, 2017), http://www.philly.com/philly/blogs/real-time/Rudy-Giuliani-President-Trump-asked-me-to-create-a-legal-Muslim-ban-.html. It is clear from the President's public statements that the EO is intended not only to target Muslim-majority countries, but is also intended to have a disparate impact as between Muslims and non-Muslims from the same countries.

The historical background of this drafting decision reveals a long line of public statements by President Trump indicating animus towards Muslims. *See*, e.g., Theodore Schleifer, Donald Trump: 'I think Islam hates us', CNN (Mar. 10, 2016), http://www.cnn.com/2016/03/09/politics/donaldtrump-islam-hates-us. The sequence of events leading up to this decision reveals that President Trump has long publicly stated that he plans to ban Muslims from entering the United States. *See*, *e.g.*, Donald J. Trump, Donald J. Trump Statement On Preventing Muslim Immigration, (Dec. 7, 2015), https://www.donaldjtrump.com/press-releases/donald-j.-trump-statement-onpreventing-muslim-immigration ("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."); Abby Phillip and Abigail Hauslohner, *Trump on the Future of Proposed Muslim Ban, Registry: 'You know my plans'*, Wash. Post (Dec. 22, 2016), https://www.washingtonpost.com/news/post-politics/wp/2016/12/21/trump-on-the-future-of-proposed-muslim-ban-registryyou-know-my-plans/?utm_term=.a22a50598ea3.

Given the disparate impact of the EO, a historical background of public statements of animus against Muslims, the specific sequence of promises by President Trump that he would "ban" Muslims, and the substantive departure from prior policy on the basis of factors that strongly favor a decision other than the one reached, the *Arlington Heights* factors are clearly met. *See Vill. of Arlington Heights v. Metro. Hous. Dev. Corp*., 429 U.S. at 266-7. Petitioners have therefore asserted a prima facie claim of discriminatory purpose and of discriminatory impact. It is the government's burden to rebut the resulting "presumption of unconstitutional action." *Washington v. Davis*, 426 U.S. 229, 241 (1976).

4. Plaintiffs-Petitioners Are Likely to Succeed on the Merits of Their Administrative Procedures Act Claims

Finally, Defendants-Respondents' actions in detaining and mistreating Plaintiffs-Petitioners 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 (APA), 5 U.S.C. §§ 706(2)(A)-(D).

The scope of this Court's review is delineated by 5 U.S.C. § 706, which provides that the "reviewing court shall . . . hold unlawful and set aside agency action . . . found to be "(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege, or immunity; (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; . . . [or] (D) without observance of procedure required by law . . . ." 5 U.S.C. § 706(2) (emphasis added). The APA provides further that, "[t]o the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and

determine the meaning or applicability of the terms of an agency action." *Id.* § 706 (emphasis added).

Defendants-Respondents detained and mistreated Plaintiffs-Petitioners solely pursuant to the January 27th EO, which expressly discriminates against Plaintiffs-Petitioners on the basis of their country of origin and was substantially motivated by animus toward Muslims, in violation of the equal protection component of the Due Process Clause of the Fifth Amendment. *See supra* Section II(A)(4). The EO exhibits hostility to a specific religious faith, Islam, and gives preference to other religious faiths, principally Christianity. Respondents' actions were therefore "contrary to constitutional right, power, privilege, or immunity, in violation of § 706(2)(B). Further, 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). This section establishes a non-discrimination principle that extends to the agency's processing of applicants for entry at the border. Were this not so, this section would have no practical effect, since CBP could simply deny entry to individuals based on the above prohibited characteristics to individuals whom DHS had otherwise duly issued a visa. Defendants-Respondents' detention and mistreatment of Plaintiffs-Petitioners despite their possession of valid entry documents is therefore contrary to the INA and in violation of 5 U.S.C. § 706(2)(C). As set forth above, *supra* Section II(A)(1), Defendants-Respondents' actions also violated procedural requirements of the Fifth Amendment and the Immigration and Nationality Act by returning Plaintiffs-Petitioners and members of the proposed class to their home countries without the opportunity to present claims for asylum or other forms of humanitarian protection. Individuals arriving at United States ports of entry must afforded an opportunity to apply for asylum or other forms of humanitarian protection and be promptly received and processed by United States authorities. 8 U.S.C. § 1158(a)(1); *see also id.*

§ 1225(b)(1)(A)(ii). The Immigration and Nationality Act and implementing regulations, including 8 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 Plaintiffs-Petitioners to an opportunity to apply for asylum, withholding of removal, and CAT relief. Defendants-Respondents' actions, in violating the procedural requirements of the Due Process Clause of the Fifth Amendment and these various statutory provisions, also violate § 706(2)(D) of the APA, which prohibits agency action taken "without observance of procedure required by law."

For all of the reasons set forth in this section, Defendants-Respondents' challenged actions were "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). In addition, Defendants-Respondents' actions were arbitrary and capricious for their failure to consider "all relevant issues and factors." *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 48-49 (1983)). Under *State Farm*, for an agency action to survive arbitrary-and-capricious review, it "must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made." *State Farm*, 463 U.S. at 43 (internal quotation omitted). This "hard look" standard exceeds the "rational basis" standard applied under the Due Process Clause. *Id.* at 43 n.9. Here, the government has failed to consider many relevant issues and factors, including evidence regarding the low risk to U.S. citizens posed by refugees, and the relative risk presented by those arriving on different visa categories.

B. Plaintiffs-Petitioners Are Likely to Suffer Irreparable Harm, and the Balance of Harms and Public Interest Favor the Granting of an Injunction

Plaintiffs-Petitioners will suffer irreparable harm in the absence of a temporary injunction, and a TRO is urgently required. They came to the United States in reliance on the United States' promise that they would be allowed to enter the country. Intending to become permanent residents, as their visas allowed, they sold belongings and property. Yet, when they arrived in Philadelphia, they were given no information and forced to return to Syria, and they were not given any opportunity provide information concerning the danger they faced upon return to a war-torn country as religious minorities. Plaintiffs-Petitioners face a risk of death, serious bodily injury, and persecution if they are not allowed to return to the United States.

Their family, including two members who recently entered on the same visa approvals, are in Allentown, Pennsylvania, and are waiting to greet them. They have waited 13 years for the processing of their visas and arrival to the United States as permanent residents. Without an injunction allowing them to return, they will be irreparably harmed by the loss of companionship with family members in the United States, and will be forced to undergo an expensive and cumbersome visa application process that could separate them from their U.S. family for months or years, all while facing the risks resulting from their return to Syria.

There is no question that the balance of equities tips in their favor as they have already been cleared by security checks and found to be admissible, they face a dangerous and unstable situation in Syria, and there is no harm in allowing them to enter the United States given the many years of vetting they have already gone through. Given the discriminatory nature of the EO and the humanitarian interests in unifying the family, an injunction is also in the public interest.

III. CONCLUSION

Plaintiffs-Petitioners respectfully request that this Court grant this motion for temporary restraining order and enter the attached proposed order.

Dated: January 31, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Joseph C. Hohenstein, hereby certify that on January 31, 2017, the foregoing filing was served on counsel for Defendants-Respondents via e-mail to:

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