

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

JOHN DOE,

Petitioner,

v.

ELAINE DUKE, in her official capacity as Acting Secretary, U.S. Department of Homeland Security; JEFFERSON B. SESSIONS, in his official capacity as U.S. Attorney General; JAMES MCHENRY, in his official capacity as Acting Director of the Executive Office for Immigration Review; KEVIN K. MCALEENAN, in his official capacity as Acting Commissioner, U.S. CUSTOMS AND BORDER PROTECTION (“CBP”); U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (“ICE”); JOHN TSOUKARIS, in his official capacity as Field Office Director for Enforcement and Removal Operations, Newark Field Office, ICE; MICHAEL FIRING, in his official capacity as Chief, Enforcement Branch Passenger Operations Division, Port of New York/Newark Office of Field Operations, CBP; ADELE FASANO, in her official capacity as Newark Port Director, CBP; and ORLANDO RODRIGUEZ, Warden, Elizabeth Detention Center,

Respondents.

Civil Action No. 2:17-cv-1709 (JLL)

HON. JOSE L. LINARES

**AMENDED VERIFIED PETITION
FOR WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241**

INTRODUCTION

1. This case involves the unjustified immigration detention of a young Muslim man who put his life at risk to serve U.S. military and diplomatic personnel in Afghanistan, and who traveled to the United States on a Special Immigrant Visa that the government concedes was valid at the time he arrived. Ex. C-10, Form I-213.

2. Petitioner, John Doe, is a citizen of Afghanistan who worked in support of the United States Armed Forces and U.S. Embassy for a total of five years, during which time he provided dining services to U.S. government and military personnel.

3. Because of his support for the United States, he was attacked and beaten by the Taliban and nearly killed by an explosive device. Due to the ongoing danger he faces in Afghanistan, and the fact that this danger arises from his service to the United States, the U.S. government granted him a Special Immigrant Visa (“SIV”). This immigrant visa gave him the opportunity to enter the United States as a lawful permanent resident (“LPR”) and to receive refugee resettlement assistance.

4. After the U.S. government issued his SIV and his travel was arranged, Mr. Doe quit his job at the Embassy in preparation for his move. His family brought him a suitcase with dried fruit and homemade cookies inside, and he took three flights to reach the United States. At Newark-Liberty International Airport (“Newark Airport” or the “airport”), a U.S. Customs and Border Protection (“CBP”) agent placed an admission stamp in his passport, indicating LPR status. To Mr. Doe’s surprise, however, CBP then detained him and most of the other Afghan men on his flight. They gave no reason for the detention except an unspecified “problem” with his visa, and questioned him about the Muslim prayer rug and kufi (prayer cap) in his bag, and whether he had a Quran. CBP denied Mr. Doe food for over 24 hours, denied him a suitable place to sleep from the evening

of March 13 through the early morning of March 15, denied his requests to speak with his SIV sponsor and for an interpreter, and denied him access to his current counsel, who was present at the airport seeking to represent him *pro bono*. Agents coerced and misled him into signing documents he did not understand, including one that purported to withdraw his application for admission.

5. Respondents then booked Mr. Doe on the earliest possible flight back to Afghanistan, despite his passport stamp and the documented danger he faces from the Taliban. Agents were preparing to board Mr. Doe on a plane when the Third Circuit granted an emergency stay of removal in the present case. Ex. 1, Third Circuit Stay of Removal. Mr. Doe was sent back to a detention facility. He subsequently passed a credible fear interview and was placed in full removal proceedings. He applied for parole, submitting strong letters of support from three refugee resettlement agencies, a U.S. Senator, and a U.S. Congressman. The government denied this request, but did not allege that he failed to prove his identity, nor that he posed any flight risk or danger. It cited only “[a]dditional exceptional, overriding factors,” namely, the fact that “ICE is currently investigating” the reason that the Department of State revoked his visa. Ex. C-14, Parole Denial Letter. Today, months after our government invited Mr. Doe to come to the United States because his service to the United States put his life in danger, he remains detained without a bond hearing.

6. For the reasons discussed herein, Mr. Doe’s detention has no basis under the Immigration and Nationality Act and violates the First and Fifth Amendments. Even if he had been subject to immigration detention, his detention without a bond hearing is unlawful and unconstitutional because it is unreasonably prolonged, and also because he should have received a bond hearing when he was placed in full removal proceedings.

7. Mr. Doe respectfully applies to this Court for a writ of habeas corpus to remedy his unlawful detention. He respectfully requests that this Court order his immediate release or in the alternative, a bond hearing before the immigration court.

JURISDICTION AND VENUE

8. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 (federal question jurisdiction), 2241 and 2243 (writ of habeas corpus), and the Suspension Clause of the U.S. Constitution (U.S. Const. art. I, § 9, cl. 2).

9. Venue properly lies within the District of New Jersey because a substantial part of the events or omissions giving rise to this action occurred in the District. 28 U.S.C. § 1391(b)(2). Aside from the present action, no civil complaint or petition for habeas corpus has been filed in any court to review Mr. Doe’s case. Mr. Doe is now in removal proceedings before the Elizabeth Immigration Court.

10. 8 U.S.C. § 2241 contains no jurisdictional exhaustion requirement, and prudential exhaustion is within the “sound discretion of the court” and is not required where it “would be futile.” *Lamas v. McKenzie*, No. Civ-07-6035 (SDW), 2008 WL 346138, at *6 n.13 (D.N.J. 2008) (citing *Haitian Refugee Center v. Smith*, 676 F.2d 1023, 1032 (5th Cir. 1982)). Mr. Doe has exhausted all administrative remedies for which exhaustion would not be futile.

PARTIES

11. Mr. Doe is an Afghan national who was issued a Special Immigrant Visa (“SIV,” type SQ1), authorizing his resettlement in the United States. He is a practicing Muslim, and Afghanistan is a Muslim-majority country. He arrived at Newark- Airport on March 13, 2017, and has been in custody since his arrival. He is currently detained at the Elizabeth Detention Center.

12. The U.S. Department of Homeland Security (“DHS”) is a cabinet department of the United States federal government with responsibility for, among other things, administering and enforcing the nation’s immigration laws.

13. 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. Upon information and belief, Mr. Doe was in CBP custody from the time of his initial arrest up until the evening of March 14, 2017, when he was first transferred to Elizabeth Detention Center.

14. U.S. Immigration and Customs Enforcement (“ICE”) is an agency within DHS that “enforces federal laws governing border control, customs, trade and immigration to promote homeland security and public safety.”¹ Mr. Doe is currently in ICE custody. Upon information and belief, he has been in ICE custody since on or before the night of March 14, 2017, when he was first transferred to Elizabeth Detention Center.

15. All of the individual Respondents are sued in their official capacity.

16. Respondent Elaine Duke is the Acting Secretary of the U.S. Department of Homeland Security. She is a custodian of Mr. Doe and has the authority to order his release. She has authority over both DHS and CBP, including but not limited to custody determinations, parole determinations, and other detention policies and procedures.

17. Respondent Jefferson B. Sessions is the Attorney General of the United States. He has authority over the Department of Justice, including the Executive Office for Immigration Review and the Elizabeth Immigration Court, and the authority to order Mr. Doe’s release.

¹ U.S. Immigration and Customs Enforcement, *Who We Are*, www.ice.gov/about (last visited Aug. 7, 2017).

18. Respondent Kevin K. McAleenan is Acting Commissioner of CBP. He was a custodian of Mr. Doe during his time in CBP custody and had authority to order his release.

19. Respondent James McHenry is Acting Director of the Executive Office for Immigration Review. He has authority over the Elizabeth Immigration Court and the authority to order Mr. Doe's release.

20. Respondent Michael Firing is Chief, Enforcement Branch Passenger Operations Division, Port of New York/Newark Office of Field Operations for CBP. He had custody over Mr. Doe during his detention at Newark Airport and had authority to order his release.

21. Respondent John Tsoukaris is the Field Office Director for Enforcement and Removal Operations, Newark Field Office, United States Immigration and Customs Enforcement. He is a custodian of Mr. Doe and has the authority to order his release.

22. Respondent Adele Fasano is Newark Port Director for CBP. She had custody of Mr. Doe from the time of his arrival at Newark Airport to the time he was transferred to ICE custody, and the authority to order his release.

23. Respondent Orlando Rodriguez is the Warden of Elizabeth Detention Center and the immediate custodian of Mr. Doe. He has the authority to order his release.

STATEMENT OF FACTS

24. The United States government granted Mr. Doe a Special Immigrant Visa in recognition of his five years of dedicated service in Afghanistan in support of the U.S. Armed Forces and the U.S. Department of State and the serious and imminent threat of harm he faced at the hands of the Taliban as a result of this service.

Mr. Doe's Work to Support the United States in Afghanistan

25. Mr. Doe was twenty years old when he began working for the U.S. Government. For over five years, and until weeks before he departed for the United States, Mr. Doe worked for contractors supporting the United States Armed Forces and Embassy in Afghanistan.²

26. Mr. Doe worked in dining halls on two U.S. military bases, and subsequently in a dining hall in the U.S. Embassy in Kabul. He served food to American troops and officers at the camps, and later worked as a dining hall cashier for staff and officials of the U.S. Department of State, including the U.S. Ambassador.

27. Mr. Doe's supervisor at the Embassy was a retired U.S. Army Sergeant named Marion Leon Goins. Mr. Doe worked extremely hard and was respected by his supervisors and coworkers. Ex. C-8 and C-9, Letters of Support for SIV Application.

28. To work in these secure locations, Mr. Doe had to pass regular security checks by the U.S. government, which included interviews and polygraph tests.

Threats and Attacks by the Taliban

29. Citizens of Afghanistan who work or have worked for the U.S. Armed Forces, government entities, or contractors often become targets of violent anti-American attacks, kidnappings, torture, and murder by the Taliban. The Taliban opposes the U.S. presence in Afghanistan and targets

² Mr. Doe was consistently employed for five years by an approved U.S. government contractor. The contractor changed names during his tenure due to mergers.

Afghan citizens who have worked for the U.S. government and its contractors based upon this work, their pro-American political opinions, and their imputed religious beliefs.³

30. Knowing that his work for the United States put him at risk of Taliban violence, Mr. Doe tried to keep his employment secret. He understood that if word got out in his village that he was working for the Americans, the Taliban would target him.

31. In early 2015, Mr. Doe noticed a Taliban poster in the mosque in his family's village, threatening that anyone working for the United States would be reprimanded.

32. In light of the threat he faced from the Taliban, Mr. Doe realized he could no longer commute safely from his family's village. He spoke to Sgt. Goins, and his employer allowed him to begin living in shared employee housing near the U.S. base where he worked, and later in housing near the U.S. Embassy.

33. Mr. Doe is very close to his family. At first, even though he was living near the base, Mr. Doe would make trips home to visit them.

34. In or about early 2015, when Mr. Doe was travelling home to see his family in their village, he was attacked and beaten by men whose manner of dress identified them as members of the

³ See, e.g., Emmarie Heutteman, "*They Will Kill Us*": *Afghan Translators Plead for Delayed U.S. Visas*, New York Times (Aug. 9, 2016), <https://www.nytimes.com/2016/08/10/us/politics/afghan-translators-military-visas.html> (quoting Senator John McCain's testimony from the Senate floor that, if the Afghan SIV program is not renewed, "People are going to die."); see also Barbara Starr, *At least 11 US citizens injured in Kabul blast*, CNN (May 31, 2017), <http://www.cnn.com/2017/05/31/politics/kabul-attack-us-citizens/index.html> (reporting a car bomb attack that killed 11 U.S. government contractors and nine Afghan hires serving the U.S. in a security capacity); U.S. Embassy in Afghanistan, *U.S. Embassy Condemns Attack in West Kabul*, official press release (July 24, 2017), <https://af.usembassy.gov/u-s-embassy-condemns-attack-west-kabul/> (noting that the attack targeted "brave and dedicated Afghan public servants").

Taliban. On another occasion, while making the same trip home, he was nearly killed by a roadside explosion, which appeared to target him personally.

35. Following these near-fatal attacks, Mr. Doe made the difficult decision to stop visiting his family in their village, because he now knew that the Taliban were targeting him on these trips. Mr. Doe also realized that he needed to leave Afghanistan to save his life. With support from his employer, he began the process of applying for an Afghan SIV.

Afghan Special Immigrant Visas

36. Recognizing the critical role that Afghan citizens play in supporting the U.S. Armed Forces, the frequency of Taliban attacks on citizens who work for the United States or its contractors, and the importance of protecting those residents in exchange for their service, Congress created the Afghan SIV program. SIVs provide safety and refuge in the United States for Afghans who face or have “provided faithful and valuable service to the United States” and who have “experienced or [are] experiencing a serious threat” as a “consequence” of that service. The program was established pursuant to the Afghan Allies Protection Act of 2008, 8 U.S.C. § 1101 note at 601-02.

37. The SIV program allows individuals who worked with the U.S. Armed Forces or under Chief of Mission (“COM”) authority and provided assistance to the United States to apply for a visa authorizing them to enter and live in the United States. These immigrant visas enable qualifying Afghan citizens to enter the United States as LPRs. *Id.* at notes 601-02.⁴

⁴ See also, U.S. Department of State, *Special Immigrant Visas for Afghans - Who Were Employed by/on Behalf of the U.S. Government*, U.S. Visas, https://travel.state.gov/content/visas/en/immigrate/afghans-work-for-us.html?cq_ck=1457123892013 (last visited Aug. 7, 2017) (“As an SIV recipient, you will have Lawful Permanent Resident (LPR) status upon admission into the

38. To be eligible for an SIV, an Afghan citizen must: apply pursuant to the general statutory provision for SIVs; be “eligible to receive an immigrant visa”; be “admissible to the United States for permanent residence,” except that the “public charge” ground of inadmissibility does not apply; and must “clear[] a background check and appropriate screening, as determined by the Secretary of Homeland Security.” *Id.* at note 602(b)(1).

39. The first step in pursuing an SIV is obtaining approval from the Chief of Mission (“COM”) with jurisdiction over the case. The COM must conduct a “risk assessment” and “an independent review of records maintained by the United States Government or hiring organization or entity to confirm employment and faithful and valuable service to the United States government” before he or she may approve a petition. *Id.* at note 602(b)(2)(D).

40. After obtaining COM Approval, an SIV applicant files Form I-360 with DHS’s U.S. Citizenship and Immigration Services (“USCIS”). *Id.* at note 602(b)(12)(B)(II). Upon approval of this petition, the applicant submits a DS-260 visa application, along with accompanying documents, to the National Visa Center, part of the U.S. Department of State. After the DS-260 is processed, the Department of State interviews the applicant at a U.S. consulate or embassy.

41. At that point, SIV applications receive administrative processing, during which the U.S. government collects fingerprints and biometric information and conducts security checks and a medical examination. Two separate government entities, the Department of State and USCIS, conduct background checks and determine whether the applicant is at imminent risk of harm in

United States. Once you are admitted to the United States you will be mailed your Permanent Resident Card (also known as Green Card).”).

the home country. If, and only if, the applicant satisfies all these checks and receives clearance, USCIS issues a SIV and the individual is granted authorization to travel to the United States.⁵

42. In April 2017, the Department of State reported that the average processing time for an Afghan's SIV application was approximately two (2) years.⁶

43. Because Afghan SIVs are issued for a humanitarian purpose, Congress provides the same refugee resettlement support and benefits to SIV holders that it affords refugees. *Id.* at note 602(b)(8).

44. In fact, Congress provided that SIV holders receive even more favorable treatment than refugees or asylees, because SIV holders receive immediate and automatic adjustment of status to LPR status upon admission.⁷

Mr. Doe's Special Immigrant Visa

45. In May 2015, Mr. Doe applied for an SIV. As part of his application, he had to explain the "serious threat" he faced in Afghanistan as a "consequence" of "faithful and valuable service to the United States." *See* 8 U.S.C. § 1101 note at 601-02. Because Mr. Doe is unable to read or write

⁵ On information and belief, "SIV-SQ1" denotes an SIV issued to an eligible individual who has worked on behalf of the United States. Their spouses and children are issued SIV-SQ2 and SIV-SQ3 visas, respectively.

⁶ *See* Department of State, *Joint Department of State/Department of Homeland Security Report: Status of the Afghan Special Immigrant Visa Program* (April 2017), available at https://travel.state.gov/content/dam/visas/SIVs/Afghan_SIV_report_April_2017.pdf (reporting that an average processing time of 480 U.S. Government calendar days. $480 \text{ days} / 5 \text{ (days per standard business week)} = 96 \text{ weeks} + a = 99.7 \text{ weeks} / 52 \text{ weeks in a year} = 1.917 \text{ years}$ average processing time for Afghan SIV. ($a = \text{federal holidays during 480 U.S. Government Calendar Days}$ (96 weeks flat / 52 weeks in a year = 1.85 years. 10 federal holidays per year x 1.85 years = 18.5 days. $18.5 \text{ days} / 5 \text{ days per week} = 3.7 \text{ weeks}$)).

⁷ Conversely, refugees and asylees cannot apply for adjustment to LPR status until they have had refugee or asylum status for at least one year. *See* 8 U.S.C. § 1159(a), (b), INA § 209(a), (b).

English fluently, he dictated his statement through an interpreter to his supervisor, who wrote it down for him in English.

46. Mr. Doe's supervisor, retired U.S. Army Sergeant Marion Leon Goins, sponsored his application. By letter dated April 20, 2015, Sgt. Goins wrote, "It is with full confidence that I recommend [John Doe] for Special Immigrant Visa (SIV) Status under program for Afghan[] employees serving with the United States Armed Forces in Afghanistan. [John Doe] has diligently supported [the contractor and its predecessors] for supplying Food Service to them." He also expressed "full enthusiastic support" for Mr. Doe's application, and confirmed the details of Mr. Doe's employment at two U.S. camps. He explained that Mr. Doe's "tenure with [the contractor], with all the Company Staff as above has been marked with distinction and [John Doe] has earned a reputation as a hard worker." Ex. C-8, Sgt. Goins Letter.

47. After continuing to praise Mr. Doe's work, Sgt. Goins described the danger Mr. Doe faced in Afghanistan: "Due to the nature of the missions and the professional dedication he has displayed, Mr. [John Doe] has put himself in danger numerous times. His work among the populace assisting us with our mission has resulted in his identity becoming known to the enemy, he has personally received numerous threats against his life till today. Despite these risks, [John Doe] continues to serve his community, country and ultimately the efforts of the government of the United States in its counter terrorism fight." Sgt. Goins then recounts Mr. Doe's request to help save his life in light of attacks by the Taliban in his home district. *Id.*

48. Sgt. Goins concludes, "Through my close and direct supervision, I can state that [John Doe] in my opinion poses no threat to the national security of [the] United State[s]. He has gained thr[ough] actions my trust and that of our counterparts. His level of personal sacrifice and service to the United States clearly warrant his inclusion into this program[.]" *Id.*

49. By letter dated May 13, 2015, Sandrine Wickremasinghe, Human Resources Manager for the U.S. military contractor, further recommended Mr. Doe for an SIV. She writes that her company had employed Mr. Doe since February 2012, and praises Mr. Doe as “a hardworking, honest, and trustworthy individual who works diligently at every task given to him and discharges his duties to the entire satisfaction of the Management.” After giving details of his assignments, she continues: “We could highly recommend him for his services, especially for his communication skills, customer service, and overall professionalism. He has also gained not only our admiration, but that of everyone who had dealings with [him].” She concludes: “Without reservation, I would recommend Mr. [John Doe] as a highly motivated individual.” Ex. C-9, Wickremasinghe Letter.

50. Mr. Doe submitted his visa application, the extensive requisite biographical data, other supporting documents, and a detailed statement of threat, describing the attacks and threats he suffered as a result of his service to the United States.

51. In accordance with the SIV application process, as described in paragraphs 39 to 42 above, Mr. Doe was interviewed in person at the U.S. Embassy, underwent a medical evaluation, and complied with each step of the exhaustive SIV vetting process.⁸

52. Mr. Doe was granted an SQ1 SIV on December 27, 2016, more than a year-and-a-half after he had applied. Ex. C-1, SIV.

⁸ “Afghans seeking entry to the U.S. through the special immigrant visa program are among the most carefully vetted immigrants. They undergo extensive screening before they can even be hired to work with U.S. troops. When they apply for a special immigrant visa, they undergo an additional multi-agency screening process that can take as long as two years.” Jessica Shulberg, *Must-Pass Congressional Spending Bill Includes 2,500 Visas for Afghan Interpreters*, Huffington Post (May 1, 2017), http://www.huffingtonpost.com/entry/spending-bill-2500-visas-afghan-interpreters_us_59076623e4b05c3976810289.

53. In issuing such a visa, Respondents necessarily concluded, among other things, that Mr. Doe was eligible for an SIV, including that he faced an “ongoing serious threat” in Afghanistan as a result of his work in service of the U.S. Armed Forces, and that he posed no national security or safety threat to the United States. *See* 8 U.S.C. § 1101 note at 601-02; *Id.* at 602(b)(1)(D).

Travel to the United States

54. Because he was issued an SIV, the United States Refugee Processing Center (“RPC”), part of the United States Refugee Admissions Program (“USRAP”), authorized his travel.⁹

55. Once Mr. Doe was cleared for travel by the RPC, his travel arrangements were made with the International Organization for Migration (IOM). IOM is an inter-governmental organization and a Department of State contractor that serves as the primary travel agent for the USRAP.¹⁰ Once Mr. Doe’s travel was arranged, IOM gave him his airline tickets.

56. Mr. Doe continued working at the U.S. Embassy up until a couple of weeks before his scheduled departure flight.

57. As he got ready to start a new life in the United States, Mr. Doe had to prepare himself for indefinite and potentially permanent separation from his family. Because Mr. Doe could not safely travel to his home village to say goodbye, his family came to him. They arrived with a suitcase containing clothes, homemade cookies, and dried fruit. He dressed for his first plane trip in a

⁹ U.S. Department of State, *Special Immigrant Visas for Afghans – Who Were Employed by/on Behalf of the U.S. Government*, U.S. Visas, <https://travel.state.gov/content/visas/en/immigrate/afghans-work-for-us.html#step5> (last visited July 28, 2017).

¹⁰ USCIS.gov, *The United States Refugee Admissions Program (USRAP) Consultation & Worldwide Processing Priorities*, Refugees & Asylum, <https://www.uscis.gov/humanitarian/refugees-asylum/refugees/united-states-refugee-admissions-program-usrap-consultation-worldwide-processing-priorities> (Last visited June 26, 2017).

button-down shirt and sweater, fitting all of his possessions into a small carry-on bag and his new suitcase. His family brought him to the Kabul airport to see him off.

58. IOM had booked Mr. Doe on three connecting flights to get from Afghanistan to Newark Airport. On March 12, 2017, he flew from Kabul to Dubai. On March 13, he flew from Dubai to Frankfurt. Also on March 13, he flew from Frankfurt to Newark. *See* Ex. C-11, Flight Details.

59. Mr. Doe could not sleep during these flights, thinking about his family and the new life ahead of him.

Arrival and Admission: March 13

60. Mr. Doe arrived at Newark Airport with his valid SIV on March 13, 2017, at 7:19 p.m. Ex. C-11, Flight Details; *see also* Ex. C-1, Passport with SIV (stamped on March 13). The government has conceded that his visa was valid at this time. Ex. C-10, Form I-213 (“For admission, the subject presented a valid Afghanistan passport number . . . which had been endorsed with a Valid Immigrant Visa in the SQ1 Classification . . .”).

61. Upon information and belief, approximately six Afghan families traveled with Mr. Doe on his three flights. All of the families had young children or infants with them.

62. As he had been previously advised, an IOM employee greeted Mr. Doe and the other Afghan passengers just after the plane landed in Newark.

63. Mr. Doe's flight arrived at Newark Airport just as a major blizzard was beginning. IOM employees told Mr. Doe upon arrival that his connecting flight to Ohio had been cancelled because the weather was really bad, but that they had booked a hotel room for him for the night.¹¹

64. Thereafter, the IOM employees escorted Mr. Doe and the other Afghan families to an area where CBP agents were checking passports. IOM collected all the passports from the men and took them over to a CBP officer.

65. The CBP officer then called up the Afghan men individually for primary inspection. Upon information and belief, approximately four Afghan men were called before him, and after their primary inspection, each was then taken to a holding area.

66. As the language on Mr. Doe's visa indicates, SIV holders become LPRs automatically upon receipt of an admission stamp. *See* Ex. C-1 ("UPON ENDORSEMENT SERVES AS TEMPORARY I-551 EVIDENCING PERMANENT RESIDENCE FOR ONE YEAR"). USCIS advises employers on its I-9 website, "When a new immigrant first enters the U.S., U.S. Customs and Border Protection (CBP) will stamp the passport with an admission stamp that indicates the immigrant has permanent resident status and has the date the new immigrant entered the U.S. *The employee's foreign passport with the MRIV [Machine-Readable Immigrant Visa] is evidence the employee has permanent resident status for 1 year from the date of admission.*" Ex. 2, U.S. Citizenship and Immigration Services, Temporary I-551 Stamps and MRIVs (emphasis added) (advising employers to treat a stamped immigrant visa as "an acceptable List A document [for

¹¹ *See Nearly 3,000 flights canceled at NYC airports ahead of blizzard*, ABC7 Eyewitness News, Mar. 14, 2017, <http://abc7ny.com/weather/nearly-3000-flights-canceled-at-nyc-airports-ahead-of-blizzard/1798518/> (reporting 1,015 flight cancellations at Newark Airport on March 14 alone due to the blizzard).

purposes of verifying both identity and employment authorization] valid for 1 year from the date of admission”).

67. Mr. Doe’s passport bears an admission stamp dated March 13, 2017, the date of his arrival at Newark Airport. Ex. C-1, Passport Stamp indicating admission on March 13, 2017. Upon and since the receipt of his admission stamp on March 13, 2017, Mr. Doe has been an admitted LPR of the United States.¹²

68. After completing his inspection and placing the admission stamp in his passport, however, CBP did not allow Mr. Doe to leave. Rather, it escorted him to the holding area, where he saw the Afghan men from his flight who had been taken to secondary inspection.

Extended Airport Detention: March 13-14, 2017

69. All of the individuals ordered to wait in this holding area were Afghan men traveling with the assistance of IOM. Therefore, upon information and belief, all were either refugees or SIV holders.

70. CBP officers also detained the arriving Afghan women and children, but had separated the families, forcing the women and children to wait in a separate area. As Mr. Doe waited, he could hear some of the children crying. When one of the men asked a CBP officer to go and comfort his child, the CBP officer refused his request.

¹² The Executive Office for Immigration Review ruled on August 11 that he was not admitted, but for the reasons set forth in the accompanying Memorandum of Law, the statute and caselaw require a different result.

71. CBP held the men for hours, releasing each of the other men at a different time. Mr. Doe was forced to wait in this holding area for well over 24 hours, from the evening of March 13 to the night of March 14.

72. The holding area was not equipped for extended detention, and CBP failed to provide Mr. Doe with food until the evening of March 14, or an adequate place to rest.

73. When IOM staff attempted to bring food to the Mr. Doe and the others, CBP officers would not let them. Eventually, a CBP officer yelled at the IOM employees and told them not to come back into the holding area.

74. During the lengthy period – well over 24 hours – that he was detained at the airport, Mr. Doe was terrified that he would be sent back to Afghanistan where he would be targeted and possibly killed by the Taliban. He understood that the fact that he had travelled to the United States would make him an even bigger target for the Taliban.¹³

75. Late on the evening of March 13, a plainclothes immigration officer asked each of the Afghan men to come with him for questioning. The man asked Mr. Doe a few short questions. During this brief exchange, Mr. Doe explained the danger he faced in Afghanistan and his fear of return. Mr. Doe's fear of return was also readily apparent from the fact that he arrived on a valid SIV, as well as from his SIV application.

76. At some point on March 13, the officers also took Mr. Doe's cell phone. They asked for his password and his family members' phone numbers, and then searched the phone before returning it.

¹³ The Taliban would target him for having traveled to the United States. Moreover, because Mr. Doe had quit his job at the U.S. Embassy after receiving his SIV, he would no longer have access to employee housing and would have less protection.

77. By the evening of March 14, his second night in the holding area, Mr. Doe, who was becoming increasingly sleep deprived, asked a CBP officer for a place to rest. Mr. Doe was permitted to sleep briefly, but was shown to a hard platform or table, rather than a bed. About an hour or two later, CBP officers roused him for further questioning.

78. CBP Sergeant Cristian Segura and another CBP officer conducted the interview.

79. Mr. Doe's native language is Dari. He speaks some limited English, but he has difficulty reading English and understanding or communicating effectively in spoken English.

80. When Sergeant Segura asked if he needed an interpreter, Mr. Doe said yes, but he was then told that no interpreter was available, and that if he did not know the answers to the officers' questions, he did not need to answer them. The CBP officers questioned Mr. Doe in English, which was difficult for Mr. Doe to understand.

81. One of the CBP officers asked Mr. Doe what his religion was, and he answered that he is Muslim.

82. The CBP officers told Mr. Doe that there was a "problem" with his travel documents, and that he would have to return to the Consulate in the U.S. Embassy in Kabul, Afghanistan to address the issue.

83. Mr. Doe tried to ask what was wrong, but he was interrupted and told that they did not have any further information at this time. The CBP officers asserted that they had already called the U.S. consulate, that they had done this for other people before, and that if Mr. Doe agreed to go back to Afghanistan, he would have no problem fixing the "problem" with his visa and he could return very shortly.

84. Mr. Doe asked to call the consulate, but the CBP officers told him that the consulate was unreachable due to the poor weather.¹⁴

85. He also asked to call his SIV sponsor, Sgt. Goins, but CBP refused his request. Instead, CBP officers took Sgt. Goins' phone number from Mr. Doe and used it to call Sgt. Goins from the interview room. They did not permit Mr. Doe to speak with him.

86. The officers told Mr. Doe that he would need to sign a paper withdrawing his application for admission to the United States and that if he did this, he could very quickly rectify the alleged visa problem.

87. This representation was misleading. As discussed below, on that same day, March 14, CBP attempted to cancel Mr. Doe's visa. Had this revocation been successful,¹⁵ Mr. Doe would have had to file an entirely new SIV application and likely wait years to return to the United States. Moreover, the U.S. Embassy in Kabul had announced just five days earlier, on March 9, 2017, that it would not be processing any SIV applications by Afghan applicants.¹⁶

88. Upon information and belief, CBP's misleading statements were meant to induce Mr. Doe to sign a document purporting to withdraw his application for admission and an erroneous and misleading "Sworn Statement" and "Jurat" that did not accurately reflect CBP's airport interview of Mr. Doe or his statements.

¹⁴ Upon information and belief, the officers were referring to the massive snowstorm that began on the evening of March 13.

¹⁵ In fact, Mr. Doe had already been admitted as an LPR, and regardless of admission, immigration officers lack authority to cancel an immigrant visa. *See infra* Counts I-II; Memorandum of Law.

¹⁶ *See* Fahim Abed, *Afghans Who Worked for U.S. Are Told Not to Apply for Visas, Advocates Say*, New York Times (Mar. 10, 2017), www.nytimes.com/2017/03/10/world/asia/afghanistan-visa-program-united-states.html.

89. Mr. Doe could not fully understand the documents he was asked to sign because they were in English. Believing he had no choice, in reliance on CBP's misrepresentations, and in light of his exhaustion and extreme hunger, Mr. Doe signed the forms.

90. The "Record of Sworn Statement," drafted by CBP and never translated for Mr. Doe, did not accurately recount all the questions that CBP asked Mr. Doe nor Mr. Doe's responses. For example, this statement indicates that CBP told Mr. Doe that Sgt. Goins was unaware of his arrival, but as Sgt. Goins has since explained to the Washington Post, he was aware of Mr. Doe's arrival date and had communicated this to CBP when the officer called him.¹⁷ The statement also indicates that CBP made several different representations to Mr. Doe about his visa status: that it was under review (page 1); that it was invalid when he left Afghanistan (page 6) and that it had been revoked (page 6). Resp. to Pet'n, Ex. A, Dkt. No. 3-2, Record of Sworn Statement.

91. After the interview, a full day after he came into custody, CBP finally provided Mr. Doe something to eat.

92. CBP officers also brought over Mr. Doe's suitcase, which was locked, and asked him to open the bag. Mr. Doe complied, and they then searched his belongings in front of him.

93. During the search, they pulled out his prayer rug and kufi (prayer cap) and asked what they were for. Mr. Doe responded that he uses them to pray. They asked Mr. Doe if he had a copy of the Quran, and he stated that he did not.

¹⁷ See Abigail Hauslohner, *He Was Promised He Could Live in the U.S. After Serving in Afghanistan. But They Never Let Him In*. Washington Post (May 15, 2017), https://www.washingtonpost.com/national/he-was-told-he-could-live-in-the-us-after-serving-in-afghanistan-but-they-never-let-him-in/2017/05/15/32e985a4-30f0-11e7-9dec-764dc781686f_story.html.

94. A CBP officer then told Mr. Doe that they were going to take him somewhere where he could rest and escorted him to a government van. Mr. Doe was shocked and confused when the van arrived not at a hotel, but at Elizabeth Detention Center. He arrived there very late at night and was forced to wait in a freezing cold room for hours before he was “processed,” instructed to change into a detainee uniform, and left to sleep in a pod with about forty men.

Counsel’s Attempts to Speak with Mr. Doe on March 14

95. CBP refused to allow any attorney to communicate with Mr. Doe at the airport. On March 14, 2017, three attorneys who had been contacted by the International Refugee Assistance Project contacted ICE and CBP by telephone to inquire about Mr. Doe’s location, but the agencies refused to provide this information or permit Mr. Doe to speak with an attorney.

96. Around 8:30 p.m. on March 14, 2017, undersigned attorney Jeanne LoCicero, the Deputy Legal Director of the American Civil Liberties Union of New Jersey, arrived at Newark Airport and attempted to meet with Mr. Doe. She met with CBP Deputy Chiefs, handed them a DHS appearance form and explained she was prepared to represent him *pro bono*.

97. CBP Deputy Chiefs confirmed that Mr. Doe was at the airport, but refused to let Ms. LoCicero meet with him, or to convey a message to Mr. Doe. They stated that he did not have the right to meet with an attorney.¹⁸

98. Mr. Doe was not permitted to speak with counsel until the afternoon of March 15, when Ms. LoCicero met with him at Elizabeth Detention Center.

¹⁸ Upon information and belief, Ms. LoCicero spoke with CBP officers at the airport before Mr. Doe was questioned by uniformed CBP officers on the evening of March 14.

DHS Visa Revocation Claims

99. On March 14, 2017 – the day *after* a CBP officer placed an admission stamp in Mr. Doe’s passport, making him an LPR – a CBP officer stamped Mr. Doe’s visa with the word “CANCELLED,” and wrote the following information by hand on the visa: “NEW – Mar. 14-2017 –[illegible]—22 CFR 41.122(e)(3).” Ex. C-1, SIV-SQ1.

100. The cited subsection refers to voluntary withdrawals of applications for admission. This regulation applies only to *non-immigrant* visas, and not to SIVs. Immigration officers lack the authority to revoke immigrant visas.

101. On July 7, 2017, after Mr. Doe’s immigration counsel pointed out that the visa could not have been revoked as alleged, DHS amended its removal allegations to allege that the Department of State had “prudentially revoked” Mr. Doe’s SIV on March 14. Ex. C-6, Additional Charges of Inadmissibility/Deportability, July 7, 2017. Prudential revocations, however, also apply only to non-immigrant visas. 9 FAM 403.11-5(B)(a) (prudential revocation for non-immigrant visas).¹⁹ Moreover, although the government has now produced a DOS cable purporting to revoke the visa, this was dated March 14, 5:31 pm, whereas the admissions stamp, which marked Mr. Doe’s admission as an LPR, was placed in Mr. Doe’s passport the evening of March 13. Upon information and belief, DOS issued this cable at the request of CBP.

102. On the original copy of the Record of Deportable/Inadmissible Alien, Form I-213, CBP alleged falsely that Mr. Doe had entered the United States on March 14, the date on which CBP had attempted to revoke his visa. Ex. C-10, Form I-213, with ICE redactions (listing “03/14/2017” as the date of “Last Entry” and stating, “On march [sic] 14, 2017, [John Doe] . . . arrived . . .”). In

¹⁹ See also 9 FAM 500, 501.1 to 502.1-3; 504.12-2 to 504.12-3 (immigrant visa sections, not providing for prudential revocation).

fact, not only were flights grounded on March 14 due to the snowstorm, but Mr. Doe's passport, which remains in DHS custody, bears an admission stamp that establishes his arrival a day earlier, on March 13. Ex. C-1, Passport with Admission Stamp dated Mar. 13. CBP's misrepresentation on Mr. Doe's I-213 obscured the fact that he had been admitted as an LPR a full day before the government attempted or purported to revoke his visa.

DHS's Attempt to Return Mr. Doe to Afghanistan without Process

103. Upon information and belief, CBP made arrangements for Mr. Doe to be returned to Afghanistan on the next available connecting flight after his arrival in the United States: a flight departing for Germany at approximately 6:20 p.m. on Wednesday, March 15.

104. On the evening of March 15, Mr. Doe was transported back to the airport from Elizabeth Detention Center and escorted through the airport terminal to the gate by immigration officers. To his great humiliation, he was escorted to the gate in handcuffs.

105. At the time CBP attempted to remove Mr. Doe on March 15, he had already received an admission stamp, and he had expressed his fear of persecution in both his SIV application packet and his statements to the plainclothes DHS officer on March 14, but he had not been scheduled for a credible fear interview. *See supra* ¶ 76; *see* 8 U.S.C. § 1225(b)(1)(A)(ii) (requiring CBP to refer non-citizens who are subject to expedited removal proceedings but express a "fear of persecution" for a credible fear interview).

106. Just as Mr. Doe was about to be boarded onto the plane, he was pulled out of line and returned to Elizabeth Detention Center. Upon information and belief, the decision not to place Mr. Doe on this flight was solely based on the Third Circuit Court of Appeals issuing a temporary stay

of removal on an appeal of the Motion for Temporary Injunctive Relief the present matter. *See* Ex. 1, *Int'l Refugee Assistance Project v. Kelly*, No. 17-1578, Stay of Removal (Mar. 15, 2017).

Mr. Doe's Credible Fear Determination

107. ICE placed Mr. Doe in expedited removal proceedings. After Mr. Doe was granted a stay of removal, ICE scheduled Mr. Doe for a credible fear interview (“CFI”) with an Asylum Officer U.S. Citizenship and Immigration Services, DHS. The officer interviewed him with a Dari interpreter on March 24, 2017.

108. On that same day, the interviewing Asylum Officer determined that Mr. Doe “was found credible” and had established a credible fear of persecution based on his political opinion and membership in the particular social group of “Afghan citizens working for Americans in Afghanistan.” Ex. C-14, Tab 1(B).

Parole Application and Denial

109. After Mr. Doe passed his credible fear interview, he was issued a Notice to Appear in removal proceedings pursuant to 8 U.S.C. § 1229b. Ex. C-4, Notice to Appear, Form I-862, Mar. 24, 2017.

110. ICE decided to hold Mr. Doe in detention without bond, claiming that he was an “arriving alien” and therefore not eligible for bond. On August 11, Immigration Judge Ramin Rastegar held that he lacked jurisdiction to review this determination.

111. Mr. Doe, via *pro bono* immigration counsel Jason Scott Camilo, submitted a parole application to ICE on April 7, 2017. Ex. C-14; INA § 212.5(b); *see* 8 C.F.R. §§ 235.3(c), 212.5(b) (authorizing parole for arriving non-citizens who have passed credible fear interviews).

112. ICE Directive 11002.1, which was issued in 2009, requires that “[e]ach alien’s application for parole shall be considered on its own merits and based on the facts of the individual alien’s case.” Ex. 10, ICE Directive No. 11002.1, “Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture” ¶ 6.2 (Dec. 8, 2009) (“Parole Directive”).

113. After President Trump was sworn in, then-Secretary for Homeland Security, John Kelly, stated that the Parole Directive remains in “full force and effect” under the present Administration. The Department of Justice has confirmed this assertion, describing the Parole Directive procedures as “automatically consider[ing] parole for arriving aliens found to have a credible fear” and as releasing the non-citizen “if he establishes his identity, demonstrates that he is not a flight risk or danger, and there are no countervailing considerations.” Gov. Suppl. Reply Br., at 6, *Jennings v. Rodriguez*, 136 S. Ct. 2489 (2016) (No. 15-1204) (brief filed Feb. 21, 2017).

114. Pursuant to the governing regulations and the Parole Directive, Mr. Doe supported his parole application with extensive evidence of identity, including a passport, his SIV, and records of his work on U.S. military bases and inside the U.S. Embassy, which required regular security screenings. Mr. Doe’s parole application also included: (a) letters of support from Senator Sherrod Brown and Representative Tim Ryan, both of Ohio; (b) letters from three refugee resettlement agencies offering housing, transportation, and other support, (c) evidence of the extensive press coverage and community support his case has received. *See* Ex. C-14.

115. By form notice dated April 17, 2017, ICE Field Office Director John Tsoukaris informed Mr. Doe that ICE had decided not to parole him. The letter explained that “Based on a review of all available information, ICE has determined that parole is not appropriate in your case at this time.” By way of reason, Respondent Tsoukaris checked a box alleging that “[a]dditional exceptional, overriding factors (e.g., law enforcement interests or potential foreign policy

consequences) in your case mitigate against parole, as follows: *Your Immigrant Visa was revoked by the US Department of State. ICE is currently investigating the basis of that revocation.*” Ex. C-13, Parole Denial.

116. Director Tsoukaris did not check the box relating to failure to establish identity, nor the box relating to failure to establish future appearances, nor that relating to failure to establish lack of danger or risk to national security. The form thus does not allege that he presents any danger or flight risk, but makes clear that his parole was denied solely because ICE was still investigating the reason for his visa denial, over a month after he entered the country.

117. Until 2014, the ICE Newark Field Office routinely granted parole to asylum-seekers pursuant to the Parole Directive. Beginning in late 2014 or early 2015, the ICE Newark Field Office severely decreased the proportion of parole applications that it granted for arriving asylum-seekers. *See* Ex. 14, Human Rights First, *Detention of Asylum Seekers in New Jersey 2* (Nov. 2016), Upon information and belief, from 2015 to the present, ICE Newark Field Office has denied parole to all but a handful of the asylum-seekers who applied each year, based on reports by legal service providers. *Id.* (citing only 3 grants of parole among 91 recent asylum seekers) Asylum-seekers with “strong community ties, identity confirmation, and other equities” were denied parole. Ex. 13, Human Rights First, *Lifeline on Lockdown 22* (2016). For example, a Syrian asylum-seeker held at the Elizabeth Detention Center who had submitted 13 forms of identification was denied parole even after an immigration court found him credible and found he would be tortured in Syria. *Id.* at 14. A survivor of severe domestic violence held in New Jersey was denied parole as a “flight risk” despite submitting a letter of support from a New York City police officer. *Id.* at 16.

Mr. Doe's Removal Proceedings and Detention Without a Bond Hearing

118. Mr. Doe has now been detained for nearly five months without a bond hearing.

119. Because ICE misclassified Mr. Doe as an “arriving alien” and the immigration court has held it lacks jurisdiction to review this classification, he has not received bond from ICE, nor a bond hearing in immigration court.

120. Mr. Doe's removal proceedings have already lasted nearly five months, and are likely to continue for many months or even years. The delays in his case arise primarily from delays caused by the government's repeated amendments to the allegations against him and by immigration court backlogs. Mr. Doe and his counsel have filed good-faith challenges to removability, and rulings on these challenges have been significantly delayed.

121. For over two months, ICE maintained to the Immigration Court that Mr. Doe had arrived and sought admission on March 14, even though CBP had in fact stamped his passport on March 13 and ICE had this passport. Ex. C-4, Notice to Appear, Mar. 24, 2017; *see supra* ¶ 102 (discussing date falsified by CBP on DHS Form I-213). In June, DHS finally amended its allegations to reflect the correct arrival date, March 13. Ex. C-5, Additional Charges of Inadmissibility/Deportability, June 7, 2017.

122. DHS was also forced to amend its initial claim that DHS had revoked Mr. Doe's immigrant visa, since immigration agents lack this authority. *See supra*, ¶¶ 101-02.

123. DHS has now filed three different sets of factual allegations with the immigration court. *See* Ex. C-4, Notice to Appear, Mar. 24, 2017 (alleging that Mr. Doe sought admission on March 14 and “did not then possess or present a valid immigrant visa . . .”); Ex. C-5, Additional Charges of Inadmissibility/Deportability, June 7, 2017 (alleging that Mr. Doe sought admission on March

13, and that SIV revoked by CBP on March 14); Ex. C-6, Additional Charges of Inadmissibility/Deportability, July 7, 2017 (rescinding allegation that CBP revoked the SIV and alleging that the Department of State “prudentially revoked” the SIV on March 14).

124. Mr. Doe’s removal proceedings are being heard by a rotating series of visiting immigration judges, rather than by a single immigration judge, as is typically the case in removal proceedings.

125. On May 17, 2017, Mr. Doe’s immigration attorney filed a motion to terminate proceedings in his removal case. This motion was denied on August 11, 2017.

126. Mr. Doe’s next immigration court hearing is on September 6, 2017. This hearing will be the first opportunity for him to file an asylum application in immigration court. This will be followed by an individual hearing, at least a month or two later, to adjudicate the asylum claim, and may require further hearings.

127. Mr. Doe or the government could then appeal any final ruling to the Board of Immigration Appeals, followed by a possible petition for review by Mr. Doe to the Third Circuit Court of Appeals.

128. If Mr. Doe remains detained throughout the course of his proceedings and any appeals, his detention can reasonably be expected continue for months longer, and quite likely for years.

The Trump Administration’s Travel Ban and Animus Against Muslim Non-citizens

129. Respondents’ actions on March 13 through 15, and their continued detention of Mr. Doe significantly depart from routine immigration procedures.

130. For example, it is not normal DHS procedure to: (a) first admit a non-citizen as an LPR, based on an admittedly valid visa, and subsequently detain him and attempt to retroactively revoke

his visa without legal authority; (b) hold a non-citizen at the airport for well over 24 hours; (d) place an immigrant traveling on a valid immigrant visa in expedited removal proceedings; (e) mislead an immigrant into withdrawing his application for admission and signing statements he did not understand; (f) misrepresent the date of entry on multiple documents, including before the Immigration Court; or (f) repeatedly amend the factual allegations in immigration court to proffer alternate authorities for revoking a visa.

131. Indeed, the Director of the International Refugee Assistance Project, which has worked on behalf of SIV holders for years, noted that she could not find a single example of any SIV holder being detained or deported by CBP officers until March 2017. See March 27, 2017 Interview with Becca Heller, *available at* <http://www.npr.org/2017/03/27/521537052/special-immigrant-visa-holders-still-face-questioning-upon-reaching-u-s>.

132. These deviations from normal agency process must be considered in the context of current events, namely that Mr. Doe's detention occurred just days before President Trump's revised "Travel Ban" Executive Order was due to take effect.

133. On the campaign trail and since his election, President Trump made various statements reflecting his intent to discriminate against Muslims, as well as his intent to use countries of origin or "territories," including Afghanistan, as proxy for religion. See *Int'l Refugee Assistance Project v. Trump*, 857 F.3d 554, 575 (4th Cir. 2017).

134. For example, on the campaign trail, then-candidate Trump said, "we've admitted nearly 100,000 immigrants from Iraq and Afghanistan. And these two countries according to Pew Research, a majority of residents say that the barbaric practice of honor killings against women are often or sometimes justified . . . And we're admitting them to our country." Transcript of Donald Trump's Immigration Speech, N.Y. Times, Sept. 1, 2016, <https://nyti.ms/2k69TdS>; see

also, e.g., Transcript of Donald Trump’s National Security Speech, Politico, June 13, 2016, www.politico.com/story/2016/06/transcript-donald-trump-national-security-speech-224273

(“Immigration from Afghanistan into the United States has increased nearly five-fold in just one year. According to Pew Research, 99% of people in Afghanistan support oppressive Sharia Law.”).

135. President Trump and his close advisors also made many other statements regarding his intention to bar Muslim non-citizens from entering the United States. For example:

- a. As a December 7, 2015 press release from the Trump campaign explained, “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.”²⁰
- b. On the same day he called for a “total and complete shutdown,” then-candidate Trump responded to a television host’s question about how customs agents would enforce the ban by stating, “That would be probably – they would say, are you Muslim?” When the host asked, “And if they said yes, they would not be allowed in the country?,” then-candidate Trump answered, “That’s correct.”²¹
- c. On December 13, 2015, on Fox News, in response to a question about whether his proposed Muslim Ban would apply to a Canadian businessman who is Muslim, then-candidate Trump replied, “There’s a sickness. They’re sick people. There’s a sickness going on. There’s a group of people that is very sick.”²²
- d. On March 9, 2016, then-candidate Trump asserted, “I think Islam hates us. There’s . . . a tremendous hatred there. There’s a tremendous hatred. We have to get to the bottom of it. There’s an unbelievable hatred of us.”²³

²⁰ Ryan Teague Beckwith, President Trump’s Own Words Keep Hurting His Travel Ban, *Time*, March 16, 2017, available at <http://time.com/4703614/travel-ban-judges-donald-trump-words/>.

²¹ Jenna Johnson and Sean Sullivan, Donald Trump explains how his ban on Muslims entering the U.S. would work, *Wash. Post*, Dec. 8, 2015, available at <http://wapo.st/1NDFU8D>.

²² Jenna Johnson and Abigail Hauslohner, ‘I think Islam hates us’: A timeline of Trump’s comments about Islam and Muslims, *Wash. Post*, May 20, 2017, http://wapo.st/2qCmaNc?tid=ss_mail&utm_term=.c5d9f085f0f5 (collecting numerous examples of anti-Muslim statements by Donald J. Trump).

²³ *Id.*

- e. In a *Sixty Minutes* interview on July 17, 2016, when asked whether he still intended to ban Muslims from entering the United States, then-candidate Trump said, “Call it whatever you want. We’ll call it territories, ok?”²⁴
- f. A week later, he made similar statements on *Meet the Press*: “I’m looking at territories now. People were so upset when I used the word *Muslim*. Oh, *you can’t use the word Muslim*. Remember this—and I’m OK with that, because I’m talking territory instead of Muslim. . . .”²⁵
- g. Shortly after the first version of the Muslim Ban EO was announced, Rudolph W. Giuliani, one of President Trump’s close advisers, revealed on Fox News that he had counseled President Trump on how to repackage the intended ban on Muslims entering the United States: “So when [Trump] first announced it, he said, ‘Muslim ban.’ He called me up. He said, ‘Put a commission together. Show me the right way to do it legally.’” Giuliani explained that the commission advised President Trump to focus on territories, rather than expressly banning Muslims.²⁶
- h. In an interview with the Christian Broadcasting Network released the same day he signed first version of the EO, President Trump stated that the EO was designed to give Christians priority in applying for refugee status. “If you were a Muslim you could come in, but if you were a Christian, it was almost impossible and the reason that was so unfair – everybody was persecuted, in all fairness – but they were chopping off the heads of everybody but more so the Christians. And I thought it was very, very unfair.”²⁷

136. On Friday, January 27, 2017, President Donald J. Trump had signed Executive Order 13769, titled “Protecting the Nation from Foreign Terrorist Entry into the United States” (“EO 13769”). Among other provisions, EO 13769 immediately suspended the “entry” of nationals from seven Muslim-majority countries for 90 days; suspended the U.S. Refugee Admissions Program

²⁴ William Saletan, Donald Trump Doesn’t Care if You Think He Wants to Ban Muslims, *Slate.com*, Dec. 22, 2016, http://www.slate.com/articles/news_and_politics/politics/2016/12/donald_trump_doesn_t_care_if_you_think_he_wants_to_ban_muslims.html.

²⁵ *Id.*

²⁶ Amy B. Wang, Trump asked for a ‘Muslim ban,’ Giuliani says — and ordered a commission to do it ‘legally,’ *Wash. Post*, Jan. 29, 2017, *available at* www.washingtonpost.com/news/the-fix/wp/2017/01/29/trump-asked-for-a-muslim-ban-giuliani-says-and-ordered-a-commission-to-do-it-legally.

²⁷ Daniel Burke, Trump says US will prioritize Christian refugees, *CNN*, Jan. 30, 2017, *available at* <http://www.cnn.com/2017/01/27/politics/trump-christian-refugees/index.html>.

for 120 days; indefinitely suspended “the entry [into the United States] of nationals of Syria as refugees . . . until such time as . . . [the President] has determined that sufficient changes have been made to the USRAP to ensure that admission of Syrian refugees is consistent with the national interest;” reduced the number of annual refugee admissions from 110,000 to 50,000; and directed the Secretary of State to “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.” EO 13769.

137. Following early losses in litigation challenging this EO, the Trump Administration withdrew EO 13769 and in its place issued Executive Order 13780 (“EO 13780”), bearing the same title. President Trump announced that EO 13780 would go effect at 12:01 a.m. Eastern Time on March 16, 2017.

138. On the same day that EO 13780 was released, March 6, 2017, President Trump also issued a Memorandum on “Implementing Immediate Heightened Screening and Vetting of Applications for Visas and Other Immigration Benefits, Ensuring Enforcement of All Laws for Entry Into the United States, and Increasing Transparency Among Departments and Agencies of the Federal Government and for the American People.” 82 Fed. Reg. 16279, 16279-81 (Mar. 6, 2017). While neither EO 13769 nor 13780 named Afghanistan as being subject to the travel ban, both are examples of anti-Muslim animus, as multiple courts have now recognized. CITE

139. Respondents’ unlawful detention of Mr. Doe arose in the context of this anti-Muslim animus, occurring in the short intervening period between the issuance of EO 13780 and the Memorandum on March 6, 2017, and EO 13780’s effective date of March 16, 2017.

CAUSES OF ACTION

COUNT ONE
IMMIGRATION AND NATIONALITY ACT –
UNAUTHORIZED DETENTION

140. Mr. Doe re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

141. On March 13, 2017, Mr. Doe arrived in the United States with a valid Special Immigrant Visa, type SQ1. Pursuant to this immigrant visa, he was lawfully admitted as an LPR on the same date.

142. Even if he had not been admitted to the United States, Mr. Doe's SIV remains valid because it has never been revoked or cancelled pursuant to any applicable statute, regulation, or other applicable provision of law.

143. No provision of the Immigration and Nationality Act authorizes or justifies Mr. Doe's detention.

COUNT TWO
FIFTH AMENDMENT DUE PROCESS –
UNCONSTITUTIONAL DETENTION
WITHOUT ANY BASIS IN LAW

144. Mr. Doe re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

145. Mr. Doe was admitted to the United States on March 13, 2017, as an LPR, pursuant to his valid SIV.

146. Even if he had not been admitted, Mr. Doe's valid SIV would remain valid because it has never been revoked or cancelled pursuant to any applicable provision of law.

147. Mr. Doe's unauthorized and baseless imprisonment violates his fundamental right to due process of law. Respondents have failed to provide adequate procedural protections and do not have any justification to detain him.

148. Accordingly, Respondents' detention of Mr. Doe violates the Due Process Clause of the Fifth Amendment to the United States Constitution. It was and is without cause, not authorized by statute, and not reasonably related to the purposes of immigration detention.

149. Therefore, Mr. Doe is entitled to immediate release.

COUNT THREE
IMMIGRATION AND NATIONALITY ACT–
UNREASONABLY PROLONGED DETENTION
WITHOUT A BOND HEARING

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

151. Mr. Doe's unreasonably prolonged detention *without a bond hearing* violates the Immigration and Nationality Act.

152. The Immigration and Nationality Act does not, and cannot, permit indefinite mandatory detention.

153. Mr. Doe's detention has become unreasonably prolonged, and will be even more unreasonably prolonged in the future so the statute requires an immediate, constitutionally-adequate bond hearing.

COUNT FOUR
FIFTH AMENDMENT DUE PROCESS –
UNREASONABLY PROLONGED DETENTION
WITHOUT A BOND HEARING

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

155. The Third Circuit, following the principles set forth by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001), and *Demore v. Kim* 538 U.S. 510 (2003), has held that unreasonably prolonged detention without a bond hearing violates the Fifth Amendment Due Process Clause. *E.g.*, *Chavez-Alvarez v. Warden York Cnty. Prisons*, 783 F.3d 469 (3d Cir. 2015); *Diop v. ICE/Homeland Security*, 656 F.3d 221 (3d Cir. 2011).

156. Mr. Doe’s prolonged, indefinite detention under § 1225(b) violates the Fifth Amendment by depriving him of liberty without due process of law. This Court should therefore order his release, with appropriate conditions of supervision if necessary. *See, e.g., Nunez–Pimentel v. U.S. Dep’t of Homeland Security*, 2008 WL 2593806 (M.D. Pa. June 27, 2008) (ordering release from prolonged detention pending removal proceeding). In the alternative, the Court should order an immediate, constitutionally-adequate bond hearing.

COUNT FIVE
IMMIGRATION AND NATIONALITY ACT—
MISCLASSIFICATION OF ADMITTED NON-CITIZEN AS “ARRIVING NON-
CITIZEN” AND DETENTION WITHOUT A BOND HEARING

157. The government contends that INA 235(b)(1)(B)(ii), 8 U.S.C. § 1225(b)(1)(B)(ii), governs Mr. Doe’s detention. However, this provision applies only to non-citizens who are seeking admission to the United States and have not yet been admitted.

158.Mr. Doe was admitted as an LPR on March 13, 2017. As a result, he is not subject to detention pursuant to any provision of § 1225(b). Because he was admitted and is in removal proceedings pursuant to INA § 240, 8 U.S.C. § 1229a, to the extent he may be detained at all, his detention would be governed by INA § 236(a), 8 U.S.C. § 1226(a).

159.Mr. Doe is therefore entitled to an immediate bond hearing.

COUNT SIX
IMMIGRATION AND NATIONALITY ACT—
DETENTION WITHOUT BOND HEARING FOLLOWING COMMENCEMENT OF
REMOVAL PROCEEDINGS

160.Even if Mr. Doe’s detention had been governed in the first instance by section 1225(b)(1)(B)(ii), once the government commenced removal proceedings against him pursuant to INA § 240, 8 U.S.C. § 1229a, he became entitled to a bond hearing pursuant to 8 U.S.C. § 1226(a), which governs the detention of non-citizens in removal proceedings.

161.Mr. Doe is entitled to an immediate bond hearing.

COUNT SEVEN
IMMIGRATION AND NATIONALITY ACT, IMPLEMENTING REGULATIONS, DHS
DIRECTIVE 11002.1, AND FIFTH AMENDMENT DUE PROCESS—
DENIAL OF PAROLE

162.Petitioner repeats and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

163.As discussed above, DHS denied Mr. Doe’s parole application after determining that he had proven his identity and that he posed no danger, security risk, or flight risk. The only reason proffered for the denial was the following “[a]dditional exceptional, overriding factor[]”: “Your Immigrant Visa was revoked by the US Department of State. ICE is currently investigating the basis of that revocation.” Ex. C-14.

164.DHS's denial of Mr. Doe's parole application, violates the Immigration and Nationality Act, its implementing regulations, and DHS Directive 11002.1

165.DHS's denial of Mr. Doe's parole application violates the Due Process Clause of the Fifth Amendment.

COUNT EIGHT
FIRST AMENDMENT RELIGION CLAUSES

166.Mr. Doe re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

167.Respondents' arrest and detention of Mr. Doe on the basis of his religion violates the Free Exercise Clause and the Establishment Clause of the United States Constitution.

168.Upon information and belief, Mr. Doe was arrested and has been subject to ongoing and prolonged immigration detention for no other reason than his religion as a Muslim man, or his citizenship in a Muslim-majority country.

COUNT NINE
FIFTH AMENDMENT EQUAL PROTECTION

169.Petitioner repeats and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

170.The Fifth Amendment to the United States Constitution protects individuals against actions of the federal government that deny equal protection of the laws.

171.Respondents discriminated against Mr. Doe, without justification, because he is Muslim, because of his national origin, and/or because his country of origin, Afghanistan, is a Muslim-majority country.

172. Respondents' arrest and ongoing detention of Mr. Doe violates the equal protection guarantees of the Fifth Amendment.

173. Respondents' failure to afford Mr. Doe his rights under the Constitution, the laws of the United States, and international law violates the equal protection guarantees of the Fifth Amendment.

174. Therefore, Mr. Doe is entitled to immediate release.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

(1) Issue a Writ of Habeas Corpus requiring Respondents to release Mr. Doe from custody immediately, or in the alternative, requiring an immediate, constitutionally adequate bond hearing;

(2) While this Petition and Complaint are pending, order Mr. Doe's immediate release pursuant to the Court's inherent authority to release habeas petitions on bail;

(3) Enter a judgment declaring that Respondents' detention of Mr. Doe is unauthorized by statute and contrary to law and the U.S. Constitution;

(4) Award Petitioner reasonable costs and attorneys' fees; and

(5) Grant any other and further relief that this Court may deem fit and proper.

Dated: August 15, 2017

Respectfully submitted,
s/ Jeanne LoCicero

**AMERICAN CIVIL LIBERTIES UNION OF
NEW JERSEY FOUNDATION**

Farrin R. Anello*
Rebecca Livengood
Alexi Velez
Jeanne LoCicero
Alexander Shalom
Edward Barocas
89 Market Street, 7th Floor
P.O. Box 32159
Newark, NJ 07102
Telephone: (973) 854-1715
Facsimile: (973) 642-6523

Counsel for John Doe

* Motion for admission *pro hac vice* forthcoming

VERIFICATION *

(To be filed under seal)

I declare under penalty of perjury that I am the petitioner, that I have had the foregoing Amended Petition translated orally to me in Dari (my native language), and that the information in this petition is true and correct to the best of my information, knowledge, and belief.



8/1/2017

Date

* Unredacted Version at Ex. C-15