

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

INTERNATIONAL REFUGEE ASSISTANCE
PROJECT,

as Next Friend of JOHN DOE

Petitioners,

v.

JOHN F. KELLY, in his official capacity as Secretary,
U.S. Department of Homeland Security; KEVIN K.
MCALEENAN, in his official capacity as Acting
Commissioner, U.S. CUSTOMS AND BORDER
PROTECTION (“CBP”); MICHAEL FIRING, in his
official capacity as Chief, Enforcement Branch
Passenger Operations Division
Port of New York/Newark Office of Field Operations,
CBP; and ADELE FASANO, in her official capacity
as Newark Port Director, CBP,

Respondents.

Civil Action No. 2:17-cv-1709

Hon. _____

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

INTRODUCTION

1. On Monday, March 13, 2017, U.S. Customs and Border Protection (“CBP”) unjustly and unconstitutionally detained John Doe,¹ a citizen of Afghanistan seeking to enter the United States on a Special Immigrant Visa at Newark Liberty International Airport in New Jersey. Upon information and belief, Mr. Doe holds a valid Special Immigrant Visa (“SIV”). SIV’s are reserved for Afghan citizens who risked their own lives to protect and defend the U.S. government abroad, and who – as a result of this service – can no longer live safely in Afghanistan. Even though the U.S. government has recognized Mr. Doe’s record of service by issuing this visa, U.S. Customs and Border Protection has now detained Mr. Doe at the airport for *more than 28 hours* without any explanation. Moreover, when one of the undersigned counsel went to the airport to meet with Mr. Doe, providing a notice of entry of appearance as his attorney, the two CBP supervisors on duty informed her that she could not speak with him because he did not have the right to speak with an attorney. Ex. A, Declaration of Jeanne LoCicero.
2. Because the undersigned attorneys have been unable to communicate with Mr. Doe, they cannot verify whether he has been apprised of his constitutional rights, his rights pursuant to his visa, or his right to seek asylum pursuant to the Immigration and Nationality Act and the Refugee Convention.² He is at risk of imminent removal to a

¹ Because CBP has denied the undersigned counsel permission to meet with Mr. Doe, counsel has not been able to obtain consent to release his name. His safety and security is a grave concern because Special Immigrant Visas (SIV), such as those issued to Mr. Doe, are issued only when there is an ongoing danger to the person seeking resettlement.

² Counsel of record on this matter represent IRAP in their petition as next friend of

country in which he faces ongoing danger, evidenced by the very terms of the visa the U.S. has issued to him.

3. Mr. Doe's service put his life at risk. The grant of SIV status recognizes that his service to the U.S. government would make continued residence in his home country dangerous for him. Indeed, in order to receive an SIV, both the Department of State and the Department of Homeland Security must make a determination that the applicant "has experienced or is experiencing an ongoing serious threat" as a consequence of his or her assistance to the U.S. military. Thus, in the case of an approved SIV, such as that of Mr. Doe, the Departments of State and Homeland Security have already determined his life to be at risk. Mr. Doe traveled to the United States in reliance on the promise of this safe haven.
4. Moreover, before awarding SIVs, the U.S. government subjects applicants to thorough background checks, typically over a number of years. This vetting ensures that neither the applicants nor their families pose any threat to public safety or national security. In order to obtain an SIV, Mr. Doe would have gone through this extensive vetting process.
5. CBP's detention of Mr. Doe and denial of his right to counsel, moreover, cuts against a string of recent decisions enjoining federal government officials from similarly mistreating immigrants who, despite holding documents permitting their lawful entry

Mr. Doe. The government has refused to allow counsel to meet with Mr. Doe, although counsel is willing and able to represent him once permitted access. Because he is being held incommunicado and they have as a result been unable to discuss representation with him, counsel of record does not purport to represent Mr. Doe in this matter.

into this country, were detained and held incommunicado at airports all around the country.³

6. Finally, this case mirrors that of two Afghan parents and their three young children who were detained after arriving at Los Angeles International Airport and threatened with immediate family separation and deportation before a federal judge intervened and granted a Temporary Restraining order to prevent the mother and children from being put on a plane to a detention center in Texas before the habeas petition could be adjudicated. Ex. C, TRO Order, *Does v. Kelly*, No. 2:17-cv-1761 (C.D. Cal.).
7. In short, CBP's decision to detain Mr. Doe and deny him access to counsel is not only egregious and inhumane, but unconstitutional and illegal. Accordingly, the International Refugee Assistance Project ("IRAP") files this petition for writ of habeas corpus as next friend of the real-party-in-interest, John Doe. Habeas is required to satisfy, among other constitutional interests, procedural and substantive Due Process and Equal Protection. The detention of Mr. Doe violates the Administrative Procedure Act and is *ultra vires* of the federal immigration statutes. IRAP urges the Court to grant immediate relief in the form of release from detention and injunctive and declaratory relief.

JURISDICTION AND VENUE

8. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1331, 1361, 2241, 2243, and

³*Badr Dhaifallah Ahmed Mohammed v. United States*, No. CV1700786ABPLAX, 2017 WL 438750, at *2 (C.D. Cal. Jan. 31, 2017); *Vayeghan v. Kelly*, No. CV 17-0702, 2017 WL 396531, at *2 (C.D. Cal. Jan. 29, 2017); *Washington v. Trump*, No. C17-0141JLR, 2017 WL 462040, at *2 (W.D. Wash. Feb. 3, 2017), *stay denied*, *Washington v. Trump*, 847 F.3d 1151 (9th Cir. 2017); *Darweesh v. Trump*, No. 17 CIV. 480 (AMD), 2017 WL 388504, at *1 (E.D.N.Y. Jan. 28, 2017); *Aziz v. Trump*, No. 1:17-CV-116, 2017 WL 386549, at *1 (E.D. Va. Jan. 28, 2017).

the Habeas Corpus Suspension Clause of the U.S. Constitution (U.S. Const. art. I, § 9, cl. 2). This Court also has remedial authority under the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*

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).
10. To the knowledge of the undersigned counsel and IRAP, no complaint or petition for habeas corpus has been previously filed in any court to review Mr. Doe's case.
11. To the best of IRAP's and counsel's knowledge, no proceeding has been held in this matter, or in any related matter, in Immigration Court. Nor has there been any proceeding or substantive occurrences with respect to removal, which is a matter that is not the subject of this petition.

PARTIES

12. IRAP is an organization of attorneys and other advocates that provides direct legal services and advocacy to refugees and to those seeking SIVs.
13. Upon information and belief, John Doe is an Afghan national and holder of a SIV authorizing resettlement in the United States. According to CBP, as of 8:30 p.m., he was in CBP custody at Airport. Ex. A, Decl. of Jeanne LoCicero. Because Mr. Doe's next friend IRAP and its partners have not been granted access to him, IRAP has not been able to determine whether revealing his true name would put him in harm's way. This is a legitimate concern because, to be awarded an SIV, John Doe had to demonstrate that he "has experienced or is experiencing an ongoing serious threat" as a result of his service to the United States.

14. The 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.
15. 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.
16. All of the individual Respondents are sued in their official capacity.
17. Respondent John F. Kelly is the Secretary of the U.S. Department of Homeland Security. He is a custodian of Mr. Doe and has the authority to order his release.
18. Respondent Kevin K. McAleenan is Acting Commissioner of CBP. He is a custodian of Mr. Doe and has the authority to order his release.
19. Respondent Michael Firing is Chief, Enforcement Branch Passenger Operations Division, Port of New York/Newark Office of Field Operations for CBP. He is an immediate custodian of Mr. Doe and has the authority to order his release.
20. Respondent Adele Fasano is Newark Port Director for CBP. She is an immediate custodian of Mr. Doe and has the authority to order his release.

STANDING

21. IRAP has “next-friend” standing to bring this habeas petition on behalf of John Doe.
22. Standing based on the next-friend doctrine is permissible where the petitioner is unable to litigate his own cause due to mental incapacity, lack of access to court, or other similar disability; and where the next-friend is “truly dedicated to the best interests of the person on whose behalf he seeks to litigate.” *Whitmore v. Arkansas*, 495 U.S. 149, 163 (1990). Due to the extreme circumstances of this case, IRAP has standing to seek relief on behalf of John Doe.

23. First, Mr. Doe lacks access to court because Respondents themselves have prevented and continue to prevent him from contacting counsel or taking any other steps to avail himself of the protection of the courts. *See Padilla v. Rumsfeld*, 352 F.3d 695 (2d Cir. 2003) (holding that petitioner's attorney could serve as next friend because petitioner was being held incommunicado), *reversed and remanded on other grounds*, 542 U.S. 426 (2004). Since Mr. Doe arrived at Newark Airport approximately 28 hours ago, Defendant CBP has refused to allow his potential attorneys to speak with him. Upon information and belief, when U.S. Senator Corey Booker's office attempted to ascertain the status of Mr. Doe's case, they were told by CBP that they needed to provide a privacy waiver signed by Mr. Doe, which is impossible due to CBP's decision to deny him access to counsel.
24. Second, IRAP is truly dedicated to the best interests of John Doe, as shown by its incredibly rapid attempts to locate John Doe on March 14 and its efforts to recruit counsel to bring this litigation on an emergency basis.
24. Furthermore, IRAP has a significant relationship with and a unity of interests with John Doe because its mission is to help procure SIVs like the visa Mr. Doe obtained. IRAP has particular and unique expertise in assisting individuals and families seeking and holding SIVs. It is committed to ensuring that John Doe obtains the full benefits of the visa he has secured and that Defendants do not violate the rights of Petitioner or other SIV holders.
25. IRAP and its partners have made inquiries to determine whether John Doe has relatives or close friends in the United States who are interested in his detention. To date, IRAP and its partners have failed to reach any such individuals.

26. Moreover, without IRAP assistance, John Doe will have *absolutely no avenue* to contest his ongoing illegal and unconstitutional detention. This would result in an effective Suspension of the Writ of Habeas Corpus, in violation of Article I, Section 9 of the United States Constitution.

STATEMENT OF FACTS

SPECIAL IMMIGRANT VISA PROGRAM

27. The Department of State oversees the SIV program, which allows individuals who worked with the U.S. Armed Forces or under Chief of Mission (“COM”) authority as a translator or interpreter in Iraq or Afghanistan or who otherwise worked for or with and provided assistance to the U.S. military to apply for a visa authorizing them to enter and live in the United States.

28. Congress created the Iraqi and Afghan SIV programs to provide safety and refuge in the United States for Iraqis and Afghans who face or have faced serious threats on account of their faithful and valuable service to the United States. The programs were established pursuant to the Refugee Crisis in Iraq Act of 2007, 8 U.S.C. § 1157 note at 1241- 49 and the Afghan Allies Protection Act of 2008, 8 U.S.C. § 1101 note at 601-02.

29. The first step in pursuing a SIV is obtaining COM Approval from the appropriate Embassy. The Chief of Mission determines whether the applicant has “provided faithful and valuable service to the United States” and “has experienced or is experiencing a serious threat” as a “consequence” of that service.

30. After obtaining COM Approval, a SIV applicant files the Form I-360 petition to U.S. Citizenship and Immigration Services (“USCIS”) to apply for an SIV. Upon approval of the petition, the applicant submits a DS-260 visa application, along with accompanying

documents, to the National Visa Center. After the DS-260 is processed, the applicant undergoes an interview at a U.S. consulate or embassy.

31. At that point, SIV applications go into administrative processing during which the U.S. government conducts various security checks as well as a medical examination, including fingerprinting. Two separate government entities, the Department of State and USCIS, conduct background checks and determine that the applicant is at imminent risk of harm in the home country. If, and only if, the applicant satisfies all these checks and receives clearance, USCIS issues a SIV and the individual may travel to the United States.

32. Several weeks after the applicant enters the United States, he or she will receive a green card in the mail and can naturalize five years later.

JOHN DOE HAS A VALID SPECIAL IMMIGRANT VISA.

33. Upon information and belief, Petitioner John Doe is a holder of a valid special immigrant visa. *See* Ex. A, Declaration of Jeanne LoCicero; Ex. B, Declaration of Elizabeth Foydel.

34. Per the State Department's website, in order to obtain such visa he was required to attend at least one interview prior to issuance of the SIV, and long before ever arriving in the United States. To obtain an SIV, John Doe was further required to show proof that he had provided assistance to the U.S. Armed Forces, or under COM authority for at least 12 months, as well as proof of completion of a background check and screening. John Doe also was required to obtain a recommendation letter from a General or Flag Officer in the chain of command of the unit that John Doe supported, or from the U.S. Embassy in Baghdad or Kabul, stating that he had provided "faithful and valuable service" to the

United States.

35. John Doe obtained his SIV as a result of his service with or for the United States government in Afghanistan. To obtain the SIV, John Doe would have had to undergo an extensive background check and interview process with the U.S. government. To issue such a visa, the U.S. government necessarily concluded, among other things, that John Doe posed no national security or safety threat to the United States.

36. The government further concluded, as stated *supra*, that John Doe had experienced or continued to experience an “ongoing serious threat” as a result of his work on behalf of the United States.

UNCONSTITUTIONAL ARREST AND DETENTION OF JOHN DOE

37. Upon information and belief, John Doe arrived in the United States on the evening of Monday, March 13, 2017 at around 7:19 p.m. CBP almost immediately took him into custody.

38. As of the filing of this motion, John Doe has been in CBP custody for more than 28 hours.

39. John Doe has been denied access to counsel while being detained at Newark Airport for this extended period of time. Despite repeated requests, CBP has provided no information regarding why he was detained, whether he has been questioned, and whether any reason at all exists to justify his continued detention.

40. Throughout the entirety of the detention of John Doe, CBP has refused to allow any individual or organization seeking to establish an attorney-client relationship with John Doe to communicate with him in any way. Furthermore, CBP has refused to release information to any individual or organization seeking to establish an attorney-client

relationship with John Doe.

41. During the afternoon of March 14, 2017, three attorneys working in cooperation with IRAP made attempts to contact ICE and CBP by telephone to inquire about the location of Mr. Doe, but the agencies refused to provide this information or make him available to speak with an attorney.

42. 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, went to Newark Liberty International Airport intending to locate and meet with Mr. Doe. She brought an appearance form and indicated she was prepared to represent him. CBP Deputy Chiefs confirmed that Mr. Doe was at EWR, but refused to let her meet with him. The Deputy Chiefs also refused to tell Mr. Doe that Ms. LoCicero was present and available to represent him. They stated that he did not have the right to meet with an attorney, and refused to share information about why Mr. Doe was in custody and what actions CBP would be taking on his case.

42. The undersigned counsel and cooperating counsel would be interested in representing John Doe if permitted to do so. However, as of the filing of this petition, they have been unable to contact John Doe and therefore unable to establish an attorney-client relationship with him.

43. Mr. Doe's intent to be admitted to the United States was clearly demonstrated by the arduous process he navigated in submitting his visa application, and then getting on a flight in an attempt to enter.

44. Upon information and belief, John Doe is still being detained by CBP at Newark liberty International Airport or in another detention facility.

CAUSES OF ACTION

COUNT ONE

FIFTH AMENDMENT – SUBSTANTIVE DUE PROCESS

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

46. Non-citizens who are physically present in the United States are guaranteed the protections of the Due Process Clause of the Fifth Amendment. *See Zadvydas v.*

Davis, 533 U.S. 678, 693 (2001) (“[T]he Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.”).

47. The continued detention of John Doe violates his right to substantive due process protected by the Fifth Amendment. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690. Any deprivation of this fundamental liberty interest must be accompanied not only by adequate procedural protections, but also by a “sufficiently strong special justification” to outweigh the significant deprivation of liberty. *Id.*; *see also Phan v. Reno*, 56 F. Supp. 2d 1149, 1154 (W.D. Wash. 1999) (“Above and beyond the procedural guarantee explicit in the Due Process Clause itself, federal courts have long recognized a limited substantive component that forbids the government to infringe certain fundamental liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest.” (internal citations and quotations omitted)).

48. Here, there is no reason why John Doe should be detained by CBP—particularly in

excess of 28 hours. As evidenced by the fact that he passed the lengthy and rigorous screening and interview process necessary to obtain a SIV, he does not pose a risk to public safety or national security. To the contrary; it has already been established that he has “experienced or are experiencing an ongoing serious threat” in Afghanistan as a result of his service to the United States.

49. Given the thorough and extensive screening procedures employed by the U.S. government to assess and validate the fitness for entry of John Doe to the United States, as demonstrated by the issuance of an SIV – all of which took place before he boarded a flight to the United States – Respondents cannot show a “sufficiently strong special justification” to outweigh the significant deprivation of liberty to John Doe. *Zadvydas*, 533 U.S. at 690.

50. The availability of John Doe’s substantive due process rights under the Fifth Amendment is not affected by the fact that he has been detained at a port of entry. *See Kwai Fun Wong v. United States*, 373 F.3d 952, 973 (9th Cir. 2004) (“The entry fiction is best seen . . . as a fairly narrow doctrine that primarily determines the procedures that the executive branch must follow before turning an immigrant away. Otherwise, the doctrine would allow any number of abuses to be deemed constitutionally permissible merely by labelling certain ‘persons’ as non-persons”).

COUNT TWO

FIFTH AMENDMENT – PROCEDURAL DUE PROCESS

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

52. The Due Process Clause of the Fifth Amendment prohibits the federal government

from depriving individuals of their liberty interests without due process of law.

53. Where Congress has granted statutory rights and authorized procedures applicable to arriving and present non-citizens, minimum due process rights attach to those statutory rights.

54. Respondents' arrest and continued detention of John Doe conflicts with the statutory rights and procedures directed by Congress, and violates the procedural due process guarantees of the Fifth Amendment.

55. The U.S. government enlisted the services of John Doe in the war in Afghanistan based on, in part, an implied promise that the United States would protect his safety.

56. Congress' creation of the Special Immigrant Visa program created an implied promise that applicants who had assisted the United States would be allowed to enter the United States if they were selected for the program, vetted, and received visas.

57. The United States vetted John Doe and granted him a Special Immigrant Visa. On information and belief, as of January 2016 that vetting process takes more than nine months. *See* Joint Department of State/Department of Homeland Security Report: Status of the Afghan Special Immigrant Visa Program *available at* https://travel.state.gov/content/dam/visas/SIVs/Afghan%20SIV%20public%20report_Jan%202016.pdf. That report also states that "The Department of State (State), the Department of Homeland Security (DHS), and all other U.S. government departments and agencies involved in the U.S. Special Immigrant Visa (SIV) program have the highest respect for the men and women who take enormous risks in helping our military and civilian personnel. We are committed to helping those who have helped us."

58. John Doe relied on the Special Immigrant Visa he was granted when he left Afghanistan to travel to the United States, at great risk to his personal safety and knowing that he could not thereafter safely return to Afghanistan.

59. Rather than welcoming John Doe and thanking him for his service to the United States, Respondents arrested and detained him without explanation and without access to counsel.

60. Respondents' bait-and-switch violates the due process rights of John Doe. As the Supreme Court has long recognized, the Due Process Clause forbids the government from punishing people for engaging in conduct that the government itself has encouraged. *See, e.g., Cox v. State of La.*, 379 U.S. 559, 571 (1965) (holding that the government could not punish protestors for demonstrating in a location where state officials had said the protest was allowed); *Raley v. State of Ohio*, 360 U.S. 423, 438 (1959) (holding that witnesses could not be punished for refusing to answer self-incriminating questions from a State legislative commission when the commission itself had told the witnesses they could decline to answer such questions as doing so would amount to "the most indefensible sort of entrapment by the State").

61. Moreover, the potential removal of Mr. Doe without access to the asylum office or immigration court procedures to assert a claim to asylum, withholding of removal, or Convention Against Torture relief further violates his rights to procedural due process.

62. Respondents have detained John Doe at Newark Liberty International Airport for over 28 hours without access to counsel. This detention has been done arbitrarily, capriciously and without due process of law.

63. Access to counsel is a fundamental Due Process right.

64. Respondents have failed even to allow John Doe to speak with counsel during his detention. And, when counsel attempted to make contact, CBP did not permit them to speak to John Doe.

65. Respondents' acts violate Fifth Amendment's guarantee of Procedural Due Process.

COUNT THREE

FIFTH AMENDMENT – EQUAL PROTECTION

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

67. The Fifth Amendment protects individuals against actions of the federal government that deny the equal protection of the laws. *United States v. Windsor*, 133 S. Ct. 2675, 2695 (2013) (“The liberty protected by the Fifth Amendment’s Due Process Clause contains within it the prohibition against denying to any person the equal protection of the laws.”); *Bolling v. Sharpe*, 347 U.S. 497, 500 (1954) (applying Equal Protection Clause to the federal government).

68. Here, Respondents singled out John Doe, without justification, from other people arriving in the United States under Special Immigrant Visas for arrest and extended detention.

69. Respondents' failure to allow John Doe access to counsel violates the equal protection guarantee of the Fifth Amendment.

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

71. Respondents' arrest and continued detention of John Doe violates the equal protection

guarantee of the Fifth Amendment.

COUNT FOUR

ADMINISTRATIVE PROCEDURE ACT

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

73. The INA and implementing regulations entitle John Doe to enter the United States as a Special Immigrant.

74. Respondents' detention and mistreatment of John Doe is not authorized by the INA.

75. Respondents' actions in detaining and mistreating John Doe were arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, in violation of APA § 706(2)(A); contrary to constitutional right, power, privilege, or immunity, in violation of APA § 706(2)(B); in excess of statutory jurisdiction, authority, or limitations, or short of statutory right, in violation of APA § 706(2)(C); and without observance of procedure required by law, in violation of APA §706(2)(D).

COUNT FIVE

ADMINISTRATIVE PROCEDURE ACT – ACCESS TO COUNSEL

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

77. Respondents' acts of preventing attorneys such as Jeanne LoCicero of the ACLU of New Jersey from accessing John Doe detained in their custody at Newark Liberty International Airport violate Section 555(b) of the Administrative Procedure Act.

COUNT SIX

**THE IMMIGRATION AND NATIONALITY ACT
8 U.S.C. §§ 1101(a)(27), 1153(b)(4), AND 1181**

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

79. John Doe has a valid U.S. Special Immigrant Visa, and a denial of his admission into the United States violates 8 U.S.C. §§ 1101(a)(27), 1153(b)(4), and 1181.

COUNT SEVEN

THE IMMIGRATION AND NATIONALITY ACT – ACCESS TO COUNSEL

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

81. Respondents' acts of preventing attorneys such as IRAP from accessing John Doe detained in their custody at Newark Airport violate 8 C.F.R. § 292.5(b), and the statutory authority from which that regulation derives, 8 U.S.C. § 1103.

COUNT EIGHT

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

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

83. 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 Petitioners to an opportunity to apply for asylum, withholding of removal, and CAT relief. These provisions also entitle Petitioners to a grant of withholding of removal and CAT relief upon a showing that they meet the applicable legal standards.

Respondents' actions in seeking to return Petitioner to Afghanistan deprive Petitioner of his statutory and regulatory rights.

PRAYER FOR RELIEF

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

- (1) Issue a Writ of Habeas Corpus requiring Respondents to release John Doe from CBP custody immediately;
- (2) Enter a judgment declaring that Respondents' detention of John Doe is unauthorized by statute and contrary to law and the U.S. Constitution;
- (3) Require immediate access by the undersigned counsel and IRAP to John Doe to provide legal counsel;
- (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: March 15, 2017

Respectfully submitted,

s/ Jeanne LoCicero
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Counsel for Petitioner

*Forthcoming Motion for Admission
Pro Hac Vice.

VERIFICATION

I, Rebecca Heller, state the following under penalty of perjury:

1. I am the Director of the Iraqi Refugee Assistance Project, which is filing the foregoing Petition for Writ of Habeas Corpus as Next Friend to John Doe.
2. The facts stated in this Petition are true and correct to the best of my information, knowledge, and belief.

Dated: March 15, 2017

A handwritten signature in black ink, appearing to read "Rebecca Heller", with a long horizontal flourish extending to the right.

Rebecca Heller