

**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF TEXAS**

SALAM ALBALDAWI, as next friend to
LABEEB IBRAHIM ISSA,

Petitioner,

Case No. _____

v.

DONALD TRUMP, *President of the United States*; UNITED STATES DEPARTMENT OF HOMELAND SECURITY; UNITED STATES CUSTOMS AND BORDER PROTECTION; JOHN KELLY, *Secretary of DHS*; KEVIN K. MCALEENAN, *Acting Commissioner of CBP*; and CLEATUS P. HUNT, JR., *Dallas-Fort Worth Port Director, CBP*,

EXPEDITED HEARING REQUESTED
Date: January 31, 2017

Respondents.

**EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS
AND REQUEST FOR EMERGENCY HEARING**

1. Pursuant 28 United States Code §§ 2241–2255, Labeeb Ibrahim Issa seeks a writ of habeas corpus through his next friend Salam Albaldawi. Mr. Albaldawi worked in Iraq as a translator for the United States Army. (Exhibit A.) Mr. Albaldawi is a friend of Labeeb Ibrahim Issa, who is being held against his will—in extreme pain in his wheelchair—by the United States Customs and Border Protection Agency (“Customs”).

2. In Iraq, Mr. Issa worked for the United States Army as a driver and performed general maintenance. In 2016, he was badly injured in a car accident in Iraq. He was targeted because of his work for the U.S. Army. As a result of the attack, he broke his pelvis and was left confined to a wheelchair to be able to move. Due to continually being targeted for his past

association with the United States Army, on January 13, 2017, he sought a Special Immigrant Visa. To obtain one, Mr. Issa had to demonstrate that he had experienced or was experiencing an ongoing serious threat due to his employment with the U.S. Government. Mr. Issa was ultimately issued a Special Immigrant Visa, which confirms that the United States has determined that Mr. Issa was not a security threat to the United States.¹

3. Acting upon the granted Visa in an attempt to escape the continuing threat to his life, Mr. Issa made a series of long flights—leaving his home country behind. He flew first from Baghdad, then to Qatar. When he arrived to Qatar, however, he was turned back to Iraq despite having valid entry documents. Mr. Issa was informed that, because of President Trump’s January 27, 2017 Executive Order concerning immigration, Mr. Issa could not enter the United States.

4. This Order is the one that reflects Mr. Trump’s promises during his campaign to ban Muslims from certain countries from entering the United States. The Order, for 90 days, suspends entry into the United States by immigrants and nonimmigrants from Iraq, Iran, Libya, Somalia, Sudan, Syria, and Yemen.

5. After being halted, Mr. Issa was told he could enter the United States after all. So he his flight through Qatar to Dallas was back on.

6. As a result of the attack that injured Mr. Issa, he has severely impaired circulation in one of his legs that may require amputation. These long, repetitive flights and series of delays can only have exceptionally exacerbated Mr. Issa’s pain—which he has repeatedly expressed.

7. Mr. Issa landed in Dallas hoping to find safety and freedom—perhaps only a small token of thanks from our country in exchange for his extreme sacrifice for our country in its war efforts in his home country. He has no family here.

¹ A nonimmigrant visa “shall be valid for such period, not exceeding six months, as shall be by regulations prescribed.” 8 U.S.C. § 1201(c)(1).

8. On January 30, Mr. Issa arrived at 3:25 pm at DFW International Airport. But Customs and Department of Homeland Security (“Homeland Security”) did not meet Mr. Issa’s landing in Dallas with thanks for his service to our country. Nor did either agency seek to make his already painful travel more comfortable.

9. Another passenger, Ahmed Alobaidi, expresses genuine concern about Mr. Issa’s condition after viewing him while in the secondary inspection room. (Exhibit B.) Mr. Alobaidi also served as a translator to the US Army in Iraq, and was flying in from London before being taken into the secondary inspection room upon arrival. While there, Mr. Alobaidi met Mr. Issa, viewed that he was in significant pain, and watched as Mr. Issa’s condition worsened over the course of the night. Indeed, Customs has never been capable of providing ongoing, appropriate medical care to those in detention for an unknown time period, and for a wholly unexpressed reason. Of course, this circumstance more than negligently places Mr. Issa’s health in substantial jeopardy and works only to further his pain.

10. Mr. Alobaidi also saw employees at Customs ask how long the wheelchair-bound man would be held, and heard the Customs officers respond that “there is no chance” that the man would be released the night of January 30, because the officers needed clearance from Washington. The officers mentioned that they “could not get an answer tonight.”

11. Unfortunately this problem should have already been—and *has* already been—solved. The United States District Court for the District of Massachusetts examined President Trump’s Executive Order and issued an order limiting the same Respondents set forth in this action from a variety of acts. Those acts include keeping secondary screening to that which was in effect before the Executive Order, not detaining or removing any holders of valid immigrant and non-immigrant visas, and not detaining or removing any lawful permanent residents and

other individuals from the seven identified countries (who would be permitted to enter the country absent the Executive Order). To ensure compliance, the Court ordered the United States Marshal for the District of Massachusetts to enforce the Order.

12. Customs has publicly expressed an official position that they are no longer detaining persons under the President's Executive Order.

13. This has turned out to be at minimum pretext, if not an outright falsehood.

14. During this debacle, Mr. Issa has been held against his will in confinement. At this point he has been unlawfully detained for over twelve hours. And he has apparently been told he will be held over night. It is unknown why he is being detained. Mr. Issa does not pose any threat to the United States. He has no criminal history and worked for many years with the US Army. Mr. Albaldawi fears he may suffer serious or irreparable harm if he remains detained.

15. Mr. Albaldawi, Mr. Issa's friend, explains that Mr. Issa has some medications with him. But Mr. Issa has extreme health issues and Mr. Albaldawi does not know how long Mr. Issa's provisions will last. The provisions were just in his carry-on luggage. Mr. Albaldawi is extremely concerned about Mr. Issa's health and safety while he remains in detention, as well as whether he will obtain access to appropriate medical care.

16. Mr. Albaldawi last heard from Mr. Issa on January 30 at 8 pm. At that time, he thought Mr. Issa expressed his hope that he might be released very soon. But since that time, hours have passed and he has not yet been released. And Mr. Issa is at imminent risk of being returned to Iraq against his will, despite both his severe physical disabilities and the threat to his life in Iraq.

JURISDICTION AND VENUE

17. This Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331, 1361, 2241, 2243, and the Habeas Corpus Suspension Clause of the U.S. Constitution.

18. Venue properly lies within the Dallas Division of the Northern District of Texas because a substantial part of the events or omissions giving rise to this action occurred in the District, the location of the Port of Dallas-Fort Worth, 7501 Esters Boulevard, Suite 160, Irving, Texas 75063. 28 U.S.C. § 1391(b)(1).

19. No petition for habeas corpus has previously been filed in any court to review Mr. Issa's case.

PARTIES

20. Mr. Issa is a 33-year-old Iraqi national and holder of a valid Special Immigrant Visa for entry into the United States, and is currently being detained at DFW Airport.

21. Salam Albaldawi is a legal permanent resident who worked as a translator for the US Army and, having known Mr. Issa since 2007, Mr. Albaldawi brings this suit for a writ as next friend to Mr. Issa because he is inaccessible, has been denied access to counsel, and is unable to pursue this action for himself. As Mr. Issa's friend and the individual responsible for maintaining the financial requirements as a sponsor for Mr. Issa's Special Immigrant Visa, Mr. Albaldawi is dedicated to Mr. Issa's best interests.

22. The US Department of Homeland Security ("Homeland Security") is a cabinet department of the United States federal government with the primary mission of securing the United States.

23. US Customs and Border Protection (“Customs”) is an agency within Homeland Security. Customs’ primary mission is to detect and prevent the unlawful entry of persons and goods into the United States.

24. Respondent John Kelly is the Secretary of Homeland Security. Secretary Kelly has immediate custody of Mr. Issa. Mr. Kelly is sued in his official capacity.

25. Respondent Kevin K. McAleenan is the Acting Commissioner of CBP. Acting Commissioner McAleenan has immediate custody of Mr. Issa. Mr. McAleenan is sued in his official capacity.

26. Respondent Cleatus P. Hunt is the Customs Area Port Director for Dallas-Fort Worth, which has immediate custody of Mr. Issa. He is sued in his official capacity.

27. Respondent Donald Trump is the President of the United States. He is sued in his official capacity.

CAUSES OF ACTION

28. Entry of Order for Writ of Habeas Corpus for Ms. Issa.

29. The above allegations and requests are incorporated herein by reference.

30. **Fifth Amendment – Equal Protection.** The Executive Order wrongfully discriminates against Mr. Issa on the basis of his country of origin and religion, violating his right to equal protection under the Fifth Amendment. The Executive Order was substantially motivated by animus towards Muslims, and has had a disparate and purposefully distinguished² effect on them, which is true even if it is accomplished through the application of a general law.³

² See Michael D. Shear & Helene Cooper, *Trump Bars Refugees and Citizens of 7 Muslim Countries*, N.Y. Times (Jan. 27, 2017), (“[President Trump] ordered that Christians and others from minority religions be granted priority over Muslims.”); Carol Morello, *Trump Signs Order Temporarily Halting Admission of Refugees, Promises Priority for Christians*, Wash. Post (Jan. 27, 2017).

³ *Yick Wo v. Hopkins*, 118 U.S. 356, 373–74 (1886).

Mr. Issa has suffered injury as a result of Respondents' actions and is entitled to appropriate relief including but not limited to injunctive relief.

31. **Administrative Procedure Act Violation of Immigration and Nationality Act.**

The INA forbids discrimination in issuance of visas based on a person's race, nationality, place of birth, or place of residence. 8 U.S.C. § 1152(a)(1)(A). Thus, this mandate prohibits the President (and federal agencies) from exercising his authority under 8 U.S.C. § 1182(f) in a discriminatory manner, as he has with the Executive Order—prohibiting entry of all aliens from seven Muslim-majority countries. Further, such an order is overbroad and not tailored to specific classes of aliens as envisioned by Congress under 8 U.S.C. § 1182(f) and required by law.

32. Respondents' actions in detaining and mistreating Petitioner 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 § 706(2)(D).

33. **Fifth Amendment – Procedural Due Process.** The Immigration and Nationality Act provides that “[a]ny alien who is physically present in the United States or who arrives in the United States . . . irrespective of such alien's status, may apply for asylum in accordance with this section or, where applicable, section 235(b).” 8 U.S.C. § 1158(a)(1); *see also id.* § 1225(b)(1)(A)(ii); 1231(b). Mr. Issa is entitled to apply for asylum or other forms of humanitarian protection and be promptly received and processed by United States authorities. It is understood he has been denied these rights, as he remains in detention at DFW Airport.

34. Additionally, in *Kleindienst v. Mandel*, 408 U.S. 753, 769 (1972), the Supreme Court explained that the Executive must have a “facially legitimate and bona fide reason” for denying someone entry to the United States. Respondents have engaged in behavior specifically to avoid divulging, must less confrontation concerning, the basis for the apparent, new activities for purposes of detention.

35. This case presents private interests (the right to be free from detention, travel, and not be humiliated by an unexpected denial of entry), yet the government’s interests have already been satisfied as proven by the granted Special Immigrant Visa. Thus, the scope of the Executive Order creates a substantial risk of the erroneous deprivation of liberty.

36. Finally, Mr. Issa is being detained without access to counsel or an interpreter, and may well be coerced into signing forms intended for the purpose of his unknowing waiver of his rights.

37. **Fifth Amendment – Establishment Clause.** The Executive Order exhibits hostility to a specific religious faith, Islam, and gives preference to other religious faiths, principally Christianity. The Executive Order therefore violates the Establishment Clause of the First Amendment by not pursuing a course of neutrality with regard to different religious faiths.

38. **Religious Freedom Restoration Act.** The Executive Order will have the effect of imposing a special disability on the basis of religious views or religious status, by withdrawing an important immigration benefit principally from Muslims on account of their religion. In doing so, the Executive Order places a substantial burden on Petitioner’s exercise of religion in a way that is not the least restrictive means of furthering a compelling governmental interest.

BOND

39. To the extent the Court requires a bond to release Plaintiff, Plaintiff demands such bond be *de minimis*.

EMERGENCY HEARING

40. Plaintiff asks the Court to set this Petition for Writ of Habeas Corpus for hearing at the earliest possible time and, after hearing the request, to issue a writ ordering the release of Mr. Issa.

PRAYER FOR RELIEF

WHEREFORE, the nationwide Massachusetts Order (attached as Exhibit C), should be applied in this district. Thus, Petitioner prays that this Court grant the following relief:

- (1) Issue a Writ of Habeas Corpus requiring Respondents to release Mr. Issa;
- (2) While awaiting expedited discovery concerning this issue, enjoin and restrain the Respondents, their officers, agents, servants, employees, attorneys, and all members and persons acting in concert or participation with them, from the date of this Order, from:
 - (a) in any manner or by any means, removing individuals with refugee applications approved by U.S. Citizenship and Immigration Services as part of the U.S. Refugee Admissions Program, holders of valid immigrant and non-immigrant visas, and other individuals from Iraq, Syria, Iran, Sudan, Libya, Somalia, and Yemen legally authorized to enter the United States;
 - (b) shall limit secondary screening to comply with the regulations and statutes in effect prior to the Executive Order, including 8 U.S.C. § 1101(a)(13)(C);
 - (c) shall not, by any manner or means, detain or remove individuals with refugee applications approved by U.S. Citizenship and Immigration Services as part of the U.S. Refugee Admissions Program, holders of valid immigrant and non-immigrant visas, lawful permanent residents, and other individuals from Iraq, Syria, Iran, Sudan, Libya, Somalia and Yemen who, absent the Executive Order, would be legally authorized to enter the United States; and
 - (d) the right to access to counsel be permitted for any detained individual to ensure due process of law; and
- (3) Grant any other and further relief that this Court may deem fit and proper.

DATED: January 30, 2017
Dallas, Texas

Respectfully submitted,

/s/ Christopher S. Hamilton
Christopher S. Hamilton
TX Bar No. 24046013
chamilton@standlyhamilton.com
STANDLY & HAMILTON, LLP
325 N. St. Paul Street, Suite 3300
Dallas, Texas 75201
Direct: (214) 234-7970
Cell: (214) 244-4943
Fax: (214) 234-7300

Angela Hunt
Texas State Bar No. 24007413
angela.hunt@fghlaw.net
FARROW-GILLESPIE & HEATH, LLP
1700 Pacific Avenue, Suite 3700
Dallas, Texas 75201
P: 214-361-5600
F: 214-203-0651

Matthew Mitzner
TX Bar No. 24068911
matthew.mitzner@tklaw.com
John P. Atkins
Tex. Bar No. 24097326
john.atkins@tklaw.com
THOMPSON & KNIGHT, LLP
1722 Routh Street, Suite 1500
Dallas, Texas 75201
P: (214) 969-1355
F: (214) 999-1670

CERTIFICATE OF CONFERENCE

Counsel for Mr. Issa certifies that best possible notice, under these circumstances (*i.e.*, the urgency of the health issues being experienced by Mr. Issa), has been given to Respondents through their counsel, John Parker (john.parker@usdoj.gov) the Acting United States Attorney for the Northern District of Texas, via email. However, the circumstances have limited the time-frame and time-of-day for the response. Because of the urgency of the issue, Petitioner requests that a hearing be held without awaiting an explicit response from Respondents.

/s/ Matthew M. Mitzner
Matthew M. Mitzner
Counsel for Petitioner