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The People of the State of California, and
The People of the United States of America

IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO

People of the United States of America and the State of California, Plaintiffs, vs. Donald Trump; United States of America, Defendants.	Case Number: 3:17-cv-451 (Fee Exempt: 28 U.S.C. § 1914(b), by Judicial Conference effective 12/2016) COMPLAINT FOR INJUNCTION AND REPEAL OF PRESIDENTIAL EXECUTIVE ORDER DATED JANUARY 27, 2017 SUSPENDING VISAS AND IMMIGRATION BENEFITS WITHOUT CONGRESSIONAL APPROVAL U.S. Const. art. I, § 1; U.S. Const. art. II, § 1, cl. 1

I. FEE EXEMPTION

This action is brought on behalf of the People of the State of California and United States, and exempted from filing fees under 28 U.S.C. § 1914(b):

Effective on: December 1, 2016

The United States should not be charged fees under this schedule, with the exception of those specifically prescribed in Items 2, 4 and 5, when the information requested is available through remote electronic access.

Reference:

http://www.uscourts.gov/services-forms/fees/district-court-miscellaneous-fee-schedule

I. JURISDICTION

This action arises under the Constitution, laws, or treaties of the United States, conferring Federal Question jurisdiction under 28 U.S.C. § 1331.

VENUE

Defendant is the United States. Venue is proper in any judicial district pursuant to 28 U.S.C. § 1391(e).

PARTIES

1. Plaintiffs are the People of the United States of America and the State of California, by way of the Private Attorney General statutes of the State of California and United States, for this civil action. The action is for the protection of all persons in the United States in their civil rights and for their vindication pursuant to brought pursuant to 42 U.S.C. § 1988.

2. Defendant, Donald Trump, aka Donald John Trump ("Mr. Trump"), is the forty fifth president of the united states, inaugurated eight days ago, on January 20, 2017. He is named as an indispensable party with regard to this action to enjoin enforcement of his executive order issued one day before the filing of this action, on January 27, 2017, purporting to suspend visas and immigration benefits of a seemingly undefined class of persons, apparently based on ethnicity and/or religious beliefs.

3. Defendant, the United States of America, is the United States

Government, generally, and is named as a defendant for the purpose of enjoining enforcement of the Executive Order of Mr. Trump.

FIRST CAUSE OF ACTION FOR INUNCTION OF EXECUTIVE ORDER DATED JANUARY 27, 2017

4. On January 27, 2017, one day before the filing of this Complaint, Mr. Trump signed an executive order purporting to suspend visas and immigration benefits of a seemingly undefined class of persons, apparently based on ethnicity and/or religious beliefs. The order is captioned:

"EXECUTIVE ORDER PROTECTING THE NATION FROM FOREIGN TERRORIST ENTRY INTO THE UNITED STATES"

A copy of the Executive Order is attached as Exhibit A hereto.

5. The Executive Order purports to suspend the issuance of visas and benefits, with it's stated goal being the prevention of entry of citizens and/or residents of largely unspecified countries, and appears to erroneously reference a statute which does not appear to exist: "section 217(a)(12) of the INA." While there is a "section 217," there does not appear to be a section "217(a)(12)" identifying the countries from which "immigrant and nonimmigrant" persons are to be denied entry to the United States:

> I hereby proclaim that the immigrant and nonimmigrant entry into the United States of aliens from countries referred to in section 217(a)(12) of the INA, 8 U.Ss.C. 1187(a)(12), would be detrimental to the interests of the United States, and I hereby suspend entry into the United States, as immigrants and nonimmigrants, of such persons for 90 days from the date of this order..."

The People are not able to readily identify which countries the President intended because there does not appear to be a "section 217(a)(12)," and therefore does not appear to be any publication defining the "countries referred" in "section 217(a)(12).

6. The Executive Order violates the separation of powers doctrine without statutory exception, because U.S. Const. art. I, § 1 vests Congress with all legislative powers:

> U.S. Const. art. I, § 1
>
> All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

The President is vested with the executive power pursuant to U.S. Const. art. II, § 1, cl. 1:

> Section 1. The executive Power shall be vested in a President of the United States of America.

The Judiciary, this Court, is vested with the judicial powers to interpret the laws pursuant to is vested with U.S. Const. art. III, § 1:

> Section 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

No Statutory Exception Exists

There has been no change of any kind so as to warrant departure from the Separation of Powers doctrine and permit Mr. Trump to legislate the Executive Order at issue. There has been on increase of threat of terrorist attacks at all since the event referenced in the second paragraph of Mr. Trump's Executive Order, the "terrorist attacks of September 11, 2001." To the contrary, the threat of terrorist attacks has declined steadily since September 2001, therefore Congress and the previous two presidential administrations never considered enacting such a prohibition of entry of persons to the United States based on their countries of origin and/or religious beliefs. There is no exigent circumstance exception to warrant an executive order, while the legislature and previous two presidents served through the several years following September 11, 2001 and had years to enact legislation barring entry into the United States by the classes of persons identified on Mr. Trump's Executive Order, but clearly determined such legislation would be detrimental to the interests of the People of the United States of America.

THE EXECUTIVE ORDER WOULD DAMAGE U.S. REPUTATION

Mr. Trump's intent is commendable and appreciated insofar as he identifies persons who inflict "gender-based violence against women, including honor killings," as well as persons "who have been radicalized after entry into the United States and engaged in terrorism-related acts, or who have provided material support to terrorism-related organizations in countries that pose a threat to the United States." However, Mr. Trump's Executive Order is overly broad and misses it's mark. If not stricken, the Executive Order would facially damage the reputation of the United States worldwide, because it discriminates against a very large class of persons based on either their foreign citizenship or residency, or religious beliefs, based on an erroneous beliefs of one individual (Mr. Trump). While the several countries Mr. Trump attempted to identify on his Executive Order are not actually specified, and apparently cannot even be ascertained from the document or it's references, nevertheless a ban on entry to the United States based solely on foreign citizenship or residency, or religion, facially evidences inhumane discrimination.

CONGRESS MAY ENACT THE LEGISLATION IF NECESSARY

The Legislative branch is charged with enactment of the laws. Mr. Trump can therefore tender his Executive Order as a bill to Congress, so that the legislature can decide whether such a law should be enacted for the benefit of the People of the United States of America. However, no statute or authority exists to support the issuance of this particular Executive Order.

SECOND CAUSE OF ACTION TO STRIKE EXECUTIVE ORDER AS UNCONSTITUTIONAL INFRINGEMENT ON ESTABLISHMENT CLAUSE

7. The First Amendment to the United States Constitution is the cornerstone

of democracy. The first sentence of the First Amendment provides:

"Congress shall make no law respecting an establishment of religion..."

Mr. Trump's Executive Order presents a proposed "law" facially prohibiting entry of persons to the United States based on their adherence to religious beliefs shared in certain countries. The Executive Order therefore is facially unconstitutional and must be stricken as an infringement on the Establishment Clause of the First Amendment.

INJUNCTIVE RELIEF PENDING ADJUDICATION

Plaintiffs respectfully move for an immediate injunction of enforcement of Mr. Trump's Executive Order until it's validity and constitutionality is adjudicated.

Dated: January 28, 2017

s/Andrew W. Shalaby
Andrew W. Shalaby, Attorney for Plaintiffs

PROOF OF SERVICE

I, Andrew W. Shalaby, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the within entitled action. I am employed at 7525 Leviston Ave, El Cerrito, CA. On January 28, 2017 I served the attached:

COMPLAINT FOR INJUNCTION AND REPEAL OF PRESIDENTIAL EXECUTIVE ORDER DATED JANUARY 27, 2017 SUSPENDING VISAS AND IMMIGRATION BENEFITS WITHOUT CONGRESSIONAL APPROVAL

on the interested parties in said action, by placing a true copy thereof in sealed envelope(s) addressed as follows:

Office of the Attorney General
455 Golden Gate, Suite 11000
San Francisco, CA 94102-7004

and served the named document in the manner indicated below:

BY MAIL: I am familiar with the practices of the U.S. Postal Service, and I caused true and correct copies of the above documents, by following ordinary business practices, to be placed and sealed in envelopes(s) addressed to the addressees, at an office of the U.S. Postal Service in El Cerrito, California, for collection and mailing by first class mail with the United States Postal Service.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed January 28, 2017, at El Cerrito, California.

s/Andrew W. Shalaby

Andrew W. Shalaby