This memo outlines a variety of issues relating to lawful permanent residents ("LPRs") and President Trump's January 27, 2017 Executive Order, "Protecting the Nation from Foreign Terrorist Entry into the United States" (the "EO"). In Section I, we first give an overview of the rights of LPRs under the law and the Constitution. We discuss the Presidential authority to suspend the rights of LPRs and recourse for the unlawful suspension of LPR's rights.

In Section II, we analyze whether the EO makes enforcement distinctions between LPRs based on their geographic location or the procedural posture of their LPR status and whether such distinctions have historically existed under the immigration laws of the United States.

In Section III, we discuss abandonment of LPR status, which can be initiated by either the government or the LPR. We discuss reports that LPRs have been coerced into executing I-407 forms by immigration officers, thereby abandoning their LPR status. Finally, in Section IV, we analyze the impact of the EO on LPRs and discuss all current cases that have been filed and bear on LPR rights.

I. OVERVIEW OF RIGHTS ENJOYED BY LAWFUL PERMANENT RESIDENTS ("LPRS")

A. Statutory Rights

1. Live and work in United States

A LPR has a right to live and work in the United States. 8 C.F.R. § 274a.12 (lawful permanent resident may be employed in the United States without restrictions as to location or type of employment); 8 C.F.R. § 1001.1(p) (lawful permanent residents have "been lawfully accorded the privilege of residing permanently in the United States as an immigrant"). However, only citizens may vote and run for elected office. U.S. Const. art. I, §§2, 3; U.S. Const. art. II, §2; U.S. Const. amend. 15.

2. No formal admission required

A returning lawful permanent resident is not considered to be seeking "admission" to the United States unless he or she: (i) has abandoned or relinquished permanent residence; (ii) has been absent from the United States for a continuous 180-day period; (iii) has engaged in illegal activity after departing the United States; (iv) left the United States while under legal process seeking removal of the alien; (v) committed an offense identified in Section 212(a)(2); or (vi) attempts to enter at a time or place other than as designated by immigration officers or has not been admitted to the United States after inspection and authorization by an immigration officer. 8 U.S.C. § 101(a)(13)(C).

If seeking admission to the U.S. under 8 U.S.C. § 101(a)(13)(C), the LPR is considered an arriving alien, 8 C.F.R. §§ 1.2, 1001.1(q), subject to the grounds of inadmissibility under Immigration and Nationality Act (INA) 212(a), 8 U.S.C. § 1182(a). In addition, as discussed below, LPRs considered an arriving alien have been accorded fewer constitutional protections when seeking admission to the U.S.

3. Right to seek naturalization if certain conditions met

Under 8 U.S.C. 1427 *et seq*, a LPR may seek naturalization as a United States citizen if he or she meets various requirements, including continuous residence, physical presence, and good moral character requirements.

4. Rights of spouse and children to become lawful permanent residents

In most cases, a LPR may seek lawful permanent residence for his or her spouse or children. 8 U.S.C. § 1153.

B. Constitutional Rights

The scope of the constitutional rights provided to LPRs is not a settled area of law. An analysis of the constitutional rights of LPRs must begin with reference to the categories of individuals referred to in the Constitution itself: a "natural born Citizen;"[1] a "Citizen" or "Citizens;"[2] "the people" or "the People;"[3] and "Person" or "Persons."[4] In *United States v. Verdugo-Urquidez*, 494 U.S. 259, 265 (1990), the plurality indicated '"*the people'* seems to have been a term of art employed in select parts of the Constitution [to extend rights to] a class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community" and that the term "person" is a "relatively universal term" with even broader reach.

Once an alien lawfully enters and resides in the United States, he or she is invested with the rights guaranteed by the Constitution to all people within United States borders. *Kwong Hai Chew v. Colding*, 344 U.S. 590, 596 n.5 (1953) (noting several constitutional provisions that apply to all "persons" and do not recognize a distinction between "citizens" and "aliens."); *but see United States v. Verdugo-Urquidez*, 494 U.S. 259 (1990) (using a "significant voluntary connection" test, non-resident Mexican citizen who was involuntarily within the United States for a matter of days was not subject to Fourth Amendment protections for a search of his home in Mexico while he was in the United States).

1. First Amendment rights

A LPR is afforded the protections of the First Amendment, which protects against government establishment of religion and protects religious freedom, free speech, the freedom of the press, the right to peaceably assemble and the right to petition the government for redress of grievances. *Bridges v. Wixon*, 326 U.S. 135, 148 (1945) (resident alien was unlawfully ordered deported for affiliation with communist party).

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[1] U.S. Const. art. II, § 1, cl. 5

[2] U.S. Const. art. I, § 2, cl. 2; U.S. Const. art. I, §. 3, cl. 3; U.S. Const. art. IV, § . 2, cl. 1.

[3] First, Second, Fourth, Ninth, Tenth and Seventeenth Amendments. Preamble and Art. I, § . 2, clause 1.

[4] Referenced throughout the Constitution and Bill of Rights.

2. Fifth Amendment rights

A LPR who remains physically present in the United States is protected by the Fifth Amendment, which affords procedural protections for persons accused of crimes and provides for due process of law before a person is deprived of life, liberty, or property. *Kwong Hai Chew v. Colding*, 344 U.S. 590, 597 (1953); *Wong Wing v. United States*, 163 U.S. 228, 238 (1896) (all persons within the territory of the United States are entitled to Fifth and Sixth Amendment protection); *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (when a person enters the United States, "the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent"). A LPR returning from abroad is entitled to a due process hearing on any charges that would attempt to exclude the LPR from the United States. *Rosenberg v. Fleuti*, 374 U.S. 449, 460 (1963); *Landon v. Plasencia*, 459 U.S. 21, 33 (1982).

Under the Due Process Clause, a person cannot be denied the "right to follow a chosen trade or profession" without due process, but this will not protect against the loss of one position in a chosen profession. *Greene v. McElroy*, 360 U.S. 474, 492 (1959); *Kartseva v. Dep't of State*, 37 F.3d 1524, 1529 (D.C. Cir. 1994); *Abdelfattah v. U.S. Dep't of Homeland Sec.*, 787 F.3d 524, 538 (D.C. Cir. 2015).

The Due Process Clause also protects the right to travel internationally, which cannot be denied without providing due process. *Califano v. Aznavorian*, 439 U.S. 170, 176 (1978); *Abdelfattah*, 787 F.3d at 539. However, the right to international travel is subject to further regulatory restrictions than the right to travel interstate, which is a "virtually unqualified" right. *Edwards v. California*, 314 U.S. 160 (1941); *Califano v. Aznavorian*, 439 U.S. 170, 176 (1978).

Constitutional rights have also been extended to foreign nationals who have traveled abroad. In *Ibrahim v. Department of Homeland Security*, 669 F.3d 983, 996 (9th Cir. 2012), a Malaysian citizen pursuing a PhD degree at Stanford University attended a conference abroad and was subsequently denied entry to the U.S. because her name was on a government "no-fly" list. Finding the relevant inquiry to be "whether the alien has voluntarily established a connection to the United States," the Court held that Ibrahim could invoke her Fifth Amendment rights in light of her connections to the U.S. (she had been studying in the U.S. for five years), and her purpose of travel (presenting her research at a conference), which served "to further, not to sever, her connections to the United States." *Id.* at 997 (following the "significant voluntary connection" test of *Verdugo-Urquidez*).

3. Sixth Amendment rights

All persons physically present in the United States, including LPRs, are protected by the Sixth Amendment, which provides various procedural protections to criminal defendants. *Wong Wing v. United States*, 163 U.S. 228, 238 (1896).

4. Fourteenth Amendment rights

All persons within the territorial jurisdiction of the United States, including LPRs, are protected by the Fourteenth Amendment, which prohibits states from depriving any person of life, liberty, or property without due process and provides that all persons are guaranteed equal protection of the laws. *Yick Wo v. Hopkins*, 118 U.S. 356, 366 (1886) ("The fourteenth amendment to the constitution is not confined to the protection of citizens. . . . [Its] provisions are universal in their application, to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality . . . ."); *Plyler v. Doe*, 457 U.S. 202, 215 (1982) (invalidating Texas statute that withheld public funds from being used to educate children of illegal immigrants).

Under the Fourteenth Amendment, laws that classify on the basis of alienage are subject to close judicial scrutiny because "[a]liens are a prime example of a discrete and insular minority for whom . . . heightened judicial solicitude is appropriate." *Graham v. Richardson*, 403 U.S. 365, 372 (1971) (applying strict scrutiny to find restrictions and conditions on state welfare benefits to aliens violated equal protection clause); *but see Foley v. Connelie*, 435 U.S. 291, 295 (1978) (refusing to apply strict scrutiny to "matters firmly within a State's constitutional prerogatives," such as the right to participate in democratic political institutions, "because to do so would obliterate all the distinctions between citizens and aliens, and thus depreciate the historic values of citizenship"); *Bernal v. Fainter*, 467 U.S. 216, 220-221 (1984) (recognizing an exception to the strict scrutiny standard for laws that "exclude aliens from positions intimately related to the process of democratic self-government").

While the courts have generally reviewed state restrictions based on alienage under strict scrutiny, some federal restrictions and distinctions based on alienage have been reviewed under a less strict standard of review. *See generally Mathews v. Diaz*, 426 U.S. 67, 80 (1976) (in upholding a statute that denied Medicare eligibility to LPRs who had been in the U.S. for less than five years, stating Congress "has no constitutional duty to provide all aliens with the welfare benefits provided to citizens" and finding it reasonable to determine eligibility "on both the character and the duration of [the LPR's] residence.")

C. Constitutional Rights of LPRs in the Context of Exclusion and Removal

Following the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), the exclusion/deportation framework was consolidated into simply 'removal proceedings.' Removal is not a criminal matter, but rather a civil matter where constitutional rights extended to criminal defendants are no longer available. As such, constitutional rights in the context of removal proceedings are largely limited to Fifth Amendment due process. *Rosenberg v. Fleuti*, 374 U.S. 449, 460 (1963); *Landon v. Plasencia*, 459 U.S. 21, 33 (1982).

In making distinctions about who may be admitted into the United States, however, Congress and the executive branch have much broader authority to define the scope of due process. For example, in *Knauff v. Shaugnessy*, 338 U.S. 537, 544 (1950), the Supreme Court stated that, in denying entry, without a hearing, to the wife of a naturalized citizen on security

grounds, "[w]hatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned."

In the context of detention before removal, the Supreme Court has been less inclined to offer constitutional protections, finding "that Congress, justifiably concerned that deportable aliens who are not detained continue to engage in crime and fail to appear for their removal hearings in large numbers, may require that persons such as respondent be detained for the brief period necessary for their removal proceedings." *Demore v. Kim,* 538 U.S. 510, 513 (2003). The Court further noted that while the Fifth Amendment entitles foreign nationals to due process in removal proceedings, it also recognized "detention during deportation proceedings as a constitutionally valid aspect of the deportation process" and "in the exercise of broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens." *Demore*, 538 U.S. at 521-23.

D. Rights of LPRs Returning to the United States

Returning LPRs have historically been entitled to due process protection. *See generally Kwong Hai Chew v. Colding,* 344 U.S. 590 (1953); *Landon v. Plasencia,* 459 U.S. 21 (1982) (returning LPRs have due process rights). However, following the enactment of IIRIRA, some returning LPRs are treated as applicants for admission under INA Sec. 101(a)(13)(C), discussed *supra*.

A LPR seeking admission to the U.S., i.e., an "arriving alien," may be treated differently from a LPR who never left the United States, or a returning LPR not considered to be seeking admission. *Mejia-Rodriquez v. Holder*, 558 F.3d 46, 49 (1st Cir. 2009); *De Fuentes v. Gonzales,* 462 F.3d 498, 503 (5th Cir. 2006) (finding no constitutional right to admission, and no violation of equal protection where Congress classifies some LPRs as arriving aliens and not others); *but see Matter of Pena,* 26 I&N Dec. 613(2015) (where LPR allegedly obtained that status unlawfully, but not falling within any of the INA 101(a)(13)(C) exceptions, cannot be considered an arriving alien under INA 101(a)(13)(C)).

E. Presidential Authority to Suspend the Rights of a LPR

The President's power to issue an executive order must stem from either an act of Congress or from the Constitution itself. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952). Congress delegated to the president the power to suspend the entry into the United States of aliens, or a class of aliens, in 8 U.S.C. § 1182(f), which states: "Whenever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate."

However, Congress also has forbidden discrimination on the basis of race, sex, nationality, place of birth, or place of residence in the issuance of visas, under 8 U.S.C. § 1152(a)(1)(A): "[N]o person shall . . . be discriminated against in the issuance of an immigrant visa because of the person's race, sex, nationality, place of birth, or place of residence." *See also Olsen v. Albright*, 990 F. Supp. 31, 39 (D.C. 1997) (consulate policies that subjected applicants

from certain nations to more scrutiny because of higher immigration fraud levels in those countries violated non-discrimination rule).

F. Recourse for the Unlawful Suspension of LPR's Rights

A LPR's rights who have been violated may have recourse in a variety of different forms, depending on how the LPR's rights were violated. One avenue of review for a LPR is a habeas corpus proceeding pursuant to the suspension clause of the United States Constitution. While the REAL ID Act of 2005 purportedly limited the writ of habeas corpus as a procedural mechanism to challenge immigration rulings,[5] the suspension clause likely protects a LPR's right to petition for habeas corpus relief. *Castro v. United States Department of Homeland Security*, 835 F.3d 422, 446-47 (3rd Cir. 2016). In *Castro*, the court held that the petitioners could not invoke the suspension clause as grounds for entitlement to habeas corpus review because the court deemed the petitioners "aliens seeking initial admission into the United States" based on their being apprehended within hours of a clandestine entrance into the United States. By being categorized as such, the petitioners were not entitled to the constitutional protections of the suspension clause. In contrast, the court noted that "lawful permanent residents" were a "category of aliens (unlike recent clandestine entrants) whose entitlement to broad constitutional protections is undisputed." *Castro*, 835 F.3d at 446.

Based on the reasoning of *Castro*, there is a strong argument that LPRs are afforded the right to habeas corpus review under the suspension clause. *See also* 28 U.S.C. §§ 2241, 2243 (authorizing relief for those unlawfully detained through a writ of habeas corpus). However, the Department of State's revocation of an immigrant visa or non-immigrant visa under INA § 221(i) is not reviewable in habeas or mandamus, but if such revocation provides the sole basis for removal under INA § 237(a)(1)(B), the action may be reviewed in removal proceedings. *See generally Bolante v. Achim*, 457 F. Supp. 2d 898 (E.D. Wis. 2006).

Further, a LPR whose rights are adversely impacted by an unconstitutional executive order may seek relief under: (1) 28 U.S.C. § 2201, by seeking a declaration on the constitutionality of the executive order; or (2) 28 U.S.C. § 1361, in a mandamus action to compel an executive officer to comply with a legal duty. *See generally Meina Xie v. Kerry*, 780 F.3d 405 (D.C. Cir. 2015) (action to compel issuance of immigrant visa eligible for Administrative Procedure Act and mandamus review).

II. ENFORCEMENT DISTINCTIONS BETWEEN DIFFERENT GROUPS OF LPRS

Introduction

The EO suspends entry into the United States of most immigrants and nonimmigrants from seven majority-Muslim countries designated in the Immigration and Nationality Act (INA) § 217(a)(12), 8 U.S.C. § 1187(a)(12): Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen. EO

[5] The REAL ID Act of 2005 states that habeas corpus review is limited to determinations of: (1) whether the petitioner is an alien; (2) whether the petitioner was ordered removed; and (3) whether the petitioner can prove by a preponderance of the evidence that the petitioner is lawfully admitted for permanent residence, an admitted refugee, or has been granted asylum. 8 U.S.C. § 1252(e)(2).

Sec. 3(c).[6] On its face, the EO applies to all applicants from these countries, irrespective of whether they hold a current, validly issued, visa or have LPR status in the United States.

Questions Presented

Under the EO, is an enforcement distinction being made between the following groups of LPRs:

- "Initial" LPRs—those who applied for and received immigrant visa approval abroad, and are traveling to the United States, with a valid immigrant visa in hand, but will not receive their green cards until after admission to the United States;
- LPRs present in the United States who have not yet received their green cards; or
- LPRs present in the United States who have their green cards in hand?

Have any such distinctions between groups of LPRs historically been made under the immigration laws of the United States?

Executive Summary

The Department of Homeland Security's (DHS's) interpretation of the EO has changed multiple times since its issuance on January 27. LPRs physically present in the United States have not been directly impacted by the EO in any of its interpretations. In the EO's original form, the U.S. Customs and Border Protection (CBP) refused to honor any travel visa for any immigrant from any one of the seven enumerated countries, thereby denying entry to "Initial" LPRs, who had not yet gained LPR status by gaining admission to the United States. The State Department also revoked valid travel visas for approximately 60,000 immigrants at the outset of the EO's implementation, thereby denying the right to travel to "Initial" LPRs from the seven enumerated countries, despite their otherwise having been determined by DHS to be eligible for LPR status. Subsequent DHS clarifications of its interpretation of the EO—to the effect that it would allow LPRs returning from abroad entry into the United States—did nothing to address the deprivation of "Initial" LPRs' right to travel.

Historically, there has been a distinction made between LPRs present in the United States or seeking reentry into the United States and "Initial" LPRs or LPRs who, for the reasons enumerated in 8 U.S.C. § 1108(a)(13)(C), are deemed to be seeking admission into the United States.

[6] Although beyond the scope of this memorandum, which focuses on LPRs, the EO further indefinitely suspends admission of all Syrian refugees. EO § 5(c).

Analysis

A. Summary of Officially Announced DHS and State Department Positions on the EO

- January 27, 2017—The EO bars entry of all people "from" seven enumerated countries, regardless of immigration status.

- January 29, 2017—DHS Secretary Kelly issues press release clarifying that the EO would apply to LPRs, but LPRs would qualify for an exception to the ban, and right to entry would be determined on a case-by-case basis. "I hereby deem the entry of lawful permanent residents to be in the national interest. Accordingly, absent the receipt of significant derogatory information indicating a serious threat to public safety and welfare, lawful permanent resident status will be a *dispositive factor in our case-by-case determination*." Statement By Secretary John Kelly On The Entry Of Lawful Permanent Residents Into The United States, U.S. DEPT. OF HOMELAND SECURITY (Jan. 29, 2017), https://www.dhs.gov/news/2017/01/29/statement-secretary-john-kelly-entry-lawful-permanent-residents-united-states (emphasis added).

- February 2, 2017—*DHS Q&A for Executive Order* states: "Under the recent guidance from the White House, we will continue to ensure that lawful permanent residents are processed through our borders efficiently. Under that guidance, the Executive Order issued January 27, 2017, *does not apply to their entry to the United States*. U.S. Customs and Border Protection will continue to execute its mission to protect the homeland in its processing of all individuals at ports of entry." *Q&A For Executive Order: Protecting the Nation from Foreign Terrorist Entry into the United States*, U.S. CUSTOMS AND BORDER PROTECTION (Feb. 2, 2017), https://www.cbp.gov/sites/default/files/assets/documents/2017-Feb/EO-QA-PDF-WEB-02.02.2017.pdf (emphasis added.)

- February 3, 2017—The State Department announced that "it had already revoked some 60,000 visas." Rebecca Herscher, *Federal Judge Stays Trump Travel Order, But Many Visas Already Revoked*, NPR (Feb 3, 2017, 4:42 p.m.), http://www.npr.org/sections/thetwo-way/2017/02/03/513306413/state-department-says-fewer-than-60-000-visas-revoked-under-travel-order. This included an unknown number of LPR applicants whose applications had been approved, and who would obtain LPR status upon arrival in the United States and stamping of their I-551 forms. State Department spokesperson, Will Cocks, also clarified that the EO did not apply to visa holders already in the country. "Asked, by way of example, about a hypothetical Iranian student currently in the U.S., he said such a student 'likely has a visa that could have been revoked. However this has no impact on legal status on those in the U.S. So they are not here illegally.'" *Id.*

- February 3, 2017—Judge James L. Robart of the United States District Court for the Western District of Washington granted a nationwide temporary restraining order (TRO), that ordered a return to the status quo ante by prohibiting enforcement of Sections 3(c), 5(a), 5(b), 5(c), and 5(e) (to the extent it purports to prioritize refugee claims of religious minorities) of the EO. *Washington v. Trump*, No. 2:17-cv-00141-JLR, Dkt. No. 52 (W.D. Wash. Feb. 3, 2017) (Temporary Restraining Order). On Saturday, February 4, the Department of Justice (DOJ) appealed to the Ninth Circuit for relief from the TRO, and on Sunday, February 5, the Ninth Circuit rejected the appeal. A briefing schedule on the States' request for a permanent injunction is anticipated by the close of business on February 5.

- February 3, 2017—Following issuance of Judge Robart's order "CBP officials told representatives from major air carriers they could allow previously banned passengers to board flights bound for the US." Kevin Liptak, *Trump just got checked and balanced*, CNN (Feb. 4, 2017, updated 3:44 p.m.), http://www.cnn.com/2017/02/04/politics/donald-trump-travel-ban/.

- February 4, 2017—DHS Secretary Kelly announced that the DHS is suspending implementation of the EO. The State Department announced that it would be revalidating visas it had revoked when the EO went into effect, unless those visas were physically cancelled. How such cancelled visas will be treated, and how many "Initial" LPRs were among those affected, is unknown as of this writing. "We have reversed the provisional revocation of visas under Executive Order 13769. . . . Those individuals with visas *that were not physically cancelled* may now travel if the visa is otherwise valid." Kevin Liptak, *Trump just got checked and balanced*, CNN (Feb. 4, 2017, updated 3:44 p.m.), http://www.cnn.com/2017/02/04/politics/donald-trump-travel-ban/ (emphasis added).

B. Historical Enforcement Distinctions Between Types of LPRs

Prior to the signing of the EO on January 27, 2017, the legal rights and protections for card-holding LPRs, under U.S. immigration laws and policies, included the freedom to travel, and to freely reenter the United States, except as enumerated in 8 U.S.C. § 1101(a)(13)(C). In these limited circumstances, certain categories of LPRs were deemed to be "seeking admission" as arriving aliens. The statute provides—

> An alien lawfully admitted for permanent residence in the United States shall not be regarded as seeking an admission into the United States for purposes of the immigration laws unless the alien has:
>
> (1) has abandoned or relinquished that status;
>
> (2) been absent from the United States for a continuous period in excess of 180 days;

(3) engaged in illegal activity after having departed the United States;

(4) departed from the United States while under legal process seeking removal of the alien from the United States, including removal proceedings under this chapter and extradition proceedings;

(5) committed an offense identified in section 1182(a)(2) of this title, unless since such offense the alien has been granted relief under section 1182(h) or 1229b(a) of this title; or

(6) is attempting to enter at a time or place other than as designated by immigration officers or has not been admitted to the United States after inspection and authorization by an immigration officer. 8 U.S.C. § 1101(a)(13)(C).

USCIS provides the following guidance to LPRs with respect to maintaining LPR status, and avoiding a situation in which they are deemed to be seeking admission:

- Permanent residents are free to travel outside the United States, and temporary or brief travel usually does not affect your permanent resident status. If it is determined, however, that you did not intend to make the United States your permanent home, you will be found to have abandoned your permanent resident status.

- A general guide used is whether you have been absent from the United States for more than a year. Abandonment may be found to occur in trips of less than a year where it is believed you did not intend to make the United States your permanent residence. While brief trips abroad generally are not problematic, the officer may consider criteria such as whether your intention was to visit abroad only temporarily, whether you maintained U.S. family and community ties, maintained U.S. employment, filed U.S. income taxes as a resident, or otherwise established your intention to return to the United States as your permanent home. Other factors that may be considered include whether you maintained a U.S. mailing address, kept U.S. bank accounts and a valid U.S. driver's license, own property or run a business in the United States, or any other evidence that supports the temporary nature of your absence. International Travel as a Permanent Resident, U.S. Customs and Immigration Services, https://www.uscis.gov/green-card/after-green-card-granted/international-travel-permanent-resident (last visited Feb. 2, 2017).

While a returning LPR would generally be allowed to freely reenter the United States, those LPRs deemed to be seeking admission to the United States as arriving aliens under 8 U.S.C. § 1101(a)(13)(C) would be subject to the grounds of inadmissibility set forth in 8 U.S.C. § 1182(a). This heightened scrutiny of arriving aliens seeking admission has long been deemed to fall within the executive branch's broad authority to enforce immigration policy. *See, e.g., Sale v. Haitian Centers Council, Inc.*, 509 U.S. 155, 201 (1993) ("The laws that the Coast Guard is engaged in enforcing when it takes to the seas under orders to prevent aliens from illegally crossing our borders are laws whose administration has been assigned to the Attorney General by Congress, which has plenary power over immigration matters.").

In contrast, an "Initial" LPR is deemed to be seeking admission to the United States at a U.S. port of entry.[7] Because "Initial" LPRs have not been admitted to the United States at the time their applications for LPR status are approved—only granted the right to travel to the United States for purpose of obtaining LPR status—they have historically been deemed to be seeking admission as arriving aliens, and thus are subjected to greater scrutiny upon arrival. Unless and until these "Initial" LPRs are admitted to the United States, they do not enjoy the full rights and benefits of LPRs.

C. Enforcement Distinctions Between Types of LPRs under the EO

The EO, as initially enacted, made no distinctions between LPRs who had previously been admitted to the United States—and thus should have been treated as returning LPRs, except in the limited circumstances of those deemed to be seeking admission pursuant to 8 U.S.C. § 1101(a)(13)(C)—and "Initial" LPRs who had never entered to the United States.

The EO, as subsequently interpreted by the DHS prior to entry of the TRO prohibiting enforcement of Sections 3(c), 5(a), 5(b), 5(c), and 5(e), appeared to revert to long-standing U.S. immigration enforcement policy recognizing the broad legal protections available to LPRs, and the limited rights afforded to arriving aliens—including "Initial" LPRs not yet admitted to the United States.

Conclusion

Subsequent interpretations of the EO by DHS, as the EO relates to LPRs, have been consistent with longstanding U.S. immigration policy. In addition, the TRO issued in *Washington v. Trump*, No. 2:17-cv-00141-JLR, Dkt. No. 52 (W.D. Wash. Feb. 3, 2017) (Temporary Restraining Order), has temporarily rendered the relevant portions of the EO unenforceable in any respect, and has restored the *status quo ante*.

Among the open questions regarding enforcement of the EO as it pertains to classes of LPRs:

- While the DHS is enjoined from enforcing the EO, will visas be reissued to "Initial" LPRs, whose visas were physically cancelled, as they attempted to enter the United States, or will they be required to reapply for their visas?

- How many "Initial" LPRs were denied entry, and will DHS disclose this data?

- Will DHS seek to enforce the EO going forward, and, if so, which of its several prior interpretations will govern?

[7] After an Initial LPR's application is approved by a consular officer in the applicant's home country, an immigrant visa is issued by the State Department, which entitles the holder to travel to the United States as an immigrant. At the U.S. port of entry, the immigrant visa holder is inspected for entry as an arriving alien, and only becomes a permanent resident—and is processed for a permanent resident card—upon admission to the United States pursuant to the stamped I-551 in his or her passport. A permanent resident card is mailed the LPR's U.S. address within a few weeks of admission.

- If the EO is reinstated in some form, will "Initial" LPRs have standing to bring constitutional challenges to their denial of entry to the United States, despite having been approved by U.S. consular officers for lawful permanent residence in the United States?

III. ABANDONMENT OF LPR STATUS

LPR status can be "abandoned or relinquished." 8 U.S.C.A. § 1101(C)(i). A determination that an individual's LPR status has been abandoned can be initiated by the government or by the LPR. 26 C.F.R. § 301.7701(b)-1. Determinations initiated by the government are the result of a LPR requesting re-entry into the U.S. after residing outside of the U.S. without a "continuous, uninterrupted intention to return." *Chavez-Ramirez v. I.N.S.,* 792 F. 2d 932 (1986). Such determinations, initiated by a LPR, occur when a LPR executes an application for abandonment Form I-407 (I-407)) or a letter similarly expressing an intent to abandon LPR status with the LPR's Alien Registration Receipt Card (Green Card) enclosed.

A. Abandonment Initiated by Government

Abandonment of LPR status occurs when a LPR resides outside of the U.S. for a period of time that cannot be considered a "temporary visit abroad," but instead infers that the LPR did not possess a "continuous, uninterrupted intention to return." 8 U.S.C.A. § 1181(27)(A); *Chavez-Ramirez* at 937). Whether or not a visit outside of the U.S. is "temporary," is not merely a question of duration, but is dependent on the LPR's "intent to return to the United States within a relatively short period." *Singh v. Reno,* 113 F. 3d 1512, 1514 (9th Cir. 1997). The government must show clear, unequivocal and convincing evidence, when making the determination, that LPR status has been abandoned. *Matter of Huang,* 19 I. & N. Dec. 749 (BIA 1988).

Whether a LPR had the intent to return to the U.S. in a relatively short period of time, and therefore did not abandon LPR status, is determined based on the totality of the circumstances, including (i) the duration and number of the visits abroad; (ii) the reasons for the departure and the return of the LPR from abroad; and (iii) the extent of the LPR's ties to the U.S. *See Singh* at 1514; *See also Ahmed v. Ashcroft,* 286 F. 3d 611, 613 (2nd Cir. 2002).

1. Duration and number of visits abroad

While there is no exact length of time a LPR can be absent from the U.S. and not abandon his or her status, in the absence of a reentry permit (discussed below), an absence from the United States of one year or longer is considered an invalidation of the individual's Green Card. 8 C.F.R. 211.1(a)(2); *See also Diosa-Ortiz v. Ashcroft,* 334 F.Supp.2d 27 (D.Mass 2004) (finding that such absence also constitutes abandonment). The possession of a reentry permit does not prevent the Department of Homeland Security (i.e. Customs and Border Protection) from inquiring into whether or not the holder has abandoned his/her residency, but does prevent a determination of abandonment based solely on the amount of time the holder has spent outside the United States. 8 C.F.R. 223.3(d)(1). Generally, the longer a LPR remains outside of the U.S., the greater the inference that such LPR has abandoned his or her status. (*See Karimijanaki v. Holder,* 579 F. 3d 710, 719 (6th Cir. 2009)).

An absence of 180 days or longer is also significant. A returning LPR is not considered to be seeking "admission" to the United States unless he or she: (i) has abandoned or relinquished permanent residence; (ii) has been absent from the United States for a continuous 180-day period; (iii) has engaged in illegal activity after departing the United States; (iv) left the United States while under legal process seeking removal of the alien; (v) committed an offense identified in Section 212(a)(2); or (vi) attempts to enter at a time or place other than as designated by immigration officers or has not been admitted to the United States after inspection and authorization by an immigration officer. 8 U.S.C. § 101(a)(13)(C).

If seeking admission to the U.S. under 8 U.S.C. § 101(a)(13)(C), the LPR is considered an arriving alien, 8 C.F.R. §§ 1.2, 1001.1(q), subject to the grounds of inadmissibility under INA 212(a), 8 U.S.C. 1182(a). An applicant for admission to the U.S., as a result of an absence of 180 days or longer, is subject to greater scrutiny during the entry/admission process. 8 U.S.C. § 1101(C). Historically, such a situation has created a "rebuttable presumption" of abandonment in the absence of other factors or a valid reentry permit.

The duration of absence is not always indicative of an intent to return to the U.S. after a short period. "Brief and technical interruptions of absence" can be overwhelmed by other factors, resulting in a finding of abandonment. *Matter of Kane,* 15 I. & N. Dec. 258, 265 (B.I.A. 1975). Moreover, an absence well beyond one year may be excused by other factors. *See Ward v. Holder,* F. 3d 601 (6th Cir. 2013).

2. Reasons for the departure and the return from abroad

The circumstances surrounding a trip can weigh in favor of a determination that it was intended to be temporary, particularly if it was "fixed by some early event" which would infer the temporary nature of the visit. *Singh* at 1514*; see also Moin v. Aschroft,* 335 F. 3d 415, 419 (5th Cir. 2003) (holding the fact that LPR's return was not "triggered by some identifiable event, *i.e.* the need to return to work at some determinable time" weighed in favor of abandonment). An event that triggers a return need not have been fixed to weigh favorably for a LPR, but may have had a "reasonable possibility of occurring within a short period of time," such as the sale of a home or the death of a relative in critical condition. *See Singh* at 1514; *see also Khodagholian v. Ashcroft,* 335 F. 3d 1003, 1008 (9th Cir. 2003). Moreover, an unplanned event which requires the LPR to stay abroad, and which remains out of the LPR's control, will weigh in favor of a determination that the LPR intended to return after a short period of time. *See Khodagholian* at 1008.

3. Extent of LPR's ties to the U.S.

A LPR's ties to the U.S., and, conversely, his or her ties outside of the U.S., help reveal the LPR's intention to reside permanently within the U.S. (*Singh* at 1514, 1515). These factors include family members within the U.S., property (such as a house), ties related to business, such as a job or the payment of taxes, and communications with the U.S. government. *Id*; *see also Khodagholian* at 1008, (finding the LPR's failure to pay taxes in the U.S. weighed in favor of a finding of abandonment though ultimately overwhelmed by other factors); *see also Karimijanaki v. Holder,* 579 F. 3d 710, 716 ("…[the LPR] nevertheless took all three children back with her to Iran…").

B. Abandonment Initiated by the LPR

If a LPR intends to voluntarily abandon LPR status, he or she can do so by executing an I-407, or by delivering a letter to the relevant immigration authority, either Department of Homeland Security or Department of State, declaring their intent to abandon LPR status with their Green Card enclosed. (8 U.S.C.A. § 1101(C)(i)). While a declaration is a clear sign of the LPR's intent, and is generally sufficient to find that the LPR has abandoned LPR status, it does not in itself abandon status as an operation of law. The U.S. Department of State Foreign Affairs Manual informs consular officers that "it is not the statement renouncing residence, but the absence of a fixed intent to return, that results in the loss of LPR status." (9 FAM 202.2-8(b)). Moreover, in *Singh v. Ashcroft*, the LPR's execution of an I-407 form was determined to be "clear intent to abandon his LPR status," among other factors. The court, in that instance, made no determination that the completion of the I-407 was by itself determinative or acted as an operation of law of abandonment, but weighed it heavily in favor of such a finding.

C. Current Issues in LPR Abandonment

While the government has a high bar for finding that abandonment has occurred, the subjective nature of the governing law can give it wide latitude in who is targeted. The EO placed immigration restrictions on seven nations, declaring that the entry of individuals from these countries into the U.S. "would be detrimental to the interests of the United States." (EO Sec. 3(c)). LPRs were initially reported to be included in these restrictions, and the EO does not explicitly exempt LPRs from the "aliens" restricted to enter the U.S. (*Id*). LPRs from the listed countries, therefore, could be subject to increased scrutiny and determinations of abandonment.

The majority of published decisions are affirmations of an administrative or judicial decision that LPR status was abandoned. (Immigration Law Service 2d). Moreover, while the initial burden for the government is high, on appeal, courts give deference to administrative decisions. (*See Moin v. Ashcroft* at 418). This deferential stance may give the executive branch less judicial oversight in the application of abandonment standards.

Soon after the EO was signed, there were reports that LPRs were being coerced into executing I-407 forms by immigration officers. (AILA Doc. 17012960). If a LPR was coerced to execute an I-407 against his or her will, there is a strong argument that this would negate the presumption that such LPR had a clear intention to abandon LPR status. Other factors, such as the length of the LPR's trip abroad and his or her ties to the U.S., could also weigh in favor of a finding that the LPR did not intend to abandon his or her status despite the execution. The circumstances surrounding the execution could be determinative as well, specifically the timing of the execution in relation to the EO, where the LPR was when asked to execute (i.e. on a plane heading to the U.S. or in detention at a U.S. airport), whether a translator was needed or present and whether the LPR was represented by counsel.

IV. IMPACT OF PRESIDENT TRUMP'S EXECUTIVE ORDER ON LPRS, INCLUDING DISCUSSION OF CURRENT LAW SUITS FILED RELATED TO LPRS AND THE EXECUTIVE ORDER

A. President Trump's Executive Order

Challenges to the EO, insofar as it impacts LPRs, focus on Section 3(c). That portion of the EO declares "that the immigrant and nonimmigrant entry into the United States of aliens from countries referred to in section 217(a)(12)of the [Immigration and Naturalization Act (INA)], 8 U.S.C. 1187(a)(12), would be detrimental to the interests of the United States." Critically, Section 3(c) suspends "entry into the United States, as immigrants and nonimmigrants, of such persons for 90 days from the date of this order…." The relevant seven countries are Iraq, Iran, Libya, Somalia, Sudan, Syria and Yemen.

Simply put, the EO's plain text suspends non-citizens who are nationals of those seven countries from entering the United States for 90 days. It contains no express exemption for LPRs. The Office of Legal Counsel (OLC) reviewed the EO the day it was announced. But OLC's memorandum, that only approved the EO "with respect to form and legality," makes no mention of its potential effect on LPRs. Indeed, OLC's only comment on Section 3 was a straightforward description of it: "The Order would also suspend the entry of immigrants and non-immigrants from countries referred to in section 217(a)(12) of the INA, subject to case-by-case exceptions." U.S. Department of Justice, Office of Legal Counsel, Memorandum Re: Proposed Executive Order, "Protecting the Nation from Foreign Terrorist Entry into the United States," Jan. 27, 2017.

The same day the President issued the EO, the State Department revoked "all valid nonimmigrant and immigrant visas of nationals of Iraq, Iran, Libya, Somalia, Sudan, Syria, and Yemen…." Edward J. Ramotowski, the Deputy Assistant Secretary for Visa Services, issued the revocation upon the request of the U.S. Department of Homeland Security (DHS). *See* AILA Doc. No. 17013109 (posted Jan. 31, 2017).

DHS Secretary, John Kelly, made clear that the EO applied to LPRs. While noting that LPRs would be permitted to enter "absent the receipt of significant derogatory information indicating a serious threat to public safety welfare," the administration placed the onus on LPRs to prove that they were not a threat to national security. At the same time, Secretary Kelly noted that the admission of LPRs into the United States was nonetheless "in the national interest." AILA Doc. No. 17012962 (posted Jan. 29, 2017).

The administration doubled-down on this commitment a day later. Chief of Staff, Reince Priebus said that green card holders will be allowed to enter the United States "on a case-by-case basis." Eric Bradner, "Priebus: Green card holders will be allowed into U.S., case-by-case," CNN, Jan. 29, 2017, *available at* http://www.cnn.com/2017/01/29/politics/trump-travel-ban-green-card-holders-priebus/. So for the first several days after its issuance, the EO plainly applied to LPRs. This had clear consequences for LPRs entering the United States. Customs and Border Patrol (CPB) agents have, according to a January 31, 2017, Practice Advisory by the American Immigration Council (AIC), strong-armed entering LPRs into signing INS records of abandonment (INS Form I-407) of LPR status.

Ultimately, however, the White House reversed course. On Tuesday, February 1, 2017, Donald F. McGahn II, counsel to the president, clarified that the EO does not apply to LPRs. He stated "that sections 3(c) and 3(e) do not apply to [lawful permanent residents of the United States]." AILA Doc. No. 17020300 (posted Feb. 3, 2017). Nevertheless, litigation concerning both the revocation of visas and the application of the EO ensued. Over a challenge from the government, the Ninth Circuit let the temporary restraining order stand.

B. How Courts Have Assessed the EO

Needless to say, the EO and CPB's conduct prompted legal action. Thus far, courts have consistently sided with LPRs challenging Trump's EO. *See, e.g.*, *Louhghalam, et al. v. Trump, et al.*, D. Mass, Case No. 17-cv-10154-NMG (Jan. 30, 2017) (granting a temporary restraining order); *Aziz v. Trump, et al.*, E.D. Va., Case No. 17-cv-116 (Jan. 28, 2017) (same). Judge Leonie Brinkema, of the Eastern District of Virginia, specifically observed that the petitioners seeking a temporary restraining order (TRO) were lawful permanent residents, and she enjoined their removal from the United States for a period of seven days. *See id*. She additionally ordered that CPB permit attorneys to access LPRs being detained at Dulles International Airport (IAD).

The *Aziz* petitioners detail their experiences in their complaint. Although they were LPRs and had "valid entry documents," CPB prevented them from leaving IAD. Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief, E.D. Va., Case No. 17-cv-116, Dkt. 1 (Jan. 28, 2017), ¶2. CPB detained the petitioners when they arrived at IAD on the morning of Saturday, January 28, 2017. *Id*. at ¶¶ 25-26. They were held that entire day, without access to counsel. *Id*.

Likewise, under the EO, LPRs were detained at Boston's Logan airport. This was clear from the allegations in the *Louhghalam* litigation. The named plaintiff, Arghavan Louhghalam, is a LPR and Iranian national who teaches mechanical engineering at the University of Massachusetts, Dartmouth. Returning to the United States, from an academic conference abroad, she was denied entry. CPB detained her for almost four hours. *Louhghalam*, D. Mass, Case No. 17-cv-10154-NMG, Dkt. 1 at ¶¶ 53-55. Other LPRs were detained for hours as well, or deterred from leaving the United States altogether. *See, e.g., id*. at ¶¶ 63, 66-67, 70-72, 80.

Judge Allison D. Burroughs, of the District of Massachusetts, found that the "petitioners have met their burden of establishing a strong likelihood of success in establishing that the detention and/or removal of the petitioners and others similarly situated would violate their rights to Due Process and Equal Protection as guaranteed by the United States Constitution…." *Louhghalam v. Trump, et al.*, D. Mass., Case No. 17-cv-10154, Dkt. 6 at *2 (Jan. 29, 2017). Her order specifically enjoined the detention and removal of "lawful permanent residents…." *Id*. at *3. A motion for a preliminary injunction remains pending.

The *Aziz* and *Louhghalam* cases are the only LPR-related cases in which courts have issued orders, and both were favorable to the petitioners. Litigants in general, even those without LPR status, have also had success challenging the EO. *See, e.g., Darweesh v.* Trump, E.D.N.Y., Case No. 17-cv-00480 (Jan. 28, 2017) (granting a temporary restraining order); *Vayeghan v. Kelly*, C.D. Cal., Case No. 17-cv-00702 (Jan. 29, 2017) (same). Indeed, the injunction in the

Darweesh case, the first issued since the EO went into effect, has served as an impetus for future actions against the ban.

More recently, the Eastern District of Michigan permanently enjoined the United States from enforcing the EO against LPRs. According to the court's order, the "injunction applies to Plaintiffs Samir Almasmari, Sabah Alasmary, Hana Almasmari, and Mounira Atik, as well as *all other lawful permanent residents of the United States who are similarly situated*." *Arab American Civil Rights League, et al. v. Trump, et al.*, E.D. Mich., Case No. 17-cv-10310, Dkt. 8 at *2 (Feb. 3, 2017). Judge Victoria Roberts' limited her ruling to LPRs. *Id*. at *1. While she observed that one of the plaintiffs is "an immigrant who was issued a visa to enter the United States as a lawful permanent resident," she noted that they had sought relief unaddressed by her order. *Id*.

Finally, Judge James Robart, of the Western District of Washington state, issued a temporary restraining order in *State of Washington, et al., v. Trump, et al.,* W.D. Wash., Case No. 17-cv-0141, Dkt. 52 at *5-6 (Feb. 3, 2017). His order temporarily enjoins the Trump administration from enforcing the EO on a nationwide basis. Although the case did not directly involve LPRs, the importance of J-1 visa holders and LPRs to Washington's economy—including its institutions of higher education—factored into the state's argument that it had standing to sue. *State of Washington,* W.D. Wash., Dkt. 1 at ¶¶14-17.

C. Pending Cases Involving LPRs

1. *Ali, et al. v. Trump et al.,* W.D. Wash., Case No. 17-cv-00135

One of the plaintiffs, Reema Khaled Dahman, is a lawful permanent resident and a Syrian national. Ms. Dahman lives in Seattle, Washington. She has been trying to obtain an immigrant visa application for her son, who lives in Syria. Section 3(c) of the EO, however, "suspended the processing" of her son's visa application.

The complaint alleges that the EO violates the INA, the Administrative Procedure Act (APA) and the Fifth Amendment's guarantee of due process and equal protection.

2. State of Washington, et al., v. Trump, et al., W.D. Wash., Case No. 17-cv-0141

On January 30, 2017, the state of Washington filed a lawsuit seeking an order to permanently enjoin the enforcement of the EO. The state of Minnesota joined the lawsuit as a co-plaintiff. Washington asserted that it had an interest in protecting the freedom and welfare of its residents, and that immigrants contributed heavily to both the state's economy and its governmental operations. Although the lawsuit does not directly involve LPRs, the state's complaint notes that Seattle-based Microsoft employees are both temporary visa holders and likely LPRs. The complaint also notes that two of its state universities enroll hundreds of nationals from the affected countries.

As noted, Judge Robart issued a nationwide temporary restraining order on February 3, 2017. The government asked the U.S. Court of Appeals for the Ninth Circuit to reverse the order, but they declined to grant an immediate administrative stay of the Judge Robart's nationwide

temporary restraining order. *State of Washington, et al., v. Trump, et al.*, 9th Cir., Case No. 17-35105 (Feb. 4, 2017). The temporary restraining order remains in effect while the Ninth Circuit considers the administration's emergency motion to stay the temporary restraining order.

3. *Aziz, et al. v. Trump et al.*, E.D. Va., Case NO. 17-cv-00116

Factual details related to the *Aziz* matter are above. During the quick course of litigation, the Commonwealth of Virginia sought to intervene. On February 1, 2017, the parties jointly filed a request to hold claims in abeyance until they could resolve the case. That same day, the Trump administration clarified that LPRs would no longer need a waiver to enter the United States.

4. *Sarsour, et al. v. Trump, et al.*, E.D. Va., Case No. 17-cv-00120

This lawsuit was filed by the Council on American-Islamic Relations (CAIR) on behalf of various plaintiffs. CAIR was unsparing in its description of the EO: "The vulgar animosity that accounts for the existence of Executive Order entitled 'Protecting the Nation from Terrorist Attacks by Foreign Nationals' (hereinafter the 'Muslim Exclusion Order'), issued the same day of this action, is plain to see, and the absence of the words Islam or Muslim does nothing to obscure it." CAIR claims that the EO "denies immigration benefits to those who, like some of the immigrant and nonimmigrant Plaintiffs, followed the rules and entered and are now lawfully present in the United States."

Several of the plaintiffs are LPRs or seeking to obtain LPR status. Their common allegation is that, in the event they leave the United States, the Executive Order will prevent them from returning. The complaint claims that the Executive Order violates both the establishment and free exercise clauses of the First Amendment, the Fifth Amendment's guaranty of equal protection, and the APA.

5. *Louhghalam, et al. v. Trump, et al.*, D. Mass., Case No. 17-cv-10154

This case not only concerned plaintiffs who were detained upon entering the United States, but also LPRs who were deterred from leaving the United States out of fear of being unable to return. As noted, the District of Massachusetts granted the temporary restraining order. The court held a hearing on the motion for a preliminary injunction on February 3, 2017. That motion remains pending, but the temporary restraining order expired on Monday morning, February 6. Due to the nationwide temporary restraining order issued by Judge Robart in Seattle, however, the expiration of the temporary restraining order that the court had issued in *Louhghalam* has no practical effect.

6. *Tawfeeq v. U.S. Dep't of Homeland Security, et al.*, N.D. Ga., Case No. 17-cv-00353

The plaintiff is an Iraqi citizen and LPR of the United States who is seeking to return to the United States.

7. *Doe. v.Trump et al.*, N.D. Ill., 17-cv-00770

The unnamed plaintiff is a LPR who, due to the EO, is not able to leave Iran.

8. *Abou Asali et al. v. U.S. Dep't of Homeland Security, et al.*, E.D. Pa., Case No. 17-cv-00447

Plaintiffs include two brothers from Syria who had approved visas to enter and apply for LPR status. Their brother, wives and children were U.S. citizens. For 13 years, their family visa applications were in processing, which they needed to reunite with their family in the United States. The plaintiffs' flight from Syria landed in Philadelphia on January 28, 2016—they were en route to the United States when President Trump issued the EO. According to the complaint, once they landed, two "CPB officers removed them from the plane and detained them." CPB denied them a request to contact their brother.

According to the complaint, CPB never asked the brothers anything except to confirm that they came from Syria. CPB never opened the brothers' visa packages, which they obtained from the U.S. Embassy in Syria. They are now in Damascus.

Their lawsuit claims that the EO violated the INA, due process, equal protection, the Establishment Clause, and the APA.

9. *Hagig v. Trump, et al.*, D. Co., Case No. 17-cv-00289

The plaintiff in *Hagig* is a LPR and Libyan national. The complaint asserts that the EO violates the Fifth Amendment's guaranties of due process and equal protection, the establishment clause of the First Amendment, and the Administrative Procedure Act (APA).

10. *Arab American Civil Rights League et al. v. Donald Trump, et al.*, E.D. Mich. Case No. 17-cv-10310

Several plaintiffs in this case—including 4 LPRs and 1 individual issued a visa to enter the United States as a LPR—are currently abroad. They are trying to return to the United States to rejoin their family in Michigan. Under the terms of the EO, they have been prevented from traveling to the United States. Their complaint contains various allegations claims the EO—including several constitutional claims—violated procedural due process, substantive due process, free exercise, and equal protection—and two statutory claims—that it violates the APA and the Religious Freedom Restoration Act.

As noted, on February 3, 2017, the court permanently enjoined the United States from enforcing the EO against LPRs. The court's order, however, did not address the relief demanded by the plaintiff who was granted a visa to enter the United States as a LPR.