

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RASHID MOHAMED SADI;)	
JABER MOHAMED ALSAADY;)	Case No.
JANE DOE NO. 1;)	Hon.
JANE DOE NO. 2;)	
JOHN DOE NO. 1;)	
JOHN DOE NO. 2;)	
JANE DOE NO. 3;)	
SADIK MOHAMED SAADI;)	
JANE DOE NO. 4;)	
JANE DOE NO. 5;)	
JANE DOE NO. 6;)	
JANE DOE NO. 7;)	
JANE DOE NO. 8;)	
JANE DOE NO. 9;)	
JOHN DOE NO. 3;)	
JANE DOE NO. 11;)	
JOHN DOE NO. 4;)	
JANE DOE NO. 12;)	
JOHN DOE NO. 5;)	
WAHBIHAH ALI HASSAN YAHYA;)	
JOHN DOE NO. 6;)	
HUSSAIN BASSERY;)	
NOOR BASSERY;)	
ISMAIL AHMED ALBANAH;)	
JANE DOE NO. 13;)	
JANE DOE NO. 14;)	
JOHN DOE NO. 7;)	
JANE DOE NO. 15;)	
JOHN DOE NO. 8;)	
JOHN DOE NO. 9;)	
KHADIJAH AWNALLAH;)	
JOHN DOE NO. 10;)	
JANE DOE NO. 16;)	
JANE DOE NO. 17;)	
JOHN DOE NO. 11;)	
HAILAH MALAH;)	
JANE DOE NO. 18;)	
)	
Plaintiffs,)	
)	
v.)	
)	

BARACK H. OBAMA, President of the United States, in his official capacity;)
)
JOHN F. KERRY, Secretary of State, United States Department of State, in his official capacity;)
)
ASH CARTER, Secretary of Defense, United States Department of Defense, in his official capacity;)
)
MATTHEW H. TUELLER, United States Ambassador to Yemen, in his official capacity;)
)
 Defendants.)

COMPLAINT
FOR EMERGENCY INJUNCTIVE, MANDAMUS AND DECLARATORY RELIEF

Plaintiffs, through their undersigned counsel, Council on American-Islamic Relations, Michigan (“CAIR-MI”), state as follows:

Background

1. A coalition of countries led by Saudi Arabia have launched a military campaign against the Houthis, a militia group from northern Yemen that Saudi officials have accused of serving as a proxy force for Iran. The coalition of countries includes Morocco, Egypt, Jordan, Kuwait, Bahrain, Qatar, United Arab Emirates, Sudan and Pakistan.

2. The United States is lending substantial logistical support, including the establishment of a joint planning cell with Saudi Arabia to facilitate the coordination of United States military and intelligence activities regarding operations in Yemen.

3. As part of its military campaign, Saudi Arabia imposed a no-fly zone and is in complete control of the air space.

4. In an official statement issued by the United Nations on March 31, 2015, the United Nations High Commissioner for Human Rights warned that Yemen is on the brink of collapse: “The situation in Yemen is extremely alarming, with dozens of civilians killed over the past four days. The country seems to be on the verge of total collapse. The killing of so many innocent civilians is simply unacceptable.”¹

5. The United Nations statement confirmed that “at least 93 civilians were reported to have been killed since March 27, 2015 and a further 364 injured in Sana'a, Sa'da, Dhale, Hudayda and Lahj, among whom were “dozens” killed in an airstrike on the Al-Mazraq camp for internally displaced persons that was established by the United Nations in 2009.”

6. The statement further confirmed that “[p]rivate homes, hospitals, education facilities and infrastructure in several locations have been destroyed.”

7. On February 11, 2015, due to the deteriorating security situation, the U.S. Department of State suspended embassy operations, and staff at the U.S. Embassy in Sanaa were evacuated from the country. The U.S. Department of State suspended all consular services, routine and/or emergency, until further notice.²

8. Moreover, the air strikes and heavy ground combat combined with years of conflict and drought has left civilians in Yemen struggling to find basic necessities, such as food, water, and medicine.

9. As a result, desperate U.S. Citizens who find themselves stranded in Yemen due to Saudi Arabia's no-fly zone and hijacked main roads say they have begun to consider

¹ *Senior UN Officials Deeply Concerned Over Civilian Casualties in Wake of Recent Fighting in Yemen*, UN NEWS CENTRE (March 31, 2015), available at <http://www.un.org/apps/news/story.asp?NewsID=50464#.VR14GPnF98E>.

² U.S. Department of State, *Yemen Travel Warning* (February 11, 2015), available at: <http://travel.state.gov/content/passports/english/alertswarnings/yemen-travel-warning.html>.

alternate means of escape, including smuggling themselves to East Africa by sea or driving through dangerous back roads that lead to neighboring Oman.³

10. At least one U.S. Citizen of Yemeni national origin was killed by shelling while returning home from a mosque with his 14-year old nephew.⁴

11. Despite having no less than three U.S. navy ships in nearby waters, the United States has refused to evacuate U.S. Citizens from Yemen.⁵

12. In fact, the Embassy of the United States in Sana'a, Yemen issued an official statement on April 1, 2015 that "[t]here are no plans for a U.S. government-sponsored evacuation of U.S. Citizens at this time."⁶

13. On April 3, 2015, the U.S. State Department updated its travel warning to advise U.S. Citizens to evacuate themselves *via* commercial transportation that is *unavailable*: "We encourage all U.S. citizens to shelter in a secure location until they are able to depart safely. U.S. citizens wishing to depart should do so via commercial transportation options when they become available."⁷

14. Even further, in an emergency message sent to U.S. Citizens stranded in Yemen, the U.S. State Department advised that they should evacuate themselves by boarding a French frigate that can only accommodate a "few hundred people," and that *cannot even dock at the port*: "Currently, there is a French frigate just off the coast of Aden called the

³ *Stranded Yemeni-Americans Consider Alternate Escape Routes*, ALJAZEERA AMERICA, March 28, 2015.

⁴ Amel Ahmed, *Californian killed in Yemen's Strife as US Urged to Help Citizens Flee*, ALJAZEERA AMERICA, April 3, 2015.

⁵ Smitha Khorana and Spencer Ackerman, *Americans in Yemen Fear They Have Been Left Behind as Bombing Escalates*, THE GUARDIAN, April 1, 2015.

⁶ Embassy of the United States, Sana'a, Yemen, *Messages for U.S. Citizens Residing in or Traveling to Yemen* (April 1, 2015), *available at*: http://yemen.usembassy.gov/tw_040115.html; *see also* U.S. Department of State, *Yemen Crisis*, *available at*: <http://travel.state.gov/content/travel/english/YemenCrisis.html>

⁷ U.S. Passports & International Travel, U.S. Department of State, *Yemen Travel Warning* (April 3, 2015), *available at*: <http://travel.state.gov/content/passports/english/alertswarnings/yemen-travel-warning.html>

Acronit. It's a smaller boat that can accommodate a few hundred people and its mission is to transport all people who have a passport and can get to the boat. The boat is not in the port, therefore people will have to find their own way to get out to it. The window of time for when the boat may leave is uncertain."

15. An estimated 55,000 United States Citizens⁸ are stranded in Yemen, with no hope of their government arranging for their evacuation.

16. On the other hand, several countries have already evacuated their civilians, including Russia⁹, China¹⁰, India¹¹, Pakistan¹² and Somalia.¹³ The United Nations has also evacuated its international staff.

17. When a reporter asked whether the United States has plans to take a more proactive role in evacuating U.S. Citizens in Yemen on April 3, 2015, U.S. Department of State Spokesperson Marie Harf stated that the U.S. government does not. She stated that the reasons were that:

Well, first, we have been warning for I think a decade now that American citizens not travel to Yemen. So that's not a reason why not to; I'm just reminding people of that. The second is that in each of these cases, we have to make a decision based on the security situation and what is feasible to do. And given the situation in Yemen is quite dangerous and unpredictable, doing something like sending in military assets even for an evacuation could put U.S. citizen lives at greater risk. In some other places we've helped evacuate U.S. citizens. For example, airports were still open and you could evacuate people on commercial airlines. Obviously, that's not the case in Yemen. So we're continuing to

⁸ Office of the Inspector General, U.S. Department of State, *Report of Inspection: Embassy Sanaa, Yemen* (June 2010) at 21.

⁹ *Russia Dispatches Planes to Evacuate Hundreds of Its Citizens From Yemen*, ASSOCIATED PRESS, April 2, 2015.

¹⁰ James T. Areddy, *China Evacuates Citizens From Yemen*, THE WALL STREET JOURNAL, March 30, 2015.

¹¹ Press Trust of India, *India Evacuates Around 350 Indians Stranded in Yemen*, BUSINESS STANDARD, April 1, 2015.

¹² Rizwan Tabassum, *Pakistan Evacuates Over 500 Citizens From Yemen*, NEWSWEEK, March 30, 2015.

¹³ *Somalia Preparing to Evacuate Citizens From Yemen*, HORSEED MEDIA, March 27, 2015.

evaluate the security situation, and we're continuing to look at what our options are, but at this point, no plan – no change in plans.¹⁴

18. Defendants' reasons for their failure to evacuate Plaintiffs and other U.S. Citizens stranded in Yemen are not compelling government interests, as the feasibility of evacuation is clear, not only based on the evacuations of other nations described in para. 16, *supra*, but also because on April 6, 2015 the Saudi-led coalition gave permission to the International Committee of the Red Cross to bring supplies into the country by boat and plane into the two main population centers in Yemen, Sanaa and Aden.

19. Moreover, Defendants have evacuated U.S. Citizens under comparable circumstances.

The U.S. Government's Policy Regarding the Protection and Evacuation of U.S. Citizens and Nationals and Designated Other Persons From Threatened Areas Overseas

20. Pursuant to Executive Order 12656, Assignment of Emergency Preparedness Responsibilities (as amended), the DOS is responsible for the protection or evacuation of U.S. Citizens and Nationals abroad and for safeguarding their overseas property abroad, in consultation with the Secretaries of Defense and Health and Human Services. (the "Executive Order"). (**Exhibit A – Executive Order 12656, Assignment of Emergency Preparedness Responsibilities**).

21. The Executive Order states in pertinent part regarding the lead responsibilities of the U.S. Department of State:

¹⁴ Daily Press Briefing, U.S. Department of State (April 3, 2015), *available at*: <http://www.state.gov/r/pa/prs/dpb/2015/04/240324.htm>

Part 13 – Department of State

Sec. 1301. Lead Responsibilities... the Department of State *shall*:

(2) Prepare to carry out Department of State responsibilities in the conduct of the foreign relations of the United States during national security emergencies, under the direction of the President and in consultation with the heads of other appropriate Federal departments and agencies, including, but not limited to:

(f) Protection or evacuation of United States citizens and nationals abroad and safeguarding their property abroad, in consultation with the Secretaries of Defense and Health and Human Services. *Id.* at 10. (emphasis added).

22. Further, the Executive Order states in pertinent part regarding the support responsibilities of the U.S. Department of Defense:

Sec. 502. Support Responsibilities. The Secretary of Defense *shall*:

(2) Advise and assist the Secretary of State and the heads of other Federal departments and agencies, as appropriate, in planning for the protection, evacuation, and repatriation of United States citizens in threatened areas overseas. *Id.* at 6. (emphasis added).

23. The Executive Order resulted in the Memorandum of Agreement Between Departments of State and Defense on the Protection and Evacuation of US Citizens and Designated Aliens Abroad, entered into on July 14, 1998. (“DOS-DOD Evacuation Policy”).

Exhibit B – DOS-DOD Evacuation Policy.

24. Pursuant to the DOS-DOD Evacuation Policy, the U.S. Department of State and U.S. Department of Defense agreed that it is the “policy of the United States Government” to:

1. Protect U.S. citizens and nationals and designated other persons, to include, when necessary and feasible, their evacuation to and welfare in relatively safe areas.
2. Reduce to a minimum the number of U.S. citizens and nationals and designated other persons subject to the risk of death and/or seizure as hostages.
3. Reduce to a minimum the number of U.S. citizens and nationals and designated other persons in probable or actual combat areas so that combat effectiveness of U.S. and allied forces is not impaired. *Id.* at 1.

25. Moreover, pursuant to the Evacuation Policy, the U.S. Department of State *shall* prepare plans for the protection and evacuation of all U.S. Citizens and Nationals and designated other persons abroad, coordinate with the U.S. Department of Defense, and implement the appropriate plan. *Id.* at 2-3.

26. Moreover, pursuant to the Evacuation Policy, the U.S. Department of Defense *shall* assist the U.S. Department of State in carrying out responsibilities described in para. 23, *supra.* *Id.* at 3.

27. Moreover, pursuant to the Evacuation Policy, the Chief of Mission *shall* prepare and implement the plans described in para. 23, *supra*, and provide timely information regarding the number of potential evacuees, the availability of resources necessary to execute the evacuation plans, and recommendations as to which parts of the U.S. Department of State plans should be implemented. *Id.* at 3.

28. Moreover, pursuant to the Evacuation Policy, the Chief of Mission *shall* request from the U.S. Department of State approval to invoke an emergency evacuation plan in an area where an emergency is expected or developing. *Id.* at 4.

29. Finally, pursuant to the Evacuation Policy, the employment of forces to execute a military-assisted evacuation *will* be approved by the President of the United States.

30. Thus, Defendants' duties and obligations owed to Plaintiffs, and other U.S. Citizens of Yemeni national origin stranded in Yemen, are clear and unambiguous, and are therefore not discretionary.

**U.S. Government Emergency Evacuations of U.S. Citizens
of Non-Yemeni National Origin During Times of Crisis**

31. On July 12, 2006, Israel launched a major military assault, bombing Lebanon's airport in Beirut and forcing its closure, blockading Lebanon's ports, and bombing roads and bridges. Only two days later, on July 14, 2006, the U.S. Department of State and the U.S. Department of Defense began developing a plan to move American citizens from Beirut to Cyprus with helicopters, U.S. military ships, and contracted commercial ships. Together, the Departments evacuated nearly 15,000 U.S. Citizens from Lebanon in less than one month in 2006.¹⁵

32. On December 22, 2013, the U.S. State Department announced that, in coordination with the United Nations, it evacuated approximately 380 U.S. officials and private citizens and approximately 300 citizens of other countries to Nairobi and other locations outside South Sudan on four chartered flights and five military aircraft.¹⁶

33. On February 2, 2011, the Office of the Spokesman for the U.S. State Department announced that "More than 1,900 U.S. citizens and their family members have been evacuated from Egypt in an operation that began on Monday, January 31. We plan to continue evacuation efforts on Thursday, February 3, and are assessing the need to continue

¹⁵ U.S. State Department, U.S. Government Accountability Office, *The July 2006 Evacuation of American Citizens From Lebanon* (June 7, 2007), available at: <http://www.gao.gov/products/GAO-07-893R>

¹⁶ U.S. State Department, *U.S. Citizen Evacuation in South Sudan* (December 22, 2013), available at: <http://www.state.gov/r/pa/prs/ps/2013/219057.htm>.

flights after that. We continue with our efforts to assist any U.S. citizens who wish to leave Egypt and are boarding additional flights today. As curfew has been eased by three hours, we expect more U.S. citizens will be able to reach the Cairo airport.”¹⁷

34. On February 18, 2010, the U.S. Air Force announced that it evacuated more than 15,000 American citizens while 223 Haitian critical patients were aeromedically evacuated to the United States.¹⁸

35. On March 31, 1997, the U.S. Department of Defense announced that U.S. Forces evacuated nearly 900 people from Albania after civil unrest erupted. Of those evacuated, 400 were American citizens and 489 were third country nationals. U.S. forces also rescued 105 Albanian refugees from unsafe and overcrowded vessels.¹⁹

36. Between April 9, 1996 and April 18, 1996, the United States evacuated 485 American citizens from Liberia as a civil war endangered their lives.

37. Also during April 1996, the United States evacuated American citizens from Bangui, Central African Republic.

38. On May 2, 1975, the U.S. Navy evacuated 50,000 refugees from Vietnam.²⁰

39. In fact, since the date the Executive Order was signed, Plaintiffs have been unable to locate a single instance of U.S. Citizens stranded in an emergency crisis abroad where U.S. Citizens of non-Yemeni national origins were not evacuated.

¹⁷ U.S. State Department, Official Blog, *Update on the Status of U.S. Citizen Evacuations from Egypt* (February 2, 2011), available at: <https://blogs.state.gov/stories/2011/02/02/update-status-us-citizen-evacuations-egypt>.

¹⁸ The Official Website of the U.S. Airforce, *AMC Total Force Provides Hope to Haiti* (February 18, 2010), available at: <http://archive.today/Mdyf#selection-867.138-867.327>.

¹⁹ U.S. Department of Defense, DoD News, *U.S. Forces Evacuate Americans from Albania* (March 31, 1997), available at: <http://www.defense.gov/news/newsarticle.aspx?id=43332>.

²⁰ U.S. Naval Institute, Naval History Blog, *Operation Frequent Wind: April 29-30, 1975* (April 29, 2010), available at: <http://www.navalhistory.org/2010/04/29/operation-frequent-wind-april-29-30-1975>.

The U.S. Government's Policies and Long-Standing Practice of Discriminating Against Americans of Yemeni National Origin

40. The United States government has long viewed Yemeni-Americans, due to their national origin, as inherently suspicious and has thereby implemented a range of discriminatory policies and practices that specifically target U.S. Citizens of Yemeni national origin.

41. In a U.S. Department of State report issued in June, 2010, the Office of Inspector General stated that “[m]any of the U.S. citizens [of Yemeni national origin] have no connection to the United States except their U.S. passport. Indeed, a large number of the Yemeni-Americans reflect local standards of illiteracy and lack of education.”²¹

42. For example, the U.S. Department of State has systematically, willfully and unlawfully withheld and/or unreasonably delayed the processing of United States passport applications filed by U.S. Citizens of Yemeni national origin, thereby unlawfully denying these individuals their constitutionally-protected right to travel without affording them their right to due process of law under the Fifth Amendment to the United States Constitution.

43. The failure to process passport applications is only one example of the federal government's typical approach to U.S. Citizens of Yemeni national origin. According to a federal government document released by WikiLeaks, visa applications for relatives of U.S. Citizens of Yemeni national origin are "considered fraudulent until proven otherwise" and routinely tabled indefinitely.²² Consequently, U.S. Citizens of Yemeni national origin are

²¹ Office of the Inspector General, U.S. Department of State, *Report of Inspection: Embassy Sanaa, Yemen* (June 2010) at 21.

²² Available at: <https://wikileaks.org/cable/2009/09/09SANAA1729.html>

systematically prevented from leaving the United States, and their non-citizen relatives are systematically prevented from entering the United States.

44. As a result of these policies, families of U.S. Citizens of Yemeni national origin have been destroyed.

45. Moreover, U.S. Citizens of Yemeni national origin who present themselves to the U.S. Embassy in Yemen for routine consular purposes are at a heightened risk of having their U.S. passports immediately seized for an indefinite period of time.

46. In fact, this widespread and unconstitutional practice of a form of “proxy denaturalization” appears to be “uniform—and uniformly shocking.”²³

47. That the U.S. government has refused to evacuate its U.S. Citizens of Yemeni national origin that are stranded in Yemen during the current crisis, including the Plaintiffs, is therefore consistent with the Defendants’ general approach to issues involving Yemeni Americans.

48. Rather, the U.S. government’s refusal to conduct emergency evacuation operations in Yemen is in furtherance of its blatant and discriminatory policy of targeting and stripping U.S. Citizens of Yemeni national origin of their guaranteed citizenship rights under the law.

49. The U.S. government’s refusal to conduct emergency evacuation operations in Yemen is not in line with how the U.S. government has previously utilized evacuation

²³ See Ramzi Kassem, *Passport Revocation as Proxy Denaturalization: Examining the Yemen Cases*, 82 FORDHAM L. REV. 2099, 2101, 2111 (2014), available at: <http://ir.lawnet.fordham.edu/flr/vol82/iss5/5> (“By choosing to take administrative action on a large scale in Yemen, the State Department has achieved an outcome—with naturalized citizens stripped of their U.S. passports, stranded beyond U.S. borders, and unable to avail themselves of due privileges and protections—that could normally be achieved in only two ways: denaturalization proceedings in court or revocation of citizenship resulting from a conviction for naturalization fraud, followed by removal proceedings.”).

operations, which is a strong indication that the U.S. is treating U.S. Citizens of Yemeni national origin differently than U.S. Citizens of other national origins.

50. Defendants President Obama, U.S. Department of State, U.S. Department of Defense, and the Chief of Mission in Yemen have each failed to carry out their duties under the Executive Order and DOS-DOD Evacuation Policy as described in paras. 19-28, *supra*.

51. As a result, each of the Plaintiffs, and approximately 55,000 U.S. Citizens of Yemeni national origin are at serious and immediate risk of being killed due to the ongoing crisis in Yemen.

Parties

52. Plaintiff Rashid Mohamed Sadi is a United States Citizen of Yemeni national origin residing in Wayne County, Michigan, and within this district. Rashid arrived in Yemen three days prior to the Saudi Arabian military attacks inside Yemen for a one-week vacation to visit his family. Rashid is currently stranded in Taez, Yemen.

53. Plaintiff Jaber Mohamed Alsaady is a United States Citizen of Yemeni national origin residing in Wayne County, Michigan, and within this district. Jaber arrived in Yemen three days prior to the Saudi Arabian military attacks inside Yemen for a one-week vacation to visit his family. Jaber is currently stranded in Taez, Yemen.

54. Plaintiff Jane Doe No. 1 is a United States Citizen of Yemeni national origin residing in Wayne County, Michigan, and within this district. She is currently stranded in Taez, Yemen. She is 13 years old. Plaintiff Jane Doe No. 1's name is being concealed for fear of reprisal.

55. Plaintiff Jane Doe No. 2 is a United States Citizen of Yemeni national origin residing in Wayne County, Michigan, and within this district. She is currently stranded in

Taez, Yemen. She is 11 years old. Plaintiff Jane Doe No. 2's name is being concealed for fear of reprisal.

56. Plaintiff John Doe No. 1 is a United States Citizen of Yemeni national origin residing in Wayne County, Michigan, and within this district. She is currently stranded in Taez, Yemen. He is 8 years old. Plaintiff John Doe No. 1's name is being concealed for fear of reprisal.

57. Plaintiff John Doe No. 2 is a United States Citizen of Yemeni national origin residing in Wayne County, Michigan, and within this district. He is currently stranded in Taez, Yemen. He is 2 years old. Plaintiff John Doe No. 2's name is being concealed for fear of reprisal.

58. Plaintiff Jane Doe No. 3 is a United States Citizen of Yemeni national origin residing in Wayne County, Michigan, and within this district. She is currently stranded in Taez, Yemen. She is 5 years old. Plaintiff Jane Doe No. 3's name is being concealed for fear of reprisal.

59. Plaintiff Sadik Mohamed Saadi is a United States Citizen of Yemeni national origin residing in Wayne County, Michigan, and within this district. Mr. Sadik is currently stranded in Taez, Yemen.

60. Plaintiff Jane Doe No. 4 is a United States Citizen of Yemeni national origin residing in Wayne County, Michigan, and within this district. She traveled to Yemen to visit her daughter. She is currently stranded in Taez, Yemen. Plaintiff Jane Doe No. 4's name is being concealed for fear of reprisal.

61. Plaintiff Jane Doe No. 5 is a United States Citizen of Yemeni national origin residing in Wayne County, Michigan, and within this district. She followed her husband to

Yemen after he was diagnosed with cancer. She and her three daughters, Plaintiffs Jane Doe No. 6, Jane Doe No. 7 and Jane Doe No. 8 are currently stranded in Sana'a, Yemen. Plaintiff Jane Doe No. 5's name is being concealed for fear of reprisal.

62. Plaintiff Jane Doe No. 6 is a United States Citizen of Yemeni national origin residing in Wayne County, Michigan, and within this district. She is currently stranded in Sana'a, Yemen. She is the daughter of Plaintiff Jane Doe No. 5. She is 17 years old. Plaintiff Jane Doe No. 6's name is being concealed for fear of reprisal.

63. Plaintiff Jane Doe No. 7 is a United States Citizen of Yemeni national origin residing in Wayne County, Michigan, and within this district. She is currently stranded in Sana'a, Yemen. She is the daughter of Plaintiff Jane Doe No. 5. She is 6 years old. Plaintiff Jane Doe No. 7's name is being concealed for fear of reprisal.

64. Plaintiff Jane Doe No. 8 is a United States Citizen of Yemeni national origin residing in Wayne County, Michigan, and within this district. She is currently stranded in Sana'a, Yemen. She is the daughter of Plaintiff Jane Doe No. 5. She is 9 years old. Plaintiff Jane Doe No. 8's name is being concealed for fear of reprisal.

65. Plaintiff Jane Doe No. 9 is a United States Citizen of Yemeni national origin residing in Wayne County, Michigan, and within this district. She is currently stranded in Sana'a, Yemen. She lives in Yemen with her mother. She is 4 years old. Plaintiff Jane Doe No. 9's name is being concealed for fear of reprisal.

66. Plaintiff John Doe No. 3 is a United States Citizen of Yemeni national origin residing in Wayne County, Michigan, and within this district. He lives in Yemen with his mother. He is currently stranded in Sana'a, Yemen. He is 9 years old. Plaintiff John Doe No. 3's name is being concealed for fear of reprisal.

67. Plaintiff Jane Doe No. 11 is a United States Citizen of Yemeni national origin residing in Wayne County, Michigan, and within this district. She is currently stranded in Sana'a, Yemen. She lives in Yemen with her mother. She is 13 years old. Plaintiff Jane Doe No. 11's name is being concealed for fear of reprisal.

68. Plaintiff John Doe No. 4 is a United States Citizen of Yemeni national origin residing in Wayne County, Michigan, and within this district. He is currently stranded in Sana'a, Yemen. He lives in Yemen with his mother. He is 11 years old. Plaintiff John Doe No. 4's name is being concealed for fear of reprisal.

69. Plaintiff Jane Doe No. 12 is a United States Citizen of Yemeni national origin residing in Wayne County, Michigan, and within this district. She lives in Yemen with her mother. She is currently stranded in Sana'a, Yemen. She is 12 years old. Plaintiff Jane Doe No. 12's name is being concealed for fear of reprisal.

70. Plaintiff John Doe No. 5 is a United States Citizen of Yemeni national origin residing in Wayne County, Michigan, and within this district. He lives in Yemen with his mother. He is currently stranded in Sana'a, Yemen. He is 10 years old. Plaintiff John Doe No. 5's name is being concealed for fear of reprisal.

71. Plaintiff Wahbiah Ali Hassan Yahya is a United States Citizen of Yemeni national origin last residing in Wayne County, Michigan, and within this district. Wahbiah attended Edsel Ford High School in Dearborn, Michigan. She moved to Yemen after getting married, and is currently pregnant. If evacuated, she will reside in Wayne County, Michigan. She is currently stranded in Demit, Yemen.

72. Plaintiff John Doe No. 6 is a United States Citizen of Yemeni national origin last residing in Wayne County, Michigan, and within this district. He attended Saline

Intermediate School in Dearborn, Michigan before moving to Yemen with his father. He needs special medical care due to a mental condition he was diagnosed with. If evacuated, he will reside in Wayne County, Michigan. He is 17 years old. He is currently stranded in Demit, Yemen. Plaintiff John Doe No. 6's name is being concealed for fear of reprisal.

73. Plaintiff Hussain Bassery is a United States Citizen of Yemeni national origin residing in Wayne County, Michigan, and within this district. Hussain worked at Chrysler for over 30 years and is currently retired. Hussain travels every year with his wife, Plaintiff Noor Bassery, during the winter to Yemen to stay in their vacation home there and to visit their families. He is currently stranded in Aden, Yemen.

74. Plaintiff Noor Bassery is a United States Citizen of Yemeni national origin residing in Wayne County, Michigan, and within this district. Noor travels every year with her husband, Plaintiff Hussain Bassery, to stay in their vacation home there and to visit their families. She is currently stranded in Aden, Yemen.

75. Plaintiff Ismail Ahmed Albanah is a United States Citizen of Yemeni national origin. Ismail is currently stranded in Sanaa, Yemen. If evacuated to the United States, Ismail will reside with his family in Wayne County, Michigan, and within this district.

76. Plaintiff Jane Doe No. 13 is a United States Citizen of Yemeni national origin last residing in Wayne County, Michigan, and within this district. She is currently stranded in Sanaa, Yemen. She is 6 years old. If evacuated to the United States, she will reside with her family in Wayne County, Michigan, and within this district. Plaintiff Jane Doe No. 13's name is being concealed for fear of reprisal.

77. Plaintiff Jane Doe No. 14 is a United States Citizen of Yemeni national origin last residing in Wayne County, Michigan, and within this district. She is currently stranded

in Sanaa, Yemen. She is 5 years old. If evacuated to the United States, she will reside with her family in Wayne County, Michigan, and within this district. Plaintiff Jane Doe No. 14's name is being concealed for fear of reprisal.

78. Plaintiff John Doe No. 7 is a United States Citizen of Yemeni national origin last residing in Wayne County, Michigan, and within this district. He is currently stranded in Sanaa, Yemen. He is 4 years old. If evacuated to the United States, he will reside with his family in Wayne County, Michigan, and within this district. Plaintiff John Doe No. 7's name is being concealed for fear of reprisal.

79. Plaintiff Jane Doe No. 15 is a United States Citizen of Yemeni national origin last residing in Wayne County, Michigan, and within this district. She is currently stranded in Sanaa, Yemen. She is 15 years old. If evacuated to the United States, she will reside with her family in Wayne County, Michigan, and within this district. Plaintiff Jane Doe No. 15's name is being concealed for fear of reprisal.

80. Plaintiff John Doe No. 8 is a United States Citizen of Yemeni national origin last residing in Wayne County, Michigan, and within this district. He is currently stranded in Sanaa, Yemen. He is 13 years old. If evacuated to the United States, he will reside with his family in Wayne County, Michigan, and within this district. Plaintiff John Doe No. 8's name is being concealed for fear of reprisal.

81. Plaintiff John Doe No. 9 is a United States Citizen of Yemeni national origin last residing in Wayne County, Michigan, and within this district. He is currently stranded in Sanaa, Yemen. He is 9 years old. If evacuated to the United States, he will reside with his family in Wayne County, Michigan, and within this district. Plaintiff John Doe No. 9's name is being concealed for fear of reprisal.

82. Plaintiff Khadijah Awnallah is a United States Citizen of Yemeni national origin residing in Wayne County, Michigan, and within this district. Khadijah is currently stranded in Al-Jawf Al-Riyashiyyah, Yemen.

83. Plaintiff John Doe No. 10 is a United States Citizen of Yemeni national origin residing in Wayne County, Michigan, and within this district. He is currently stranded in Al-Jawf Al-Riyashiyyah, Yemen. He is only a baby. Plaintiff John Doe No. 10's name is being concealed for fear of reprisal.

84. Plaintiff Jane Doe No. 16 is a United States Citizen of Yemeni national origin residing in Wayne County, Michigan, and within this district. She is currently stranded in Al-Jawf Al-Riyashiyyah, Yemen. She is 15 years old. Plaintiff Jane Doe No. 16's name is being concealed for fear of reprisal.

85. Plaintiff Jane Doe No. 17 is a United States Citizen of Yemeni national origin residing in Wayne County, Michigan, and within this district. She is currently stranded in Al-Jawf Al-Riyashiyyah, Yemen. She is 10 years old. Plaintiff Jane Doe No. 17's name is being concealed for fear of reprisal.

86. Plaintiff John Doe No. 11 is a United States Citizen of Yemeni national origin residing in Wayne County, Michigan, and within this district. He is currently stranded in Al-Jawf Al-Riyashiyyah, Yemen. He is 14 years old. Plaintiff John Doe No. 11's name is being concealed for fear of reprisal.

87. Plaintiff Hailah Abdullah Omar is a legal permanent resident and wife of a United States Citizen. She is of Yemeni national origin residing in Wayne County, Michigan, and within this district. Hailah is currently stranded in Al-Jawf Al-Riyashiyyah, Yemen.

88. Plaintiff Jane Doe No. 18 is a United States Citizen of Yemeni national origin residing in Wayne County, Michigan, and within this district. She arrived in Yemen just prior to the Saudi Arabian military attacks inside Yemen for a short vacation to visit her family. She brought her children with her. She is currently stranded with her children in Taez, Yemen. Plaintiff Jane Doe No. 18's name is being concealed for fear of reprisal.

89. Defendant Barack H. Obama is President of the United States. Defendant Obama is being sued in his official capacity, only. The President is responsible for establishing the policy for national security emergency preparedness. Moreover, pursuant to the President's direction, the National Security Council (the President's principal forum for considering national security and foreign policy matters with his senior national security advisors and cabinet officials) is responsible for developing and administering such policy.

90. Defendant John F. Kerry is Secretary of State of the U.S. Department of State. Defendant Kerry is being sued in his official capacity, only. The DOS has the lead responsibility for evacuating American citizens from overseas locations in times of crisis.

91. Defendant Ash Carter is Secretary of Defense of the U.S. Department of Defense. Defendant Carter is being sued in his official capacity, only. The DOD provides assistance to the DOS in securing safe passage for American citizens in a war zone, as well as utilizing its expertise and resources in providing sea and air transportation for large numbers of people.

92. Defendant Matthew H. Tueller is United States Ambassador and Chief of Mission in Yemen. Defendant Tueller is being sued in his official capacity, only. U.S. embassies world-wide are required to develop Emergency Action Plans (EAP) to prepare for emergencies, take part in periodic crisis management exercises, and develop estimates of the

number of American citizens in each country. The United States Ambassador is the senior United States Government authority for the evacuation and, as such, is ultimately responsible for the successful completion of noncombatant evacuation operations and the safety of the evacuees.

Jurisdiction and Venue

93. Under U.S. Const. Art. III §2, this Court has jurisdiction because the rights sought to be protected herein are secured by the United States Constitution. Jurisdiction is proper pursuant to 28 U.S.C. § 1331, 403 U.S. 388 (1971), *et seq.*, 5 U.S.C. § 702, 5 U.S.C. § 706, the United States Constitution, and federal common law.

94. This is a civil rights action brought pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1361, the Mandamus Act, to redress the deprivation of rights, privileges and immunities secured to Plaintiff.

95. This action also seeks declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § § 2201-02, Rules 57 and 65 of the Federal Rules of Civil Procedure, and pursuant to the general, legal, and equitable powers of this Court.

96. A substantial part of the unlawful acts alleged herein were committed within the jurisdiction of the United States District Court for the Eastern District of Michigan.

97. Venue is proper under 42 U.S.C. § 1391(e) as to all Defendants because Defendants are officers or employees of agencies of the United States sued in their official capacity and because this judicial district is where all Plaintiffs reside.

COUNT I
VIOLATION OF THE FIFTH AMENDMENT
TO THE UNITED STATES CONSTITUTION
(Jurisdiction under 28 U.S.C. § 1331 and 5 U.S.C. § 702)
(Equal Protection)

98. Plaintiffs hereby reallege and incorporate by reference the foregoing paragraphs of this Complaint as if fully set forth herein.

99. Based on the United States government's practice of invoking the Executive Order, Defendants have utilized their authority under the Executive Order in a consistent manner, evacuating American citizens from foreign countries in each instance when practicable.

100. The Executive Order and U.S. Department of State and U.S. Department of Defense regulations establish that Defendants have a clear and nondiscretionary duty to protect and evacuate U.S. Citizens and Nationals in the threatened areas overseas.

101. Defendants failed to act in accordance with a specific mandatory directive that requires Defendants to protect and evacuate Plaintiffs and other U.S. Citizens stranded in Yemen. See *Berkovitz v. United States*, 486 U.S. 531, 542-543 (1988).

102. Defendants' above-described actions, policies, course of conduct, or pattern of practice that mandate or permit the failure of the U.S. government to evacuate Plaintiffs from Yemen during the ongoing conflict are discriminatory and constitute an action that targets U.S. Citizens of Yemeni national origin for distinctive treatment.

103. Defendants' above-described actions, policies, course of conduct, or pattern of practice that mandate or permit the failure of the U.S. government to evacuate Plaintiffs from Yemen during the ongoing conflict have had a discriminatory effect upon and have

disparately impacted U.S. Citizens of Yemeni national origin, and not U.S. citizens of other national origins.

104. Defendants' above-described actions, policies, course of conduct, or pattern of practice that mandate or permit the failure of the U.S. government to evacuate Plaintiffs from Yemen during the ongoing conflict does not serve a compelling state interest or a legitimate or public purpose, nor are they narrowly tailored to achieve any such interest, because other countries have already evacuated their citizens from Yemen, the International Committee Red Cross has been cleared to bring supplies into the country by boat and plane into the two main population centers in Yemen, and Defendants have evacuated U.S. Citizens under comparable circumstances.

WHEREFORE, Plaintiffs request this Honorable Court issue a writ of mandamus and grant declaratory and injunctive relief in the form described in the Prayer for Relief below, plus all such other relief this Court deems just and proper including costs and attorneys' fees incurred in this action.

COUNT II
UNLAWFUL AGENCY ACTION IN VIOLATION OF
THE ADMINISTRATIVE PROCEDURE ACT, 5 U.S.C. §§ 702, 706

105. Plaintiffs hereby reallege and incorporate by reference the foregoing paragraphs of this Complaint as if fully set forth herein.

106. The Executive Order and U.S. Department of State and U.S. Department of Defense regulations establish that Defendants have a clear and nondiscretionary duty to protect and evacuate U.S. Citizens and Nationals in the threatened areas overseas.

107. Defendants failed to act in accordance with a specific mandatory directive that requires Defendants to protect and evacuate Plaintiffs and other U.S. Citizens stranded in Yemen. See *Berkovitz v. United States*, 486 U.S. 531, 542-543 (1988).

108. Defendants, in violation of the Administrative Procedure Act, 5 U.S.C. § 701, are willfully refusing to evacuate Plaintiffs and other U.S. Citizens stranded in Yemen during the ongoing conflict, and have failed to carry out the responsibilities delegated to them.

109. Defendants' actions described above are willful, arbitrary, capricious, an abuse of discretion, otherwise not in accordance with law, and should be declared unlawful pursuant to 5 U.S.C. § 706.

110. Defendants' above-described actions, policies, course of conduct, or pattern of practice that mandate or permit the failure of the U.S. government to evacuate Plaintiffs, and other U.S. Citizens stranded in Yemen, during the ongoing conflict are not discretionary because the regulations regarding evacuation of U.S. Citizens from threatened areas overseas provide specific directions and are clear and unambiguous regarding the duties owed to Plaintiffs and other U.S. Citizens stranded in Yemen. See *Berkovitz v. United States*, 486 U.S. 531, 542-543 (1988); see also *United States v. Gaubert*, 111 S. Ct. 1267, 1275 n. 7 (1991).

111. Defendants' failure to act in evacuating Plaintiffs and other U.S. Citizens stranded in Yemen constitutes a final agency action in violation of the Administrative Procedure Act, pursuant to 5 U.S.C. §§ 551(13) and 704(a)(2).

112. Pursuant to Section 10 of the Administrative Procedure Act, 5 U.S.C. § 702, Plaintiffs have standing and are entitled to a judicial review because they have suffered a legal wrong as a result of Defendants' agency action of failing to evacuate Plaintiffs and other U.S. Citizens stranded in Yemen due to discrimination on the basis of their national origin.

113. Plaintiffs, and other U.S. Citizens stranded in Yemen, have a clear right to the relief sought.

114. Plaintiffs, and other U.S. Citizens stranded in Yemen, have no other adequate remedy available to them.

115. Plaintiffs, and other U.S. Citizens stranded in Yemen, are entitled to mandamus relief compelling Defendants to protect and evacuate them from Yemen.

WHEREFORE, Plaintiffs request this Honorable Court issue a writ of mandamus and grant declaratory and injunctive relief in the form described in the Prayer for Relief below, plus all such other relief this Court deems just and proper including costs and attorneys' fees incurred in this action.

COUNT III
WRIT OF MANDAMUS

116. Plaintiffs hereby reallege and incorporate by reference the foregoing paragraphs of this Complaint as if fully set forth herein.

117. The Executive Order and U.S. Department of State and U.S. Department of Defense regulations establish that Defendants have a clear and nondiscretionary duty to protect and evacuate U.S. Citizens and Nationals in the threatened areas overseas.

118. Defendants, in violation of the Administrative Procedure Act, 5 U.S.C. § 701, are willfully refusing to evacuate Plaintiffs and other U.S. Citizens stranded in Yemen during the ongoing conflict, and have failed to carry out the responsibilities delegated to them.

119. Defendants failed to act in accordance with a specific mandatory directive that requires Defendants to protect and evacuate Plaintiffs and other U.S. Citizens stranded in Yemen. See *Berkovitz v. United States*, 486 U.S. 531, 542-543 (1988).

120. Defendants' actions described above are willful, arbitrary, capricious, an abuse of discretion, otherwise not in accordance with law, and should be declared unlawful pursuant to 5 U.S.C. § 706.

121. Defendants' above-described actions, policies, course of conduct, or pattern of practice that mandate or permit the failure of the U.S. government to evacuate Plaintiffs, and other U.S. Citizens stranded in Yemen, during the ongoing conflict are not discretionary because the regulations regarding evacuation of U.S. Citizens from threatened areas overseas provide specific directions and are clear and unambiguous regarding the duties owed to Plaintiffs and other U.S. Citizens stranded in Yemen. See *Berkovitz v. United States*, 486 U.S. 531, 542-543 (1988); see also *United States v. Gaubert*, 111 S. Ct. 1267, 1275 n. 7 (1991).

122. Defendants' failure to act in evacuating Plaintiffs and other U.S. Citizens stranded in Yemen constitutes a final agency action in violation of the Administrative Procedure Act, pursuant to 5 U.S.C. §§ 551(13) and 704(a)(2).

123. Pursuant to Section 10 of the Administrative Procedure Act, 5 U.S.C. § 702, Plaintiffs have standing and are entitled to a judicial review because they have suffered a legal wrong as a result of Defendants' agency action of failing to evacuate Plaintiffs and other U.S. Citizens stranded in Yemen due to discrimination on the basis of their national origin.

124. Plaintiffs, and other U.S. Citizens stranded in Yemen, have a clear right to the relief sought.

125. Plaintiffs, and other U.S. Citizens stranded in Yemen, have no other adequate remedy available to them.

126. Plaintiffs, and other U.S. Citizens stranded in Yemen, are entitled to mandamus relief compelling Defendants to protect and evacuate them from Yemen.

WHEREFORE, Plaintiffs request this Honorable Court issue a writ of mandamus and grant declaratory and injunctive relief in the form described in the Prayer for Relief below, plus all such other relief this Court deems just and proper including costs and attorneys' fees incurred in this action.

COUNT IV
DECLARATORY RELIEF

127. Plaintiffs hereby reallege and incorporate by reference the foregoing paragraphs of this Complaint as if fully set forth herein.

128. The Executive Order and U.S. Department of State and U.S. Department of Defense regulations establish that Defendants have a clear and nondiscretionary duty to protect and evacuate U.S. Citizens and Nationals in the threatened areas overseas.

129. Defendants failed to act in accordance with a specific mandatory directive that requires Defendants to protect and evacuate Plaintiffs and other U.S. Citizens stranded in Yemen. See *Berkovitz v. United States*, 486 U.S. 531, 542-543 (1988).

130. Defendants, in violation of the Executive Order and U.S. Department of State and U.S. Department of Defense policy, are willfully refusing to evacuate Plaintiffs and other U.S. Citizens stranded in Yemen during the ongoing conflict, and have failed to carry out the responsibilities delegated to them by regulation.

131. Defendants' above-described actions, policies, course of conduct, or pattern of practice that mandate or permit the failure of the U.S. government to evacuate Plaintiffs, and other U.S. Citizens stranded in Yemen, during the ongoing conflict are not discretionary because the regulations regarding evacuation of U.S. Citizens from threatened areas overseas provide specific directions and are clear and unambiguous regarding the duties owed to

Plaintiffs and other U.S. Citizens stranded in Yemen. See *Berkovitz v. United States*, 486 U.S. 531, 542-543 (1988); see also *United States v. Gaubert*, 111 S. Ct. 1267, 1275 n. 7 (1991).

132. Plaintiffs, and other U.S. Citizens stranded in Yemen, have a clear right to the relief sought.

133. Plaintiffs, and other U.S. Citizens stranded in Yemen, have no other adequate remedy available to them.

WHEREFORE, Plaintiffs request this Honorable Court issue a writ of mandamus and grant declaratory and injunctive relief in the form described in the Prayer for Relief below, plus all such other relief this Court deems just and proper including costs and attorneys' fees incurred in this action.

Prayer for Relief

WHEREFORE, Plaintiffs respectfully request:

1. A declaratory judgment that finds that Defendants have failed to fulfill their duty to Plaintiffs by refusing to protect them and coordinate their evacuation from Yemen;
2. An injunction that requires Defendants to coordinate the emergency evacuation of Plaintiffs and American citizens in Yemen to the extent practicable as soon as practicable;
3. An award of attorneys' fees, costs, and expenses of all litigation, pursuant to 28 U.S.C. § 2412; and,
4. Such other and further relief as the Court may deem just and proper.

JURY DEMAND

NOW COME Plaintiffs, by and through their undersigned counsel, and hereby demand trial by jury of the above-referenced causes of action.

Respectfully submitted,

COUNCIL ON AMERICAN-ISLAMIC
RELATIONS, MICHIGAN

/s/ Lena Masri

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Dated: April 9, 2015