EXHIBIT 1
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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

SULEIMAN ABDULLAH SALIM,
MOHAMED AHMED BEN SOUD, OBAID
ULLAH (AS PERSONAL
REPRESENTATIVE OF GUL RAHMAN),

Plaintiffs,

v.

JAMES ELMER MITCHELL and JOHN
“BRUCE” JESSEN

Defendants.

DECLARATION OF JAN PEDERSON
I, Jan Pederson, a member of the Bar of the District of Columbia and the Supreme Court of the United States, declare under penalty of perjury as follows:

1. I am a Senior Attorney and Shareholder with Maggio-Kattar, P.C. with offices in the District of Columbia and San Diego, California. Maggio-Kattar has been retained to represent the American Civil Liberties Union and the Plaintiffs in this matter in their efforts to obtain nonimmigrant visas to enter the United States. I submit this declaration in support of Plaintiffs’ Opposition to Defendants’ Motion to Compel IMEs and Depositions.

2. Since 1978, I have practiced exclusively immigration and nationality law and represented thousands of individuals, universities and corporations in immigration matters.

3. I have served as the President of the Washington, D.C. Chapter of the American Immigration Lawyers Association (“AILA”) and as an elected member of the national Board of Governors of AILA for eighteen years. I was awarded the prestigious national Edith Lowenstein Award for excellence in the advancement of the practice of immigration law. I have served on the AILA Access to Counsel Committee for several years. The goal of this Committee is to secure the right for visa applicants to have an attorney present to represent them at visa interviews.
4. My immigration practice has focused on the subspecialty of representation of clients in applying for visas at American consular posts abroad for several decades during which I have personally appeared at twenty-four consular posts abroad and represented hundreds of clients at consular posts. I am considered to be a national expert in this specialized area of practice.

5. I served as a senior editor and author for the AILA Visa Processing Guide for many years and regularly publish an article, called "Strategic Lawyering at American Embassies and Consulates," which is a guide for attorneys to maximize the chance of success in representing clients in the visa process at consular posts.

6. The process of applying for a nonimmigrant visa requires the applicant to complete a Department of State online visa application, known as Form DS-160. Once this application is completed, it is submitted online and stored in a Department of State database. Once the application is submitted, the applicant or counsel is required to make an appointment for an in-person interview at a consular post. Personal interview waivers are granted to some categories of visa applicants, but Plaintiffs in this matter are not eligible for such waivers. The visa fee is then paid either online or at a local bank. Once the visa fee is paid, the applicant can then make a visa appointment either online or by
phone.

7. At the visa interview for most non-immigrant categories, the applicant must be found eligible for a visa under Section 214(b) of the Immigration and Nationality Act of 1952, as amended, which provides in pertinent part:

   (b) Every alien (other than a nonimmigrant described in subparagraph (L) or (V) of section 101(a)(15), and other than a nonimmigrant described in any provision of section 101(a)(15)(H)(i) except subclause (b1) of such section) shall be presumed to be an immigrant until he establishes to the satisfaction of the consular officer, at the time of application for a visa, and the immigration officers, at the time of application for admission, that he is entitled to a nonimmigrant status under section 101(a)(15)....

8. The overwhelming majority of B-1 visas, such as those sought by the Plaintiffs, that are refused are denied under this section of law. There is no appeal from the denial of a visa under this section nor is there an opportunity to seek visa reconsideration. The only remedy is to reapply for a visa, undertaking the tedious and costly process of submitting a new Form DS-160 Nonimmigrant Visa Application, paying the fees again, making a new appointment and submitting to another visa interview.

9. No government official can require a consular officer to issue a visa. If a supervisory consular official disagrees with the decision of a consular officer to refuse a visa, the remedy is for the supervisory consular officer to
assume jurisdiction over the application, re-interview the applicant and issue the visa. In practice, this rarely occurs and is discouraged. The statutes, rules and regulations giving virtually absolute power to consular officers in adjudicating visas is known as consular absolutism.

10. Thus, the Plaintiffs are required to overcome the presumption that they are “guilty” of immigrant intent (to remain in the United States) before being issued most categories of visas, including those sought by the Plaintiffs. After a typical one or two minute interview, the fate of the visa applicant is decided. The consular officers are directed to note in the Consolidated Consular

1 The Department of State Foreign Affairs Manual contains the operational guidance for visa issues and other matters. 9 FAM Section 403.10-3(D)(2)(U) provides, in pertinent part:

If a reviewing officer with a consular commission and title does not concur with the refusal, he or she may assume responsibility and re-adjudicate the case. The reviewing officer must discuss the case fully with the original adjudicating officer before taking any action. The reviewing officer must not reverse a 214(b) refusal without re-interviewing the applicant, as information gained during the interview is an essential component of any 214(b) decision. If the disagreement involves a matter of law, the reviewing officer may assume personal responsibility for the case and reverse the decision, after discussing with the original adjudicating officer. The reviewing officer should enter a note in the NIV Adjudication Review in the CCD that explains the reason for overturning the refusal.
Database the reason underlying the refusal. However, they are not required to provide the factual basis for finding the applicant “guilty.”

11. The personal satisfaction of the consular officer before whom an applicant appears is the murky, unreviewable standard which must be met. One of the Plaintiffs was found to overcome the 214(b) hurdle by the American Consul in Kabul, Afghanistan; the second was found not to overcome the hurdle by the American Consul in Dar es Salaam, Tanzania and the third was found not to overcome the hurdle by the American Consul in Istanbul, Turkey. It is not known whether the extensive documentation of home country ties and the national interest in issuing the visas were considered. Counsel was not permitted in the visa interview in Dar es Salaam. The Supreme Court has recently reinforced consular absolutism in holding that a visa applicant has no right to know the basis for a visa refusal in most circumstances.

12. In my opinion, the applicants and their attorneys have provided outstanding and extraordinary documentation of Plaintiffs’ bona fides as nonimmigrants and have in my opinion overcome the intending immigrant presumption. Indeed, it is rather counterintuitive for a consular officer to assume that the Plaintiffs who were tortured as part of a U.S. program would have any desire to put down roots in America.
13. In my opinion, Plaintiffs and their attorneys could have done nothing more to ensure that the Plaintiffs in this matter were issued nonimmigrant visas to enter the United States. Consular officers have the right to determine whether a visa applicant can be represented by an attorney and the parameters of representation.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: November 30, 2016

Washington, D.C.