

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

INTERNATIONAL REFUGEE ASSISTANCE
PROJECT, *et al.*,
Plaintiffs-Appellees,

v.

No. 17-1351

DONALD J. TRUMP, *et al.*,
Defendants-Appellants.

**REPLY IN SUPPORT OF MOTION TO EXPEDITE APPEAL
AND SET BRIEFING DEADLINES**

Pursuant to 28 U.S.C. § 1657(a), FRAP 27 and 31(a)(2), and this Court's Local Rule 12(c), defendants-appellants (collectively, the government) respectfully file this reply in support of their motion for expedited hearing of this appeal from the district court's preliminary injunction.

1. The parties are largely in agreement as to a proposed schedule for the stay motion; plaintiffs "request only a minor modification" of the government's proposed stay schedule. Pls. Resp. at 1. That "minor modification," however, would limit the government's time to file a reply to forty-eight hours. Although the government is prepared to file quickly,

forty-eight hours does not provide the government with adequate time to file a proper reply. Moreover, such a proposed schedule, giving plaintiffs over a week to file their response to the government's stay motion, is inconsistent with how quickly plaintiffs moved for relief in the district court, as well as how quickly the government moved in those proceedings at plaintiffs' behest. There is no reason that plaintiffs cannot move equally expeditiously before this Court.

2. As to the government's proposed schedule for briefing on the merits of the preliminary injunction, plaintiffs' opposition rests on their view that it is unnecessary for the briefing on the stay motion and the merits to proceed simultaneously. But that approach makes perfect sense here, where the issues in the stay motion and merits briefing are intertwined: plaintiffs cannot show irreparable harm for the same basic reasons that they lack standing, and adjudicating the stay will require evaluating the government's likelihood of success on the merits. Given the complexity of the issues (and the word limits on a stay motion), the Court

will surely benefit from having the parties' full presentation of the issues before it when ruling on the stay motion.

In addition, as the government explained in its motion, expeditious resolution of this appeal is warranted because there is a nationwide injunction in place that bars enforcement of a provision of the Executive Order implementing the President's predictive judgment about the Nation's national security needs. The plaintiffs moved very quickly in the district court to enjoin the Executive Order, under a briefing schedule that gave the parties less than one week to submit full briefing on the plaintiffs' motion for a preliminary injunction, the government's opposition, and the plaintiffs' reply. The plaintiffs filed a brief in support of their motion for injunctive relief that was more than 12,000 words long. They should be able to act with the same alacrity in this Court, particularly given that the parties have briefed at length the issues relevant to this appeal.

Plaintiffs suggest that there is no need for accelerated proceedings on the merits because the government has not appealed the temporary restraining order entered in Hawaii. Pls. Resp. at 7. The district court in

that case, however, is still considering—on an expedited basis—whether to convert the temporary restraining order into a preliminary injunction. That case therefore is in a different posture than this case, in which a preliminary injunction has already been entered. If the district court in Hawaii does convert the temporary restraining order into a preliminary injunction, however, the government will file an appeal in that case as well. A stay in this case, therefore, even if it is only pending this Court’s final disposition of the government’s appeal of the preliminary injunction, would be of significance.

In sum, the only meaningful difference between the government’s and plaintiffs’ proposals is that the government’s proposed course—full briefing on the merits of the preliminary injunction, simultaneous with the stay motion—would provide this Court with a more complete understanding of the issues to better assist the Court in resolving the stay motion. Given the complexity of the issues and the significance of the interests at stake, and the parties’ ability to brief those issues simultaneously and expeditiously, there is no reason for this Court to

decide the stay motion without the benefit of that full briefing on the merits.

Because the government is prepared to proceed expeditiously, the government intends to file its stay motion and merits brief tomorrow. Thus, even if the Court were to grant plaintiffs the full amount of time they seek to respond to the government's merits brief, *see* Pls. Resp. at 7, plaintiffs' proposed briefing schedule should nevertheless be shortened such that their opposition brief would be due on April 21, and the government's reply brief due on April 28. For the reasons the government explained, however, the better course would be to proceed as proposed in the government's motion.

CONCLUSION

For the foregoing reasons, this Court should grant the government's motion to set an expedited schedule for briefs and the government's motion for stay pending appeal.

Respectfully submitted,

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MARCH 2017

CERTIFICATE OF SERVICE

I hereby certify that on March 23, 2017, I electronically filed the foregoing reply in support of motion to expedite appeal and set briefing deadlines by using the appellate CM/ECF system.

I certify that the participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ H. Thomas Byron III
H. THOMAS BYRON III

CERTIFICATE OF COMPLIANCE

Pursuant to FRAP 32(g)(1), I hereby certify that the foregoing corrected motion complies with the type-volume limitation in FRAP 27(d)(2)(A). According to Microsoft Word, the motion contains 826 words and has been prepared in a proportionally spaced typeface using Palatino Linotype in 14 point size.

/s/ H. Thomas Byron III
H. THOMAS BYRON III