

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

INTERNATIONAL REFUGEE
ASSISTANCE PROJECT, et al.,

Plaintiffs-Appellees,

v.

DONALD TRUMP, et al.,

Defendants-Appellants.

IRANIAN ALLIANCES
ACROSS BORDERS, et al.,

Plaintiffs-Appellees,

v.

DONALD TRUMP, et al.,

Defendants-Appellants.

EBLAL ZAKZOK, et al.,

Plaintiffs-Appellees,

v.

DONALD TRUMP, et al.,

Defendants-Appellants.

Nos. 17-2231 (L), 17-2232, 17-2233

***IRAP* PLAINTIFFS-APPELLEES'
RESPONSE TO MOTION TO
EXPEDITE APPEAL AND SET
BRIEFING DEADLINES**

The government seeks unnecessarily to rush the briefing and consideration of its stay motion in this case. This Court afforded plaintiffs one week to respond to the stay motion during the last appeal in this case, in the face of similar conclusory assertions of urgency from the government. That is exactly what plaintiffs have proposed this time around. As in earlier stages of the litigation, the government has made no showing of any genuine urgency that could justify its scheduling request, and its own choices demonstrate that there is none. Plaintiffs respectfully request that, as they proposed to the government, their response to the stay be due on October 27, and the government's reply due October 30.

This case is an appeal from the district court's preliminary injunction of portions of Presidential Proclamation 9645, 82 Fed. Reg. 45161 (Sept. 27, 2017) ("EO-3"), the third ban of hundreds of millions of nationals of Muslim-majority countries that the President has signed since January. This Court, sitting en banc, affirmed the preliminary injunction of EO-3's predecessor, Executive Order 13,780, 82 Fed. Reg. 13209 (Mar. 9, 2017) ("EO-2"). *Int'l Refugee Assistance Project v. Trump*, 857 F.3d 554 (4th Cir. 2017). After EO-2's similar ban expired and the President signed EO-3, the Supreme Court vacated this Court's judgment on mootness grounds, underscoring that it expressed no view on the merits, No. 16-1436, 2017 WL

4518553 (U.S. Oct. 10, 2017). Plaintiffs then obtained the preliminary injunction against EO-3, based on violations of the Establishment Clause and the Immigration and Nationality Act, that is now on appeal. *Int'l Refugee Assistance Project v. Trump*, --- F.Supp.3d ----, 2017 WL 4674314 (D. Md. Oct. 17, 2017).

Having filed its stay motion on October 20, three business days after the district court's opinion issued, the government proposes that plaintiffs file their opposition two business days later, on October 24. It argues that this is "ample time" to respond, and that plaintiffs' request for just one week to respond "fails to reflect the gravity of the issues presented." Mot. 3-4; *but see* U.S. Reply in Support of Motion to Expedite Appeal, No. 17-1351, Doc. No. 23 at 2 ("forty-eight hours does not provide the government with adequate time to file a proper reply"). Yet during the last appeal, in which the government made similar assertions of urgency and gravity, the government proposed, and the Court ordered, that plaintiffs would have a full week to respond to the stay motion, Order, No. 17-1351, Doc. No. 25 at 2.

Moreover, the government has not behaved with the kind of dispatch that might warrant such an abbreviated briefing schedule. *First*, as to the persons covered by the preliminary injunction (which prohibits application

of EO-3's ban to individuals from certain countries who can credibly claim to have a bona fide relationship with an individual or entity in the United States), EO-3 itself delayed implementation of its ban for 24 days, from when EO-3 was signed on September 24 to October 18. 82 Fed. Reg. 45161. Were the government's interests in banning these people as urgent as it now contends, that over-three-week delay would be curious.

Second, the same day as its stay motion in this case, the government proposed in parallel litigation in the District of Hawaii that the Hawaii proceedings remain in the district court until October 24 at the earliest—even though the injunction in that case is *broader* than the one at issue here. *See* Joint Notice, *Hawai'i v. Trump*, No. 17-cv.00050, Doc. No. 388 at 2 (D. Haw. Filed Oct. 20, 2017). That proposal is inconsistent with any contention that this is a situation in which every day is crucial.

Third, the government did not file its motion for a stay until three full business days had elapsed after the district court's order. That, again, is inconsistent with the purported urgency that might justify giving plaintiffs just two business days to respond to a substantive stay motion.

Indeed, where the government *has* in fact viewed the situation as urgent, it has acted with far more dispatch. For example, this week the government noticed its appeal and filed a stay motion *the same day* as a

district court issued an injunction against it. *See Garza v. Hargan*, No. 17-5236 (D.C. Cir. filed Oct. 18, 2017). That is no surprise; the government can move quickly when it believes there is a genuine need. *See, e.g., Kiyemba v. Obama*, 555 F.3d 1022, 1024 n.2 (D.C. Cir. 2009) (government moved for a stay the same day as injunction directing release of a detainee at Guantanamo Bay); *Washington v. Trump*, 847 F.3d 1151, 1158 (9th Cir. 2017) (per curiam) (within 24 hours); *United States v. New York Times Co.*, 444 F.2d 544 (2d Cir. 1971), *rev'd*, 403 U.S. 713 (1971); Brief for Pet. at 9-10, No. 70-1873 (U.S. filed June 26, 1971), 1971 WL 134368 (same day).

Indeed, the government has failed to demonstrate any real sense of urgency throughout this litigation. It deferred issuance of its second ban in order to maximize positive press coverage of an unrelated presidential speech. App. 537-538, No. 17-1351. It proposed a briefing schedule to the Supreme Court that would leave the merits of the case unresolved for at least four months, even knowing that the injunction of the prior ban might remain in place during that time. App. Stay, No. 16A1190 at 40 (U.S. filed June 1, 2017) (not proposing a merits hearing before the next Supreme Court term). And it waited until the prior ban's very last day before issuing the current iteration, even though the prior ban had been significantly narrowed by the Supreme Court.

Lastly, the government offers no real reason why this briefing must be completed so quickly. The issues are important; but that is a reason to permit sufficient briefing, not to cut it short. And its reliance on the scope of the injunction at issue here and the fact that this case challenges a “presidential determination,” Mot. 3, falls flat. It made those same arguments before this Court and the Supreme Court last time around, and both left the last injunction largely intact. *See* Mot. Stay, No. 17-1351, Doc. 35 at 1 (4th Cir filed Mar. 24, 2017); App. Stay, No. 16A1190 at 1, 4 (U.S. filed June 1, 2017).

For these reasons, plaintiffs respectfully request that the Court set the following briefing schedule: Opposition to Motion to Stay due October 27, Reply due October 30. That schedule will permit the stay motion to proceed at a very accelerated pace without impairing plaintiffs’ full and fair opportunity to respond.

Dated: October 21, 2017

Respectfully submitted,

/s/ Omar C. Jadwat

Karen C. Tumlin
Nicholas Espiritu
Melissa S. Keaney
Esther Sung
National Immigration Law Center
3435 Wilshire Boulevard, Suite
1600
Los Angeles, CA 90010
Tel: (213) 639-3900
Fax: (213) 639-3911
tumlin@nilc.org
espiritu@nilc.org
keaney@nilc.org
sung@nilc.org

Justin B. Cox
National Immigration Law Center
PO Box 170208
Atlanta, GA 30317
Tel: (678) 279-5441
Fax: (213) 639-3911
cox@nilc.org

Kathryn Claire Meyer
Mariko Hirose
International Refugee Assistance
Project
40 Rector Street, 9th Floor
New York, New York 10006
Tel: (646) 459-3044
Fax: (212) 533-4598
kmeyer@refugeerights.org
mhirose@refugeerights.org

Omar C. Jadwat
Lee Gelernt
Hina Shamsi
Hugh Handeyside
Sarah L. Mehta
David Hausman
American Civil Liberties Union
Foundation
125 Broad Street, 18th Floor
New York, NY 10004
Tel: (212) 549-2600
Fax: (212) 549-2654
ojadwat@aclu.org
lgelernt@aclu.org
hshamsi@aclu.org
hhandeyside@aclu.org
smehta@aclu.org
dhausman@aclu.org

Cecillia D. Wang
Cody H. Wofsy
Spencer E. Amdur
American Civil Liberties Union
Foundation
39 Drumm Street
San Francisco, CA 94111
Tel: (415) 343-0770
Fax: (415) 395-0950
cwang@aclu.org
cwofsy@aclu.org
samdur@aclu.org

David Rocah
Deborah A. Jeon
Sonia Kumar
Nicholas Taichi Steiner
American Civil Liberties Union
Foundation of Maryland
3600 Clipper Mill Road, Suite 350
Baltimore, MD 21211
Tel: (410) 889-8555
Fax: (410) 366-7838
jeon@aclu-md.org
rocah@aclu-md.org
kumar@aclu-md.org
steiner@aclu-md.org

David Cole
Daniel Mach
Heather L. Weaver
American Civil Liberties Union
Foundation
915 15th Street NW
Washington, DC 20005
Tel: (202) 675-2330
Fax: (202) 457-0805
dcole@aclu.org
dmach@aclu.org
hweaver@aclu.org

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of October, 2017, I caused a PDF version of the foregoing document to be electronically transmitted to the Clerk of the Court, using the CM/ECF System for filing and for transmittal of a Notice of Electronic Filing to all CM/ECF registrants.

Dated: October 21, 2017

Respectfully submitted,

/s/ Omar Jadwat
Omar C. Jadwat

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 1,098 words and has been prepared in a proportionally spaced typeface using Times New Roman in 14 point size.

Dated: October 21, 2017

Respectfully submitted,

/s/ Omar Jadwat
Omar C. Jadwat