

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

STATE OF HAWAII and ISMAIL
ELSHIKH,

Plaintiffs,

v.

DONALD J. TRUMP, in his official
capacity as President of the United
States; U.S. DEPARTMENT OF
HOMELAND SECURITY; JOHN F.
KELLY, in his official capacity as
Secretary of Homeland Security; U.S.
DEPARTMENT OF STATE; REX
TILLERSON, in his official capacity as
Secretary of State; and the UNITED
STATES OF AMERICA,

Defendants.

Civil Action No. 1:17-cv-00050-DKW-
KSC

**DECLARATION OF NICHOLAS
ESPIRITU**

DECLARATION OF NICHOLAS ESPIRITU

I, Nicholas Espíritu, declare as follows:

1. I am an attorney with the National Immigration Law Center and one of the attorneys for *Amici* International Refugee Assistance Project (“IRAP”) and HIAS in this action.

2. I make this Declaration based upon personal knowledge of the matters set forth herein. This declaration is submitted in support of the attached *ex parte* motion for an Order to seal the following documents, which previously were filed in the Court docket: (1) Dkt. No. 336-6; (2) Dkt. No. 336-7. These documents were filed in support of *Amici*'s Brief in Support of Plaintiffs' Motion to Enforce or, in the Alternative, to Modify Preliminary Injunction. Dkt. No. 336-1.

3. Dkt. No. 336-6 is the Declaration of "Sam," (Sam Decl.) which details how Sam worked closely with U.S. military forces in Iraq—including Declarant Allen R. Vaught—and even fought alongside U.S. military personnel. The declaration contains specific, personally identifying information that, if made public, will expose Sam and his family to danger and potentially even death. It provides a real-world example of the relationships that exist between DAP-eligible Iraqis and U.S. individuals and entities and relates Sam's experience applying to the Direct Access Program for U.S.-Affiliated Iraqis ("DAP").

4. Dkt. No. 336-7 is the Declaration of Allen R. Vaught, which details Mr. Vaught's relationship with Sam, including personally identifying information that, if made public, will expose Sam and his family to danger and potentially even death. It discusses Mr. Vaught's personal experience with the Direct Access Program for U.S.-Affiliated Iraqis ("DAP") and provide a real-world example of the

relationships that exist between DAP-eligible Iraqis and U.S. individuals and entities.

5. Generally, a party seeking to seal a judicial document “must ‘articulate[] compelling reasons supported by specific factual findings.’” *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (citation omitted). The court must then “conscientiously balance[] the competing interests” of the public and the moving party. *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003).

6. Courts have recognized that the need for confidentiality outweighs the public interest in access to the information where, as here, individuals may face threat of danger to themselves or their family. *See Hunt v. Fields*, No. CIV S-09-3525 KJM, 2012 WL 3070413, at *2 (E.D. Cal. July 26, 2012) (danger to self); *United States v. Doe*, 662 F. App'x 515, 518 (9th Cir. 2016) (danger to family).

7. The danger of public exposure is acute for Declarant Sam and his family. His declaration details how he worked closely with U.S. military forces in Iraq—including Declarant Allen R. Vaught—and even fought alongside U.S. military personnel. Sam Decl. ¶¶ 3-10.

8. The Declaration of Allen R. Vaught likewise discusses Mr. Vaught’s experience working with Sam during his deployment.

9. Both declarations contain personally identifying information about Sam, including his full name and where he currently resides in hiding from persecutors targeting Iraqis who have worked with the U.S. military.

10. Public access to this information would seriously endanger the safety of Sam and his family. Sam and his family have already been threatened and targeted with violence because of Sam's relationship with the U.S. military. Sam Decl. ¶¶ 11-16, 20-25. Sam is now a DAP applicant and waiting for security checks for himself and his family before they can travel to the United States, Decl. ¶¶ 26, 31, but they all remain in danger due to the work Sam did for and with U.S. troops. *Id.* at 14-16, 20-25. Sealing the declarations is therefore necessary to protect Sam and his family from further violence and potentially death.

11. While sealing these declarations can be a matter of life or death for Sam and his family, it has but a marginal effect on the public's right to understand the merits of this case. The information contained in the declarations is limited in scope and is primarily intended to provide a real-world example of how DAP functions and why the program was created to assist Iraqis who are at risk of persecution because of their contributions to the United States' mission in Iraq. Indeed, the formal policies underlying DAP are already publicly available. The declarations serve only to illustrate the nature of the "bona fide relationship" between DAP applicants and U.S. individuals and entities, and to demonstrate why this Court's

preliminary injunction should categorically exempt DAP applicants from the Supreme Court's stay order.

12. Given the danger to Sam and his family, the balance of interests here weighs in favor of allowing the declarations to be sealed.

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

DATED: Los Angeles, California July 11, 2017.

/s/ Nicholas Espiritu
Nicholas Espiritu