

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; ELAINE DUKE, in her official
capacity as Acting 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 No. 17-00050-DKW-KSC

[PROPOSED] TEMPORARY RESTRAINING ORDER

This matter came before the Court on Plaintiffs' Motion for Temporary Restraining Order (the "Motion"). Having considered the Motion and the documents filed therewith, including supporting declarations, Plaintiffs' Third Amended Complaint, and the files and records herein, and good cause appearing therefor, the Court hereby finds and concludes as follows.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Plaintiffs face immediate and irreparable injuries as a result of the issuance and implementation of the Proclamation issued by Defendant Donald J. Trump on September 24, 2017, entitled “Presidential Proclamation Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats” (“EO-3”), which is designed to take effect at 6:01 PM Hawaii Standard Time (H.S.T.) on October 17, 2017. If implemented, Sections 2(a)-(c), (e), (g), and (h) of EO-3 would inflict irreparable harm on Plaintiff State of Hawaii by impairing the operations of its university, damaging its economy, diminishing its financial revenues, and undermining its sovereignty; would irreparably harm Plaintiffs Ismail Elshikh and John Does 1 & 2 by separating them from their close familial relations and denigrating and disadvantaging them on the basis of their faith; and would irreparably harm Plaintiff Muslim Association of Hawaii, Inc. by reducing its membership, harming its finances, impeding its religious practice, and subjecting it to discrimination based on religion. The foregoing harms are ongoing and significant.

A temporary restraining order against Defendants, in the manner set forth below, is necessary until the merits of Plaintiffs’ claims may be determined.

Plaintiffs took reasonable steps to provide sufficient notice to Defendants as to their intention to file the instant motion by email correspondence dated October

6, 2017, the substance of which was relayed to the Court on the same date in Plaintiffs' Motion to Lift the Stay, and to Increase the Word Limit and Set a Schedule for Briefing on Plaintiffs' Forthcoming Motion for a Temporary Restraining Order, Dkt. 363. Plaintiffs' efforts to contact Defendants reasonably and substantially complied with the requirements of Federal Rule of Civil Procedure 65(b).

The Court continues to have jurisdiction over Defendants and the subject matter of this case.

No security bond is required under Federal Rule of Civil Procedure 65(c).

To obtain a temporary restraining order, Plaintiffs must establish: (1) a likelihood of success on the merits; (2) that irreparable harm is likely in the absence of preliminary relief; (3) that the balance of the equities tips in Plaintiffs' favor; and (4) that an injunction is in the public interest. *Winter v. Nat'l Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Based on the foregoing, there is a strong likelihood that Plaintiffs will succeed on the merits of their claims, and irreparable injury is likely if the requested relief is not issued. The balance of the equities favors Plaintiffs, and the public interest favors entering temporary relief.

TEMPORARY RESTRAINING ORDER

Now, therefore, it is hereby ADJUDGED, ORDERED, and DECREED that:

1. Defendant ELAINE DUKE, in her official capacity as Acting Secretary of Homeland Security; REX W. TILLERSON, in his official capacity as Secretary of State; and all their respective officers, agents, servants, employees, and attorneys, and persons in active concert or participation with them who receive actual notice of this Order, hereby are enjoined fully from enforcing or implementing Sections 2(a)-(c), (e), (g), and (h) of the Proclamation issued on September 24, 2017, entitled “Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or Other Public-Safety Threats” across the Nation. Enforcement of these provisions in all places, including the United States, at all United States borders and ports of entry, and in the issuance of visas is prohibited, pending further orders from this Court; and

2. Pursuant to Federal Rule of Civil Procedure 65(b)(2), the Court sets an expedited hearing for _____ to determine whether this Temporary Restraining Order should be extended.

DATED: Honolulu, Hawaii, _____.

Derrick K. Watson
U.S. District Judge

State of Hawaii, et al. v. Trump, et al., Case No. 17-00050-DKW-KSC;
[PROPOSED] TEMPORARY RESTRAINING ORDER