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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

STATE OF HAWAII, ISMAIL ELSHIKH, JOHN
DOES 1 & 2, and MUSLIM ASSOCIATION OF
HAWAII, INC.,

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.

**JOINT NOTICE
REGARDING
STIPULATION TO
CONVERT TEMPORARY
RESTRAINING ORDER
TO PRELIMINARY
INJUNCTION; JOINT
STIPULATION TO
CONVERT TEMPORARY
RESTRAINING ORDER
TO PRELIMINARY
INJUNCTION;
CERTIFICATE OF
SERVICE**

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

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**JOINT NOTICE REGARDING STIPULATION TO CONVERT
TEMPORARY RESTRAINING ORDER TO PRELIMINARY
INJUNCTION**

On October 17, 2017, this Court issued a temporary restraining order (“TRO”) prohibiting Defendants from enforcing 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. Dkt. 387. The Court also ordered the parties to submit a stipulated briefing and hearing schedule to determine whether the TRO should be extended, or to “promptly indicate whether they jointly consent to the conversion of this Temporary Restraining Order to a Preliminary Injunction without the need for additional briefing or a hearing.” *Id.* at 39.

The parties, having met and conferred, stipulate and agree that the TRO shall be converted to a Preliminary Injunction. The parties’ joint stipulation regarding conversion is attached hereto and is being submitted to chambers consistent with Local Rules 10.4 and 100.8.2. The Government reserves its right to appeal the injunction.

The Government wishes to note, however, that it has requested that the Supreme Court vacate as moot the Ninth Circuit’s prior decision, relied on by the district court as precedent. And the Government will notify the Supreme Court of further developments regarding mootness after Section 6(a)’s review process

expires on October 24, 2017. *See Letter Brief Regarding Mootness, Trump v. Hawaii*, No. 16-1540 (Oct. 5, 2017); *cf. Trump v. IRAP*, No. 16-1436, --- S. Ct. ---, 2017 WL 4518553 (Oct. 10, 2017) (vacating the Fourth Circuit’s decision as moot due to expiration of Section 2(c) of EO-2 on September 24, 2017). Accordingly, to the extent vacatur of the Ninth Circuit’s decision would affect this Court’s decision regarding conversion of its temporary restraining order to a preliminary injunction, the Government notes that the Court may wish to wait until after the Supreme Court acts on the Government’s request for vacatur. *See Camreta v. Greene*, 563 U.S. 692, 713 (2011) (“The point of vacatur is to prevent an unreviewable decision ‘from spawning any legal consequences[.]’” (quoting *United States v. Munsingwear, Inc.*, 340 U.S. 36, 40-41 (1950))).

Plaintiffs note that the Supreme Court has not vacated the Ninth Circuit’s opinion. Moreover, even if the Supreme Court does ultimately vacate that opinion, that vacatur order would “express no view on the merits,” *IRAP*, 2017 WL 4518553, and “a vacated opinion still carries informational and perhaps even persuasive or precedential value,” *DHX, Inc. v. Allianz AGF MAT, Ltd.*, 425 F.3d 1169, 1176 (9th Cir. 2005) (Beezer, J., concurring) (collecting cases). For the reasons set forth in the Ninth Circuit’s opinion in *Hawaii v. Trump*, 859 F.3d 741 (9th Cir. 2017), and in Plaintiffs’ memorandum and reply in support of a TRO, the Ninth Circuit’s and this Court’s holdings regarding the meaning of 8 U.S.C.

§§ 1152(a)(1)(A), 1182(f), and 1185(a) are entirely correct. Therefore, Plaintiffs respectfully submit that there is no reason for this Court to delay conversion.

In addition, Plaintiffs continue to reserve their right to seek leave to amend their complaint to challenge any future actions regarding refugees, as appropriate. *See* Mem. 5-6 n.3, Dkt. No. 368-1.

DATED: Washington, DC, October 20, 2017.

/s/ Neal K. Katyal

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