



March 20, 2017

The Honorable Theodore D. Chuang
United States District Court
District of Maryland
6500 Cherrywood Lane
Greenbelt, MD 20770

Re: International Refugee Assistance Project v. Trump, No. 8:17-cv-00361-TDC

Dear Judge Chuang:

We write pursuant to § II.A of the Case Management Order to request a Pre-Motion Conference regarding Plaintiffs' desire to file a motion for a preliminary injunction of § 6 of the now-operative Executive Order, which relate specifically to the U.S Refugee Admissions Program ("USRAP"). In its opinion dated March 16, 2017, the Court held that Plaintiffs did not sufficiently develop the arguments regarding § 6 to warrant an injunction of it at that time. Mem. Op. (Dkt. No. 149) at 40-41. Plaintiffs therefore respectfully request leave to file a motion for preliminary injunction of § 6, principally on Establishment Clause grounds.

Plaintiffs are likely to succeed on their claim that § 6 of the Order, like § 2(c), violates the Establishment Clause and equal protection. There is compelling evidence, including statements by the President—some made even since the Court held argument on March 15—establishing that § 6 is part and parcel of the overall scheme to discriminate against Muslim immigrants, on whom § 6 has a markedly disparate impact, and that a reasonable observer would conclude that the primary purpose of § 6 was to disadvantage Muslims. The balance of hardships and the public interest also clearly favor granting a preliminary injunction.

Plaintiffs are also likely to succeed on their claim that § 6(b) should be enjoined on statutory grounds, as explained in the separate Motion for Preliminary Injunction of the Executive Order (doc. # 64). Given that all of § 6 is currently enjoined by the U.S. District Court for the District of Hawai'i,¹ and in the interest of judicial economy, Plaintiffs propose rescheduling the March 28

¹ See *Hawai'i v. Trump*, ___ F. Supp. 3d. ___, No. 17-00050, 2017 WL 1011673 (D. Haw. Mar. 15, 2017); see also Electronic Order, *Hawai'i v. Trump*, No. 17-00050 (D. Haw. Mar. 19, 2017), ECF No. 229 (denying the federal government's motion to "clarify" the scope of the TRO such that it no longer applied to all of §§ 2 & 6).

hearing on that motion until after briefing on the constitutional claims regarding § 6 is complete, such that the Court can consider all claims applicable to § 6 at the same time.

Plaintiffs note, moreover, that although the federal government's Notice of Appeal (doc. # 160) divests the district court of its control over the preliminary injunction of § 2(c), the Court retains jurisdiction over the balance of the case. See *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982) (per curiam); *Wright & Miller*, 16 Fed. Prac. & Proc. § 3921.2 (3d ed.).

Plaintiffs' counsel has consulted with counsel for the federal government, who states that the federal government will be prepared to address the foregoing matters during the status conference already scheduled for 3:00 PM ET on March 21, 2017.

Respectfully submitted,

/s/ Justin B. Cox

Karen C. Tumlin†
Nicholas Espíritu†
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 (Bar No. 17550)
National Immigration Law Center
1989 College Ave. NE
Atlanta, GA 30317
Tel: (678) 404-9119
Fax: (213) 639-3911
cox@nilc.org

David Rocah (Bar No. 27315)
Deborah A. Jeon (Bar No. 06905)
Sonia Kumar (Bar No. 07196)
Nicholas Taichi Steiner (Bar

Omar C. Jadwat†
Lee Gelernt†
Hina Shamsi†
Hugh Handeyside†
Sarah L. Mehta†
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

Cecillia D. Wang†
Cody H. Wofsy†
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

No. 19670)
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

† Appearing pro hac vice