

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION**

INTERNATIONAL REFUGEE
ASSISTANCE PROJECT, et al.,

Plaintiffs,

v.

DONALD TRUMP, et al,

Defendants.

Civil Action No.: 8:17-CV-00361-TDC

**PLAINTIFFS' MOTION TO CLARIFY OR
MODIFY PRELIMINARY INJUNCTION**

On October 17, 2017, this Court preliminarily enjoined Section 2 of Presidential Proclamation 9645, except with respect to (a) the provisions addressing North Korea and Venezuela, and (b) individuals lacking a credible claim of a bona fide relationship with a person or entity in the United States, “as defined in the Court’s Memorandum Opinion.” Order, Dkt. No. 220. While Plaintiffs respectfully reserve their objection to the entirety of the latter exception, they submit this motion for the narrow purpose of seeking clarification (or, as necessary, modification) of the Court’s definition of “bona fide relationship” with respect to clients of organizations like Plaintiffs IRAP and HIAS.¹

The Court’s analysis in its October 17 opinion indicated that the exception for those lacking bona fide relationships tracks the Supreme Court’s partial stay of the earlier injunctions in this case. Order at 88 (citing *Trump v. Int’l Refugee Assistance Project*, 137 S. Ct. 2080, 2088 (2017)). The Court noted that the Supreme Court had stayed the Ninth Circuit’s determination that a refugee’s formal assurance of resettlement assistance from an organization in the United States was, itself, a bona fide relationship with a United States entity, such that the injunction prevented the application of Section 6’s ban to that refugee. *Id.* Relying on that decision, this Court stated that “clients of IRAP and HIAS, and those similarly situated, are not covered by the injunction absent a separate bona fide relationship as defined above.” *Id.*

Plaintiffs respectfully ask the Court to clarify that its reference to a “separate bona fide relationship as defined above” includes organization-client relationships that are not solely based

¹ This Court retains jurisdiction to resolve this motion notwithstanding the Government’s filing of a notice of appeal. *Dixon v. Edwards*, 290 F.3d 699, 709 & n.14 (4th Cir. 2002); *Lyle v. Griffith*, 240 F.3d 404, 407-08 & n.2 (4th Cir. 2001). Doing so will “aid[] in [the] appeal” by clarifying the scope of the dispute between the parties. *Id.*

on a refugee assurance and otherwise meet the standard set out by *IRAP*, 137 S. Ct. at 2088.² That is consistent with this Court’s reasoning and the Supreme Court’s ruling, which stayed the previous injunction only “with respect to refugees covered by a formal assurance,” *Trump v. Hawaii*, — S. Ct. —, 2017 WL 4014838 (Sept. 12, 2017). A formal assurance is a promise of resettlement assistance issued by a resettlement agency contracted with the government. *Hawaii v. Trump*, 871 F.3d 646, 659, 663 (9th Cir. 2017).

The Supreme Court’s September 12, 2017 order did not stay the previous injunction as to any *other* client relationships of HIAS, which is a resettlement agency but also provides other client services, Second Amended Complaint ¶ 20, 22 (describing provision of legal services), or *IRAP*, which is not a resettlement agency and therefore does not provide formal assurances. The issue raised by the government’s application and the question that had been decided by the Ninth Circuit was whether “refugees covered by formal assurances” categorically could claim a “bona fide relationship with an entity in the United States.” *State of Hawaii v. Trump*, 871 F.3d 646, 659 (9th Cir. 2017); *see id.* at 660-64 (detailing organizational injuries specific to the assurance context); *Applic. for Stay of Mandate, Trump v. Hawaii*, No. 16-1540, at 20 (S. Ct. *filed* Sept. 11, 2017) (addressing only “the refugee-assurance aspect of the modified injunction” with respect to entity relationships); *see also id.* at 2, 20-33 (same).

Other client relationships, like attorney-client relationships, were not addressed. As the Ninth Circuit noted in deciding the question of assurances, “[t]he district court did not grant relief with respect to foreign nationals in a *client relationship* with a legal services organization,” and the plaintiffs did not appeal that ruling. *Id.* at 653 n.4 (emphasis added). Indeed, the district court had explained that, for client relationships, “the nature of [the] representational services

² In the alternative, Plaintiffs ask that the Court modify this statement to make clear that the injunction only excludes refugees whose sole connection to an organization is an assurance.

varies significantly,” making it impossible to determine, as a categorical matter, whether client relationships satisfied the Supreme Court’s “bona fide relationship” standard. *State of Hawaii v. Trump*, — F. Supp. 3d —, 2017 WL 2989048, at *8 (D. Haw. July 13, 2017).

The government conceded before the District of Hawaii that some client relationships *would* satisfy the “bona fide relationship” standard. *See* Defs’ Opp. to Mot. to Enforce, Dkt. No. 338, *State of Hawaii v. Trump*, No. 17-cv-50, at 14-15 (D. Haw. *filed* July 11, 2017) (stating that client relationships “require[] a case-by-case analysis”); Defs’ Opp. to Mot. to Clarify, Dkt. No. 301, *State of Hawaii v. Trump*, No. 17-cv-50, at 20-21 (D. Haw. *filed* July 3, 2017) (same). Under the Supreme Court’s stay order, whether or not a given client has formed such a relationship therefore depends on whether the connection is “formal, documented, and formed in the ordinary course,” such that barring the client’s entry would harm the entity. *IRAP*, 137 S. Ct. at 2088. While some client relationships may not meet that standard—for instance, if they are formed solely to “secure [the client’s] entry” under the injunction, *id.*—many others will.

Plaintiffs therefore respectfully seek clarification that the Court’s preliminary injunction protects clients of organizations like IRAP and HIAS whose relationships to those entities meet the Supreme Court’s “bona fide relationship” standard. In the alternative, Plaintiffs request that the Court modify its Order to reflect that while an assurance alone does not bring a refugee within the protection of the injunction, there is no categorical rule barring protection for clients generally.

Dated: October 20, 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 (Bar No. 17550)
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 (Bar No. 27315)
Deborah A. Jeon (Bar No. 06905)
Sonia Kumar (Bar No. 07196)
Nicholas Taichi Steiner (Bar
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

Counsel for Plaintiffs

†Admitted *Pro Hac Vice*

CERTIFICATE OF SERVICE

I hereby certify that on October 20, 2017, I electronically filed this Motion for Plaintiffs with the Court Clerk using the ECF system, which will send notification to Defendants' registered counsel.

Dated: October 20, 2017

/s/ Omar Jadwat
Omar Jadwat