



March 9, 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 temporary restraining order and preliminary injunction of the revised Executive Order signed by President Trump on March 6, 2017 entitled "Protecting the Nation from Terrorist Entry into the United States" (hereinafter "March 6 Order"), which, once effective, will supplant the identically titled Executive Order 13,769, signed on January 27, 2017 (hereinafter "January 27 Order"). Plaintiffs will soon be filing an amended complaint pursuant to Federal Rule of Civil Procedure 15(a)(1) to add allegations regarding the revised executive order. At set forth below, Plaintiffs respectfully request that their motion for a temporary restraining order be considered prior to March 16, 2017, which is when the revised order, per its terms, goes into effect. *See* March 6 Order § 14; *see also id.* at 13 (revoking the January 27 Order as of the same day and time).

On February 10, 2017, Plaintiffs sought leave to file a motion for a preliminary injunction of the January 27 Order in its entirety. *See* Letter (doc. # 40). As Plaintiffs' counsel explained in the subsequent conference held on February 13, however, intervening events—in particular, the decision of the Ninth Circuit Court of appeals maintaining the preliminary injunction of certain sections of the January 27 Order, *see Washington v. Trump*, 847 F.3d 1151, 1157 (9th Cir. 2017), as well as the federal government's decision not to pursue immediate review thereof in the Supreme Court, and the possibility that the order would be revised in the near future—led Plaintiffs instead to seek a narrower preliminary injunction of § 5(d) of the January 27 Order, which cut the number of refugees who may be admitted this fiscal year. *See* Pls.' Mot. for Prelim. Inj. (doc. # 64); *see also* March 6 Order § 6(d) (identical provision to § 5(d) of the January 27 Order). At the same time, Plaintiffs filed a motion for expedited discovery on issues pertinent to the broader preliminary injunction they believed would be necessary when a revised executive order was issued. *See* Pls.' Mot. for Expedited Discovery (doc. # 63). Both motions remain pending, although not yet fully briefed.

Plaintiffs now seek leave to file a motion for a temporary restraining order and preliminary injunction of the March 6 Order in its entirety. The federal government has dismissed its appeal of the preliminary injunction entered in *Washington v. Trump*, and takes the position that injunction does not apply to any provision of the new order. See Defs.’ Notice of Filing of Exec. Order at 14, *Washington v. Trump*, No. 217cv141 (filed Mar. 6, 2017), ECF No. 108 (The “injunctive order does not limit the Government’s ability to immediately begin enforcing the New Executive Order.”). Plaintiffs disagree with that assertion, but because the Government has made clear that it “is preparing to enforce the provisions of this New Executive Order beginning on its effective date,” *id.* at 1, the Plaintiffs are at imminent risk of irreparable harm, and accordingly seek injunctive relief to prevent the March 6 Order from going into effect as scheduled on March 16 at 12:01 AM ET.¹

Plaintiffs are likely to succeed on their claim that the March 6 Order, like the January 27 Order, violates various constitutional and federal statutory provisions. In particular, there is voluminous and compelling evidence that the Executive Order was intended and designed to make it more difficult for Muslim immigrants to enter this country, and that the Order has that effect. The Executive Order thus violates two vital constitutional protections—the guarantee that the government shall make no law respecting an establishment of religion, and the guarantee of equal protection of the laws. See *Washington*, 847 F.3d at 1164 (noting “the serious nature of the allegations the States have raised with respect to their religious discrimination claims”); *Aziz v. Trump*, 2017 WL 580855 at *7-9 (E.D. Va. Feb. 13, 2017) (concluding that Virginia had established a likelihood of success on the merits of its Establishment Clause claim). The balance of hardships and the public interest also clearly favor granting a preliminary injunction.

In light of the foregoing, and taking into account the motions already pending, Plaintiffs respectfully propose the following schedule:

Friday, March 10:	Plaintiffs file their amended complaint and their motion for a temporary restraining order and preliminary injunction of the March 6 Order
Monday, March 13 at 5:00 PM ET:	Defendants file their response to Plaintiffs’ motion for a temporary restraining order and preliminary injunction of the March 6 Order Plaintiffs file reply memoranda on their motion for a

¹ Reports indicate that the *Washington* plaintiffs will today ask the District Court for the Western District of Washington to confirm that its existing injunction prevents Defendants from implementing the provisions of the March 6 Order (sections 2(c) and 6(a)) that correspond to provisions of the January 27 Order (sections 3(c) and 5(a)) that are currently enjoined. If that Court agrees, and the March 16 effective date is therefore suspended, Plaintiffs would not need their TRO request to be briefed and decided before March 16.

	preliminary injunction of the reduction in the refugee admissions, as well as their motion for expedited discovery
Tuesday, March 14 at 5:00 PM ET:	Plaintiffs file their reply memorandum on their motion for a temporary restraining order and preliminary injunction of the March 6 Order
Wednesday, March 15:	The parties will make themselves available for argument on all pending motions, as ordered by the Court, such that Plaintiffs' request for a temporary restraining order could be considered prior to the March 6 Order's effective date
Tuesday, March 28 at 9:30 AM ET:	The parties use the already-scheduled hearing for argument on Plaintiffs' request for a preliminary injunction, to include whether to convert any existing temporary restraining order into a preliminary injunction

Plaintiffs additionally note that, should the Court accept the schedule proposed above, and should their Motion for Expedited Discovery be granted, Plaintiffs would seek to supplement the record and briefing prior to the March 28 hearing in order to incorporate the information obtained through that discovery.

Plaintiffs' counsel has consulted with counsel for the Federal Government, who states that they do not believe that the New Executive Order presents any need for emergency litigation for the reasons explained in their Notice of Filing of Executive Order (ECF No. 79, at 14), and they respectfully request the opportunity to be heard on the absence of any such need at the telephonic Pre-Motion Conference, as contemplated by the Court's Case Management Order (ECF No. 4).

Respectfully submitted,

/s/ Nicholas Espiritu

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

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

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
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

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

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*