

DECLARATION OF
RENEE
FULLERTON

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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

STATE OF WASHINGTON and
STATE OF MINNESOTA,

Plaintiffs,

v.

DONALD TRUMP, in his official
capacity as President of the United
States; U.S. DEPARTMENT OF
HOMELAND SECURITY; JOHN F.
KELLY, in his official capacity as
Secretary of the Department of
Homeland Security; REX W.
TILLERSON, in his official capacity as
Acting Secretary of State; and the
UNITED STATES OF AMERICA,

Defendants.

NO. 2:17-CV-00141-JLR

DECLARATION OF
RENEE A. FULLERTON

Pursuant to 28 U.S.C. § 1746(2), I Renee A. Fullerton, hereby declare as follows:

1. I am the J-1 Visa Waiver Program Manager of the Office of Community Health Systems, Rural Health (OCHSRH) at the Washington State Department of Health (Department). I have a master’s degree in public health, and I work extensively with both rural and urban underserved communities in Washington State to reduce healthcare access disparities. I advise the Office of the Governor and Washington State Legislature on matters relating to the State’s healthcare workforce. I represent the Department on the State’s Health

1 Workforce Council, which brings together representatives from government, the educational
2 system, labor, healthcare employers and academia to address clinician shortages.

3 2. OCHSRH promotes access to quality health care for Washington and works to
4 ensure the availability of basic health care services, including primary care, dental and
5 behavioral health services, in all parts of Washington and for all residents of the State,
6 including those in rural areas and underserved urban communities.

7 3. OCHSRH functions as both the State Office of Rural Health and the State Primary
8 Care Office. All 50 states have a State Office of Rural Health. The purpose of these offices is to
9 help individual rural communities build and maintain health care delivery systems that are
10 adequate to care for rural populations. OCHSRH is a member of the National Organization of
11 State Offices of Rural Health (NOSORH), which was established in 1995 to assist State Offices of
12 Rural Health in their efforts to improve access to health care for America's 61 million rural
13 residents. NOSORH members routinely confer on issues as ensuring access to healthcare for rural
14 populations is a matter of nationwide interest.

15 4. All 50 states also have Primary Care Offices that are charged by the federal
16 government to improve access to primary health care for medically underserved areas and
17 populations. A large part of that work includes identifying barriers to healthcare access and
18 areas that have insufficient healthcare services. As part of my work through the Primary Care
19 Office, I routinely confer with my colleagues in other states regarding emergent issues that
20 impact the rural and urban underserved healthcare workforce.

21 5. Washington currently has many Health Professional Shortage Areas (HPSA). An
22 HPSA is an area in which, following criteria set forth in federal regulations, the Health Resources
23 and Services Administration (HRSA) within the U.S. Department of Health and Human Services
24 has identified shortages in the number of primary care, dental health, or mental health physicians
25 needed to treat patients. These shortages may be based on, among other things, geography (i.e., a
26 shortage of providers for the entire population within a defined geographic area) or by population

1 groups (i.e., a shortage of providers for a specific population with a defined geographic area, such
2 as low-income patients).

3 6. Washington currently has 59 primary care HPSAs, 35 mental health HPSAs,
4 and 33 dental HPSAs. In these areas, there are not enough health care professionals to meet the
5 needs of patients. Due to the large size of Washington's counties, many of our designations
6 cover substantial geographic areas, and in many situations, a county is triply designated as
7 having shortages in primary care, dental, and mental health clinicians. Attached as Exhibit A is
8 true and accurate copy of a map depicting population and geographic HPSAs in rural
9 Washington where there is a shortage of primary care physicians. Attached as Exhibit B is a
10 true and accurate copy of a map depicting income and geographic HPSAs in rural Washington
11 where there is a shortage of dentists. Attached as Exhibit C is a true and accurate copy of a
12 map depicting income and geographic HPSAs in rural Washington where there is a shortage of
13 psychiatrists.

14 7. In addition to the HPSAs described above, Washington has 28 federally
15 qualified health centers (FQHCs) with 267 service sites, each of which is designated as being a
16 HPSA. In 2015, Washington's FQHCs treated 971,099 patients, 59 percent of which were
17 Medicaid program beneficiaries and 18 percent of which were uninsured. In Western
18 Washington, these FQHCs are key access points for the underserved urban populations of
19 Seattle, Tacoma, and Everett. In Central Washington, the FQHCs are a main healthcare access
20 point for migrant and seasonal farmworkers who work in the State's large fruit, wine, and hops
21 industries and are some of the most vulnerable residents of the State.

22 8. According to the HRSA's website, there are 6,626 primary care HPSAs, 4,627
23 mental health HPSAs and 5,493 dental HPSAs in the United States.

24 9. Washington also has a number of medically underserved areas/populations.
25 These are areas in which HRSA has identified too few primary care providers, high infant
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1 mortality rates, high poverty, or high elderly populations. Washington currently has 37
2 medically underserved areas and 10 medically underserved populations.

3 10. According to the HRSA's website, there are 4,222 medically underserved
4 areas/populations in the United States.

5 11. Washington has undertaken a number of initiatives to recruit physicians to treat
6 the underserved populations and communities described above. For instance, OCHSRH offers
7 a direct recruitment program that actively matches interested healthcare professionals with
8 practice opportunities in rural and urban underserved communities. Washington has robust
9 state loan repayment programs to encourage a variety of highly needed healthcare clinician to
10 practice in these areas. The University of Washington's Schools of Medicine and Dentistry
11 offers special rural and urban underserved focused learning experiences to increase the number
12 of their graduates that choose to work in Washington's shortage areas. The College of
13 Osteopathic Medicine at Pacific Northwest University of Health Sciences graduated its first
14 class in 2012 and focuses on training future primary care physicians. They are located in
15 Yakima, Washington, which is a county with great health disparities. In the fall of 2017,
16 Washington State University will accept the first class into the newly established Elson S.
17 Floyd College of Medicine with a goal of training physicians for rural Washington.

18 12. Despite these initiatives, Washington continues to have shortages in the number
19 of physicians and dentists available to treat underserved populations and communities. As the
20 J-1 Visa Waiver Manager and workforce specialist, I participate in conferences and discussions
21 with my colleagues in other State Offices of Rural Health and Primary Care Office throughout
22 the nation. My colleagues and I have been discussing the difficulties in providing health care in
23 rural and underserved communities. The lack of physicians interested in rural practice is a
24 problem throughout the United States. For example, attached as Exhibit D is a true and
25 accurate copy of an article entitled "Trump's Travel Ban, Aimed at Terrorists, Has Blocked
26 Doctors" that appeared in the February 6, 2017, New York Times that discusses this problem.

1 13. There are a number of demographic trends that are expected to exacerbate the
2 shortage of physicians in Washington in the coming years, including a high number of
3 physician retirements, a low number of medical students choosing to specialize in primary care
4 or serve underserved regions and persons, the growing diversity of the population, and the
5 aging population. Based on the current HPSA designations, approximately 40 percent of
6 Washington's population already live in an area where there are not enough primary care
7 physicians to meet the communities' needs. Anticipated demographic changes could increase
8 the numbers of Washington residents that have challenges accessing healthcare services and
9 living in designated shortage areas.

10 14. The recruitment of foreign-born physicians to treat underserved rural
11 communities and other underserved populations has been one of the ways that OCHSRH and
12 its counterparts in other states have attempted to address the physician shortages described
13 above and increase the number of physicians available to treat these patients. This includes:
14 recruitment of medical residents to study in the United States with J-1 Visas, a visa category
15 for individuals approved to participate in work, and study-based visitor programs. The J-1 visa
16 program is a long-standing provision of federal immigration law. Trainees in a number of
17 fields enter the U.S. to pursue advanced studies through this program. Admission to U.S
18 medical residency programs is competitive. The highest performing graduates from foreign
19 schools do well in competition for placement in U.S. medical residency programs. Studies have
20 shown the quality of foreign-trained physicians is high. As provided by federal law, OCHSRH
21 recruits foreign-born doctors through its role in the Conrad 30 Program, also known as the J-1
22 Visa Waiver Program. Under this federal program, each state can recommend up to 30 foreign-
23 born doctors who have J-1 visas for waiver of the J-1 visa requirement that the doctor must
24 return to their home country for two years after he or she completes graduate medical
25 education. This requirement is waived through the Conrad 30 Program if an employer in the
26 state wishes to hire the doctor to serve a rural or underserved area in that state for three years

1 and the state agrees to sponsor the physician for the waiver. Under this program, rural areas
2 obtain world-class physicians for at least three years. Many of these physicians settle in rural
3 areas with their families and remain there for their entire careers. OCHSRH sponsors doctors
4 for this program in Washington and manages the application process. OCHSRH has filled all
5 30 slots for four of the last five years, and filled 22 slots in federal fiscal year 2012. Based on
6 current demand, the Department expects to again fill all 30 slots in federal fiscal year 2017.

7 15. Since the program's inception in the mid-1990s, Washington State has
8 sponsored 577 foreign-born physicians for J-1 visa waivers. These physicians have the added
9 benefit of adding racial and ethnic diversity to the healthcare workforce. Washington has
10 substantial Asian, Pacific Islander and Hispanic/Latino populations that are often better served
11 in their native languages. The foreign physicians bring highly needed language skills that
12 increase their ability to serve linguistically isolated Washington residents.

13 16. In addition to the J-1 Visa Waiver physicians sponsored by the Department,
14 many healthcare facilities in the state hire foreign physicians and other healthcare
15 professionals. One large healthcare system operating in western Washington with multiple
16 hospitals and dozens of clinics currently employs 67 foreign medical providers. Another large
17 healthcare system operating in eastern Washington estimated that the organization had
18 sponsored visas for approximately 25 percent of their physician workforce. Foreign physicians
19 and other healthcare workers constitute a key subset of the larger Washington healthcare
20 workforce.

21 17. The Presidential Executive Order dated January 27, 2017 (Presidential Order)
22 impacts the ability of medical personnel from the seven named countries to travel to the U. S.
23 or, if in the U. S., to return home for emergencies, funerals, and the like. It also impacts their
24 family members who may travel to the U.S. on J-2 visas or who may be in the U.S. on such
25 visas and need to return home. Foreign-born healthcare providers are worried about themselves
26 and their family members, and these concerns have dampened recruitment efforts to bring

1 more foreign-born doctors to the U.S. Washington State healthcare employers have lost highly
2 qualified and needed physician candidates due to the uncertainty created by the
3 Presidential Order. For example, an FQHC in western Washington was ready to sign a contract
4 with a family medicine physician from Libya. After the Presidential Order was announced, the
5 physician, on advice of his attorney, decided it was too risky to change employers and so a
6 clinic serving a highly needy population lost all the services that the physician could have
7 provided. Another large healthcare system in Washington with multiple hospitals and clinics
8 lost a physician candidate who decided that finding a position in Canada would be a better
9 option for him and his family given the uncertainty surrounding immigration created by the
10 Presidential Order. This same healthcare system has several physicians — who are in the
11 process to receive their permanent resident status — that are considering leaving the U.S. for
12 opportunities in Canada. Several of Washington's largest healthcare systems have expressed
13 concern about the chilling effect the Presidential Order will have on their physician recruitment
14 programs.

15 18. Recruitment is crucial for Washington's rural hospitals. When a position goes
16 unfilled for a long time then the facility must hire expensive temporary physicians to fill in the
17 gaps. In the case of a specialist, often the patients will have to wait months for appointments,
18 travel long distances to receive care or simply do without. Recruitment can take more than a
19 year. There are many steps in the process of matching a foreign-born physician with a
20 Washington healthcare employer and dealing with immigration issues, and it is expensive for
21 Washington hospitals to engage in the process. The interruption caused by the
22 Presidential Order causes an irreparable harm to rural and underserved urban Washington
23 hospitals, clinics, and the patients they serve.

24 19. Foreign-born physicians, including those who are in the United States on J-1
25 visas and H-1B visas, are an important asset in addressing the State's physician needs and
26 delivering health care to underserved populations. Given the shortages and trends identified

1 above, it is in the U.S.'s interest to recruit foreign-born doctors to train and practice in the U.S.
2 to meet the health care needs of individuals in rural and underserved areas. Without foreign-
3 born healthcare practitioners, there would be an immediate shortage of physicians in these
4 areas. Several major Washington healthcare employers have reported they employ significant
5 numbers of foreign physicians and other healthcare clinicians. Multiple organizations have
6 already lost physician candidates from the affected countries. These physicians elected to find
7 positions in Canada or remain in their current visa situation rather than risk being unsuccessful
8 in obtaining a new work visa. The inability to hire these physicians is actively reducing patient
9 access to healthcare in Washington.

10 20. OCHSRH is statutorily charged with recruiting and retaining healthcare
11 providers by statute and is responsible for maintaining healthcare facilities in rural areas. *See*,
12 e.g., Chapter 70.185 RCW. The Presidential Order directly affects OCHSRH's ability to meet
13 its statutory duties and ensure that Washington residents in rural and underserved areas receive
14 health care.

15 21. Studies show that access to primary care physicians improves outcomes for both
16 cost and quality. Patients who do not receive health care because there are not enough
17 providers to provide timely and appropriate treatment often find their medical or dental
18 situation worsens and becomes more expensive to treat and their health outcomes are worse.
19 The taxpayers of the State of Washington incur additional expenses when this occurs. The
20 State of Washington offers a number of healthcare programs, funded at taxpayer expense, to
21 provide coverage to low-income Washington residents.

22 22. Physicians are the central revenue generators for Washington hospitals and
23 clinics. The shortage of physicians noted above, which is further exacerbated by the
24 Presidential Order, reduces the revenues of these hospitals and clinics. Many rural Washington
25 hospitals are operating on slim margins. The gain or loss of a foreign-physician can mean the
26 difference between an operating profit or loss. Continual operating losses are not sustainable

1 for a rural community and can lead to hospital closures. As major employers in rural areas,
2 when a hospital closes, the economic base for the area is decimated. Additionally, the State
3 taxes hospital revenues, and as these revenues decrease, so do the taxes the State is able to
4 collect in order to provide essential services.

5 I declare under penalty of perjury that the foregoing is true and correct.

6 Executed on this 1 day of March 2017.

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9 RENE E A. FULLERTON

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