

DECLARATION OF TIM JOHNSON

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

STATE OF WASHINGTON and
STATE OF MINNESOTA,

Plaintiffs,

v.

CIVIL ACTION NO. 2:17-cv-00141-JLR

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.

Pursuant to 28 U.S.C. § 1746(2), I, Tim Johnson, hereby declare as follows.

1. I am a Senior Vice President and the Executive Director of the Center for GME Policy and Services with the Greater New York Hospital Association (GNYHA.) I help develop and oversee GNYHA’s policy development and advocacy work in the area of graduate medical education (GME) and health care workforce.

Background on GNYHA and the New York State Health Care Workforce

2. GNYHA is a trade association comprised of 160 hospital members, approximately 140 of which are located in New York State. Virtually every academic medical center and major teaching hospital in New York is a GNYHA member.
3. Our members are worldwide leaders in GME and medical research, in addition to providing patient care. Foreign nationals form a very important segment of our members’ workforce. The J-1 and H-1B visas are among the most common types of nonimmigrant visas held by international professionals employed by our membership.
4. A large number of these visa holders are physician trainees in residency and fellowship programs. Physician trainees’ primary goal is to learn to be independent, practicing physicians. They learn by taking care of patients under supervision, and as they progress through their training, they are given greater autonomy in caring for patients.

1 Physician trainees are an integral part of New York’s health care workforce, working in
2 hospital emergency rooms, inpatient units, and outpatient clinics. They provide
3 culturally competent care in a variety of settings and communities, caring for many
underserved New Yorkers of great need as part of their training.

- 4 5. Foreign nationals applying to physician training programs are subject to rigorous
5 screening. The Educational Commission for Foreign Medical Graduates (ECFMG)
6 sponsors foreign nationals in physician training programs on J-1 visas. It is my
7 understanding that all credentials are verified and the foreign nationals are screened in
8 partnership with the Specially Designated Nationals (SDN) list maintained by the
Office of Foreign Assets Control of the U.S. Department of Treasury. Only after
successful completion of this screening and passing certain examinations are the
candidates certified by ECFMG to apply for a residency position.
- 9 6. Certified candidates submit applications and supporting documentation, including
10 diplomas and licenses, through a centralized, electronic system, the Electronic
11 Residency Application Service, that is sponsored by the Association of American
12 Medical Colleges. Each year, hospitals with such programs and applicants for residency
13 positions participate in a process known as “the match,” which is conducted by the
14 National Resident Matching Program (NRMP). Selection of residents and fellows for
15 physician training programs is largely a centralized, controlled process with set
16 milestone dates during the year. The NRMP is the conduit for matching applicants to
17 residency and fellowship training programs that begin on July 1 each year. Each year in
18 February, residency program directors must submit a rank order list of candidates to the
19 NRMP. The residency program directors develop these rank order lists using objective
20 criteria based on qualifications and likelihood of success in meeting the demands of the
21 physician training programs. Candidates and programs are then “matched” by the end
22 of March. At that point, any applicant who has matched with a program and who is in
23 need of a visa must take steps to secure it prior to commencement of training on July 1.
- 24 7. Our members will sometimes hire physician trainees outside of the match as well, as
25 there may be a need to recruit independently in certain cases for a variety of reasons. In
26 addition to physician trainees, hospitals and their affiliated medical schools and
research institutes also employ and sponsor other foreign professionals, including
attending physicians, nurses, and scientific researchers. These organizations therefore
recruit and hire physician trainees and other health care professionals continuously
through each year.

24 GNYHA Member Survey

- 25 8. In the days following the issuance of President Trump’s original travel ban, Executive
26 Order 13769, on January 27, 2017, GNYHA immediately identified three broad

1 categories of individuals associated with our member hospitals who were being or
2 could be impacted by the Executive Order: current visa holders prohibited from
3 traveling or denied reentry to the U.S.; current visa holders whose renewals could be
4 denied during the ban; and applicants for residency positions who may not be able to
5 secure visas to commence their training. This last category was of particular importance
6 because of impending deadlines in the resident match process. GNYHA determined
7 that we should survey our membership to assess the potential impact of the Executive
8 Order in these areas.

9 9. On February 1, 2017, GNYHA surveyed its members on, among other things, the
10 number of visa holders in their workforce from the seven countries designated for the
11 ban in Executive Order 13769 and the types of positions and visas they hold. We also
12 asked whether any of our members had interviewed, or planned to interview, nationals
13 from any of the seven countries for residency positions during the current match
14 process. The survey closed on February 13.

15 10. Thirty-two New York State respondents from GNYHA's membership submitted data in
16 response to the survey. Because some of the respondents are hospital systems that
17 responded on behalf of multiple hospitals, the data represents submissions on behalf of
18 80 individual New York State hospitals.

19 11. Among these 80 hospitals, the survey found that there are 72 physician trainees from
20 the six countries now subject to the ban under President Trump's new Executive Order
21 13780, who are on nonimmigrant visas. According to the survey results, there are 38
22 other health care workers from the six countries who are on nonimmigrant visas.

23 12. Fourteen of the 32 respondents (representing as many as 56 individual hospitals)
24 responded that they had interviewed foreign nationals from the original seven countries
25 for residency or fellowship positions during the current match process. We did not ask
26 respondents to identify which countries the candidates were from or how many
candidates from each of the designated countries the respondents had interviewed or
planned to interview during the match.

Impact of Executive Order 13780

13. As the GNYHA survey results demonstrate, many of our member hospitals rely on
foreign nationals from the six countries designated for the ban under Executive Order
13780 to fill physician trainee and other staff positions. Moreover, they likely have
considered such nationals for physician trainee positions in the current match process.
This year's match results will be announced on March 17. There may well be foreign
nationals from the six countries who have successfully matched to our members'
training programs, and those individuals will not be allowed to begin training in New
York unless they fit into an exception or can get a waiver, in accordance with Executive

1 Order 13780. If they cannot identify a means to get a visa, the training programs will be
2 forced to seek out other, potentially less qualified, candidates from the applicants
3 remaining who have not been matched.

4 14. Executive Order 13780 may also affect our members if it results in a diminution or
5 delay in processing renewals of visas currently held by nationals from the six
6 designated countries. The implications for visa renewals are not entirely clear under the
7 new order or the Department of Homeland Security's related Q&A document, and this
8 uncertainty is deleterious to our members' ongoing need to conduct important research,
9 provide quality patient care, and have a robust staff in place to take care of their
10 communities.

11 15. Much will depend on how the authorities interpret and implement the new order and
12 how they exercise their discretion to grant waivers. We continue to be concerned about
13 the longer-term effects on our members' workforce, particularly if the ban is expanded
14 or extended as allowed by the terms of the new order. Executive Order 13780 addresses
15 some but not all of GNYHA's original concerns.

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

17 Executed on this 11th day of March, 2017

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