

# DECLARATION OF ERIC SCHERZER

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**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 Eric Scherzer, hereby declare as follows:

1. I am the Executive Director of the Committee of Interns and Residents/SEIU Healthcare (“CIR”), a national union representing interns, residents, and fellows in the medical field, which is headquartered in New York City.
2. I have personal knowledge of the statements set forth below. Personnel within CIR, including the legal department and research department, assisted in gathering information related to these statements.
3. CIR is the oldest and largest housestaff union in the country, representing more than 14,000 interns, residents, and fellows in the medical field in New York, New Jersey, New Mexico, Massachusetts, Florida, California and Washington, D.C. CIR members comprise approximately 13% of all United States resident physicians.

- 1 4. CIR has over 5,900 members in New York State and is the major union representing  
2 medical interns, residents, and fellows in the state. The majority of these CIR members  
3 (approximately 5,600) work in hospitals located in New York City. The remainder  
4 work in Westchester County.
- 5 5. A breakdown of CIR members in each of our New York State hospitals and clinics is  
6 attached as Exhibit A.  
7

8 **Harm to CIR Members**

- 9 6. The March 6, 2017 Executive Order, titled “Protecting the Nation from Foreign  
10 Terrorist Entry Into the United States” (“March 6<sup>th</sup> Executive Order”) will be  
11 particularly harmful to CIR members. Although we do not collect visa information, I  
12 have reason to believe that more than 500 CIR members are foreign nationals with  
13 temporary employment visas. Scores of resident physicians in New York City alone are  
14 from the countries listed in the Executive Order. Of these, a significant number are  
15 from Iran, one of the listed countries. Shortly after the January 27, 2017 Executive  
16 Order also titled “Protecting the Nation from Foreign Terrorist Entry Into the United  
17 States” (“January 27<sup>th</sup> Executive Order”) went into effect, CIR issued a notice advising  
18 all nationals of the affected counties not to travel outside of the United States. We also  
19 warned foreign nationals from other countries not listed in the January 27, 2017  
20 Executive Order to avoid international travel. We cautioned other members on visas to  
21 travel outside of the U.S. only after consideration of the possible risks associated with  
22 travel during this unpredictable time.  
23  
24  
25  
26

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

7. As a result of the January 27<sup>th</sup> Executive Order, a second-year Internal Medicine resident at Interfaith Medical Center in Brooklyn – one of New York's “safety-net hospitals” that treat some of New York's most vulnerable patients -- was denied entry back into the United States when he attempted to leave Sudan after a visit to his family. This doctor is a Sudanese citizen who has a valid H-1 B visa for foreign workers in specialty occupations. He was unable to return to his residency program until he was allowed to enter the United States on February 5, 2017, after a temporary restraining order was issued by the Western District of Washington at Seattle, halting implementation and enforcement of the Executive Order.

8. The March 6<sup>th</sup> Executive Order continues to harm CIR members and potential CIR members from the 6 listed countries. Although the March 6<sup>th</sup> Executive Order allows immigration-enforcement officials to issue waivers to permit admission of nationals of the 6 listed countries if there is proof that denying entry "would cause undue hardship, and that his or her entry would not pose a threat to national security and would be in the national interest," this is done on a case-by-case basis. Therefore, it is unclear how difficult it will be for CIR members or prospective members to obtain a waiver. Also, family members of CIR members from the 6 listed countries may be barred from obtaining a visa as a result of the March 6<sup>th</sup> Executive Order.

9. The March 6<sup>th</sup> Executive Order will also likely harm CIR members beyond those from the listed countries. Many CIR members who are foreign nationals from other countries expressed concern that the January 27<sup>th</sup> and March 6<sup>th</sup> Executive Orders will be expanded to include their countries of origin. This is particularly the case for CIR

1 members from countries with a large Muslim population. Since the January 27, 2017  
2 Executive Order went into effect, CIR's counsel has been inundated with panicked calls  
3 from foreign- national residents seeking advice about how the Executive Orders could  
4 affect them.

5  
6  
7 **Impact on Safety-Net Hospitals**

8 10. I expect that the March 6th Executive Order and other policies promulgated by  
9 Department of Homeland Security will result in medical students deciding not to pursue  
10 their medical training in the U.S. Because of the remaining uncertainties engendered  
11 by this March 6th Executive Order, many medical students may elect to do their  
12 residency in Britain or Canada thus depriving U.S. hospitals from the best and brightest  
13 foreign trained medical students.

14  
15 11. CIR members primarily work in safety-net hospitals, which include all of New York  
16 City Health and Hospitals, public acute care hospitals, as well as most hospitals in  
17 Brooklyn, Queens and the Bronx. Upon completing their residencies these members  
18 often go on to work within the primary care units throughout New York State, where  
19 there is a particularly underserved population and a great need for health care  
20 professionals.

21  
22 12. New York's safety-net hospitals rely heavily on foreign national resident physicians.  
23 For example, in the Department of Internal Medicine at Interfaith Medical Center, a  
24 safety-net hospital in Brooklyn, there are 91 resident physicians. Of the 91, 43 are on  
25 H-1 B visas, 12 are on J-1s, 20 are green card holders and 16 are U.S. citizens. There  
26

1 are, for example, four Sudanese resident physicians in this Department at Interfaith, one  
2 of whom was discussed above. The Sudanese doctors cannot have family members visit  
3 them because of the Executive Order. These Sudanese residents are still concerned  
4 about overseas travel, as the Executive Orders could change to include visa holders.  
5 Many of their foreign national colleagues are similarly worried about exiting the U.S.  
6 in case the Executive Order is expanded to encompass citizens of their home countries  
7 as well.  
8

9 13. Resident physicians in the U.S. on a J-1 visa, which affords foreign nationals cultural  
10 and educational exchange opportunities in the United States, need a waiver to stay in  
11 the U.S. after their residency program is complete. A J-1 Visa Waiver allows a  
12 physician to stay in the country to practice in a federally designated Health Professional  
13 Shortage Area or Medically Underserved Area. As a result of the March 6<sup>th</sup> Executive  
14 Order, physicians from the affected countries may not pursue entry to the U.S. in J-1  
15 status and will thereby deprive underserved rural communities of the benefit of their  
16 service under a J-1 waiver after their training.  
17

18 14. The Executive Order has significant public health implications. Even the shortage of  
19 one physician can have a significant impact on a safety-net hospital and the patients  
20 they treat. Further, CIR learned about foreign-national patients who are confused by the  
21 Executive Order and are afraid to get treated in some of these safety-net hospitals out of  
22 concern that they would be deported. If this concern continues, it would have wide  
23 public health impacts.  
24  
25  
26

1 **Harm to New York Hospitals' Residency Programs**

2 15. There has been a profound chilling effect on international medical students applying to  
3 New York hospitals' residency programs and a major disincentive for hospitals to select  
4 foreign nationals for their residency programs due to the January 27<sup>th</sup> and March 6<sup>th</sup>  
5 Executive Orders and the uncertainty about whether they will be expanded to include  
6 other nations. CIR is concerned that some of the best and brightest international  
7 medical students, who have options to participate in residency programs in the United  
8 Kingdom and Canada, for example, will decide not to participate in a U.S. residency  
9 program. Many of these international medical students will not want to invest the time,  
10 energy and resources into applying for U.S. residency programs as they are concerned  
11 that they may not be able to enter the country.  
12

13 16. I expect that there will be a significant negative impact on the National Residency  
14 Matching Program (“the Match”) which will result in lower ranked medical students  
15 working in New York hospitals. During the Match, domestic and international medical  
16 school students are matched with residency programs at teaching hospitals throughout  
17 the United States. Medical students apply to residency programs and rank their  
18 hospitals by preference while teaching hospitals interview and evaluate residency  
19 program applicants and also rank them by preference. The result of the Match is that  
20 most of these applicants are placed with their most preferred program and, similarly,  
21 each program is matched with the most preferred applicants on its list.  
22

23 17. The March 6<sup>th</sup> Executive Order places teaching hospitals and residents in an untenable  
24 position as they will be uncertain about which medical students will be allowed to enter  
25  
26

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

the country to fill their residency positions in July. We will not know for sure what the effects of this uncertainty has been on the selection process until the results are announced on March 17 (“Match Day”), but I suspect that hospitals will be reluctant to rank some of the best and most qualified candidates if they are from the 6 affected countries, or even if they are foreign nationals from other countries, as they may not be able to participate in the program due to the March 6<sup>th</sup> Executive Order. As it is very difficult to fill a vacant residency position after the Match, programs may determine that it would be too much of a risk for them to rank foreign nationals who might not be able to enter the country, especially those from the affected countries.

18. The March 6th Executive Order will likely continue to cause great injury to CIR members, the hospitals where they train and the communities that they serve.

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

Executed on this 10<sup>th</sup> day of March, 2017



---

Eric Scherzer  
Executive Director  
Committee of Interns and Residents/SEIU  
Healthcare

## Breakdown of CIR Residents in New York State

CIR RESIDENTS IN NEW YORK STATE

