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THE HONORABLE JAMES L. ROBART

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

STATE OF WASHINGTON,	
	Plaintiff,
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; TOM SHANNON, in his official capacity as Acting Secretary of State; and the UNITED STATES OF AMERICA,	
	Defendants.

NO. 2:17-cv-00141-JLR

PLAINTIFF STATE OF
WASHINGTON'S
SUPPLEMENTAL BRIEF
REGARDING STANDING

SUPPLEMENTAL BRIEF REGARDING
STANDING

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1 **I. INTRODUCTION**

2 The State of Washington has standing to challenge the Executive Order on at least two
3 independent grounds. First, the State has standing to sue to redress injuries to its proprietary
4 interests. The Order will reduce state tax revenue, harm the educational mission of state
5 universities, make it impossible for state employees and students to travel, and impose
6 significant costs on state agencies. The State also has standing to sue to protect the well-being
7 of its residents. Washington has a profound interest in protecting its residents from the harms
8 caused by the irrational discrimination embodied in the Order. The Order is causing these
9 harms, and invalidating the portions challenged here will redress them. The State has standing.

10 **II. ARGUMENT**

11 To have standing, a plaintiff must generally show (1) an “injury in fact” that is concrete
12 and particularized and actual or imminent; (2) that the injury is fairly traceable to the
13 challenged action; and (3) that the injury will likely be redressed by a favorable decision. *Lujan*
14 *v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). The State can show all three.¹

15 **A. Washington Is Suffering Injuries From the Order**

16 In proving injury, states “are not normal litigants.” *Massachusetts v. EPA*, 549 U.S.
17 497, 518 (2007). Like any party, states can invoke federal jurisdiction to protect proprietary
18 interests. *Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 601-02
19 (1982) (explaining proprietary interests); *Davis v. EPA*, 348 F.3d 772, 778 (9th Cir. 2003). But
20 States also have broad authority to sue as *parens patriae* to protect “quasi-sovereign” interests,
21 including interests in the well-being of residents. *Snapp*, 458 U.S. at 602-04. Washington has
22 standing here on both independent grounds.

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¹ To the extent the Court addresses Washington’s standing as a jurisdictional issue, at this early stage in the proceedings all plausible allegations in the complaint must be taken as true and all reasonable inferences drawn in the State’s favor. *Food & Water Watch, Inc. v. Vilsack*, 808 F.3d 905, 913 (D.C. Cir. 2015). For purposes of its underlying TRO motion, Washington must show a “substantial likelihood” of standing. *Id.* As set out herein, Washington amply demonstrates a substantial likelihood of establishing standing.

1 **1. Washington is Suffering Injuries to its Proprietary Interests**

2 Washington is currently suffering concrete, adverse impacts to its proprietary interests
3 from the Order that will continue in the absence of the requested relief.

4 As an initial matter, the level of economic injury necessary to establish a State’s
5 proprietary standing is low. Courts have repeatedly found that any non-trivial economic
6 impacts constitute a concrete, particularized injury sufficient to show standing. For example, in
7 *Texas v. United States*, 787 F.3d 733 (5th Cir. 2015), the Fifth Circuit held that Texas could
8 challenge a federal immigration directive based solely on the cost of issuing driver’s licenses to
9 the beneficiaries (approximately \$130 per license).² *Id.* at 748. The Ninth Circuit found a
10 sufficient economic interest for proprietary standing in lost tourist revenues caused by
11 “aesthetic damage” from increased traffic. *City of Sausalito v. O’Neill*, 386 F.3d 1186, 1199
12 (9th Cir. 2004).

13 Here, the harms to Washington’s proprietary interests are significant and wide-ranging.

14 First, Washington will lose significant tax revenue because of the Order. Washington
15 receives substantial sales tax revenue every year from travelers from the countries impacted by
16 the Order’s travel ban. Ex. A, ¶¶ 3-8 (Decl. of Oline). Washington also stands to lose tax
17 revenue from Washington businesses harmed by the Order, *id.* ¶ 6; ECF No. 7, ¶¶ 9, 11-12
18 (Decl. of Dzielak), as well as revenue from legal, non-citizen residents who are being
19 prevented from returning to their homes and jobs, *see* ECF No. 8, ¶¶ 6-14 (Decl. of Chiang).
20 Losing these tax revenues is a real, tangible, and immediate harm, even putting aside the
21 Order’s longer-term consequences for Washington’s economy. Amended Comp. ¶¶ 12-17, 24-
22 25.

23 Washington also operates several world-class public universities that are suffering
24 adverse impacts from the Order. Several hundred faculty, staff, and students at state higher
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26 ² For purposes of the standing inquiry, the Court also flatly declined to weigh any “countervailing economic benefits” created by the challenged program that might offset injury. *Texas*, 787 F.3d at 750.

1 education institutions are here on visas from the listed countries, while others are long-term
2 permanent residents from the affected countries. *See* ECF No. 9, ¶¶ 5, 7-8 (Decl. of Riedinger);
3 ECF No. 5, ¶ 5 (Decl. of Chaudhry); Ex. B, ¶¶ 4-10 (Second Decl. of Riedinger); Ex. C, ¶¶ 4, 6
4 (Decl. of Boesenberg). The order has stranded a member of the WSU faculty overseas, Ex. D,
5 ¶ 6 (Second Decl. of Chaudhry), and will prevent a member of the UW faculty from serving as
6 the keynote speaker at a conference overseas. Ex. B, ¶ 5. Both universities have expended
7 significant resources to sponsor scholars from the affected countries to perform research and
8 teaching, and the Order will prevent several of those individuals from coming to the
9 universities or staying there. Ex. B, ¶¶ 9-10; Ex. D, ¶ 7. Students and faculty from the listed
10 countries will be prevented from participating in planned travel outside the country to conduct
11 research and attend conferences. ECF No. ¶ 7; Ex. D, ¶¶ 3-4; Ex. B, ¶¶ 6, 8. These harms to
12 faculty, staff, and students damage the universities' missions and reduce their attractiveness to
13 international students. ECF No. 5, ¶¶ 2, 9-10.³

14 In sum, these (and other⁴) direct impacts cement the injury-in-fact required for
15 proprietary standing. Far from being speculative, these impacts are occurring *now*. Indeed, the
16 impacts shown here likely understate the State's proprietary harm, as they reflect only what the
17 State has been able to document in the three business days since the Order was issued. *See*,
18 *e.g.*, Ex. B, ¶ 7.

19 2. Washington Is Suffering Injury As *Parens Patriae*

20 Washington's interests go beyond the proprietary. Under the doctrine of *parens patriae*,
21 States have standing to protect "quasi-sovereign" interests, including "the health and well-

22 ³ *See also, e.g., Parks Sch. of Bus., Inc. v. Symington*, 51 F.3d 1480, 1487 (9th Cir.1995) (holding that
23 school had standing to challenge harm to students that impacted school); *Ohio Ass'n of Indep. Schs. v. Goff*, 92
24 F.3d 419, 422 (6th Cir. 1996) (same). It is irrelevant that the suit might also benefit some other than Washington
and its residents. *See, e.g., Sprint Commc'ns Co. v. APCC Servs., Inc.*, 554 U.S. 269, 287 (2008) ("[F]ederal courts
routinely entertain suits which will result in relief for parties that are not themselves directly bringing suit.").

25 ⁴ For example, the State expects the Order to reduce its ability to recruit employees for key positions in
26 the State workforce. Ex. E, ¶¶ 7-8 (Decl. of Schumacher). The State also expects the Order to increase costs in its
child welfare system by needlessly separating children from their parents and making it more difficult for the
State to reunify families. Ex. F, ¶¶ 6-19 (Decl. of Strus).

1 being” of their residents, whether “physical [or] economic.” *Snapp*, 458 U.S. at 607. To invoke
2 *parens* jurisdiction, a state must articulate a “quasi-sovereign” interest, identify an interest
3 apart from those of particular private parties, and allege injury to a “sufficiently substantial”
4 segment of its population. *Snapp*, 485 U.S. at 593. That standard is met here.⁵

5 First, the health and well-being of residents is a quasi-sovereign interest. *Snapp*, 458
6 U.S. at 607. There can be no question that many state residents are suffering grievous harms to
7 their well-being, including those originally from the listed countries who: were temporarily
8 overseas at the time of the ban and are being prevented from returning to their homes, jobs, and
9 families in Washington; live here and wish to travel overseas for work or to visit family; or live
10 here and are unable to receive visits from their friends and family. ECF No. 8, ¶¶ 6-14;
11 Amended Complaint ¶¶ 18-23, 31-36. The ban is also affecting those who live here as refugees
12 and whose family members are now being barred from joining them, as well as religious
13 nonprofits here that serve refugees as part of their religious mission and are being denied that
14 ability. *Id.* ¶¶ 11, 18, 21, 23, 31, 33, 36.

15 Washington’s goal in ending these harms extends well beyond those of a “nominal”
16 party. Washington has a *profound* interest in preventing the very real harms—both physical
17 and economic—caused by discriminatory treatment. This interest is uniquely represented by
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19 ⁵ Washington anticipates that the United States may assert that *Massachusetts v. Mellon*, 262 U.S. 447
20 (1923), bars *parens patriae* actions against the federal government. This argument fails for two reasons. First,
21 *Mellon*’s supposed bar on *parens* actions was all but eradicated by the Supreme Court’s *Massachusetts v. EPA*
22 decision. There, the Court affirmed States’ “special solicitude” in matters of standing and rebuffed the dissent’s
23 *Mellon* arguments by pointing out “the long development of cases permitting States ‘to litigate as *parens patriae*
24 to protect quasi sovereign interests’” *Massachusetts v. EPA*, 549 U.S. at 520 & n.17. The Court also stated
25 that “*Mellon* itself disavowed any such broad reading,” because it expressly noted it had not been called upon to
26 determine whether claims involving quasi-sovereign interests were barred. *Id.*, 549 U.S. at 520 n.17. In rejecting
the federal government’s argument based on *Mellon* just months ago, the Eastern District of Washington held that
it “cannot ignore” *Massachusetts v. EPA*’s rebuff of *Mellon*. See *Hanford Challenge v. Moniz*, ___ F.Supp.3d ___,
2016 WL 6902416, at *3 (E.D. Wash. Nov. 3, 2016). Second, even if *Mellon* would otherwise apply, its
limitations on standing are prudential only and can be overridden by Congress. *Maryland People’s Counsel v.*
F.E.R.C., 760 F.2d 318, 322 (D.C. Cir. 1985). Here, Washington’s claims include two statutory causes of action
expressly allowing States to sue the federal government. See Amended Comp. ¶¶ 91-105; 5 U.S.C. § 702
(granting the right to sue the United States based on adverse agency actions); 42 U.S.C. § 2000bb-1(a) (granting
the right to sue the United States based upon alleged burdens on the exercise of religion).

1 the State, which has a strong “state interest in securing residents from the harmful effects of
2 discrimination.” *Snapp*, 458 U.S. at 609; *see also* Wash. Rev. Code 49.60.010 (“The legislature
3 hereby finds and declares that practices of discrimination against any of its inhabitants because
4 of race, creed, color, [or] national origin . . . are a matter of state concern, that such
5 discrimination threatens not only the rights and proper privileges of its inhabitants but menaces
6 the institutions and foundation of a free democratic state.”); *People v. Peter & John’s Pump
7 House, Inc.*, 914 F. Supp. 809, 813 (N.D.N.Y. 1996).

8 Finally, the impacts here are sufficiently broad to support *parens* standing. There are no
9 “definitive limits on the proportion of the population” that a state must allege to be adversely
10 affected. *Snapp*, 458 U.S. at 607. And states can establish sufficient impacts by reference to the
11 “indirect effects of the injury” implicating a group broader than just those residents directly
12 involved.⁶ *See id.* Here, the Order’s impacts are extremely broad. Washington is home to
13 thousands of immigrants from the affected countries and refugees. Amended Comp. ¶¶ 11, 31.
14 The Order affects not just those individuals, but also their friends, families, neighbors, and
15 employers. *Id.* ¶¶ 15-17, 21-23, 31-36. It also affects all Washingtonians, who have
16 emphatically rejected the discrimination embodied in the Order. *See, e.g.*, Wash. Rev. Code
17 49.60.010.

18 **B. Causation and Redressability Are Clear**

19 There can be no meaningful dispute that the harms described above are being caused by
20 the Executive Order. It is because of the violations of the equal protection, due process, and
21 establishment clauses, as well as the statutory violations, embodied in that Order that
22 Washington is suffering these harms. The harms cannot be traced to any other source.

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25 ⁶ This is especially true in cases of discrimination. *See, e.g., Commonwealth of Mass. v. Bull HN Info.*
26 *Sys., Inc.*, 16 F. Supp. 2d 90, 98 (D. Mass. 1998) (“Discrimination of any kind . . . corrodes the social fabric and
fosters intolerance and inequality.”); *Peter & John’s Pump House*, 914 F. Supp. at 813 (finding jurisdiction where
“[t]he State alleges discrimination that has a destructive societal effect”).

