

The Honorable James L. Robart

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

9 STATE OF WASHINGTON, et al.,

10 Plaintiffs,

11 v.

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

18 Defendants.

No. 2:17-cv-00141 (JLR)

**DECLARATION OF
MICHELLE R. BENNETT**

Noted For Consideration:
April 14, 2017

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20 I, Michelle R. Bennett, declare as follows:

21 1. I am a Trial Attorney in the Federal Programs Branch, Civil Division, United
22 States Department of Justice, and have held this position since October 2008. I represent
23 Defendants in the above-captioned case, in which Plaintiffs challenge Executive Order No.
24 13,780 (“New Order”) and now-revoked Executive Order No. 13,769 (“Revoked Order”). I
25 submit this declaration in support of Defendants’ Motion to Stay District Court Proceedings
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1 Pending Resolution of Appeal in *Hawaii v. Trump*. This declaration is based upon my personal
2 knowledge and information acquired by me in the course of my official duties.

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4 2. The parties held an initial conference under Federal Rule of Civil Procedure 26(f)
5 on March 15, 2017. Because the Court had not yet ruled on Plaintiffs' motion for leave to file a
6 second amended complaint, the parties agreed to postpone their substantive Rule 26(f)
7 discussions until March 22, 2017, when all plaintiffs named in the proposed second amended
8 complaint could participate.

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10 3. On March 21, 2017, in advance of the parties' next Rule 26(f) conference, counsel
11 for Plaintiff State of Washington circulated to the parties a draft joint status report and discovery
12 plan. The draft joint status report and discovery plan set forth Plaintiffs' positions on the Rule
13 26(f) topics and was intended to guide the parties' forthcoming discussions.

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15 4. On March 22, 2017, all parties participated in a telephonic Rule 26(f) conference
16 during which the parties discussed their positions with respect to each of the Rule 26(f) topics.

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18 5. During the parties' Rule 26(f) consultations, Plaintiffs indicated that they may
19 seek discovery regarding the underlying factual basis, intent, design, issuance, and effects of the
20 New Order and the Revoked Order. Plaintiffs stated that their intended discovery may include,
21 but is not limited to, probing the motivations for issuing the executive orders; the factual basis
22 for issuing the executive orders; their design; the steps and process leading to their issuance; the
23 persons, agencies, and/or departments involved and/or consulted prior to their issuance; their
24 implementation; communications to air, land, and sea ports of entry into the United States, U.S.
25 Customs and Border Protection agents and other component sub-agencies of the U.S. Department
26 of Homeland Security, United States consular offices abroad, and others concerning the
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1 implementation of the executive orders; and the immigrants, nonimmigrants, and visas affected
2 by the executive orders, including by visa revocation, detention, and/or removal or deportation.

3 6. Plaintiffs further indicated that they anticipate seeking electronically stored
4 information, including email communications among Defendants and third parties; drafts of, and
5 other documents related to, the executive orders; and databases or other electronic records
6 regarding the effects of the executive orders on immigrants, nonimmigrants, and visas.
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8 7. Plaintiffs expressed a desire to serve written discovery and document requests on,
9 and take depositions of, various federal agencies and officials, including White House Staff and
10 cabinet-level officers. As to depositions, Plaintiffs informed Defendants that they want to take
11 up to 30 depositions, with each one lasting up to 8 hours.
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13 8. Plaintiffs stated that they believe the relevant time period for discoverable
14 information is June 16, 2015—the date Donald Trump declared his presidential candidacy—to
15 the present.
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17 9. Plaintiffs also indicated during the parties' Rule 26(f) consultations that they may
18 retain experts to opine on, among other things, national security issues and prior presidents' use
19 of authority under 8 U.S.C. § 1182(f).
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21 10. Plaintiffs stated that they anticipate discovery will not be completed until March
22 16, 2018, in part because of the many discovery disputes that are likely to arise. Among other
23 disputes, Plaintiffs recognized that Defendants are likely to assert various privileges over many
24 records. Plaintiffs indicated that they believe they will be able to make a sufficient showing of
25 need to overcome any qualified privilege asserted.
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27 11. The parties continue to work together to complete their combined joint status
28 report and discovery plan, which is due on April 5, 2017.

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

2 Dated this 30th day of March, 2017.

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5 MICHELLE R. BENNETT

6 Trial Attorney

7 U.S. Department of Justice

8 Civil Division, Federal Programs Branch

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