

THE HONORABLE JAMES L. ROBERT

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

STATE OF WASHINGTON; STATE  
OF CALIFORNIA; STATE OF  
MARYLAND; COMMONWEALTH  
OF MASSACHUSETTS; STATE OF  
NEW YORK; and STATE OF  
OREGON,

Plaintiffs,

v.

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

Defendants.

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

[PROPOSED] ORDER GRANTING  
MOTION FOR TEMPORARY  
RESTRAINING ORDER

1 **INTRODUCTION**

2 This matter comes before the Court on the emergency motion for a Temporary  
3 Restraining Order filed by the States of Washington, California, Maryland, and Oregon and the  
4 Commonwealth of Massachusetts (“States”). Having considered the motion, the evidence cited  
5 therein, Defendants’ response, and the argument of the parties, if any, the Court GRANTS the  
6 States’ emergency motion for a 14-day Temporary Restraining Order effective at 12:01am on  
7 October 18, 2017. The Court enters the following findings of fact and conclusions of law.

8 **FACTUAL AND PROCEDURAL HISTORY**

9 The State of Washington first filed this lawsuit challenging President Trump’s issuance  
10 of Executive Order No. 13769 (“EO1”) on January 30, 2017. ECF 1. On February 3, 2017, this  
11 Court granted the State’s motion for a temporary restraining order (“TRO”) and enjoined  
12 enforcement of several provisions of EO1. ECF 52. The Ninth Circuit denied Defendants’  
13 emergency motion for a stay of the injunction. *Washington v. Trump*, 847 F.3d 1151 (9th Cir.  
14 2017). Defendants chose not to seek review by the Supreme Court.

15 On March 6, 2017, President Trump issued Executive Order No. 13780 (“EO2”), which  
16 revoked EO1. Two days later, Defendants withdrew their Ninth Circuit appeal in this case.  
17 ECF 111. Following the issuance of EO2, Washington, California, Maryland, Massachusetts,  
18 New York, and Oregon (“States”)<sup>1</sup> filed an amended complaint challenging EO2. ECF 152.  
19 The States moved for a TRO to enjoin sections 2(c) and 6(a) of EO2. ECF 148.

20 On March 15, 2017, in a separate suit against EO2, the district court in Hawai’i  
21 enjoined Sections 2 and 6 nationwide. *Hawai’i v. Trump*, 241 F. Supp. 3d 1119, 1140 (D. Haw.  
22 2017). The next day, in a third lawsuit, the district court in Maryland issued a nationwide  
23 injunction against Section 2(c). *Int’l Refugee Assistance Project (“IRAP”) v. Trump*, 241 F.  
24 Supp. 3d 539, 566 (D. Md. 2017). In light of the *Hawai’i* ruling, this Court stayed

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26 <sup>1</sup> The Court had previously granted Oregon’s motion to intervene on March 9, 2017.  
ECF 112.

1 consideration of the States’ motion for a TRO. ECF 164. The Court then granted Defendants’  
2 request for a stay of this case pending the Ninth Circuit’s resolution of the *Hawai‘i* appeal.  
3 ECF 175, 189.

4 The Ninth Circuit issued its opinion in *Hawai‘i* on June 12, 2017, largely affirming the  
5 injunction. *Hawai‘i v. Trump*, 859 F.3d 741 (9th Cir. 2017) (per curiam). Defendants  
6 petitioned the Supreme Court for a writ of certiorari, applied for a stay pending appeal, and  
7 requested that the *Hawai‘i* case be consolidated with *IRAP*, where the Fourth Circuit had  
8 largely affirmed the injunction entered by the district court. 857 F.3d 554 (4th Cir. 2017) (en  
9 banc). The Supreme Court granted certiorari, granted the stay application “to the extent the  
10 injunctions prevent enforcement of § 2(c) with respect to foreign nationals who lack any bona  
11 fide relationship with a person or entity in the United States,” consolidated the two cases, and  
12 set the case for argument. *Trump v. IRAP*, 137 S. Ct. at 2087 (2017). The parties in this case  
13 agreed that the stay should remain in place pending the outcome of the Supreme Court  
14 proceedings, but that any party could move to lift the stay if circumstances changed. ECF 192.

15 On June 28, 2017, Defendants began to enforce the non-enjoined parts of EO2 and  
16 published guidance interpreting the Supreme Court’s definition of “bona fide relationship” to  
17 exclude many family members and most refugees. *See Hawai‘i v. Trump*, --- F. Supp. 3d ---,  
18 No. CV 17-00050 DKW-KSC, 2017 WL 2989048, at \*5-6 (D. Haw. July 13, 2017)  
19 (summarizing guidance). Plaintiffs in the *Hawai‘i* litigation successfully challenged  
20 Defendants’ interpretation of “bona fide relationship,” and the Ninth Circuit upheld the lower  
21 court’s injunction preventing Defendants from enforcing EO2 against grandparents and other  
22 family members or refugees who have formal assurances from resettlement agencies or are in  
23 the U.S. Refugee Admissions Program. *Hawai‘i v. Trump*, --- F.3d ---, No. 17-16426, 2017  
24 WL 3911055, at \*14 (9th Cir. Sep. 7, 2017). The Supreme Court stayed the Ninth Circuit  
25 mandate with respect to refugees covered by a formal assurance. *Trump v. Hawai‘i*, --- S. Ct.  
26 ---, Nos. 17A275, 16-1540, 2017 WL 4014838, at \*1 (U.S. Sept. 12, 2017).

1 On September 24, EO2 expired, and President Trump issued EO3, a Presidential  
2 Proclamation titled, “Enhancing Vetting Capabilities and Processes for Detecting Attempted  
3 Entry into the United States by Terrorists or Other Public-Safety Threats,” 82 Fed. Reg. 45,161  
4 (Sept. 27, 2017). EO3 again suspends immigration by hundreds of millions of people from six  
5 Muslim-majority countries, and applies “additional scrutiny” to immigrants from Iraq, another  
6 Muslim-majority country. EO3 §§ 1(g), 2(a)–(c), (e), (g)-(h).<sup>2</sup> The order also suspends large  
7 classes of non-immigrants like students, businesspeople, and tourists. EO3 §§ 2(a)-(h). The  
8 non-immigrant restrictions vary by country and by type of visa. The new entry restrictions and  
9 limitations go into effect at 12:01 a.m. EST on October 18, 2017. EO3 § 7(b).

10 Following the issuance of EO3, the Supreme Court removed the *Hawai‘i* and *IRAP*  
11 cases from the oral argument calendar and directed the parties to file letter briefs addressing  
12 whether, or to what extent, EO3 rendered the cases moot. *Trump v. Hawai‘i*, --- S. Ct. ----, No.  
13 16-1540, 2017 WL 2734554, at \*1 (U.S. Sept. 25, 2017). On October 10, the Supreme Court  
14 dismissed *IRAP* as moot and directed the Fourth Circuit to vacate its opinion, finding that there  
15 was no longer a live controversy because the only section of EO2 enjoined in *IRAP* had  
16 “expired by its own terms on September 24, 2017.” *Trump v. IRAP*, --- S. Ct. ----, No. 16-1436,  
17 2017 WL 4518553 (U.S. Oct. 10, 2017). The Court “express[ed] no view on the merits.” *Id.*

## 18 FINDINGS OF FACT & CONCLUSIONS OF LAW

19 The Court finds it has jurisdiction over Defendants and the subject matter of this  
20 lawsuit. The States notified Defendants and substantially complied with the requirements of  
21 Federal Rule of Civil Procedure 65(b). The Court deems no security bond is required under  
22 Federal Rule of Civil Procedure 65(c).

23 To obtain a temporary restraining order, the States must establish standing, as well as 1)  
24 a likelihood of success on the merits; 2) that irreparable harm is likely in the absence of

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26 <sup>2</sup> The order also suspends immigration from North Korea, EO3 § 2(d)(ii), and certain  
Venezuelan non-immigrants connected with specific government officials, *id.* § 2(f)(ii).

1 preliminary relief; 3) that the balance of equities tips in the States' favor; and 4) that an  
2 injunction is in the public interest. *Winter v. Nat'l Res. Def. Council, Inc.*, 555 U.S. 7, 20  
3 (2008).

4 The Court finds that the States have satisfied these standards and that the Court should  
5 issue a Temporary Restraining Order.

6 The States have also shown that they are likely to succeed on the merits of the claims  
7 that would entitle them to relief. Specifically, the States have shown it likely that Sections 1(g)  
8 and 2 of EO3 violates the Immigration and Nationality Act's prohibition against national origin  
9 discrimination, that Defendants exceeded its authority to suspend entry under 8 U.S.C.  
10 § 1182(f), and that EO3 likely violates the Establishment Clause and the constitutional  
11 guarantee of Equal Protection.

12 The States have also shown that they are likely to suffer irreparable harm in the absence  
13 of preliminary relief. Sections 1(g) and 2 of EO3 directly impacts state public universities and  
14 other institutions of higher learning, the provision of health care, state tax revenue, and state  
15 businesses. Sections 1(g) and 2 also impact state residents, including residents who seek to  
16 reunify with family members. Sections 1(g) and 2 also harm the States' interest in being free  
17 from efforts by the federal government to express a religious preference. These harms are  
18 significant and ongoing.

19 The Court concludes the balance of the equities favor the States, and that it is in the  
20 public interest to enjoin implementation of EO3 until the States' motion for a preliminary  
21 injunction motion may be adjudicated.

22 The Court concludes that a 14-day, time-limited Temporary Restraining Order against  
23 implementation of the operative sections of EO3 is warranted. The Court also issues a briefing  
24 schedule governing the States' motion for a preliminary injunction.

1 **TEMPORARY RESTRAINING ORDER**

2 Accordingly, it is hereby ORDERED that Defendants<sup>3</sup> and their officers, agents,  
3 servants, employees, attorneys, and all members and persons acting in concert or participation  
4 with them, from the date of this Order, are:

- 5 1. Enjoined and restrained from enforcing Sections 1(g) and 2 of EO3, which suspend  
6 or restrict the entry of immigrants and non-immigrants based on national origin.

7 Pursuant to Federal Rule of Civil Procedure 65(b)(2), this Temporary Restraining Order  
8 will expire 14 days from the date of its entry. As such, the Court hereby orders the following  
9 briefing schedule for the States’ motion for a preliminary injunction:

10 Plaintiffs shall file their motion for a preliminary injunction no later than 11:59pm PDT  
11 on Friday, October 20, 2017;

12 Defendants shall file their response no later than 11:59pm PDT on Wednesday, October  
13 25, 2017;

14 Plaintiffs shall file their reply in support of their motion no later than 11:50pm PDT on  
15 Friday, October 27, 2017.

16 A hearing on Plaintiffs motion for preliminary injunction is set for Monday, October  
17 30, 2017, at 10:00 am PDT.

18  
19 IT IS SO ORDERED.

20 DATED this \_\_\_\_\_ day of October, 2017.

21  
22  
23 \_\_\_\_\_  
24 UNITED STATES DISTRICT JUDGE

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26 \_\_\_\_\_  
<sup>3</sup> This injunction does not run against the President.

1 Presented by:

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