

SECOND
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; 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 W. TILLERSON, in his official capacity as Acting Secretary of State; and the UNITED STATES OF AMERICA,

Defendants.

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

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,

1 New Mexico, Massachusetts, Florida, California and Washington, D.C. CIR members
2 comprise approximately 13% of all United States resident physicians.

- 3 4. CIR represents over 6,400 residents in New York State and is the major union
4 representing medical interns, residents, and fellows in the state. The majority of these
5 CIR residents (approximately 6,000) work in hospitals located in New York City. The
6 remainder work in Westchester County.
7
- 8 5. A breakdown of residents that CIR represents in each of our New York State hospitals
9 and clinics is attached as Exhibit A.

10 **Harm to CIR Members**

- 11 6. The September 24, 2017 Executive Proclamation, titled “Enhancing Vetting
12 Capabilities and Processes for Detecting Attempted Entry Into the United States by
13 Terrorists or other Public-Safety Threats” (“Third Executive Order”) which bans entry
14 of all nationals from Syria and North Korea, and bans entry of many nationals from
15 Chad, Libya, Iran, Yemen (collectively, the “designated countries”), will be particularly
16 harmful to CIR members. Although we do not collect visa information, I have reason to
17 believe that more than 500 CIR members are foreign nationals with temporary
18 employment visas. Scores of resident physicians in New York City alone are from the
19 countries listed in the Third Executive Order. Of these, a significant number are from
20 Iran, one of the listed countries.
21
- 22 7. The Third Executive Order continues to harm CIR members and potential CIR
23 members from the designated countries. Although the Third Executive Order allows
24 immigration-enforcement officials to issue waivers to permit admission of nationals of
25
26

1 the designated countries if there is proof that denying entry "would cause undue
2 hardship," that his or her "entry would not pose a threat to national security or public
3 safety of the United States" and "would be in the national interest," this is done on a
4 case-by-case basis. Therefore, it is unclear how difficult it will be for CIR members or
5 prospective members to obtain a waiver. Also, family members of CIR members from
6 the designated countries may be barred from obtaining a visa as a result of the Third
7 Executive Order. There has already been a substantial emotional toll on CIR members
8 who have been unable to see their family members as a result of the first two executive
9 bans on travel.
10

- 11 8. The Third Executive Order will also likely harm CIR members beyond those from the
12 listed countries. Many CIR members who are foreign nationals from other countries
13 expressed concern that the executive bans on travel will be expanded to include their
14 countries of origin. This is particularly the case for CIR members from countries with a
15 large Muslim population. When the first Executive Order went into effect on January
16 27, 2017, CIR's counsel was inundated with panicked calls from foreign- national
17 residents seeking advice about how the Executive Orders could affect them.
18

19 **Impact on Safety-Net Hospitals**

- 20
21 9. I expect that the Third Executive Order and other policies promulgated by Department
22 of Homeland Security will result in medical students deciding not to pursue their
23 medical training in the U.S. Because of the remaining uncertainties engendered by this
24 Order, many medical students may elect to do their residency in Britain or Canada thus
25
26

1 depriving U.S. hospitals of some of the best and brightest foreign trained medical
2 students.

3 10. CIR members primarily work in safety-net hospitals, which include all of New York
4 City's Health + Hospitals, public acute care hospitals, as well as most of the safety-net
5 hospitals in Brooklyn, Queens and the Bronx. Upon completing their residencies these
6 members often go on to work providing primary care throughout New York State,
7 where there is a particularly underserved population and a great need for health care
8 professionals.

9
10 11. New York's safety-net hospitals rely heavily on foreign national resident physicians.
11 For example, during the 2016-2017 residency year, in the Department of Internal
12 Medicine at Interfaith Medical Center, a safety-net hospital in Brooklyn, there were 91
13 resident physicians. Of the 91, 43 were on H-1 B visas, 12 were on J-1s, 20 were green
14 card holders and 16 were U.S. citizens.

15
16 12. The majority of foreign national resident physicians practice in the U.S. on a J-1 or H1-
17 B visa. As a result of the Third Executive Order, physicians from some of the
18 designated countries may not be able to obtain a J-1 or H1-B visa for entry to the U.S.,
19 thereby depriving New York's safety-net hospitals of the benefit of their service.

20
21 13. The Third Executive Order has significant public health implications. Even the shortage
22 of one physician can have a significant impact on a safety-net hospital and the patients
23 they treat. Further, CIR learned about foreign-national patients who have been confused
24 by the Executive Orders and are afraid to get treated in some of these safety-net
25
26

1 hospitals out of concern that they would be deported. If this concern continues, it would
2 have wide public health impacts.

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

4 14. I believe that there has been or will be a profound chilling effect on international
5 medical students applying to New York hospitals' residency programs and a major
6 disincentive for hospitals to select foreign nationals for their residency programs due to
7 the executive bans on travel and the uncertainty about whether they will be expanded to
8 include other nations. CIR is concerned that some of the best and brightest international
9 medical students, who have options to participate in residency programs in the United
10 Kingdom and Canada, for example, will decide not to participate in a U.S. residency
11 program. Many of these international medical students will not want to invest the time,
12 energy and resources into applying for U.S. residency programs as they are concerned
13 that they may not be able to enter the country.

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


16. Hospitals are currently interviewing candidates for residency programs that will begin in July of 2018. The Third Executive Order places teaching hospitals and residents in an untenable position as they will be uncertain about which prospective candidates will be allowed to enter the country to interview and participate in the Match process, and, if accepted, to fill their residency positions in July. We will not know for sure what the effects of this uncertainty will be on the selection process until the results are announced on March 16 (“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 designated 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 Third Executive Order or similar bans on travel promulgated by the Department of Homeland Security.

17. It is very difficult to fill a vacant residency position after the Match. Although many hospitals are trying to accommodate potential candidates who are unable to travel to the U.S. for their interview, *i.e.* by conducting remote interviews via Skype, 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 designated countries. I also believe that residents who do not personally appear for interviews would be adversely affected in terms of their ranking by the hospitals. Along similar lines, I believe the Third Executive Order will also adversely affect teaching hospitals in New York by causing them to rank less qualified applicants.

18. The Third Executive Order will likely continue to injure CIR members, the hospitals where they train and the communities that they serve.

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

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

Executed on this 13 day of October, 2017


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