

The Honorable James L. Robart

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**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON**

STATE OF WASHINGTON, et al.,
Plaintiffs,

v.

DONALD J. TRUMP, et al.,
Defendants.

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

STATE OF OREGON,
Intervenor-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; REX TILLERSON, in his
official capacity as Secretary of State; and the
UNITED STATES OF AMERICA,
Intervenor-Defendants

STATE OF OREGON'S MOTION TO
INTERVENE

**NOTE ON MOTION CALENDAR:
March 17, 2017**

STATE OF OREGON'S MOTION TO INTERVENE
(2:17-cv-00141-JLR)

OREGON DEPARTMENT OF JUSTICE
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1 **I. MOTION**

2 Pursuant to Fed. R. Civ. P. 24, the State of Oregon moves to intervene as of right. Fed. R.
3 Civ. P. 24(a)(2). In the alternative, the State of Oregon moves for permissive intervention.
4 Fed. R. Civ. P. 24(b)(1)(B). This motion is based on the declarations of Tobias Read, Howard N.
5 Kenyon, Janet Billups, Richard Birkel, David G. Ellis, Margaret Everett, Dennis Galvan, Lee Po
6 Cha, Ronald L. Adams, and Marc Overbeck, the pleadings and papers on file herein, and the
7 accompanying points and authorities. The State of Oregon’s proposed Complaint-in-Intervention
8 is attached hereto as Exhibit 1.

9 **II. INTRODUCTION**

10 On January 27, 2017, after campaigning on a promise to impose “a total and complete
11 shutdown of Muslims entering the United States” (Dkt. #18, ¶¶ 42-43), President Donald J.
12 Trump signed Executive Order No. 13769, which he titled, “Protecting the Nation from Foreign
13 Terrorist Entry into the United States” (the “Executive Order”). (Dkt. #18, ¶ 49). The State of
14 Washington filed suit in this Court on January 30 (Dkt. #1, 3), soon joined by the State of
15 Minnesota, to enjoin enforcement of certain portions of the Executive Order. (Dkt. #18, 19). In
16 particular, Washington and Minnesota allege that the Executive Order is motivated by a
17 discriminatory animus toward Muslims, violates a host of federal constitutional protections, and
18 runs afoul of several federal statutes. They further allege that the Executive Order harms their
19 state interests and the interests of their residents.

20 Oregon is both similarly and uniquely harmed. The Executive Order has caused—and
21 threatens to further cause—harm to Oregon and its residents, employers, agencies, educational
22 institutions, healthcare system, and economy. Moreover, the Executive Order forces Oregon to
23 violate its own laws against discrimination, frustrating Oregon’s sovereign interest in providing a
24 welcoming home to people from all over the world. In order to vindicate its rights and to protect
25 its unique interests, and because no party would be prejudiced by Oregon’s participation in this
26 matter, Oregon now seeks to intervene.

1 **III. STATEMENT OF FACTS**

2 The procedural and substantive facts underlying this litigation are familiar to this Court
3 and were recently set forth at length by published order of the Ninth Circuit Court of Appeals.
4 *See Washington v. Trump*, No. 17-35105, 2017 WL 526497, at *1–*2 (9th Cir. Feb. 9, 2017)
5 (recounting facts). In the interests of judicial efficiency and economy, Oregon does not recount
6 that history in detail here. Any additional facts relevant to Oregon’s claims are set forth below, as
7 appropriate.

8 **IV. ARGUMENT**

9 “Intervention is governed by Fed. R. Civ. Proc. 24(a) and (b).” *In re Estate of*
10 *Ferdinand E. Marcos Hum. Rts. Litig.*, 536 F.3d 980, 984 (9th Cir. 2008). Here, Oregon is
11 entitled to intervene as of right under Rule 24(a)(2). In the alternative, this court should permit
12 Oregon to intervene under Rule 24(b)(1)(B).

13 **A. Oregon has a Right to Intervene Under Federal Rule of Civil Procedure 24(a)(2).**

14 Oregon has a right to intervene under Fed. R. Civ. P. 24(a)(2). That rule provides, in
15 pertinent part:

16 On timely motion, the court must permit anyone to intervene who: . . . (2) claims
17 an interest relating to the property or transaction that is the subject of the action,
18 and is so situated that disposing of the action may as a practical matter impair or
impede the movant’s ability to protect its interest, unless existing parties
adequately represent that interest.

19 Fed. R. Civ. P. 24(a)(2).

20 This Court examines four factors to determine whether an applicant should be permitted
21 to intervene as a matter of right under Rule 24(a)(2): (1) the motion must be timely; (2) the
22 applicant must have a “significantly protectable interest” relating to the property or transaction
23 which is the subject of the action; (3) the applicant must be so situated that the disposition of the
24 action may impair or impede the applicant’s ability to protect that interest; and (4) the applicant’s
25 interest must be inadequately represented by the parties to the action. *Arakaki v. Cayetano*,

1 324 F.3d 1078, 1083 (9th Cir. 2003) (citation omitted). Oregon’s motion satisfies each of these
2 factors.

3 **1. Oregon’s motion is timely.**

4 Oregon plainly meets the timeliness factor. To determine whether a motion to intervene is
5 timely, this Court considers (1) “the stage of the proceeding at which an applicant seeks to
6 intervene,” (2) “the prejudice to other parties,” and (3) “the reason for and length of the delay.”
7 *United States v. Alisal Water Corp.*, 370 F.3d 915, 921 (9th Cir. 2004). Here, as the Ninth Circuit
8 observed less than two weeks ago, this case is at a “very preliminary stage” of the proceedings.
9 *See Washington*, 2017 WL 526497, at *1. This case has not substantially progressed since that
10 time—for example, discovery has not commenced, nor has this Court held evidentiary
11 proceedings. In the absence of any such additional proceedings, defendants cannot plausibly
12 claim that intervention would result in any form of prejudice. Moreover, any delay in
13 intervention has been short and reasonably attributable to the need to gather evidence. *Cf. Day v.*
14 *Apoliona*, 505 F.3d 963, 965–66 (9th Cir. 2007) (finding motion timely when made two years
15 after case was filed); *Smith v. Los Angeles Unified Sch. Dist.*, 830 F.3d 843, 854 (9th Cir. 2016)
16 (finding motion timely when made twenty years after case was filed). Accordingly, Oregon’s
17 motion is timely.

18 **2. Oregon has a “significantly protectable interest” related to this case.**

19 Oregon also meets the second factor, because it has a “significantly protectable interest”
20 related to this case. *See Arakaki*, 324 F.3d at 1083 (stating requirement). A significantly
21 protectable interest exists where “the interest is protectable under some law, and . . . there is a
22 relationship between the legally protected interest and the claims at issue.” *Id.* at 1084 (quotation
23 marks and citation omitted). The “relationship” requirement is generally met where the
24 “resolution of the plaintiff’s claims actually will affect the applicant.” *Id.* (quotation marks and
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1 citation omitted). Here, Oregon holds a number of legally protected interests that actually will
2 be affected by the resolution of this litigation.¹

3 **Effect on Oregon’s Finances**

4 First, Oregon’s own finances will suffer if the unlawful immigration ban is enforced. Of
5 Oregon’s \$92 billion investment portfolio, more than 19 million shares are held in technology
6 companies who have expressed alarm at the likely impacts of the Executive Order on their
7 businesses. (*See* Declaration of Tobias Read, ¶¶ 6-12). Additionally, because Oregon
8 companies employ immigrants, refugees, and others who would be affected by the ban in more
9 indirect ways (such as spouses of immigrants), threats to Oregon’s companies will result in
10 serious risks to Oregon’s financial investments, credit ratings, companies, and tax revenue. (*See*
11 Read Dec., ¶¶ 5-13.).

12 **Effect on Oregon’s Educational Institutions**

13 Second, the Executive Order harms Oregon’s educational institutions. Oregon has 7 state
14 universities, 17 community colleges, and at least 12 to 20 private colleges and universities.
15 Hundreds of students and professors at those universities and colleges are from one of the seven
16 countries covered by the Muslim travel ban. As a result, the work of those colleges is adversely
17 affected by the ban. For example, of the 3,016 international students currently studying at the
18 University of Oregon (“UO”), a public research university, 38 are citizens of the seven affected
19 countries, and are here on valid student visas. International students typically pay substantially
20 more than in-state students, providing more than \$100 million in tuition each year, in total. That

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22 ¹ “In general, an applicant for intervention need not establish Article III standing to intervene.”
23 *Perry v. Schwarzenegger*, 630 F.3d 898, 906 (9th Cir. 2011) (*per curiam*); *but see Laroe Estates,*
24 *Inc. v. Town of Chester*, 828 F.3d 60, 65 (2d Cir. 2016), *cert. granted sub nom. Town of Chester,*
25 *N.Y. v. Laroe Estates, Inc.*, No. 16-605, 2017 WL 125674 (U.S. Jan. 13, 2017) (noting that “there
26 is a circuit split on this issue”). To the extent that Oregon is required to demonstrate Article III
standing in order to intervene, it has standing for the same reasons that the Ninth Circuit
concluded that Washington and Minnesota have standing. *See Washington*, No. 17-35105, 2017
WL 526497, at *3–*5, *5 n 5 (concluding that the States had standing to challenge the harm to
their proprietary interests at a minimum).

1 tuition allows UO to subsidize Oregon students. (*See* Declaration of Dennis Galvan, ¶¶ 7-8).
2 The Executive Order damages UO’s funding, its ability to attract international students, and its
3 ability to retain faculty who may not be able to return to the United States after travel. (*Id.*, ¶¶ 9-
4 17).

5 Similarly, Portland State University (“PSU”) has over 1900 international students, 59 of
6 whom are citizens of five of the countries affected by the Executive Order: Iran, Iraq, Yemen,
7 Libya and Syria. (Declaration of Margaret Everett, ¶ 7). PSU also relies on tuition from
8 international students, which constituted approximately 13 percent of its net tuition and fees for
9 2015-2016. (*Id.*, ¶ 8). PSU admitted thirteen international students from the affected countries
10 for the Spring 2017 term. Their tuition revenue will be lost if they are unable to travel to
11 Oregon. (*Id.*, ¶ 16). The Executive Order has also damaged research being conducted at PSU.
12 For example, a researcher who is an Iranian national was conducting research funded by a
13 university in Finland related to water resources engineering in collaboration with faculty in
14 PSU’s Maseeh College of Engineering and Computer Sciences. He returned to Finland over the
15 winter break and was scheduled to leave Europe to return to the United States on January 27,
16 2017. He was not allowed to board his flight, despite holding a valid J-1 visa. To date, the
17 visiting researcher has not returned to PSU and it is unclear at this time whether he will do so,
18 thereby harming this important research. (*Id.*, ¶ 13).

19 Oregon State University (“OSU”) has 3,529 international students enrolled, comprising
20 more than 11 percent of its student body of 30,354 students. Approximately 165 current students
21 are citizens of the affected countries, studying in Oregon on student visas. As with other students
22 from outside Oregon, those 165 students typically pay full non-resident rates; OSU’s international
23 students represent approximately \$85 million in annual gross tuition revenue to OSU. (*See*
24 Declaration of Ronald Adams, ¶¶ 5-8.) Those students, as well as the school’s international
25 scholars (faculty, post-doctoral students, and others) are all affected by the Executive Order in
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1 ways that are affecting OSU’s resources and staff, and draining away time and resources that
2 otherwise would be spent on other community needs. (*Id.*, ¶¶ 9-19.)

3 Oregon’s private colleges and universities are also affected by the Executive Order,
4 resulting in a loss of tax dollars, employment, and diversity that these students bring to the state.
5 For example, Lewis & Clark College in Portland, Oregon has approximately 200 international
6 students from six continents and more than 70 countries. (Declaration of David G. Ellis, ¶ 4.
7 Lewis & Clark has at least one student from the affected counties who cannot participate in the
8 college’s overseas study program. (*Id.*, ¶ 5-6). Additionally, if the Executive Order takes effect,
9 it will harm the college’s efforts to recruit international students, causing not only a loss of tuition
10 revenue, but also harming Lewis & Clark’s efforts to foster a diverse and global student body.
11 (*Id.*, ¶ 8)

12 **Impact on Oregon’s Voluntary Organizations**

13 Third, the Executive Order harms Oregon’s voluntary organizations (“VOLAGS”) that
14 work in the field of refugee resettlement. Since 2010, more than 8,500 refugees have arrived in
15 Oregon, with the majority resettling in Portland, and the numbers have steadily increased each
16 year. Three of the six most common refugee groups come from Iran, Iraq, and Somalia.² Once
17 those refugees arrive in Oregon, the resettlement process is facilitated by VOLAGS. But if the
18 immigration ban is enforced, Oregon VOLAGS will lose federal funding for refugee resettlement
19 programs, which will force those organizations to lay off staff and reduce operations—resulting
20 in a loss of tax revenue to Oregon. (*See generally* Declaration of Howard N. Kenyon;
21 Declaration of Richard Birkel; Declaration of Lee Po Cha).

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25 ² See Refugees in Oregon Data, Oregon Department of Human Services, available online at
26 <http://www.oregon.gov/DHS/ASSISTANCE/REFUGEE/Pages/data.aspx> (last accessed Feb. 21,
2017).

1 **Impact on Oregon’s Health Care System**

2 Fourth, the Executive Order harms Oregon’s health care system. Six medical residents at
3 Oregon Health & Science University—a public academic medical center—are from the countries
4 affected by the Executive Order. Those residents perform critically needed medical care in a
5 variety of fields. If they were prevented from returning to the United States after a trip abroad,
6 or if they left the country due to the effects of the Executive Order, OHSU likely would not be
7 able to replace them. As a result, OHSU would lack the necessary work force to provide the
8 services currently provided by those Residents. The loss of even one Resident to a program
9 carries a very high risk of an adverse impact on OHSU’s ability to provide the patient care that
10 the State of Oregon and Oregonians need. (*See* Declaration of Janet Billups ¶¶ 3, 5, 7-9).

11 The Executive Order also threatens Oregon’s ability to attract and retain physicians to
12 practice in rural and underserved areas, through the J-1 visa program. (*See* Declaration of Marc
13 Overbeck, ¶¶ 3-6). Already, one physician from a country affected by the Executive Order who
14 had been willing to work in Florence, Oregon, an area affected by a physician shortage, has
15 indicated through his counsel that because of the Executive Order, he was unlikely to obtain a
16 visa. (Overbeck Dec., ¶ 4). Currently, J-1 visa physicians from Iran and Iraq are practicing in
17 underserved areas in Oregon. Without those J-1 visa physicians, Oregon patients will have to
18 either delay treatment or travel farther to obtain it, resulting in additional Oregon Health Plan and
19 Medicare Costs to the State. (*See* Overbeck Dec., ¶¶ 5-6.).

20 **Impact on Oregon’s Sovereign Interests**

21 Sixth, the Executive Order harms Oregon’s sovereign interest in enforcing its own laws.
22 Oregon has codified its state policy that practices of unlawful discrimination against any of its
23 inhabitants because of religion or national origin are “a matter of state concern,” and that such
24 discrimination “menaces the institutions and foundation of a free democratic state.” *See* Or. Rev.
25 Stat. § 659A.006(1). But the Executive Order gives effect to discriminatory policies and
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1 practices that necessarily affect Oregon’s inhabitants, thereby frustrating Oregon’s ability to
2 effectuate its statutorily codified sovereign duty toward its residents.

3 In short, because the executive order harms Oregon’s finances, educational institutions,
4 voluntary organizations, health care system, and sovereign interests, Oregon has a significantly
5 protectable interest related to this case.

6 **3. The disposition of this action may impair Oregon’s ability to protect its**
7 **interests.**

8 Oregon also meets the third requirement, because the disposition of the action “may as a
9 practical matter” impair or impede Oregon’s ability to safeguard its protectable interests. *See*
10 *Smith*, 830 F.3d at 862; *Arakaki*, 324 F.3d at 1083. For the reasons discussed above, that test is
11 met here. A decision in favor of defendants would have far-reaching practical consequences for
12 Oregon’s ability to safeguard its protectable interests—both those that it shares with Washington
13 and Minnesota, and its unique interests arising under Oregon law. Therefore, Oregon meets the
14 third Rule 24(a)(2) factor.

15 **4. Oregon’s interests are inadequately represented by the parties to the action.**

16 Finally, Oregon’s interests are inadequately represented by the parties to this action. The
17 burden on a proposed intervenor to demonstrate inadequate representation is “minimal,” and is
18 satisfied by a showing that representation of its interests “*may be*” inadequate. *Arakaki*, 324 F.3d
19 at 1086 (quotation marks and citation omitted; emphasis added). Three factors are relevant to
20 that inquiry: “(1) whether the interest of a present party is such that it will undoubtedly make all
21 of a proposed intervenor’s arguments; (2) whether the present party is capable and willing to
22 make such arguments; and (3) whether a proposed intervenor would offer any necessary
23 elements to the proceeding that other parties would neglect.” *Id.* (citation omitted). Those
24 factors weigh in favor of intervention here.

25 Oregon has an interest separate from, and as critical as, the interest advanced by
26 Washington and Minnesota—Oregon’s statutorily codified sovereign interest in protecting its

1 residents from discrimination. *See* Or. Rev. Stat. § 659A.006(1). As noted above, this statute
2 provides that discrimination because of religion or national origin is “a matter of state concern,”
3 and that such discrimination “menaces the institutions and foundation of a free democratic state.”
4 Oregon seeks to protect this unique Oregon legislative policy in this case. The State of Oregon
5 also seeks to protect its state coffers and universities from damage, as well as its citizens and
6 organizations; the States of Washington and Minnesota are not in a position to speak to the
7 injuries suffered in Oregon.

8 If Washington and Minnesota prevail in this case, as they should, it is possible that this
9 Court may craft a more limited remedy, short of a nationwide injunction, that will not address the
10 harm to Oregon’s unique sovereign interests. Moreover, because it has no independent power to
11 regulate federal immigration law, Oregon has no independent recourse to remediate that harm.

12 In short, for all of the foregoing reasons, Oregon is entitled to intervene in this action as a
13 matter of right.

14 **B. Should the Court determine that Oregon does not have a right to intervene, it**
15 **should grant permissive intervention under Rule 24(b).**

16 In the alternative, this Court should exercise its discretion to grant Oregon permission to
17 intervene under Rule 24(b). That rule provides in pertinent part that, “On timely motion, the
18 court may permit anyone to intervene who . . . (B) has a claim or defense that shares with the
19 main action a common question of law or fact.” *Blum v. Merrill Lynch Pierce Fenner & Smith*
20 *Inc.*, 712 F3d 1349, 1353 (9th Cir 2013) (quoting Fed. R. Civ. P. 24(b)(1)). Generally,
21 permissive intervention requires “(1) an independent ground for jurisdiction; (2) a timely motion;
22 and (3) a common question of law and fact between the movant’s claim or defense and the main
23 action.” *Blum*, 712 F3d at 1353 (quotation marks and citation omitted). In determining whether
24 to exercise its discretion to grant permissive intervention, the Court considers “whether the
25 intervention will unduly delay or prejudice the adjudication of the original parties’ rights.”
26 Fed. R. Civ. P. 24(b)(3). Oregon meets the requirements for permissive intervention here.

1 First, jurisdiction is easily established, because this is a federal-question case. *See*
2 *Freedom from Religion Found., Inc. v. Geithner*, 644 F3d 836, 844 (9th Cir 2011) (explaining
3 that jurisdictional requirement of permissive intervention satisfied where case presented federal
4 question). *See also* 28 U.S.C. §1331 (“The district courts shall have original jurisdiction of all
5 civil actions arising under the Constitution, laws, or treaties of the United States.”). Second,
6 Oregon’s motion is timely, as explained above. Third, also for the reasons described above, this
7 case squarely presents a common question of law and fact between Oregon’s claims and the
8 main action. Finally, defendants will suffer no conceivable prejudice, at this very early stage in
9 the proceedings, due to intervention by Oregon. Allowing Oregon to intervene will aid the Court
10 to better assess the effects and lawfulness of the Executive Order. For all of those reasons, this
11 Court should, in the alternative, exercise its discretion to allow Oregon to intervene.

12 IV. CONCLUSION

13 Oregon’s motion should be granted and it should be given leave to file its Complaint-in-
14 Intervention, attached hereto as Exhibit 1.

15
16 DATED February 22, 2017.

17 Respectfully submitted,

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