

The Honorable James L. Robart

ELLEN F. ROSENBLUM
Attorney General
SCOTT J. KAPLAN, WSBA #49377
Senior Assistant Attorney General
Oregon Department of Justice
100 Market Street
Portland, OR 97201
971-673-1880
Email: scott.kaplan@doj.state.or.us

Attorneys for Intervenor-Plaintiff

**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

INTERVENOR-PLAINTIFF'S PROPOSED
COMPLAINT IN INTERVENTION FOR
DECLARATORY AND INJUNCTIVE
RELIEF

INTERVENOR-PLAINTIFF'S PROPOSED COMPLAINT IN
INTERVENTION FOR DECLARATORY AND INJUNCTIVE
RELIEF (2:17-cv-00141-JLR)

OREGON DEPARTMENT OF JUSTICE
100 SW Market Street
Portland, OR 97201
(971) 673-1880 / Fax: (971) 673-5000

INTRODUCTION

1
2 1. The State of Oregon (“Oregon”) joins this action in order to protect its residents,
3 its employers, its agencies, its educational institutions, and its state constitution and laws against
4 an Executive Order that harms the State of Oregon, its economy, its institutions, its families, its
5 laws, and its sovereign interest in serving as a welcoming home to people from all over the
6 world.

7 2. On January 27, 2017, defendant Donald Trump signed Executive Order
8 No. 13769 (“the Executive Order”), which he titled “Protecting the Nation from Foreign
9 Terrorist Entry into the United States.” Defendant Trump has stated that the Executive Order
10 will be amended to respond to this Court’s rulings and those of the Ninth Circuit, but has not yet
11 done so, nor indicated that the damage done to Oregon by the Executive Order to Oregon will be
12 remedied.

13 3. The Executive Order denies entry into the United States to, among others,
14 individuals from Iran, Iraq, Syria, Sudan, Libya, Yemen, and Somalia who are refugees or legal
15 permanent residents or who were issued valid student, work, or spousal visas (*e.g.*, B-1, B- 2,
16 H-1B, L-1, O, F-1, F-2, J-1, J-2) entitling them to be in the United States.

17 4. The Executive Order is neither designed nor intended to “protect the nation,” but
18 is rather a step in implementing the “total and complete shutdown of Muslims entering the
19 United States” that defendant Trump promised in his presidential campaign.

20 5. Banning the entry of Oregonians and others from the seven Muslim-majority
21 countries named in the Order is a violation of the United States Constitution and unlawful under
22 federal statute, and it subjects the State of Oregon, its interest, residents, and laws to irreparable
23 harm.

JURISDICTION AND VENUE

24
25 6. This Court has jurisdiction under 28 U.S.C. §§ 1331, 1346, 1361. This Court has
26 remedial authority under 28 U.S.C. § 2201 et seq.

INTERVENOR-PLAINTIFF'S PROPOSED COMPLAINT IN
INTERVENTION FOR DECLARATORY AND INJUNCTIVE
RELIEF (2:17-cv-00141-JLR)

OREGON DEPARTMENT OF JUSTICE
100 SW Market Street
Portland, OR 97201
(971) 673-1880 / Fax: (971) 673-5000

1 Protection is responsible for detaining and/or removing non-citizen immigrants from Iran, Iraq,
2 Syria, Somalia, Sudan, Libya, and Yemen arriving at air, land, and sea ports across the United
3 States, including Portland International Airport.

4 15. Defendant John F. Kelly is the Secretary of the Department of Homeland
5 Security. He is responsible for implementing and enforcing the INA, and oversees the U.S.
6 Customs and Border Protection. He is sued in his official capacity.

7 16. Defendant Rex Tillerson is the Secretary of State. The Secretary of State has
8 authority to determine and implement certain visa procedures for non-citizens. He is sued in his
9 official capacity.

10 17. Defendant the United States of America includes all government agencies and
11 departments responsible for the implementation of the INA and responsible for the admission,
12 detention, removal of non-citizen immigrants from Iran, Iraq, Syria, Somalia, Sudan, Libya, and
13 Yemen who are traveling to or returning to the States via air, land, and sea ports across the
14 United States, including Portland International Airport.

15 GENERAL ALLEGATIONS

16 A. The Executive Order

17 18. As a candidate for office, defendant Trump called for “a total and complete
18 shutdown of Muslims entering the United States,” claiming baselessly that “there is great hatred
19 towards Americans by large segments of the Muslim population.” His statement continued,
20 “Until we are able to determine and understand this problem and the dangerous threat it poses,
21 our country cannot be the victims of horrendous attacks by people that believe only in Jihad, and
22 have no sense of reason or respect for human life.” (*See* Amended Complaint for Declaratory and
23 Injunctive Relief filed by State of Washington, Exhibit 1, ECF No. 18.)

24 19. On June 14, 2016, candidate Trump reiterated his promise to ban all Muslims
25 entering this country until “we as a nation are in a position to properly and perfectly screen those
26 people coming into our country.” (*See id.*, Ex. 3.)

1 20. As President, defendant Trump signed the Executive Order. The stated purpose of
2 the Executive Order, signed on January 27, 2017, is to ensure that the United States is “vigilant
3 during the visa-issuance process to ensure that those approved for admission do not intend to
4 harm Americans and that they have no ties to terrorism.”

5 21. The Executive Order asserts, “Numerous foreign-born individuals have been
6 convicted or implicated in terrorism-related crimes since September 11, 2001, including foreign
7 nationals who entered the United States after receiving visitor, student, or employment visas.”

8 22. Section 3(c) of the Executive Order bans individuals from seven countries, unless
9 they are a U.S. citizen or possess a diplomatic visa, North Atlantic Treaty Organization visa, C-2
10 visa for travel to the United Nations, or G-1, G-2, G-3, and G-4 visa.

11 23. Only Muslim-majority countries are included in the ban: Iraq, Iran, Syria, Libya,
12 Somalia, Yemen, and Sudan are majority-Muslim countries.

13 24. No person from Iraq, Iran, Syria, Libya, Somalia, Yemen, or Sudan in the United
14 States as a lawful permanent resident or under a work, student, or spousal visa has been
15 implicated in a terrorist plot in the United States since or before September 11, 2001. The
16 terrorist attacks that have occurred in the United States on or after September 11, 2001, have
17 been committed by extremists harboring a variety of ideologies, all of whom were from countries
18 not included in the ban, including the United States itself.

19 **B. Impact of the Executive Order on and in Oregon**

20 **Generally—Impact on Oregon’s Economy**

21 25. According to the American Community Survey data from the U.S. Census
22 Bureau, as of 2015, almost 7,000 Oregon residents were born in Iran, Iraq, Libya, Somalia,
23 Sudan, Syria, and Yemen. Almost 2,500 of those residents were not citizens of the United States
24 as of the date of the survey. As a result of the Executive Order, these Oregonians now cannot
25 leave the country to travel or visit their families without running a very real risk that they will not
26

1 be allowed to return home to Oregon, and cannot invite their families to visit without putting
2 their family members at risk of being turned away.

3 26. Oregon's economy will suffer if the immigration ban is enforced. Oregon's
4 investment portfolio totaled about \$92 billion in 2016; and as of the third quarter of 2016,
5 Oregon held more than 19 million shares in technology companies who have expressed alarm at
6 the likely impacts of the executive order on their businesses.

7 27. Oregon's companies employ immigrants, refugees, and others who would be
8 affected by the ban in more indirect ways (spouses of immigrants, for example). Threats to
9 Oregon's companies will, as a result, result in serious risks to Oregon's financial investments, its
10 credit rating, its companies, and its tax revenue from those companies and their employees. This
11 will impede the state's economic health and will expose individuals who invest in Oregon-
12 facilitated funds to unnecessary and avoidable risk.

13 28. Portland International Airport, located in Portland, Oregon, served over 670,000
14 international travelers in 2016. It has been estimated that international travelers from just one
15 major airline contributes over \$172 million in business revenue to Oregon. The Executive Order
16 by interfering with international travel and deterring international travelers from coming to the
17 United States causing significant economic injury to Oregon.

18 **Effect on Oregon of the Ban on Refugee Resettlement**

19 29. A ban on refugee resettlement would be harmful not only to the refugees and their
20 families, but also to the State of Oregon. Oregon is the home to many refugees. Since 2010,
21 more than 8,500 refugees have arrived in Oregon, with the majority resettling in Portland, and
22 the numbers have steadily increased from year to year. Three of the six most common refugee
23 groups come from Iran, Iraq, and Somalia.

24 30. After a refugee is granted legal status and permission to enter the U.S., state
25 agencies and community organizations handle the "resettlement and acculturation process."
26 Voluntary organizations (VOLAGS) do the initial resettlement, such as assisting with acquisition

1 of housing and basic necessities. The VOLAGS have 90 days to accomplish this resettlement
2 process. The Federal Office of Refugee Resettlement provides up to eight months of cash and
3 medical assistance. Those federal funds are administered through the Oregon Department of
4 Human Services.

5 31. Ecumenical Ministries of Oregon (“Ecumenical Ministries”) assists
6 approximately 600 refugees each year, many of whom are reuniting with family members
7 already living in Oregon. That organization employs 12 people in Oregon who assist with
8 refugee resettlement in Oregon, and will have to terminate all of them if refugees are no longer
9 permitted to enter the United States, and may not be able to ever re-hire them. The State of
10 Oregon will accordingly lose the income taxes that were paid as a result of those jobs existing in
11 Oregon.

12 32. Ecumenical Ministries receives approximately \$75,000 per year in government
13 funding for refugee resettlement. If the ban were enforced and remained in place, the
14 organization would lose that funding, which could lead to staffing reductions in other parts of the
15 organization. Those job losses would also necessarily result in a loss of tax revenue to the State.

16 33. Catholic Charities of Oregon (“Catholic Charities”) has operated a refugee
17 resettlement program for more than 60 years, successfully resettling thousands of refugees in
18 Oregon. A 120-day suspension of the refugee program would result in an immediate loss of
19 about \$200,000 in revenue from the U.S. Department of State, and would put another \$110,000
20 in funding at risk. Another \$126,000 would be placed at risk if no new refugees were permitted
21 to enter during that 120-day period.

22 34. Catholic Charities is not planning to fill any vacancies in its refugee resettlement
23 program and is already considering reducing its workforce by almost half. If the ban were to last
24 longer than 120 days, Catholic Charities would be forced to consider eliminating the remainder
25 of its staff. It is already pulling back from its plan to operate a resettlement office in Salem. The
26

1 layoffs and reduction in active offices will result in a loss of tax revenue from the eliminated
2 positions, as well as an economic impact from the money that will not be spent in Oregon.

3 35. Immigrant and Refugee Community Organization (IRCO), a community-based
4 organization in Portland, has a mission of promoting the integration of refugees and immigrants
5 into the community at large. It works closely with the State of Oregon in assisting with refugee
6 resettlement.

7 36. A substantial number of IRCO's clients come from the countries subject to the
8 Executive Order. IRCO has already experienced a 50 percent drop in the number of refugee
9 arrivals seeking services. If the ban is given effect, IRCO may be forced to reduce services and
10 lay off Oregon employees. The layoffs will have an adverse effect on the State by reducing
11 income taxes and other spending as a result of those jobs no longer existing.

12 **Effect on Oregon's Institutions of Higher Education**

13 37. Oregon's public and private colleges and universities would also be damaged, and
14 already have been damaged, by the immigration ban in the Executive Order. Oregon has seven
15 state universities and 17 community colleges, along with approximate 12-20 private colleges and
16 universities. Hundreds of students/professors at those universities and colleges are from one of
17 the seven countries covered by the Muslim travel ban. As a result, the work of those colleges is
18 adversely affected by this ban.

19 38. Oregon's 13,360 foreign students contributed \$439.1 million to the state's
20 economy in tuition, fees, and living expenses for the 2013-2014 academic year, according to
21 NAFSA: Association of International Educators. The students' families contributed another \$5.2
22 million. Foreign students and their spouses were calculated to have created 5,256 jobs in
23 Oregon, as of the date of the NAFSA report.

24 39. The Executive Order directly harms Oregon colleges and universities that will not
25 be able to attract students or professors who would enrich their campuses and advance their
26 educational mission. Foreign-born faculty teaching at Oregon colleges and universities under a

1 valid visa typically have specialized expertise that cannot be easily replaced. Students studying
2 under a valid visa offer perspectives and experiences that cannot be replicated in their absence.

3 40. The University of Oregon (UO) is a public research university with an enrollment
4 of more than 23,000 students, of whom more than 3,000 are from countries other than the United
5 States. Additionally, the school has 205 visiting international scholars and approximately 120
6 faculty members from other countries.

7 41. Of the 3,016 international students at the UO, 38 are citizens of the seven affected
8 countries and are here on valid student visas. International students typically pay substantially
9 more than in-state students; those students pay more than \$100 million in tuition each year, in
10 total. This tuition allows UO to subsidize Oregon students, who pay about three times less than
11 international students.

12 42. The Executive Order would damage UO's funding, its ability to attract an
13 international student undergraduate and graduate body, and its ability to retain faculty who may
14 not be able to return to the United States after travel, or who may find that their area of study has
15 suffered as a result of the ban. Even students from outside the seven immediately affected
16 countries have expressed a loss of enthusiasm for the prospect of studying in the United States.
17 UO's Admissions Department has already seen a 15 percent decrease in applications from
18 international students.

19 43. UO's professors are also forced to weigh the benefit of academic travel against
20 the risk of not being permitted to return home, and the University itself is facing the likely loss of
21 participants in two international conferences already scheduled for UO campuses, because
22 attendees and international schools are hesitant to schedule travel to the United States.

23 44. Portland State University ("PSU"), a public research university, has an enrollment
24 of about 25,000 students, of whom 1,929 are foreign nationals studying at PSU. Of those 1,929
25 students, 59 are citizens of the seven affected countries, and all are attending school on valid
26 student visas

1 45. The 59 students from the seven affected countries at PSU are all paying tuition
2 and fees that are significantly higher than in-state resident tuition and fees. Approximately \$33
3 million of PSU's tuition and fee revenue in academic year 2015-16 was derived from
4 international students.

5 46. The Executive Order is having an adverse impact on PSU's 59 students from the
6 affected countries, who cannot travel without the risk of being forbidden to return; a visiting
7 researcher who traveled to Finland over the winter break and was prevented from returning and
8 continuing his research; and a recent graduate who are unable to return to PSU to present his
9 research at PSU with his graduate advisor. The presentation will likely occur outside the country
10 now, which requires PSU to bear the cost of having the research presented in another country.

11 47. PSU's ability to attract international students, and its ability to create a
12 community in which its students may build positive and lasting ties with foreign students, have
13 been damaged by the Executive Order.

14 48. Oregon State University (OSU) has 3,529 international students enrolled,
15 comprising more than 11 percent of its student body of 30,354 students. Approximately 165
16 current students are citizens of the affected countries, studying in Oregon on student visas. As
17 with other students from outside Oregon, those 165 students typically pay full non-resident rates;
18 OSU's international students represent approximately \$85 million in annual gross tuition revenue
19 to OSU. Those students, as well as the school's international scholars (faculty, post-doctoral
20 students, and others) are all affected by the Executive Order in ways that are affecting OSU's
21 resources and staff, and draining away time and resources that otherwise would be spent on other
22 community needs.

23 49. Lewis & Clark College, a private institution in Portland composed of three
24 schools (undergraduate, law school, and a graduate school of education and counseling) has
25 more than 200 international students from six continents enrolled currently. At least one of those
26 students is from a country subject to the ban in the Executive Order, and cannot participate in a

1 planned overseas study program, because that student can no longer expect to be allowed to
2 return to the United States.

3 50. By interfering with the ability of students to travel and re-enter the United States
4 on student visas, the Executive Order disrupts the operation of Lewis & Clark's programs and
5 services, and it damages the college's ability to foster diversity and inclusion in its students'
6 lives. It also harms the college's ability to attract and retain students from the countries subject
7 to the immigration ban, and is likely to have a chilling effect on Lewis & Clark's ability to
8 recruit international students, causing both fiscal harm (loss of tuition) and harming the college's
9 ability to foster a diverse and global student body.

10 **Effect on Health Care in Oregon**

11 51. Oregon Health & Sciences University ("OHSU"), a public academic medical
12 center, has at least 15 individuals from the seven affected countries at its campus: six students,
13 two post-doctoral fellows, one professor, and six medical Residents. The school is expecting two
14 more post-doctoral fellows from Iran.

15 52. Additionally, six medical Residents at OHSU are from the countries affected by
16 the Executive Order. Those residents are performing critically needed medical care in the fields
17 of surgery, pathology, and cardiology; if they were prevented from returning to the United States
18 after a trip abroad, or if they left the country due to the effects of the Executive Order, OHSU
19 likely would not be able to replace them. OHSU would as a result lack the necessary work force
20 to provide the services currently provided by those Residents, if it were to lose them. The loss of
21 even one Resident to a program carries a very high risk of an adverse impact on OHSU's ability
22 to provide the patient care that the State of Oregon and Oregonians need.

23 53. Oregon's health care system will suffer additional injury as a result of the
24 Executive Order even outside of the impact on OHSU's medical Residents. Particularly in rural
25 and underserved areas, Oregon is dependent on international medical graduates who have been
26 given a J-1 Visa to complete a medical residency or fellowship in the United States ("J-1 Visa

1 physicians”). A stipulation of the J-1 Visa is that, upon completion of training, the physicians
2 must return to their home country for two years. This requirement is “waived” for a physician
3 willing to work in a shortage area, in a position for which recruitment of a U.S. physician has
4 been unsuccessful. Oregon, like other states, has 30 J-1 slots per year, with up to 10 “flex” slots
5 available outside of designated Health Professional Shortage Areas, provided other program
6 requirements are met.

7 54. There is a great deal of competition to obtain physicians willing to work on the
8 J-1 program. In the past, Oregon has been unable to fill all of its available slots and the
9 Executive Order will make this even more difficult. Already, one physician from a country
10 affected by the Executive Order who had been willing to work in Florence, Oregon, an area
11 affected by a physician shortage, has indicated through his counsel that because of the Executive
12 Order, he was unlikely to obtain a visa.

13 55. Since 2002, approximately 320 J-1 visa physicians have practiced in Oregon,
14 including 16 physicians from the countries affected by the Executive Order. As required by the
15 visa, these physicians serve regions such as rural areas of southern and eastern Oregon that have
16 difficulty recruiting physicians domestically, particularly physicians who are willing to accept
17 the Oregon Health Plan or Medicare payment. Currently, physicians from Iran and Iraq are
18 practicing in underserved areas. Without J-1 visa physicians, Oregon patients will have to either
19 delay treatment or travel farther to obtain it, resulting in additional Oregon Health Plan and
20 Medicare costs to the State.

21 **FIRST CLAIM FOR RELIEF**

22 **(Fifth Amendment – Equal Protection)**

23 56. Oregon realleges and incorporates by reference the allegations in the preceding
24 paragraphs of the Complaint.

25 57. As alleged above, Oregon has codified its state policy that practices of unlawful
26 discrimination against any of its inhabitants because of religion or national origin are “a matter

INTERVENOR-PLAINTIFF'S PROPOSED COMPLAINT IN
INTERVENTION FOR DECLARATORY AND INJUNCTIVE
RELIEF (2:17-cv-00141-JLR)

OREGON DEPARTMENT OF JUSTICE
100 SW Market Street
Portland, OR 97201
(971) 673-1880 / Fax: (971) 673-5000

1 of state concern,” and that such discrimination “menaces the institutions and foundation of a free
2 democratic state.” *See* ORS 659A.006.

3 58. The State’s interest in protecting the health, safety, and well-being of its residents,
4 including protecting its residents from harms to their physical or economic health as a result of
5 discrimination on the basis of their national origin, is a quasi-sovereign interest.

6 59. The Due Process Clause of the Fifth Amendment prohibits the federal
7 government from denying equal protection of the laws.

8 60. Sections 3 and 5 of the Executive Order, together with statements made by
9 Defendants concerning their intent and application, target Oregonians for discriminatory
10 treatment based on their country of origin and/or religion, without lawful justification.

11 61. The Executive Order was motivated by animus and a desire to harm a particular
12 group of individuals from seven countries, due solely to their national origin and their presumed
13 religion, and due to the “hatred” and “no sense of reason or respect for human life” attributed
14 baselessly to them by Defendant Trump.

15 62. The discriminatory terms and application of the Executive Order are arbitrary and
16 cannot be sufficiently justified by federal interests.

17 63. Through their actions above, Defendants have violated the equal protection
18 guarantee of the Fifth Amendment.

19 64. Defendants’ violation has caused and will continue to cause harm to Oregonians
20 and to the State of Oregon, deprived as it is of its residents’ full and free participation in the life
21 and economy of the State.

22 **SECOND CLAIM FOR RELIEF**

23 **(First Amendment—Establishment Clause)**

24 65. Oregon realleges and incorporates by reference the allegations set forth in the
25 preceding paragraphs
26

1 66. The Establishment Clause of the First Amendment prohibits the federal
2 government from officially preferring one religion over another, or preferring those who follow a
3 religion over those who do not follow any religion. These principles are also embodied in Art. 1,
4 secs. 2 through 6 of the Oregon Constitution.

5 67. Sections 3 and 5 of the Executive Order, together with statements made by
6 Defendants concerning their intent and application, are intended to disfavor Islam and favor
7 Christianity.

8 68. Section 5 of the Executive Order directs the Secretary of Homeland Security to
9 “to prioritize refugee claims made by individuals on the basis of religious-based persecution,
10 provided that the religion of the individual is a minority religion in the individual’s country of
11 nationality.” Each affected country is majority Muslim; this explicitly places members of other
12 religions ahead of Muslims. It also places members of minority religions above refugees who
13 do not follow any religion.

14 69. Through their actions above, Defendants have violated the Establishment Clause
15 of the First Amendment.

16 70. Defendants’ violation causes harm to the State of Oregon, by preventing non-
17 religious and Muslim immigrants from traveling to Oregon and contributing to the life and
18 economy of the State, to its colleges and universities, and to its businesses and tax revenues, as
19 refugees have done for years in Oregon.

20 **THIRD CLAIM FOR RELIEF**

21 **Fifth Amendment—Procedural Due Process**

22 71. Oregon realleges and incorporates by reference the allegations set forth in the
23 preceding paragraphs

24 72. The Due Process Clause of the Fifth Amendment prohibits the federal
25 government from depriving individuals of their liberty interests without due process of law.

1 73. Where Congress has granted statutory rights and authorized procedures applicable
2 to arriving and present non-citizens, minimum due process rights attach to those statutory rights.

3 74. Sections 3 and 5 of the Executive Order conflict with the statutory rights and
4 procedures directed by Congress. In issuing and implementing the Executive Order, Defendants
5 have violated the procedural due process guarantees of the Fifth Amendment.

6 75. Defendants' violation causes ongoing harm to Oregon residents and to the State of
7 Oregon, by preventing people from traveling to Oregon and contributing to the life and economy
8 of the State, to its colleges and universities, to its businesses, and to the medical care that Oregon
9 provides for its rural and low-income citizens.

10 **FOURTH CLAIM FOR RELIEF**

11 **(Immigration and Nationality Act —Discriminatory Visa Procedures)**

12 76. Oregon realleges and incorporates by reference the allegations set forth in the
13 preceding paragraphs.

14 77. The Immigration and Nationality Act, 8 U.S.C. § 1152(a)(1)(A), prohibits
15 discrimination in the issuance of immigrant visas on the basis of race, nationality, place of birth,
16 or place of residence.

17 78. Sections 3 and 5 of the Executive Order, together with statements made by
18 Defendants concerning their intent and application, discriminate on the basis of race, nationality,
19 place of birth, and/or place of residence in the issuance of visas, in violation of the Immigration
20 and Nationality Act.

21 79. Defendants' violation causes ongoing harm to Oregon residents and to the State of
22 Oregon, by preventing people from traveling to Oregon and contributing to the life and economy
23 of the State, to its colleges and universities, and to the medical care that Oregon provides for its
24 rural and low-income citizens.

1 **FIFTH CAUSE OF ACTION**

2 **(Immigration and Nationality Act — Denial of Asylum and Withholding of Removal)**

3 80. Oregon realleges and incorporates by reference the allegations set forth in the
4 preceding paragraphs.

5 81. The Immigration and Nationality Act, 8 U.S.C. §§ 1158 and 1231(b)(3), entitles
6 certain non-citizens arriving at Oregon ports of entry to apply for asylum and withholding of
7 removal.

8 82. As implemented, the Executive Order suspends all immigrant and nonimmigrant
9 entry into Oregon by individuals from seven countries and forecloses their ability to apply for
10 asylum and withholding of removal.

11 83. Defendants' violation causes ongoing harm to Oregon residents and to the State of
12 Oregon, by preventing people from traveling to Oregon and contributing to the life and economy
13 of the State, to its colleges and universities, to its businesses, and to the medical care that Oregon
14 provides for its rural and low-income citizens.

15 **SIXTH CAUSE OF ACTION**

16 **(Foreign Affairs Reform and Restructuring Act —**
17 **Denial of Convention Against Torture Relief)**

18 84. Oregon realleges and incorporates by reference the allegations set forth in the
19 preceding paragraphs.

20 85. The Foreign Affairs Reform and Restructuring Act of 1998, 8 U.S.C. § 1231 note,
21 implements the United Nations Convention Against Torture, which the United States ratified in
22 1994. Pub. L. 105-277, div. G, subdiv. B, title XXII, § 2242. Under the Convention Against
23 Torture, the United States may not involuntarily return any person to a country where there are
24 substantial grounds for believing the person would be in danger of being subjected to torture.
25
26

1 86. As implemented, the Executive Order suspends all immigrant and nonimmigrant
2 entry into Oregon by individuals from seven countries and forecloses their ability to apply for
3 relief under the Convention Against Torture.

4 87. The Executive Order likewise precludes an individualized determination by the
5 Secretary of State as to whether an individual immigrant is entitled to enter the country, under
6 the Convention Against Torture. That determination is required under the law.

7 88. Defendants' violation causes ongoing harm to Oregon residents and to the State of
8 Oregon, by preventing people from traveling to Oregon who have a protected Due Process
9 liberty interest in doing so, and thereby prevents them contributing to the life and economy of the
10 State, to its colleges and universities, and to its businesses.

11 **SEVENTH CAUSE OF ACTION**

12 **(Religious Freedom Restoration Act)**

13 89. Oregon realleges and incorporates by reference the allegations set forth in the
14 preceding paragraphs.

15 90. The Religious Freedom Restoration Act, 42 U.S.C. § 2000bb-1(a), prohibits the
16 federal government from substantially burdening the exercise of religion, even if the burden
17 results from a rule of general applicability.

18 91. Section 3 of the Executive Order, if implemented, will result in substantial
19 burdens on the exercise of religion by non-citizen immigrants by, for example, preventing them
20 from exercising their religion while in detention, returning to their religious communities in
21 Oregon, and/or taking upcoming, planned religious travel abroad. Such burdens on religion
22 violate the Religious Freedom Restoration Act.

23 92. Defendants' violation causes ongoing harm to Oregon residents and to the State of
24 Oregon, by preventing Oregon from enforcing its policy and laws against religious
25 discrimination, by preventing spending at Oregon-based travel-related businesses by those
26 Oregon residents, by denying the State tax revenues that would have been derived from those

1 transactions, and by preventing the State from providing convenient medical care to rural and
2 low-income Oregonians.

3 **EIGHTH CAUSE OF ACTION**

4 **(Procedural Violation of the Administrative Procedure Act)**

5 93. Oregon realleges and incorporates by reference the allegations set forth in the
6 preceding paragraphs.

7 94. The Administrative Procedure Act, 5 U.S.C. §§ 553 and 706(2)(D), requires that
8 federal agencies conduct formal rulemaking before engaging in action that impacts substantive
9 rights.

10 95. In implementing Sections 3 and 5 of the Executive Order, federal agencies have
11 changed the substantive criteria by which individuals from affected countries may enter the
12 United States. Federal agencies did not follow the procedures required by the Administrative
13 Procedure Act before taking action affecting these substantive rights.

14 96. Through their actions above, Defendants have violated the Administrative
15 Procedure Act.

16 97. Defendants' violation causes ongoing harm to Oregon residents who were
17 deprived of the opportunities and protections under the rulemaking system that federal law
18 requires, and to the State of Oregon by preventing the entry and re-entry of people into Oregon
19 who would have contributed to the life and economy of the State and contributed to its tax
20 revenues.

21 **NINTH CLAIM FOR RELIEF**

22 **(Substantive violation of the Administrative Procedure Act)**

23 98. Oregon realleges and incorporates by reference the allegations set forth in the
24 preceding paragraphs.

25 99. The State realleges and incorporates by reference the allegations set forth in each
26 of the preceding paragraphs of this Complaint.

INTERVENOR-PLAINTIFF'S PROPOSED COMPLAINT IN
INTERVENTION FOR DECLARATORY AND INJUNCTIVE
RELIEF (2:17-cv-00141-JLR)

OREGON DEPARTMENT OF JUSTICE
100 SW Market Street
Portland, OR 97201
(971) 673-1880 / Fax: (971) 673-5000

100. The Administrative Procedure Act, 5 U.S.C. § 706(2), prohibits federal agency action that is arbitrary, unconstitutional, and contrary to statute.

101. In implementing Sections 3 and 5 of the Executive Order, federal agencies have taken unconstitutional and unlawful action, as alleged herein, in violation of the Administrative Procedure Act.

102. In implementing Sections 3 and 5 of the Executive Order, federal agencies have applied provisions arbitrarily, in violation of the Administrative Procedure Act.

103. Defendants' violation causes ongoing harm to Oregon residents who were deprived of the opportunities and protections under the rulemaking system that federal law requires, and to the State of Oregon by preventing the entry and re-entry of people into Oregon who would have contributed to the life and economy of the State and contributed to its tax revenues.

TENTH CLAIM FOR RELIEF

(Tenth Amendment)

104. Oregon realleges and reincorporates the allegations set forth in each preceding paragraph of this Complaint.

105. The Tenth Amendment reserves all powers not enumerated in the Constitution to the states and prohibits the federal government from commandeering state legislative processes.

106. The Tenth Amendment prohibits the federal government from directly compelling states to enact and enforce federal law.

107. Sections 3 and 5 of the Executive Order, together with statements made by Defendants concerning their intent and application, target individuals for discriminatory treatment based on their country of origin and/or religion, without lawful justification and contrary to ORS 659A.006.

INTERVENOR-PLAINTIFF'S PROPOSED COMPLAINT IN
INTERVENTION FOR DECLARATORY AND INJUNCTIVE
RELIEF (2:17-cv-00141-JLR)

OREGON DEPARTMENT OF JUSTICE
100 SW Market Street
Portland, OR 97201
(971) 673-1880 / Fax: (971) 673-5000

