

The Honorable James L. Robart

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**

JOHN DOE, *et al.*,

Plaintiffs,

v.

DONALD TRUMP, in his official
capacity as President of the United
States, *et al.*,

Defendants.

No. 2:17-cv-00178 (JLR)

**STIPULATION AND
~~PROPOSED~~ ORDER TO
STAY PROCEEDINGS**

Noted for Consideration:
May 26, 2017

Pursuant to the Court's May 22, 2017, Order to Show Cause, Dkt. # 32, Plaintiffs and Defendants, through their respective undersigned counsel, hereby stipulate and agree as follows:

1. Plaintiffs challenge Executive Order 13,780, titled "Protecting the Nation from Foreign Terrorist Entry into the United States" ("EO2"). See 82 Fed. Reg. 13,209 (Mar. 6, 2017). Plaintiffs have filed a Second Amended Class Action Complaint for Declaratory and Injunctive Relief contesting the legality of EO2, Dkt. # 30, as well as a Motion for Class Certification, Dkt. # 19. Pursuant to earlier Stipulations and Orders, Defendants' response to the Second Amended Complaint is currently due on June 1, 2017 and their response to Plaintiffs' class certification

STIPULATION AND
[PROPOSED] ORDER TO
STAY PROCEEDINGS
(2:17-cv-00178-JLR) - 1

KELLER ROHRBACK L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101-3052
TELEPHONE: (206) 623-1900
FACSIMILE: (206) 623-3384

U.S. DEPARTMENT OF JUSTICE
Civil Division, Federal Programs Branch
20 Massachusetts Avenue, NW
Washington, DC 20530
Tel: (202) 305-8902

1 motion is currently due fourteen days after the Ninth Circuit's ruling in *Hawai'i v. Trump*, No.
2 17-50 (D. Haw.). See Dkt. #s 18, 29.

3 2. On May 17, 2017, and May 22, 2017, respectively, the Court entered orders
4 staying the proceedings in *Washington v. Trump*, No. 17-141JLR (W.D. Wash.), Dkt. # 189, and
5 *Ali v. Trump*, No. 17-135JLR (W.D. Wash.), Dkt. # 95, pending resolution of the appeal in
6 *Hawai'i v. Trump (Hawai'i)*, No. 17-15589 (9th Cir.). The Court further ordered the parties to
7 file a joint status report within ten days of the Ninth Circuit's ruling in *Hawaii* so that the Court
8 could evaluate the continued appropriateness of the stay at that time. The Court also noted that
9 any party may move to lift the stay should circumstances change such that lifting the stay is
10 warranted.
11

12 3. In light of the Court's orders staying the proceedings in *Washington* and *Ali*,
13 Plaintiffs and Defendants agree that a similar stay is appropriate in this case. Accordingly, the
14 parties stipulate and agree as follows:
15

16 a. Proceedings in this case (including Defendants' deadlines to respond to
17 the Second Amended Complaint and class certification motion) shall be
18 stayed pending the Ninth Circuit's resolution of the appeal in *Hawaii v.*
19 *Trump*.

20 b. The parties shall file a joint status report within ten days of the Ninth
21 Circuit's ruling in *Hawaii* so that the Court may evaluate the continued
22 appropriateness of a stay at that time.

23 c. Should circumstances change such that lifting the stay is warranted, any
24 party may move to lift the stay. For example, if the Ninth Circuit lifts or
25

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

narrows the preliminary injunction in *Hawaii*, Plaintiffs may seek to lift the stay for the purpose of filing a motion for temporary restraining order or preliminary injunction.¹

d. As the Court noted in *Washington*, Dkt. # 189 at 8-9, Plaintiffs may send preservation letters to third parties to notify them of the litigation and request that they preserve any potentially relevant evidence. If Plaintiffs do not believe that sending such letters will resolve the issue of third-party evidentiary preservation, Plaintiffs may move for a limited modification of the stay order to allow Plaintiffs to issue subpoenas to third parties. If any such motion is granted, the Court would then stay any required production under or response to the subpoenas until such time as the stay is fully lifted.

Accordingly, IT IS HEREBY STIPULATED AND AGREED, by and between Plaintiffs and Defendants, subject to the Court's approval, that:

A. Proceedings in this case (including Defendants' deadlines to respond to the Second Amended Complaint and class certification motion) are stayed pending the Ninth Circuit's resolution of the appeal in *Hawaii v. Trump*.

¹ Plaintiffs were preparing to file a motion for preliminary injunction in mid-March when this Court stayed the temporary restraining order proceedings in *Ali v. Trump*. Order Staying Pls.' Mot. TRO & Prelim. Injunctive Relief, *Ali*, No. 17-135JLR (W.D. Wash. Mar. 17, 2017), Dkt. # 79. Using that order as a guide, the *Doe* Plaintiffs did not file their motion.

1 B. The parties shall file a joint status report within ten days of the Ninth Circuit's
2 ruling in *Hawaii* so that the Court may evaluate the continued appropriateness of a stay at that
3 time.

4 C. Should circumstances change such that lifting the stay is warranted, any party
5 may move to lift the stay. For example, if the Ninth Circuit lifts or narrows the preliminary
6 injunction in *Hawaii*, Plaintiffs may seek to lift the stay for the purpose of filing a motion for
7 temporary restraining order or preliminary injunction.

8 D. Plaintiffs may send preservation letters to third parties to notify them of the
9 litigation and request that they preserve any potentially relevant evidence. If Plaintiffs do not
10 believe that sending such letters will resolve the issue of third-party evidentiary preservation,
11 Plaintiffs may move for a limited modification of the stay order to allow Plaintiffs to issue
12 subpoenas to third parties. If any such motion is granted, the Court would then stay any required
13 production under or response to the subpoenas until such time as the stay is fully lifted.
14
15

16
17 DATED this 26th day of May, 2017.

18
19
20
21
22
23
24
25
26 STIPULATION AND
[PROPOSED] ORDER TO
STAY PROCEEDINGS
(2:17-cv-00178-JLR) - 4

KELLER ROHRBACK L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101-3052
TELEPHONE: (206) 623-1900
FACSIMILE: (206) 623-3384

U.S. DEPARTMENT OF JUSTICE
Civil Division, Federal Programs Branch
20 Massachusetts Avenue, NW
Washington, DC 20530
Tel:(202) 305-8902

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

| | |
|--|---|
| <p>Presented by:</p> <p>KELLER ROHRBACK L.L.P.</p> <p>By: <u>/s/ Lynn Lincoln Sarko</u> By: <u>/s/ Tana Lin</u> By: <u>/s/ Amy Williams-Derry</u> By: <u>/s/ Derek W. Loeser</u> By: <u>/s/ Alison S. Gaffney</u></p> <p>Lynn Lincoln Sarko, WSBA # 16569 Tana Lin, WSBA # 35271 Amy Williams-Derry, WSBA #28711 Derek W. Loeser, WSBA # 24274 Alison S. Gaffney, WSBA #45565 1201 Third Avenue, Suite 3200 Seattle, WA 98101</p> | <p>CHAD A. READLER Acting Assistant Attorney General</p> <p>JENNIFER D. RICKETTS Director, Federal Programs Branch</p> <p>JOHN R. TYLER Assistant Director, Federal Programs Branch</p> <p><u>/s/ Michelle R. Bennett</u> MICHELLE R. BENNETT Trial Attorney U.S. Department of Justice Civil Division, Federal Programs Branch 20 Massachusetts Avenue, NW Washington, DC 20530</p> |
| <p>Telephone: (206) 623-1900 Facsimile: (206) 623-3384 Email: lsarko@kellerrohrback.com tlin@kellerrohrback.com awilliam-derry@kellerrohrback.com dloeser@kellerrohrback.com agaffney@kellerrohrback.com</p> <p>By: <u>/s/ Laurie B. Ashton</u></p> <p>Laurie B. Ashton (<i>Pro Hac Vice</i>) 3101 North Central Avenue, Suite 1400 Phoenix, Arizona 85012-2600 Telephone: (602) 248-0088 Facsimile: (602) 248-2822 Email: lashton@kellerrohrback.com</p> | <p>Tel: (202) 305-8902 Fax: (202) 616-8470 Email: michelle.bennett@usdoj.gov</p> <p><i>Attorneys for Defendants</i></p> |
| <p>By: <u>/s/ Alison Chase</u></p> <p>Alison Chase (<i>Pro Hac Vice</i>) 801 Garden Street, Suite 301 Santa Barbara, CA 93101 Telephone: (805) 456-1496 Facsimile: (805) 456-1497 Email: achase@kellerrohrback.com</p> <p><i>Attorneys for Plaintiffs/Cooperating Attorneys for the American Civil Liberties Union Of Washington Foundation</i></p> | |

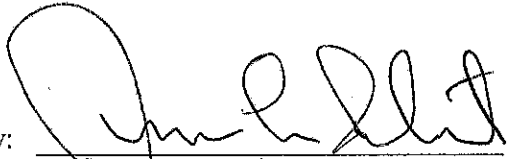
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

| | |
|---|--|
| <p>AMERICAN CIVIL LIBERTIES UNION OF WASHINGTON FOUNDATION</p> <p>By: <u>/s/ Emily Chiang</u> By: <u>/s/ La Rond Baker</u> Emily Chiang, WSBA # 50517 La Rond Baker WSBA # 43610 901 Fifth Avenue, Suite 630 Seattle, Washington 98164 Telephone: (206) 624-2184 Email: echiang@aclu-wa.org lbaker@aclu-wa.org</p> <p><i>Attorney for Plaintiffs</i></p> | |
|---|--|

ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Date: 30 May 2017

By: 
JAMES L. ROBART
United States District Judge

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

CERTIFICATE OF SERVICE

I hereby certify that, on May 26, 2017, a copy of the foregoing document was electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

DATED this 26th day of May, 2017.

KELLER ROHRBACK L.L.P.

By: /s/ Tana Lin

Tana Lin, WSBA # 35271
1201 Third Avenue, Suite 3200
Seattle, WA 98101
Telephone: (206) 623-1900
Facsimile: (206) 623-3384
Email: tlin@kellerrohrback.com

*Attorney for Plaintiffs/Cooperating
Attorney for the American Civil
Liberties Union Of Washington
Foundation*