IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ARAB AMERICAN CIVIL RIGHTS LEAGUE ("ACRL"), SAMIR ALMASMARI, SABAH ALMASMARY, HANA ALMASMARI, MOUNIRA ATIK, WALID JAMMOUL, NAGI ALGAHAIM, KOKAB ALGAZALI, SHAIKA SHAGERA, HEND ALSHAWISH, YUSRA AL SOUFI, HASAN AL-AHMED, SALHA AL-TALAQA,

on behalf of themselves and others similarly situated,

Plaintiffs,

v.

DONALD TRUMP, President of the United States, U.S. DEPARTMENT OF HOMELAND SECURITY ("DHS"), U.S. CUSTOMS AND BORDER PROTECTION ("CBP"), JOHN KELLY, Secretary of DHS, KEVIN K. MCALEENAN, Acting Commissioner of CBP,

Defendants.
_____/

Case No.: 17−cv−10310
Hon.: Victoria A. Roberts
Mag.: Stephanie D. Davis

PLAINTIFFS' OPPOSITION TO MOTION TO DISSOLVE INJUNCTION

On February 2, 2017, this Court issued an order enjoining Defendants "from applying Sections 3(c) and 3(e) of the January 27, 2017 Executive Order against lawful permanent residents of the United States." Doc #8, Pg ID 70. Defendants now move to dissolve that injunction.[1] Defendants assert that "the Executive Order does not apply to LPRs," so "there is no actual dispute between the parties." Doc #15, Pg ID 111. Defendants' motion must be rejected.

It is hornbook law that a defendant's voluntary cessation of challenged conduct does not eliminate a case or controversy. See *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000). This is a classic case of voluntary cessation.

[1] As a threshold matter, Defendants' motion is not properly before the Court because Defendants failed to comply with E.D. Mich. L.R. 7.1(a), which requires that movants must seek concurrence in the relief requested before filing a motion. To meet this requirement, Local Rule 7.1(a)(2) explains that there must be "a conference between the attorneys ... in which the movant explained the nature of the motion and its legal basis and requested but did not obtain concurrence in the relief sought." L.R. 7.1(a)(2)(A). If a conference was not possible, then the counsel for the movant must certify that "despite *reasonable effort specified in the motion or request*, the movant was unable to conduct a conference." LR 7.1(a)(2)(B) (emphasis added). Defendants here did not seek concurrence prior to filing their motion, nor did they explain their failure to do so. A "failure to seek concurrence warrants denial of the Motion." *Ethridge v. Countrywide Home L, Inc.*, No. 12-10705, 2012 WL 12884664, at *1 (E.D. Mich. June 21, 2012), report and recommendation adopted No. 12-10705, 2012 WL 12884668 (E.D. Mich. July 25, 2012). *See also Intl Union v. TRW Auto US, LLC*, No. 11-cv-14630, 2016 WL 5661568, at *1 (E.D. Mich. September 30, 2016).

On its face, the Executive Order applies equally to all "aliens from countries referred to in section 217(a)(12) of the INA," without drawing any distinction between lawful permanent residents and other aliens. Executive Order § 3(c). In its initial implementation of the order, the Government interpreted it as applying to lawful permanent residents. It was only *after* this lawsuit was filed that Defendants sought to "clarify" that the order did not apply to lawful permanent residents. But that purported clarification did not change the language of the Executive Order, and Defendants could return to their initial interpretation of that order at any moment. Defendants' actions thus are a paradigm case in which a post-litigation concession does not eliminate a case or controversy.

Nor are Defendants correct that the Plaintiffs failed to establish the relevant preliminary injunction factors. Defendants' substantive argument on this point rests entirely on their erroneous assertion that there is no live controversy between the parties. Although this Court might appropriately issue a more extensive opinion explaining the basis for the February 2 injunction now that the most emergent aspects of the situation have passed, there is no ground to vacate that injunction.

BACKGROUND

On January 27, 2017, the President issued the Executive Order that Plaintiffs challenge here. Section 3(c) of that order "proclaim[s] that the immigrant and

nonimmigrant entry into the United States of aliens from countries referred to in section 217(a)(12) of the INA, 8 U.S.C. 1187(a)(12), would be detrimental to the interests of the United States" and accordingly "suspend[s] entry into the United States, as immigrants and nonimmigrants, of such persons for 90 days from the date of this order." Section 3(g) of that order provides for case-by-case waivers of the exclusion mandated by Section 3(c): "Notwithstanding a suspension pursuant to subsection (c) of this section . . . , the Secretaries of State and Homeland Security may, on a case-by-case basis, and when in the national interest, issue visas or other immigration benefits to nationals of countries for which visas and benefits are otherwise blocked."

On its face, Section 3(c) suspends the entry of "aliens" from the listed countries. The provision makes no distinction between lawful permanent residents of the United States and any other aliens. And, indeed, when the Government initially implemented the Executive Order, it interpreted that section as applying fully to lawful permanent residents. On January 28, a spokesperson for the Department of Homeland Security told Reuters that the order "will bar green card holders."[2] Over the weekend of January 28 to 29, according to news reports,

[2] *Green Card Holders Will Need Additional Screening: White House*, REUTERS, Jan. 29, 2017, http://www.reuters.com/article/us-usa-trump-immigration-greencard-idUSKBN15C0KX (quoting Gillian Christensen, acting Department of Homeland Security spokeswoman).

government officials were applying the order to detain or bar the entry of lawful permanent residents from the listed countries.[3] As at least one lawsuit alleged, the Government was going so far as to coerce lawful permanent residents from the listed countries to sign paperwork renouncing their LPR status.[4] On the morning

[3] See Michael D. Shear et al., *Judge Blocks Trump Order on Refugees Amid Chaos and Outcry Worldwide*, N.Y. TIMES, Jan. 28, 2017, https://www.nytimes.com/2017/01/28/us/refugees-detained-at-us-airports-prompting-legal-challenges-to-trumps-immigration-order.html?_r=0 ("Human rights groups reported that legal permanent residents of the United States who hold green cards were being stopped in foreign airports as they sought to return from funerals, vacations or study abroad."); Chas Danner, *Judge Temporarily Blocks Part of Trump's Ban on Refugees and Citizens From 7 Muslim-Majority Nations*, NEW YORK, Jan. 28, 2017, http://nymag.com/daily/intelligencer/2017/01/trump-bans-citizens-from-7-muslim-nations-and-all-refugees.html ("By late Saturday afternoon, however, it was clear that Trump's order would be interpreted by U.S. authorities in the broadest possible terms, with all foreign nationals from the seven countries, including current U.S. visa holders like green-card-carrying lawful permanent residents being unable to enter or board transportation for the U.S."); Dara Lind, *Trump's Immigration Ban Initially Applied To Up To 500,000 Green Card Holders*, VOX, Jan. 30, 2017, http://www.vox.com/2017/1/28/14425150/green-card-ban-muslim-trump ("Over the weekend, many permanent residents (green-card holders) were denied entry into the US at the border, or refused to board planes, because they're nationals of Iraq, Iran, Libya, Somalia, Sudan, Syria, or Yemen — countries that are covered by the 90-day ban Trump signed into effect on Friday night."); Josh Gerstein & Matthew Nussbaum, *White House Tweaks Trump's Travel Ban To Exempt Green Card Holders*, POLITICO, Feb. 1, 2017, http://www.politico.com/story/2017/02/white-house-green-card-holders-no-longer-covered-by-trump-executive-order-234505 ("More than 100 green-card holders were detained as they arrived at U.S. airports in the first day or so that Trump's order was in place.").

[4] *See* Aziz v. Trump, 1:17-cv-116 (E.D. Va., filed Jan. 28, 2017).

of January 29, the White House Chief of Staff said, on a national news program, that "of course" the exclusion applied to lawful permanent residents.[5]

On the evening of January 29, the Secretary of Homeland Security endorsed the reading of the Executive Order as covering lawful permanent residents when he issued a "statement" that indicated that lawful permanent residents would typically receive "case-by-case" waivers under Section 3(g) of the Executive Order:

> In applying the provisions of the president's executive order, I hereby deem the entry of lawful permanent residents to be in the national interest. Accordingly, absent the receipt of significant derogatory information indicating a serious threat to public safety and welfare, lawful permanent resident status will be a dispositive factor in our case-by-case determinations.

Statement by Secretary John Kelly on the Entry of Lawful Permanent Residents into the United States, Jan. 29, 2017, go.usa.gov/x9AhN. The Secretary did ***not*** state that Section 3(c) of the Executive Order did not reach lawful permanent residents. Rather, by relying on the case-by-case waiver authority, the Secretary's statement suggested that lawful permanent residents *are* covered by Section 3(c) and thus can receive relief from the entry bar only by receiving a waiver under

[5] Krishnadev Calamur, *What Trump's Executive Order on Immigration Does—and Doesn't Do*, ATLANTIC, Jan. 30, 2017, https://www.theatlantic.com/news/archive/2017/01/trump-immigration-order-muslims/514844/ ("But when pressed by Chuck Todd, the show's host, on whether the order affected green-card holders, [Priebus] replied: 'Well, of course it does. If you're traveling back and forth, you're going to be subjected to further screening.'").

Section 3(g).[6] Nothing in the Secretary's statement in any way committed the Government to waive Section 3(c)'s bar in *any* particular lawful permanent resident's case. Rather, the statement indicated that individuals for whom there is "significant derogatory information" would not be eligible for the case-by-case waiver. The statement did not explain what "significant derogatory information" is, and that term is not defined in immigration law.

Moreover, because the Secretary's statement was a pure *ex cathedra* pronouncement, without any indication that it was required by the text of the Executive Order or any statute, even the minimal solace it offered to lawful permanent residents could be taken back at any time. Indeed, according to recent news reports, the President's chief strategist did not want the Secretary to take even the minimal steps he took to protect lawful permanent residents—and took the extraordinary step of confronting the Secretary and directing him not to issue the waiver order.[7] It is impossible for the Plaintiffs, or this Court, to predict how

[6] See also Department of Homeland Security, "Fact Sheet: Protecting The Nation from Foreign Terrorist Entry To the United States" (January 29, 2017) ("Lawful Permanent Residents of the United States traveling on a valid I-551 will be allowed to board U.S. bound aircraft and will be assessed for *exceptions* at arrival ports of entry, as appropriate." (emphasis added)), available at: https://www.dhs.gov/news/2017/01/29/protecting-nation-foreign-terrorist-entry-united-states.

[7] See Josh Rogin, *Inside The White House-Cabinet Battle Over Trump's Immigration Order*, WASH. POST, Feb. 4, 2017,

differences of opinion within the White House about the scope of the Executive Order will be resolved, and whether the government will once again reverse course.

Plaintiffs, who include four lawful permanent residents who are citizens of the listed countries, filed this action on January 31. The next day, on February 1, the White House Counsel issued a two-paragraph memorandum purporting to "clarify" that Sections 3(c) and 3(e) of the Executive Order "do not apply" to lawful permanent residents. Memorandum to the Acting Secretary of State, the Acting Attorney General, and the Secretary of Homeland Security from Donald F. McGahn II, Counsel to the President (Feb. 1, 2017). The memorandum noted, with some understatement, that "there has been reasonable uncertainty about whether those provisions apply to lawful permanent residents of the United States." *Id.* It accordingly sought "to remove any confusion." *Id.* But the White House Counsel's memorandum did not purport to modify, amend, or revoke any the text of the Executive Order—something only the President, and not the White House Counsel, has the power to do—nor did it point to even a single word of Sections 3(c) and 3(e) that suggested that those provisions did ***not*** apply to lawful permanent residents. Rather, it offered only "interpretive guidance." *Id.* Like the

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https://www.washingtonpost.com/news/josh-rogin/wp/2017/02/04/the-white-house-cabinet-battle-over-trumps-immigration-ban/?utm_term=.14c553e790d8.

Secretary's statement from three days earlier, the White House Counsel's supposed clarification could be taken back at any time.

Because of the repeated shifts in the Government's interpretation and enforcement of the Executive Order, the LPR plaintiffs are deterred from traveling outside of the United States for business or family visits. Absent an injunction mandating that the Executive Order not be applied to bar lawful permanent residents, the LPR Plaintiff who is currently outside the United States fears that he will not be able to enter the United States, and he and the other Plaintiffs (who are now in the U.S.), fear that if they leave the country again, they will not be permitted to return.

The declaration of Susan Reed, managing attorney for the Michigan Immigrant Rights Center, shows that this government's ever-shifting position has left not just lawful permanent residents, but also attorneys specializing in immigration law uncertain about whether lawful permanent residents will be barred from entry if they leave the country. *See* Reed Declaration, Exh. 1. Ms. Reed explains that:

> Based on the unprecedented nature of and lack of clarity in the Executive order, the continually evolving nature of the subsequent executive agency actions, the unresolved litigation, and the many qualifications in Department of Homeland Security statements, it is my opinion as an immigration practitioner that I cannot issue a general statement that any Lawful Permanent Residents, but particularly not those from the seven affected countries, may safely

> travel and expect to be readmitted to the United States. I cannot encourage anyone to expect to enter the U.S. on the same basis that they did before the issuance of the January 27, 2017 executive order and I cannot clearly communicate in practical terms what the new standards for entry are based on the information I have.
> …
> Because of the extreme brevity of the government's statements on Lawful Permanent Residents, the initial confusion about the meaning of "immigrant visa" in the implementation of the Executive Order, the ongoing developments in litigation nationwide as the Department of Justice seeks to defend the Executive Order, and the uncertainty about the meaning of "significant derogatory information" or the standards for determining whether Lawful Permanent Residents are eligible for "exceptions" to the ban, I have continued to advise Lawful Permanent Residents from countries affected by the ban against travel.

Id. at ¶¶ 17, 20.

Accordingly, the Michigan Immigrant Rights Center website currently warns:

> At first, the government said that the ban fully included people with Lawful Permanent Resident or "Green Card" status as well as any other visas. On Sunday, January 29, 2017, the government said that Lawful Permanent Residents would be allowed to return to the United States unless there is "significant derogatory information" about them. Immigration lawyers do not know what will be considered "significant derogatory information." So, we are discouraging all citizens of those countries from traveling outside of the United States for any reason. This includes travel to Canada.

See www.michiganimmigrant.org.

ARGUMENT

I. In Light of the Government's Repeated Shifts in Interpretation of the Executive Order, There is a Live Controversy in This Case.

"It is well settled that 'a defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice.' '[I]f it did, the courts would be compelled to leave "[t]he defendant . . . free to return to his old ways." ' "*Friends of the Earth*, 528 U.S. at 189 (quoting *City of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283, 289 & n.10 (1982); *United States v. W.T. Grant Co.*, 345 U.S. 629, 632 (1953)). Accordingly, to prevail on their motion to vacate the injunction, Defendants must meet a "***stringent***" standard of showing that "'subsequent events made it ***absolutely clear*** that the allegedly wrongful behavior could not reasonably be expected to recur.'" *Id.* (quoting *United States v. Concentrated Phosphate Export Assn.*, 393 U.S. 199, 203 (1968)) (emphasis added). Defendants bear the "'***heavy burden of persua[ding]***' the court that the challenged conduct cannot reasonably be expected to start up again." *Id.* (quoting *Concentrated Phosphate*, 393 U.S. at 203) (emphasis added).

Defendants cannot come close to meeting that demanding standard. Although Defendants now assert flatly that "[t]he Executive Order does not apply to LPRs," Doc #15, Pg ID 116, the Executive Order does not on its face distinguish between LPRs and others from the listed countries. The order bars all "entry into

the United States" by aliens from the listed countries. Executive Order § 3(c). The Government's current interpretation of that language conflicts with the interpretations government officials—up to and including the Secretary of Homeland Security—placed on the Executive Order during the days preceding the White House Counsel's February 1 memorandum.

Although the Government now takes the position, in accordance with that memorandum, that the Executive Order does not reach lawful permanent residents, the White House Counsel could withdraw that memorandum at any time. Given the many changes in the Government's position up to this point, there is certainly at least a reasonable prospect that Defendants will change their position again. Such a change is especially likely because: (1) news reports indicate that there is disagreement among senior White House staff about whether the Executive Order should apply to LPRs; (2) the White House Counsel's two-paragraph memorandum contains absolutely no legal analysis or effort to tie its interpretation to the text of the Executive Order; (3) the White House Counsel has no power to alter the terms of an Executive Order; and (4) it is the Department of Justice's Office of Legal Counsel, and not the White House Counsel, whose job it is "to provide controlling advice to Executive Branch officials on questions of law." U.S. Dep't of Justice, Office of Legal Counsel, *Best Practices for OLC Legal Advice and Written Opinions* (July 16, 2010),

https://www.justice.gov/sites/default/files/olc/legacy/2010/08/26/olc-legal-advice-opinions.pdf. In light of these facts, Defendants simply cannot show that it is "absolutely clear" that there is no reasonable prospect that they will revert to their former interpretation, *Friends of the Earth*, 528 U.S. at 189.

This case is strikingly similar to *A. Philip Randolph Institute v. Husted*, 838 F.3d 699 (6th Cir. 2016), in which the Sixth Circuit rejected a claim that voluntary cessation deprived the court of a case or controversy. The plaintiffs in *A. Philip Randolph* sued to challenge certain procedures the State of Ohio used to keep its voter rolls current. In particular, the plaintiffs alleged that the "confirmation notice form" the state sent to voters before removing them from the rolls did not comply with the requirements of the National Voter Registration Act, 52 U.S.C. § 20501 *et seq.*, and the Help America Vote Act, 52 U.S.C. § 20901 *et seq.* During the litigation, the defendant Secretary of State implemented a new confirmation notice form that allegedly complied with federal law; he argued that the new form deprived the court of a case or controversy. *A. Philip Randolph Inst.*, 838 F.3d at 712-713.

The Sixth Circuit rejected that argument. The court reasoned that "the new confirmation notice form was issued pursuant to the Secretary's 'directive,' rather than any legislative process. Thus, this is not a case in which reversing the

cessation would be particularly burdensome." *Id.* at 713.[8] The court also "note[d] that the circumstances of the Secretary's issuance of the new form"—in the midst of pending litigation challenging the old form—"d[id] not inspire confidence in his assurances regarding the likelihood of recurrence." *Id.* So too here, it would not be at all difficult for Defendants to, once again, change their position regarding the application of the Executive Order to lawful permanent residents. And the Government's repeated changes in position to this point hardly "inspire confidence." *Id.*

This case is also similar to the Sixth Circuit's decision in *Akers v. McGinnis*, 352 F.3d 1030 (6th Cir. 2003). In *Akers*, the plaintiffs challenged a written rule of the Michigan Department of Corrections (MDOC); during the course of the litigation, the rule was substantially revised. The Sixth Circuit rejected MDOC's mootness argument: "In the present case, as the promulgation of work rules appears to be solely within the discretion of the MDOC, there is no guarantee that MDOC will not change back to its older, stricter Rule as soon as this action

[8] As the *A. Philip Randolph* court noted, even adopting new legislation might not have been enough to meet the defendant's burden, for "the Supreme Court has declined to defer to a governmental actor's voluntary cessation, even where that cessation occurred pursuant to legislative process." *Id.* (citing *City of Mesquite*, 455 U.S. at 289 ("[T]he city's repeal of the objectionable language would not preclude it from reenacting precisely the same provision if the District Court's judgment were vacated.")).

terminates." *Id*. at 1035. Here, as in *Akers*, the Defendants are free to change their interpretation of the Executive Order at any time.

Defendant's argument is further weakened by the fact that the government made repeated unilateral changes to its interpretation of the Executive Order, reversing course repeatedly and under political pressure. *See Wall v. Wade*, 714 F.3d 492, 497 (4th Cir. 2013) (holding that a state prison's Ramadan policy change did not moot the claims, especially since "the fact that at least three separate policies have been utilized [] since 2009 indicates some degree of doubt that the new policy will remain in place for long"); *Longstreth v. Maynard*, 961 F.2d 895, 900 (10th Cir. 1992) (finding free exercise challenge was not moot due to change in hair grooming policy since policy had been repeatedly changed in the past); *Charles v. Daley*, 749 F.2d 452, 458 (7th Cir. 1984) (rejecting mootness argument because state had repeatedly made changes to the policy in question, thereby persuading the court that additional changes reverting back to the challenged policy "would not be unlikely"). As in *Wall*, *Longstreth*, and *Charles*, based on the history of changes in interpretation of the Executive Order – changes which here have occurred in rapid succession – there is every reason to believe that another policy reversal would take place.

Defendants rely on the unpublished case of *Libertarian Party of Ohio v. Husted*, 497 F. App'x 581 (6th Cir. 2012), but that case is inapposite. There,

plaintiffs alleged that a state ballot access law violated the First Amendment. While the litigation was ongoing, the state repealed the statute; as a result, there remained "nothing to enjoin or declare unconstitutional." *Id.* at 583. Here, by contrast, the Executive Order that Plaintiffs challenge remains on the books. That order, on its face, still excludes "aliens" from the listed countries, without distinguishing between lawful permanent residents and others. All that has changed is that, after initially interpreting the Executive Order in one way, the Government now takes the directly opposite position and asserts that the Order does not reach lawful permanent residents. Absent an injunction, there is nothing to stop the Government from reversing its position again.

As Ms. Reed of the Michigan Immigrant Rights Center explains, if the government once again changes course, the potential harm to lawful permanent residents is great:

> Lawful Permanent Residents in my experience tend to have overwhelming equities in the U.S. and generally have extremely low tolerance of risk with regard to being excluded or removed from the U.S.. Given the consequences that Lawful Permanent Residents face if they are excluded or removed from the U.S., I have had to carefully consider our organization's public information and ensure that our organization does not suggest courses of action that could result in exclusion or removal.

Reed Declaration, ¶18. Ms. Reed gives the example of a lawful permanent resident from one of the listed countries who is a physician, has lived in the United States for twenty years, is the son a U.S. citizen mother, and works in a medically

underserved area. He happened to be visiting friends in Canada when the Executive Order went into effect, and Ms. Reed assisted him in crossing the Canadian border on January 29, 2017, including preparing documents that would help him advocate for his readmission based on a "case-by-case" exception to the Executive Order for lawful permanent residents. *Id.*

The individual LPR Plaintiffs all have family outside of the United States, whom they would like to visit, and therefore the uncertainty about the meaning of the Executive Order is causing them real harm. But they are deterred from leaving the country by the prospect that the Government will change its position once again and bar them from returning. Many members of the organizational Plaintiff ACRL are in the same position. An injunction is necessary to prevent that harm.

The proposed order that Defendants attach to their motion would not protect the individual Plaintiffs and the Plaintiff organization ACRL's members from that harm. The proposed order includes a sentence that states the following: "The Court also confirms hereby that the Executive Order does not apply to Lawful Permanent Residents as explained in the guidance issued by the White House Counsel on February 1, 2017." Doc. #15-1 Pg ID 121. That language would serve no function, however. It does not purport to be binding on the Defendants—and, indeed, the whole point of Defendants' motion is to absolve them of any binding obligation to protect lawful permanent residents from the operation of the

Executive Order. See Doc. #15, Pg ID 118 (arguing that the injunction should be dissolved because "[t]he public suffers when the Government is subject to injunctions that resolve no dispute and confer no rights but may still be invoked against the Government"). If Defendants are right that there is no live controversy, then a statement from this Court "confirm[ing]" the interpretation in the White House Counsel's memorandum is a mere advisory opinion with no force or effect. And if Defendants are wrong, and there is a live controversy, then there is no basis for this Court to dissolve its injunction imposing a binding obligation on Defendants to protect lawful permanent residents from the operation of the Executive Order. Because there is a live controversy, the injunction must remain in effect.

II. The February 2 Injunction Satisfied Rule 65.

Defendants assert that Plaintiffs failed to establish the four factors necessary for the grant of an injunction. Doc. #15 Pg ID 117. Defendants' argument on this score rests entirely on the assertion that there is no live controversy between the parties relating to the application of the Executive Order to lawful permanent residents. See *id.* at Pg ID 117-118. As Plaintiffs have shown, that controversy remains very much alive. Moreover, Plaintiffs' original motion (Doc. #5) fully establishes each of the injunction factors. Because this Court issued its injunction at a truly emergent moment, the written order was necessarily more summary than

one that might have been issued in a calmer time. Now, with a greater luxury of time and in an abundance of caution, it may be appropriate for the Court to issue a supplemental order that more fully explains its reasoning in accordance with Fed. R. Civ. P. 65. But there is no basis for vacating the injunction.

CONCLUSION

For the foregoing reasons, the Motion to Dissolve Injunction should be denied.

Respectfully submitted,

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Dated: February 7, 2017

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EXHIBIT 1

Susan Reed Declaration

DECLARATION OF SUSAN E. REED

I, Susan E. Reed, declare as follows:

1. I am an attorney licensed in the State of Michigan with Attorney Number P66950. I am a citizen of the United States.

2. I am the Managing Attorney at the Michigan Immigrant Rights Center (MIRC), a division of the Michigan Advocacy Program (MAP), a nonprofit civil legal services group established more than 50 years ago. MIRC was founded as a project of MAP in early 2009 to serve as a resource center for nonprofit immigration legal services programs and other advocates providing support and technical assistance throughout the state.

3. I have practiced immigration and nationality law on a full time basis as a licensed attorney since 2004, exclusively in nonprofit civil legal services settings. I have attached my resume to this declaration.

4. I currently serve as the Steering Committee Secretary of the Michigan Coalition for Immigrant and Refugee Rights, a nonprofit membership organization of more than 40 nonprofit, faith, and educational groups founded in 1989 with many members focused on nonprofit immigration legal services. In that role and as part of our general work at MIRC, I disseminate community legal education materials to an email list of 4,763 active contacts.

5. On January 27, 2017, the day that the Executive Order entitled, "Protecting the Nation from Foreign Terrorist Entry Into the United States," was signed, I began communicating via email and social media (Facebook and Twitter) with our advocacy community and the public. There was significant delay between the signing of the Executive Order and the posting of the final text of what was signed to any government website. So, I was initially forced to rely, until I received a copy via email mid-day on January 28 from a

refugee services agency, on quotes from the Department of Homeland Security given to reporters.

6. On Saturday, January 28, 2017, numerous media sources quoted the Department of Homeland Security as stating that the seven country ban would apply to Lawful Permanent Residents (LPRs) or "green card" holders. This development was extremely surprising to me initially.

7. MIRC's initial Facebook post about this development, which we did not pay to promote, was shared 177 times and viewed by 28,051 people within a short period of time. I worked all day on January 28, 2017 to develop, translate, and disseminate community legal education information warning Lawful Permanent Residents not to travel outside of the United States. I received several panicked phone calls from community leaders seeking clarification.

8. Later in the afternoon on Saturday, January 28, 2017, I was able to review an actual copy of the Executive Order. The language of the Order raised and continues to raise great concern for me with respect to all visa holders from affected countries, but particularly Lawful Permanent Residents because of Section 3(c)'s repeated reference to "immigrant and nonimmigrant visas." That language is ambiguous, and could be read in multiple ways. However, it is the case that Lawful Permanent Residents must be issued immigrant visas or must obtain an immigrant visa number in order to be granted Lawful Permanent Resident status. Indeed, the Department of Homeland Security was indicating that Lawful Permanent Residents too were subject to the ban.

9. Late in the evening on Saturday, January 28, 2017, I learned of a Michigan doctor who was an LPR from a country affected by the ban who had traveled to Toronto, Ontario, Canada for the weekend to visit with friends and was fearful of not being readmitted based on the application of the ban to Lawful Permanent Residents. I traveled to meet him on Sunday morning, January 29, 2017, in Windsor, Ontario, Canada to prepare to enter the United States with him and advocate for his readmission to the United States. By that time, media reports were indicating that LPRs might be allowed to return home on a "case by case" basis, so we gathered materials to show that my client was a surgeon who had lived in the U.S. for 20 years, was the son of a U.S. citizen mother, and worked in a medically underserved area, among other positive attributes. Because it was unclear whether my client would be allowed to enter the U.S., he had put his practice on notice that he might be unavailable for several surgeries he had scheduled for Monday, January 30, 2017.

10. My above-referenced client was sent to secondary inspection by Customs and Border Protection at the Detroit Tunnel and I was not permitted to represent him in his interview. He was admitted to the United States after secondary inspection which took approximately 90 minutes.

11. Since the Executive Order, our office has been forwarded dozens of inquiries from individuals from affected countries with connections to Michigan including Lawful Permanent Residents, immigrant visa holders and nonimmigrant visa holders.

12. On January 29, 2017, I reviewed the Secretary of Homeland Security John Kelly's formal statement that, "In applying the provisions of the president's executive order, I hereby deem the entry of lawful permanent residents to be in the national interest. Accordingly, absent the receipt of significant derogatory information indicating a serious threat to public safety and welfare, lawful permanent resident status will be a dispositive factor in our case-by-case determinations." Available at: https://www.dhs.gov/news/2017/01/29/statement-secretary-john-kelly-entry-lawful-permanent-residents-united-states, visited February 7, 2017.

13. Secretary Kelly's statement did not explain what "significant derogatory information" means, nor is that term defined anywhere in the immigration laws.

14. A "fact sheet" published January 29, 2017, by the Department of Homeland Homeland Security reiterated that, "The Congress provided the President of the United States, in section 212(f) of the Immigration and Nationality Act (INA), with the authority to suspend the entry of any class of aliens the president deems detrimental to the national interest." LPRs are aliens. The fact sheet also stated that, "Lawful Permanent Residents of the United States traveling on a valid I-551 will be allowed to board U.S. bound aircraft and will be assessed for exceptions at arrival ports of entry, as appropriate. The entry of these individuals, subject to national security checks, is in the national interest. Therefore, we expect swift entry for these individuals." Available at: https://www.dhs.gov/news/2017/01/29/protecting-nation-foreign-terrorist-entry-united-states, visited February 7, 2017.

15. The Department of Homeland Security "fact sheet" did not explain what standards will be used to assess Lawful Permanent Residents for "exceptions" from the bar on entry to nationals from the seven countries.

16. On February 1, 2017, the White House Counsel issued a Memorandum to the Acting Secretary of State, the Acting Attorney General, and the Secretary Of Homeland Security from Donald F. McGahn II, Counsel to the President (Feb. 1, 2017). The Memorandum

does not contain any legal analysis but states that Section 3(c) and 3(e) to not apply to Lawful Permanent Residents. The Memorandum does not discuss the test of the Executive Order, nor does it clarify how this latest statement intersects with the earlier statement by Secretary Kelly regarding barring entry for Lawful Permanent Resident with "significant derogatory information" of the Department of Homeland Security fact sheet statement that Lawful Permanent Residents will be eligible for "exceptions" from the ban.

17. Based on the unprecedented nature of and lack of clarity in the Executive Order, the continually evolving nature of the subsequent executive agency actions, the unresolved litigation, and the many qualifications in Department of Homeland Security statements, it is my opinion as an immigration practitioner that I cannot issue a general statement that any Lawful Permanent Residents, but particularly not those from the seven affected countries, may safely travel and expect to be readmitted to the United States. I cannot encourage anyone to expect to enter the U.S. on the same basis that they did before the issuance of the January 27, 2017 executive order and I cannot clearly communicate in practical terms what the new standards for entry are based on the information I have.

18. Like the client I assisted with entry on Sunday, January 29, 2017, Lawful Permanent Residents in my experience tend to have overwhelming equities in the U.S. and generally have extremely low tolerance of risk with regard to being excluded or removed from the U.S.. Given the consequences that Lawful Permanent Residents face if they are excluded or removed from the U.S., I have had to carefully consider our organization's public information and ensure that our organization does not suggest courses of action that could result in exclusion or removal.

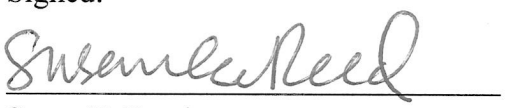
19. After reviewing the DHS statements, I revised the initial community legal education materials I had developed, retranslated them and posted them to our website, michiganimmigrant.org. I have attached a current "screenshot" of the current home page.

20. Because of the extreme brevity of the government's statements on Lawful Permanent Residents, the initial confusion about the meaning of "immigrant visa" in the implementation of the Executive Order, the ongoing developments in litigation nationwide as the Department of Justice seeks to defend the Executive Order, and the uncertainty about the meaning of "significant derogatory information" or the standards for determining whether Lawful Permanent Residents are eligible for "exceptions" to the ban, I have continued to advise Lawful Permanent Residents from countries affected by the ban against travel.

21. As a practitioner, I am awaiting additional legal developments that will allow me to provide clearer communication to affected immigrant community members and organizations.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct and was executed on February 7, 2017, in Kalamazoo, Michigan.

Signed:



Susan E. Reed

Susan E. Reed
3030 S. 9th St. Ste 1B, Kalamazoo, MI 49009; email: susanree@michiganimmigrant.org

EXPERIENCE

Michigan Immigrant Rights Center, Ann Arbor and Kalamazoo, Michigan
Managing Attorney, January 2009-present

- Providing technical and co-counsel assistance and training to Michigan legal aid and pro bono attorneys handling immigration and immigrant rights matters.
- Engaging in systemic advocacy on behalf of Michigan's low-income immigrants and their families.
- Tracking legislative and legal developments.
- Building coalitions among immigration assistance providers and immigrant advocacy organizations statewide.
- Providing support and training for domestic violence survivor attorneys and advocates regarding the rights of battered immigrants.
- Representing individual clients in immigration and immigrant rights matters.

United Methodist Committee on Relief/
Justice for Our Neighbors West Michigan, Grand Rapids, Michigan
Regional Attorney, October 2006 – January 2009

- Represented a high volume of low-income immigrants in immigration matters including administrative applications and appeals, removal proceedings, and appeals to the Board of Immigration Appeals and federal courts.
- Specializing in representing the most vulnerable immigrants in pursuing humanitarian immigration relief including asylum seekers, immigrant survivors of domestic violence, and unaccompanied minors in federal custody.
- Participating in the leadership of various local immigrant advocacy and public education efforts as the only non-profit immigration attorney in the metro Grand Rapids area.
- Serving as a United Methodist Church and Community Worker responsible for interpreting the work of UMCOR/JFON and the need for immigration reform to United Methodist congregations and other faith groups in West Michigan.

Farmworker Legal Services of Michigan, Kalamazoo, Michigan
Staff Attorney, June 2003 – October 2006

- Represented migrant and seasonal farmworkers in employment, immigration, housing, public benefits, and civil rights matters before administrative agencies and state and federal courts.
- Advocated for farmworker rights through outreach to migrant labor camps, community education, administrative advocacy, and participation in state and local task forces.

United States Department of Justice
Executive Office for Immigration Review, Bloomington, Minnesota
Student Intern (through course credit externship program), Spring 2003

- Researched and wrote legal memoranda, orders, and decisions to support Immigration Judges.

Migrant Legal Services, St. Paul and Greater Minnesota
Summer Season Outreach Paralegal, 2001 and 2002

EDUCATION

University of Minnesota Law School, Minneapolis, MN
Juris Doctor, Cum Laude, May 2003

- *Minnesota Law Review,* Staff Member 2001-2002, Article Submission Editor 2002-2003
- Study abroad: *Universidad Ramon Llull/ESADE*, Barcelona, Spain, Fall 2003

Marquette University, Milwaukee, WI
Bachelor of Arts, *Magna Cum Laude,* May 2000
Majors: English Literature, Spanish Language and Literature, Minor: History

- Burke Scholar
- College of Arts and Sciences Outstanding Senior, Class of 2000
- Study abroad: *Universidad Complutense*, Madrid, Spain, Spring 1999

PROFESSIONAL ACTIVITIES

W.K. Kellogg Foundation Community Leadership Network Fellow, 2014-present
American Immigration Lawyers Association,
Michigan Chapter Member, 2004 – present; past co-chair of Advocacy Committee
Michigan Coalition for Immigrant and Refugee Rights,
Member, 2003-present, Past Chair, Current Secretary of Steering Committee
State Planning Body for Legal Services, Member, 2007-present
Pro Bono Assessment, State Bar of Michigan and Michigan State Bar Foundation
State Bar of Michigan Justice Initiatives Summit Cabinet 2014
Michigan Supreme Court Foreign Language Board of Review,
Advocate for Populations with Limited English Proficiency, 2013-present

BAR ADMISSIONS

State Bar of Michigan, admitted May 21, 2004
United States Court of Appeals for the Sixth Circuit
U.S. District Court, Western District of Michigan, completed Hillman Advocacy Program
U.S. District Court, Eastern District of Michigan
U.S. Tax Court

PUBLICATIONS

Emerging Problems with Immigrants' Access to Food from Private Charities, 46 CLEARINGHOUSE REVIEW 259 (2012).

Serving Farmworkers 38 CLEARINGHOUSE REVIEW 367 (2004) (with Ilene J. Jacobs).

Labor Laws and Michigan Agriculture Michigan State University Extension Bulletin E-1597 (2006) (with Dr. Vera Bitsch).

LANGUAGE SKILLS

Fluent written and oral Spanish, beginning German.

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Michigan Immigrant Rights Center

MIRC
Michigan Immigrant Rights Center

Latest Updates/ Últimas Novedades

WARNING: DO NOT TRAVEL OUTSIDE THE UNITED STATES IF YOU ARE FROM AN AFFECTED COUNTRY

President Trump issued an Executive Order on Friday, January 27, 2017, that says that people who are citizens of Iran, Iraq, Libya, Somalia, Sudan, Syria and Yemen may not enter the U.S. for at least 90 days. At first, the government said that the ban fully included people with Lawful Permanent Resident or "Green Card" status as well as any other visas. On Sunday, January 29, 2017, the government said that Lawful Permanent Residents would be allowed to return to the United States unless there is "significant derogatory information" about them. Immigration lawyers do not know what will be considered "significant derogatory information." So, we are discouraging all citizens of those countries from traveling outside of the United States for any reason. This includes travel to Canada.

تحذير : يرجى عدم السفر الى خارج الولايات المتحدة الامريكية اذا كنت من رعايا احد الدول المشمولة

صدر الرئيس دونالد ترامب امر تنفيذي صباح يوم الجمعة المصادف 27 كانون الثاني، 2017، يقول ان المواطنين الذين يحملون الجنسية الإيرانية العراقية الليبية، الصومالية، السودانية السورية، و اليمنية لا يستطيعون الدخول الى الولايات المتحدة الامريكية لمدة 90 يوم على الاقل. وهذا يشمل الاشخاص الذين يحملون بطاقة الاقامة الدائمة (الجرين كارد) او الذين يحملون تأشيرة الدخول (فيزا). صرحت الحكومة يوم الأحد المصادف 29 كانون الثاني 2017 بانه مسموحا للمهاجرين الذين يحملون بطاقة الاقامة المؤقتة (الكرين كارد) بالامكان عودتهم الى الولايات المتحدة الامريكية مالم يكن بحقهم معلومات او دلالات سلبية و مضافة للقانون الى هؤلاء المهاجرين القانونيين ان جازاء (مالم يكن بحقهم معلومات او دلالات سلبية و مضافة للقانون) غير واضحة ولا يعرف ما المقصود بها...لذلك ننصح مؤلاء المواطنين من الدول المذكورة بعدم السفر خارج الولايات المتحدة لاي سبب كان وحتى لو السفر الى كندا.

Contact Us

Email: mirc@michiganimmigrant.org

If you are looking for legal assistance with an immigration matter, please call our Ann Arbor office.

Ann Arbor Office:
Michigan Immigrant Rights Center
220 E. Huron Street, Suite 600A
Ann Arbor, MI 48104
Phone: 734-239-6863
Fax: 734-998-9125

Kalamazoo Office:
Michigan Immigrant Rights Center
3030 S. 9th Street, Suite 1B
Kalamazoo, MI 49009
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Fax: 269-492-7198

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