

The Honorable James L. Robart

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

STATE OF WASHINGTON, et al.,
Plaintiffs,

v.

DONALD J. TRUMP, et al.,
Defendants.

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

STATE OF OREGON,
Intervenor-Plaintiff

v.

DONALD TRUMP, in his official capacity as
President of the United States; U.S.
DEPARTMENT OF HOMELAND
SECURITY; JOHN F. KELLY, in his official
capacity as Secretary of the Department of
Homeland Security; REX TILLERSON, in his
official capacity as Secretary of State; and the
UNITED STATES OF AMERICA,
Intervenor-Defendants

STATE OF OREGON'S MOTION TO
INTERVENE

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

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

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

1 **I. MOTION**

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

9 **II. INTRODUCTION**

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

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

1 **III. STATEMENT OF FACTS**

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

8 **IV. ARGUMENT**

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

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

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

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

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

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

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

3 **1. Oregon’s motion is timely.**

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

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

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

3 **Effect on Oregon's Finances**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 Sixth, the Executive Order harms Oregon’s sovereign interest in enforcing its own laws.
 22 Oregon has codified its state policy that practices of unlawful discrimination against any of its
 23 inhabitants because of religion or national origin are “a matter of state concern,” and that such
 24 discrimination “menaces the institutions and foundation of a free democratic state.” *See* Or. Rev.
 25 Stat. § 659A.006(1). But the Executive Order gives effect to discriminatory policies and
 26

1 practices that necessarily affect Oregon’s inhabitants, thereby frustrating Oregon’s ability to
2 effectuate its statutorily codified sovereign duty toward its residents.

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

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

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

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

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

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

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

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

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

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

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

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

12 **IV. CONCLUSION**

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

15

16 DATED February 22, 2017.

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Respectfully submitted,

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ELLEN F. ROSENBLUM

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Attorney General

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s/ Scott Kaplan
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The Honorable James L. Robart

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11 **FOR THE WESTERN DISTRICT OF WASHINGTON**

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15 DONALD J. TRUMP, et al.,

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18 STATE OF OREGON,

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20 v.

21 DONALD TRUMP, in his official capacity as
President of the United States; U.S.
22 DEPARTMENT OF HOMELAND
SECURITY; JOHN F. KELLY, in his official
23 capacity as Secretary of the Department of
Homeland Security; REX TILLERSON, in his
24 official capacity as Secretary of State; and the
UNITED STATES OF AMERICA,

25 Intervenor-Defendants
26

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
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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
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1 7. Venue is proper in this District under 28 U.S.C. §§ 1391(b)(2) and 1391(e)(1)(B).

2 8. Oregon intervenes in this action pursuant to Fed R. Civ. P. 24(a) and 24(b).

3 **PARTIES**

4 **Plaintiff-in-Intervention State of Oregon**

5 9. Petitioner-Intervenor is the State of Oregon.

6 10. The Governor is the chief executive officer of the State of Oregon. The Governor
7 is responsible for overseeing the operations of the State of Oregon and ensuring that its laws are
8 faithfully executed.

9 11. The Attorney General is the chief legal adviser to the State of Oregon. The
10 Attorney General's powers and duties include acting in federal court on matters of public
11 concern.

12 12. Oregon has codified its state policy that practices of unlawful discrimination
13 against any of its inhabitants because of religion or national origin are "a matter of state
14 concern," and that such discrimination "menaces the institutions and foundation of a free
15 democratic state." See ORS § 659A.006.

16 **Defendants**

17 13. Defendant Donald Trump is the President of the United States, and issued the
18 January 27, 2017, Executive Order on which Defendants rely for authority to detain, remove, or
19 refuse admission to non-citizen immigrants from Iran, Iraq, Syria, Somalia, Sudan, Libya, and
20 Yemen who are traveling or returning to the States via air, land, and sea ports across the United
21 States, including Portland International Airport. He is sued in his official capacity.

22 14. Defendant U.S. Department of Homeland Security ("DHS") is a federal cabinet
23 agency responsible for implementing and enforcing the Immigration and Nationality Act
24 ("INA"). DHS is a Department of the Executive Branch of the U.S. Government, and is an
25 agency within the meaning of 5 U.S.C. § 552(f). The U.S. Customs and Border Protection is an
26 Operational and Support Component agency within DHS. The U.S. Customs and Border

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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.)

INTERVENOR-PLAINTIFF'S PROPOSED COMPLAINT IN
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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

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

FIFTH CAUSE OF ACTION

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

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

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

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

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

SIXTH CAUSE OF ACTION

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

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

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

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.

1 108. Oregon, its employers, housing providers, business and government entities have
2 long been prohibited by Oregon law from discriminating against people based on national origin
3 in employment, housing, education, and in places of public accommodation.

4 109. The Executive Order effectively mandates that Oregon engage in discrimination
5 based on national origin and/or religion, thereby nullifying Oregon's historic protection of civil
6 rights and religious freedom.

7 110. Through their actions above, Defendants have violated the Tenth Amendment.

8 111. Defendant's violation is causing ongoing harm to Oregon.

9 **PRAYER FOR RELIEF**

10 112. Wherefore, the State of Oregon prays that the Court:

11 a. Declare that Sections 3(c), 5(a)-(c), and 5(e) of the Executive Order are
12 unauthorized by and contrary to the Constitution and laws of the United States;

13 b. Enjoin Defendants from implementing or enforcing Sections 3(c), 5(a)-(c),
14 and 5(e) of the Executive Order, including at all United States borders, ports of entry, and
15 in the issuance of visas, pending further orders from this Court; and

16 c. Award such other relief as the Court deems appropriate and just.

17 DATED: February ___, 2017.

18 Respectfully submitted,

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