

The Honorable James L. Robart

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON**

JUWEIYA ABDIAZIZ ALI, *et al.*,

Plaintiffs,

v.

DONALD TRUMP, *et al.*,

Defendants.

No. 2:17-cv-00141 (JLR)

**REPLY IN SUPPORT OF  
DEFENDANTS’ MOTION TO STAY  
DISTRICT COURT PROCEEDINGS  
PENDING RESOLUTION OF  
APPEAL IN *HAWAII V. TRUMP***

Noted For Consideration:  
April 14, 2017

The district court in *Hawaii v. Trump* recently stayed all proceedings pending final disposition of the government’s appeal of the preliminary injunction entered in that case. *See* No. CV 17-00050, ECF No. 279 (D. Haw. Apr. 3, 2017). This Court should do the same here, as a stay is most “efficient for [the Court’s] own docket and the fairest course for the parties[.]” *Leyva v. Certified Grocers of Cal., Ltd.*, 593 F.2d 857, 863 (9th Cir. 1979). Defendants demonstrated in their opening brief that resolution of the *Hawaii* appeal is likely to have “significant relevance to—and potentially control”—the Court’s analysis of forthcoming issues in this case. *Ali v. Trump*, 2017 WL 1057645, at \*5 (W.D. Wash. Mar. 17, 2017). Plaintiffs’

1 efforts to diminish the relevance of *Hawaii* serve only to highlight why further guidance from  
2 the Ninth Circuit is necessary before this case proceeds.

3         The question of what this Court may review in analyzing Plaintiffs' claims is a primary  
4 issue before the Ninth Circuit. In the *Hawaii* appeal, Defendants argue that the "Supreme  
5 Court has made clear that '[w]hen the Executive exercises' its authority to exclude aliens from  
6 the country 'on the basis of a facially legitimate and bona fide reason, the courts will neither  
7 look behind the exercise of that discretion, nor test it by balancing its justification against the'  
8 asserted constitutional rights of U.S. citizens.'" Br. of Appellants, *Hawaii v. Trump*, No. 17-  
9 5589, ECF No. 23 at 33 (9th Cir. Apr. 7, 2017) (quoting *Kleindienst v. Mandel*, 408 U.S. 753,  
10 770 (1972)). Plaintiffs disagree about the applicability of *Mandel*, but the important point for  
11 purposes of this stay motion is that the Ninth Circuit will likely provide significant guidance as  
12 to what evidence this Court may review. As this Court has recognized, the New Executive  
13 Order is "significant[ly] differen[t]" than the Revoked Executive Order, such that the Ninth  
14 Circuit's preliminary ruling as to the Revoked Order "does not preordain how the Ninth Circuit  
15 will rule in [*Hawaii*] with respect to [the New Order]." *Ali v. Trump*, 2017 WL 1057645, at \*5.  
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19         Even if the Ninth Circuit were to determine in *Hawaii* that, notwithstanding *Mandel*,  
20 courts may look beyond the four corners of the New Order, resolution of the *Hawaii* appeal is  
21 likely to provide guidance regarding the scope of any such review. As explained in  
22 Defendants' stay motion, the Ninth Circuit will likely address whether review is limited to  
23 openly available data that is accessible to an objective observer or instead extends to internal  
24 government documents, as well as whether statements or records that predate President  
25 Trump's assumption of office are relevant. Plaintiffs point out that the *Hawaii* appeal will not  
26 require the Ninth Circuit to "resolve yet-to-be-presented discovery disputes in this case." Pls.'  
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1 Opp'n at 3, ECF No. 92.<sup>1</sup> That, of course, oversimplifies the issue. The Ninth Circuit will not  
 2 adjudicate discovery issues, but it *will* decide legal questions that are likely to impact this  
 3 Court's resolution of forthcoming discovery disputes by clarifying "the applicable law or the  
 4 relevant landscape of facts that need to be developed." *Ali*, 2017 WL 1057645, at \*5. These  
 5 legal questions have been teed up in the *Hawaii* appeal, *see, e.g.*, Br. of Appellants, *Hawaii*,  
 6 No. 17-5589, ECF No. 23 at 46-53 (arguing statements made before President Trump assumed  
 7 office are not relevant); *id.* at 47 (describing discovery sought in this case and urging Ninth  
 8 Circuit to "reject a rule that [would] invite[] such probing"); *id.* at 47-49 (contending courts'  
 9 analysis must be based on official acts and openly available data); *id.* at 37-38 (arguing courts  
 10 cannot second-guess the President's national security judgments, which would render experts  
 11 unnecessary here).

14 Plaintiffs also contend that resolution of the *Hawaii* appeal will be of limited relevance  
 15 because Plaintiffs raise "five claims" in addition to the Establishment Clause claim raised in the  
 16 *Hawaii* appeal. Opp'n at 2. This assertion, however, ignores the fact that Defendants contend  
 17 the *Mandel* standard applies to all of Plaintiffs' constitutional claims. *See, e.g., Mandel*, 408  
 18 U.S. at 753, 760 (First Amendment right to "hear[] and meet[]" with alien"); *Fiallo v. Bell*, 430  
 19 U.S. 787, 791 (1977) (applying *Mandel* to claims that statute discriminated based on sex and  
 20 illegitimacy in violation of the Equal Protection and Due Process Clauses); *Rajah v. Mukasey*,

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24 <sup>1</sup> Plaintiffs' assertion that a stay is premature because Defendants "have not yet been served" with discovery  
 25 requests is unpersuasive. Opp'n at 5. Defendants' "discovery-related concerns" are hardly "speculative" (*id.* at  
 26 5)—Plaintiffs have already indicated in the parties' joint status report that they intend to seek broad and intrusive  
 27 discovery regarding the underlying factual basis, intent, design, issuance, and effects of the Order and the Revoked  
 28 Order. *See* ECF No. 82 at ¶¶ 4(B), 5(E). Because Plaintiffs could begin propounding discovery requests at any  
 time, a stay of proceedings would be far more efficient than requiring Defendants to pursue "the normal  
 procedures for contesting discovery requests." Opp'n at 5.

<sup>1</sup> Defendants note that the *Hawaii* plaintiffs filed a Petition for Initial Hearing En Banc in the Ninth Circuit. *See*  
 No. 17-15589, ECF No. 52 (9th Cir. Apr. 11, 2017).

1 544 F.3d 427, 438 (2d Cir. 2008) (applying *Mandel* to equal protection claim alleging  
2 discrimination based on “religion, ethnicity, gender, and race”). Moreover, Plaintiffs’  
3 argument against a stay because “only an extremely limited subset of claims at issue in this  
4 case are before the Ninth Circuit” is belied by their own arguments in their motion to for leave  
5 to intervene in *Hawaii*. Opp’n at 1. There, Plaintiffs stressed that the “congruence of the  
6 claims in the two lawsuits demonstrates the strong relationship between the interests of the *Ali*  
7 Plaintiffs and the *Hawai’i* plaintiffs’ claims,” and affirmed that the *Hawaii* appeal “may  
8 directly determine the merits of the *Ali* Plaintiffs’ claims for injunctive relief.” *Hawaii*, No. 17-  
9 5589, ECF No. 20-1 at 12, 14. The resolution of the *Hawaii* appeal will indeed likely narrow  
10 most of the merits issue in this case, in addition to affecting the scope of discovery.  
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12 (Defendants note that while a stay pending resolution of the *Hawaii* appeal is warranted  
13 because the Ninth Circuit’s guidance will inform this Court and the parties going forward, the  
14 *Ali* plaintiffs’ intervention on appeal in *Hawaii* is inappropriate for a variety of reasons, as the  
15 government has explained to the Ninth Circuit.)  
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17 In any event, resolution of the *Hawaii* appeal need not “settle every question of . . . law”  
18 to justify a stay. *Landis v. N. Am. Co.*, 299 U.S. 248, 256 (1936). It is sufficient that the  
19 *Hawaii* appeal is likely to “settle many” issues and “simplify” others, *id.*, such that a stay will  
20 facilitate the orderly course of justice and conserve resources for both the Court and the parties.  
21 See *Fairview Hosp. v. Leavitt*, 2007 WL 1521233, at \*3 (D.D.C. May 22, 2007) (granting stay  
22 pending resolution of another matter that would likely settle or simplify issues even though it  
23 “would not foreclose the necessity of litigation in [the stayed] case”); *In re Literary Works in*  
24 *Elec. Databases Copyright Litig.*, 2001 WL 204212, at \*3 (S.D.N.Y. Mar. 1, 2001) (same).  
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26 Indeed, this Court stayed consideration of Plaintiffs’ TRO motion notwithstanding the fact that  
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1 the motion asserted claims under the INA, Equal Protection Clause, Due Process Clause, and  
2 Administrative Procedure and Mandamus Acts—in addition to an Establishment Clause claim.  
3 *See* ECF No. 79.

4 With respect to balancing the hardships that a stay would create, the harm of which  
5 Plaintiffs complain—“delaying the resolution of discovery disputes” (Opp’n at 7)—does not  
6 outweigh “the hardship [and] inequity” Defendants would suffer “in being required to go  
7 forward” without guidance from the Ninth Circuit. *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th  
8 Cir. 1962). Plaintiffs seek extraordinarily broad, burdensome, and intrusive discovery in an  
9 area where the President’s authority is at its apex. *See* Joint Status Report & Discovery Plan,  
10 ECF No. 82. Contrary to Plaintiffs’ claim, Defendants’ request for a stay is not a “pretext for  
11 their categorical opposition to all discovery.” Opp’n. at 4. Rather, they merely seek to avoid  
12 being required to respond to such resource-intensive discovery without the benefit of guidance  
13 from the Ninth Circuit that is likely to inform threshold issues regarding the appropriateness,  
14 scope, and necessity of the discovery Plaintiffs seek. *See Cheney v. U.S. District Court*, 542  
15 U.S. 367, 385 (2004) (“The high respect that is owed to the office of the Chief Executive,”  
16 which is to “inform . . . the timing and scope of discovery,” warrants a stay pending resolution  
17 of the *Hawaii* appeal.); *Clinton v. Jones*, 520 U.S. 681, 707 (1997) (The power to stay  
18 proceedings applies “especially in cases of extraordinary public moment[.]”).

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22 Finally, in contrast to Plaintiffs’ claim, the stay Defendants seek is limited. Defendants  
23 request a stay pending final disposition of appellate proceedings concerning the preliminary  
24 injunction in *Hawaii*, which is the same, reasonable stay entered by the district court in *Hawaii*  
25 itself. *See* No. CV 17-00050, ECF No. 279. Considering that the Ninth Circuit has ordered  
26 expedited briefing and set oral argument for May 15, 2017, *see Hawaii*, No. 17-15589, ECF  
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1 Nos. 14, 18, there is no reason to believe the stay will be of inordinate duration. Plaintiffs'  
2 conjecture about a possible petition for certiorari and further speculation about when any  
3 Supreme Court review might take place, *see* Opp'n at 6, does not justify denying a stay. If the  
4 Court is concerned about the duration of any stay, it could require a status report once the Ninth  
5 Circuit has issued its decision to reevaluate the circumstances at that time.  
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7 For these reasons, the Court should stay district court proceedings in this case pending  
8 resolution of the *Hawaii* appeal.  
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10 DATED: April 14, 2017

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 14, 2017, I electronically filed the foregoing Reply in Support of Defendants’ Motion to Stay District Court Proceedings Pending Resolution of Appeal in *Hawaii v. Trump* using the Court’s CM/ECF system, causing a notice of filing to be served upon all counsel of record.

/s/ Stacey I. Young  
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