

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

ARAB AMERICAN CIVIL RIGHTS
LEAGUE, et al.,

Plaintiffs,

v.

DONALD TRUMP, et al.,

Defendants.

Case No. 2:17-cv-10310-VAR-SDD

Hon. Victoria A. Roberts

Mag. J. Stephanie D. Davis

**PLAINTIFFS' BRIEF IN PARTIAL OPPOSITION TO
DEFENDANTS' MOTION TO EXTEND TIME FOR
ISSUANCE OF A SCHEDULING ORDER UNDER RULE 16(b)**

Plaintiffs hereby respond to Defendants' Motion to Extend Time for Issuance of a Scheduling Order Under Rule 16(b), as set forth in the attached supporting brief.

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INTRODUCTION

The parties' basic disagreement is whether the Court should halt proceedings entirely in this case while it considers Defendants' motion to dismiss, or instead allow limited discovery to proceed now so that Plaintiffs can move forward with seeking a preliminary injunction based on a strong factual record that has been unavailable to any other court considering these Executive Orders. Defendants are essentially seeking a delay of further proceedings well into the summer by arguing that this Court should depart significantly from the decisions of other courts that have rejected essentially the same Government arguments regarding the same executive action.

Plaintiffs are willing to agree that the Court can defer entering a full pretrial scheduling order, and therefore oppose Defendants' motion only in part. The Court should, however, allow Plaintiffs to proceed immediately with the very limited discovery they seek to support their motion for preliminary injunction, so that the remainder of the case can move forward without further delay. As discussed in more detail below, Defendants' motion is highly unlikely to be dispositive of the case; the narrow discovery sought by Plaintiffs involves minimal burden on Defendants and was designed not to implicate executive privilege; and the Court has all the information it needs to enter the limited scheduling order that Plaintiffs propose.

ARGUMENT

I. A Ruling on Defendants' Motion to Dismiss Will Neither Dispose of This Case Nor Make the Requested Discovery Unnecessary.

Only *complete* dismissal of this case would make the limited discovery sought by Plaintiffs unnecessary. But it is highly unlikely that the Court would arrive at such a result, particularly given that other courts have rejected many of the same arguments by the same Defendants about the same executive action.

The Government devotes considerable attention to questions of standing, but these arguments will not result in dismissal of the case. Defendants' arguments on standing and ripeness have already been rejected by at least four other courts. *See, e.g., Washington v. Trump*, 847 F.3d 1151, 1159-60 (9th Cir. 2017) (finding standing based on harm to university students and faculty who cannot travel for research, academic collaboration, or personal reasons; whose family members from abroad cannot visit; and who cannot recruit students or faculty from the barred countries); *Sarsour v. Trump*, No. 17-cv-120, 2017 WL 1113305, at *5 (E.D. Va. Mar. 24, 2017) (finding standing due to the stigma and burden on travel and other activities imposed by the Revised Executive Order); *IRAP v. Trump*, No. 17-cv-361, 2017 WL 1018235, at *5 (D. Md. Mar. 16, 2017) (finding standing for plaintiffs with barred family members and stigma-related injuries); *Hawaii v. Trump*, No. 17-cv-0050, 2017 WL 1011673, at *16 (D. Haw. Mar. 15, 2017)

(finding standing for an American citizen due to stigma caused by the Revised Executive Order).

Moreover, the Government's scattershot arguments on standing do not even address all of the injuries alleged in the Complaint. By failing to attack the standing of all of the Plaintiffs based on all of the injuries they allege, the Government essentially concedes that the case is justiciable. And even if some of the claims of some of the Plaintiffs are ultimately dismissed, the case will move into discovery as long as even a single claim from a single plaintiff remains viable. *See, e.g., ACLU of Ky. v. Grayson Cnty.*, 591 F.3d 837, 843 (6th Cir. 2010) ("The presence of one party with standing is sufficient.").

Other courts have similarly rebuffed the Government's arguments. For instance, several other courts have rejected the notion that 8 U.S.C. §§ 1182 and 1185 essentially authorize the President to violate the Constitution. *See, e.g., Washington v. Trump*, 847 F.3d 1151, 1161 (9th Cir. 2017) ("There is no precedent to support this claimed unreviewability, which runs contrary to the fundamental structure of our constitutional democracy."); *IRAP v. Trump*, No. 17-cv-361, 2017 WL 1018235, at *16 (D. Md. Mar. 16, 2017) ("Even when exercising their immigration powers, the political branches must choose constitutionally permissible means of implementing that power." (citation omitted)); *Aziz v. Trump*, No. 17-cv-116, 2017 WL 580855, at *6 (E.D. Va. Feb. 13, 2017) ("Every

presidential action must still comply with the limits set by Congress' delegation of power and the constraints of the Constitution, including the Bill of Rights.'").

On the merits, courts have rejected Defendants' arguments on the constitutional claims when evaluating them under the much more difficult preliminary injunction standard of "likelihood of success," making it unlikely that this Court would find that Plaintiffs here have not even stated a claim sufficient to survive a motion to dismiss. *See, e.g., IRAP v. Trump*, No. 17-cv-361, 2017 WL 1018235, at *13 (D. Md. Mar. 16, 2017) (finding likelihood of success because animus drove formulation of Revised Executive Order); *Hawaii v. Trump*, No. 17-cv-0050, 2017 WL 1011673, at *13 (D. Haw. Mar. 15, 2017) (same); *Aziz v. Trump*, No. 17-cv-116, 2017 WL 580855, at *8-11 (E.D. Va. Feb. 13, 2017) (same).

In light of this recent history, there is good reason to doubt the government's self-serving claim that its motion to dismiss will dispose of the case in full. Moreover, questions of fact will also prevent the Court from granting Defendants' motion to dismiss. Defendants acknowledge this problem implicitly. Rather than confining their argument to matters of law and the facts alleged in the Complaint, Defendants feel compelled to dispute Plaintiffs' allegations as a factual matter. Central to their argument is the Government's position that the Revised Executive Order was intended to protect national security and does not have a discriminatory

effect, contrary to Plaintiffs’ allegation that its “purpose and effect” was to “target and discriminate against Muslims” (2nd Am. Compl., R. 41, Pg. ID 464, ¶ 9). *See, e.g.*, Defs.’ Mot. to Dismiss, R. 76 (“MTD”), at Pg. ID 1017 (arguing that purpose was to protect national security), 1043 (same), 1034-35 (offering statistics to dispute the effect of the ban), 1035-36 (characterizing the purpose of exempting Iraq from the ban), 1043-44 (suggesting that Donald Trump’s statements before becoming President are not reflective of his views and intent after taking office). The Government’s own arguments make clear that the Court will ultimately need to decide whether the purpose and effect of the Revised Executive Order were impermissible based on a consideration of the facts and evidence — including evidence that Plaintiffs believe will be produced in discovery — not when considering a motion to dismiss.

II. The Limited Discovery Sought by Plaintiffs Is Relevant and Necessary.

The Court has already found that “Plaintiffs’ requested discovery is directly relevant to their claim that the [Revised Executive Order] was motivated by discriminatory religious animus.” (March 31 Order, R. 69, Pg. ID 978.) Plaintiffs’ discovery is therefore also directly relevant to their anticipated motion for a preliminary injunction.

Because the Government has opposed preliminary injunction motions in other cases on the grounds that the public record evidence of animus is insufficient,

Plaintiffs wish to file an injunction motion supported by evidence that incontrovertibly establishes that the Executive Orders were motivated by religious animus and that the national security justification is a mere pretext. This will allow the Court to issue an injunction supported by evidence of religious animus and discriminatory intent not available to the other District Courts considering challenges to the Revised Executive Order, and will allow the Court to be the first to consider the question of whether the purported facial neutrality of an Executive Order can erase undisputable evidence of animus and discriminatory intent.

III. Plaintiffs' Discovery Requests Are Not Burdensome and Do Not Implicate Executive Privilege.

Defendants' alarmist predictions of the burden of discovery ignore the realities of the limited discovery that Plaintiffs are actually pursuing at this time. Plaintiffs are not seeking discovery on everything "within the scope of the present Second Amended Complaint," nor are they seeking depositions. *See* Defs.' Mot. to Extend Time, R.77 ("Mot."), at Pg. ID 1069. As Defendants know from the discovery requests served by Plaintiffs on April 6 and the schedule proposed by Plaintiffs earlier the same day, Plaintiffs are currently seeking production of only four limited categories of documents and responses to just five narrow interrogatories. (*See* Ex. A and Ex. B.) The Court has already noted in its March 31 Order that "most of Plaintiffs' discovery requests are appropriately narrow," while also finding the document request and interrogatory related to congressional

staffers to be “overly broad.” Order, R. 69, Pg. ID 977. Plaintiffs have further narrowed even the requests that the Court found “appropriately narrow,” and have more precisely described the other requests to limit them to the few congressional staffers involved in drafting the Executive Orders. The burden imposed on Defendants by these requests is entirely reasonable (as well as inevitable).¹

Given the limited nature of the discovery requests, it is difficult to contemplate any circumstance in which Government lawyers would need to spend “thousands” of hours conducting a privilege review (*see* Mot. at Pg. ID 1069). Defendants have no serious argument that Plaintiffs’ discovery requests implicate executive privilege.² Neither the presidential communications privilege (which is rooted in “the President’s Article II powers” and protects “materials that reflect presidential decisionmaking”) nor the deliberative process privilege (which gives “government officials freedom to debate alternative approaches in private”) applies to the discovery that Plaintiffs have served. *In re Sealed Case*, 121 F.3d 729, 748, 744, 737 (D.C. Cir. 1997). Most of Plaintiffs’ requests seek evidence pre-dating

¹ As proposed below, after this first phase of limited discovery is complete, and after the Court decides the motion to dismiss, the parties can meet and confer about the parameters of any additional discovery that may be appropriate.

² The Government appears to acknowledge this, noting that the privilege questions they allude to would be an “issue of first impression.” Mot. at Pg. ID 1069.

the election,³ and Defendants’ own motion to dismiss argues that a candidate is a “private person” and not a “government actor,” and that a candidate’s pre-election statements are not “official acts.” MTD Pg. ID 1042. Simply put, statements by Candidate Trump are no more subject to a claim of executive privilege than statements by Candidate Clinton or any other candidate.

If Defendants truly intend to argue for an unprecedented extension of executive privilege to cover candidates for political office or legislative staff, they may do so as discovery moves forward. But novel (let alone baseless) theories for shielding some documents are no justification for a blanket stay on any and all discovery.

³ Document Request 4 and Interrogatory 2 relate solely to communications prior to the inauguration involving certain congressional staffers, which are clearly not covered by the presidential communications privilege. *See, e.g., Judicial Watch, Inc. v. Dep’t of Justice*, 365 F.3d 1108, 1116, 1119 (D.C. Cir. 2004) (privilege applies only to “immediate White House advisers” in the Office of the President and their staff, even when the information sought relates to the exercise of a “Presidential duty”); *Fish v. Kobach*, No. 16-cv-2105, 2017 WL 1373882, at *6 (D. Kan. Apr. 17, 2017) (“[A] president-elect . . . has no *constitutional* power to make any decisions on behalf of the Executive Branch. No court has recognized the applicability of the executive privilege to communications made before a president takes office.”). And Interrogatories 3-5 relate to solely factual information, which the Government cannot seriously claim is privileged. *See, e.g., Sealed Case*, 121 F.3d at 737 (“The deliberative process privilege does not . . . protect material that is purely factual . . .”).

IV. The Court Has All the Information It Needs to Enter a Scheduling Order at This Time.

Under Rule 16(b)(1)(B), the Court may issue a Rule 16 order “so long as the judge consults with the parties’ attorneys” (as it did on April 13), without requiring submission of a Rule 26(f) report. *See Lasisi v. Follett Higher Educ. Grp.*, 598 F. App’x 437, 441 (7th Cir. 2015) (“[A] district judge may issue a scheduling order without first receiving the parties’ report under Rule 26(f) so long as the judge consults ‘with the parties’ attorneys” (quoting Fed. R. Civ. P. 16(b)(1)(B))).

While the parties disagree as to whether their April 6 meet and confer constituted a formal Rule 26(f) conference, the Court need not resolve that dispute in order to enter a scheduling order. Nor would another meet and confer serve any purpose. This is not a case where the parties disagree about the nuances covered by Rule 26(f). Rather, the disagreement is fundamental — whether even limited discovery should proceed at this time. It is clear that a 26(f) plan would simply recite competing positions on nearly every issue, with Defendants insisting that no discovery should occur and Plaintiffs setting out the same proposal for discovery that they outline here.

The most efficient solution would be for the Court to enter a scheduling order under Rule 16(b)(1)(B) establishing the following two-stage approach. First, the parties would proceed only with initial disclosures and the limited discovery that Plaintiffs served on April 6. On the basis of the discovery obtained, which

Plaintiffs expect will add importantly to the existing evidence of religious animus, Plaintiffs will be prepared to file a motion for a preliminary injunction. Second, within 21 days of the Court's ruling on the Defendants' motion to dismiss, the parties would confer and submit a joint report to the Court regarding the remainder of the case, including with respect to briefing of a motion for a preliminary injunction. This approach alleviates any concerns Defendants might claim to have regarding wide-ranging discovery, while accommodating Plaintiffs' request for targeted discovery to support a motion for a preliminary injunction.

Thus, Plaintiffs ask that the Court enter a Scheduling Order:

(1) Requiring initial disclosures to be exchanged within one week of entry of the Scheduling Order. This should present little burden to Defendants since initial disclosures have been made previously in other cases challenging the Revised Executive Order.⁴

(2) Requiring Defendants to produce the single document responsive to Document Request 1 (the Giuliani memo) within one week of entry of the Scheduling Order. Production of this document should present little burden to Defendants. And, to the extent Defendants are serious about asserting executive privilege over *pre-election*

⁴ See, e.g., *Doe v. Trump*, No. 17-cv-178, ECF #27 (W.D. Wash. Apr. 12, 2017) (scheduling order requiring exchange of initial disclosures and submission of a discovery plan); *Ali v. Trump*, No. 17-cv-135, ECF #38 (W.D. Wash. Feb. 21, 2017) (same); *Washington v. Trump*, No. 17-cv-141, ECF #87 (W.D. Wash. Feb. 15, 2017) (same); Joint Status Report & Discovery Plan, *Washington v. Trump*, No. 17-cv-141, ECF #177 (W.D. Wash.) (filed Apr. 5, 2017) (confirming that parties exchanged initial disclosures); Joint Status Report & Discovery Plan, *Ali v. Trump*, No. 17-cv-135, ECF #82 (W.D. Wash.) (filed Mar. 28, 2017) (same).

campaign documents, it will permit Plaintiffs to begin the process of challenging that assertion.

(3) Requiring Defendants to respond to Document Requests 2-4 and Interrogatories 1-5 within three weeks of entry of the Scheduling Order. Those requests were served on Defendants on April 6, and therefore the deadline for the Defendants to respond under FRCP 34(b)(2)(A) and 33(b)(2) would have been May 8. These requests are narrower versions of those filed with Plaintiffs' Motion for Expedited Discovery, which Defendants have had since March 16.

CONCLUSION

Plaintiffs therefore ask that the Court deny Defendants' motion to the extent it seeks to halt all proceedings, and instead enter the limited order described above.

Dated: April 21, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

This Brief and the accompanying Exhibits were filed on April 21, 2017, via the Court's ECF system, which provides notice to all counsel of record.

/s/ Jason C. Raofield

Jason C. Raofield

(D.C. Bar #463877)

INDEX OF EXHIBITS

Exhibit A: Plaintiffs' First Set of Document Requests to Defendants

Exhibit B: Plaintiffs' First Set of Interrogatories to Defendants

**IN THE UNITED STATES DISTRICT COURT
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**PLAINTIFFS' FIRST SET OF DOCUMENT REQUESTS
TO DEFENDANTS**

Plaintiffs hereby propound the following First Set of Document Requests to Defendants under Rule 34 of the Federal Rules of Civil Procedure.

DEFINITIONS AND INSTRUCTIONS

A. Definitions

As used herein, the identified terms or abbreviations have the following meanings:

1. **"DOCUMENT REQUEST"** refers to Plaintiffs' First Set of Document Requests to Defendants in this action.
2. **"TRUMP CAMPAIGN"** means Donald J. Trump for President, Inc., Trump Make America Great Again Committee, and all of their affiliates,

parents, subsidiaries, predecessors, successors, partnerships, partners, and all related entities, as well as their officers, directors, employees, internal and outside counsel, agents, representatives, consultants, spokespeople, advisers, and any other person(s) acting under their control or on their behalf.

3. **“PROPOSED MUSLIM BAN / EXTREME VETTING / TRAVEL BAN”** means any and all proposals by or on behalf of Donald J. Trump involving any of the following: prohibitions or restrictions on entry into the United States by Muslims, enhanced vetting procedures for Muslims seeking to enter the United States, prohibitions or restrictions on entry into the United States by individuals from a list of countries to be identified, enhanced vetting procedures for individuals seeking to enter the United States from a list of countries to be identified, or the policy or policies reflected in Executive Order 13769 or Executive Order 13780.

4. **“EXECUTIVE ORDER 13769”** refers to Executive Order No. 13769, entitled “Protecting the Nation From Foreign Terrorist Entry Into the United States,” which was issued on January 27, 2017, and published at 82 Fed. Reg. 8977-82.

5. **“EXECUTIVE ORDER 13780”** refers to Executive Order No. 13780, entitled “Protecting the Nation From Foreign Terrorist Entry Into the

United States,” which was issued on March 6, 2017, and published at 82 Fed. Reg. 13209-19.

6. “**IDENTIFY**” means:

a. when used with respect to a natural person, provide his or her full name, last known business address and telephone number, and last known business position or title and affiliation;

b. when used with respect to a document or written communication, provide its date; the name and job title of the preparer(s), sender(s), and recipient(s) of the document or written communication; the name and job title of all persons to whom copies of the document or written communication were furnished; the subject matter of the document or written communication; and the present or last known location and custodian or custodians of the document or written communication; except that with respect to any document produced in response to Plaintiffs’ Document Requests, you need only identify such document by listing its date, the name of the sender and recipient of the document, or the stamped production number if any;

c. when used with respect to oral communications, provide the nature and substance of the communication, the date when and place where such oral communication occurred, each person who participated in the communication, and each person present when the communication occurred.

7. “**COMMUNICATION**” means any meeting, telephone conversation, facsimile, incoming or outgoing e-mail message, text message, face-to-face conversation, letter, or other written, oral, or electronic transmittal or exchange of information.

8. “**MEETING**” means any discussion or conversation involving two or more people, whether conducted in person, by telephone, or electronically, and whether held formally or informally, and whether or not scheduled in advance, including conferences, conference calls, online meetings, and videoconferences.

9. “**DOCUMENT**” means, without limitation, and whether or not they are publicly available, the originals, marked copies, drafts, regardless of origin, whether sent or received, whether made or used internally, and both sides thereof, of the following items, whether printed, recorded, taped, written by hand, or produced, reproduced, or stored by any mechanical or electronic process: agreements, brochures, communications, contracts, correspondence, diaries, electronic mail (“e-mail”) messages, letters, memoranda, manuals, handbooks, circulars, policy statements, minutes of meetings or conferences, notes, reports, summaries or records of personal conversations or interviews, summaries or records of telephone conversations, summaries or records of negotiations or investigations, computer printouts, computer tapes, computer programs, and any and all other electronically stored information (including available meta data),

tangible things, writings, drawings, graphs, charts, photographs, sound recordings, images, spreadsheets, or other data or data compilations in whatever form they exist. The term “DOCUMENT” also means every copy of a document where such copy is not an identical duplicate of the original. Any copy of a document bearing any comment or notation that is not a part of the original text is to be considered a separate “DOCUMENT.” Any draft or other preliminary form of any document is also to be considered a separate “DOCUMENT.”

10. **“PERSON”** means any natural person, firm, corporation, partnership, proprietorship, cooperative, association, joint venture, organization, governmental body, committee, commission, group, or other entity, and any agent or employee of any of those individual entities.

11. **“RELATE OR REFER”** or **“RELATING OR REFERRING”** shall be construed broadly and shall mean, for example, pertaining to, containing, describing, reflecting, regarding, illustrating, mentioning, evidencing, embodying, constituting, supporting, discussing, or having any logical or factual connection whatsoever with the subject matter in question.

12. **“YOU”** and **“YOUR”** refer to the Defendants in this action, including all of their departments, agencies, employees and agents, and any other person or entity acting or purporting to act on their behalf, at their direction, or under their supervision.

13. All uses of the conjunctive herein include the disjunctive and vice versa. Words in the singular form include the plural form and vice versa.

B. Instructions

1. Produce all documents in your possession, custody, or control, or otherwise available to your employees, agents, consultants, attorneys, and accountants, whether past or present.

2. Produce in their entirety all documents that respond, in whole or in part, to any portion of the production requests, including any and all attachments and enclosures. Produce all electronically stored information in native form, with all meta data intact.

3. Produce all drafts, marked-up versions, preliminary versions, or other non-identical copies of documents requested, and produce all documents with all hand-written notations, marginalia, and interlineations intact.

4. If any information is withheld by you under a claim of privilege, please set forth in your written response for each document or information for which a claim of privilege is made:

(a) Principals. The name and title of the author(s), sender(s), addressee(s), and recipient(s) of the document.

(b) Date. The date of the document.

(c) Publications. The date and title of each person to whom the contents of the document has been disclosed by copy, exhibition, reading, summarization, or otherwise.

(d) Descriptions. A description of the nature and subject matter of the document.

(e) Privilege. A statement of the privilege(s) and the basis or bases upon which the privilege(s) is or are asserted.

5. If any document is withheld under a claim that only part of a document is exempt from production by reason of a privilege or privileges, produce the part(s) of the document that are not claimed to be exempt from production by reason of a privilege or privileges.

6. If you cannot produce a requested document for any reason, identify the document as fully and accurately as possible and state the reason(s) that the document cannot be produced.

7. Affix Bates numbers to all documents produced.

8. These Requests are continuing in nature. Therefore, you are obligated to provide, by way of supplemental responses and documents, whatever information may hereafter be obtained by you, or by anyone on your behalf, that will supplement this request.

DOCUMENT REQUESTS

1. A copy of the “memorandum” (or “white paper”) that Rudolph Giuliani and others provided to Donald J. Trump or others working for or on behalf of the Trump Campaign in approximately May to July 2016, which was discussed extensively by Mr. Giuliani during public appearances on or about July 8, 2016, November 13, 2016 and January 28, 2017, by Rep. Michael McCaul in public appearances in late January and early February 2017, and by Susan Phelan, Spokeswoman for the House Committee on Homeland Security, on or about January 30, 2017.¹

RESPONSE:

¹http://www.nj.com/politics/index.ssf/2016/07/exclusive_giuliani_source_of_trump_shift_on_muslim.html; www.cnn.com/TRANSCRIPTS/161113/sotu.01.html; https://www.washingtonpost.com/news/the-fix/wp/2017/01/29/trump-asked-for-a-muslim-ban-giuliani-says-and-ordered-a-commission-to-do-it-legally/?utm_term=.75466c390ef0; <http://www.mcclatchydc.com/news/politics-government/white-house/article129703344.html>; <https://www.texastribune.org/2017/02/07/michael-mccaul-calls-trumps-travel-ban-rollout-problematic/>.

2. All documents or communications created after May 10, 2016 and prior to July 10, 2016 referring or relating to the Proposed Muslim Ban / Extreme Vetting / Travel Ban, and which involve the “commission” or “group” discussed extensively by Rudolph Giuliani, Rep. Michael McCaul and Susan Phelan in the public appearances referenced in Document Request No. 1. This request includes but is not limited to drafts of the document requested in Document Request No. 1, and any responses to that document (or drafts of that document) by Donald J. Trump or others working for or on behalf of the Trump Campaign.

RESPONSE:

3. All documents or communications created after July 8, 2016 and prior to November 8, 2016 which refer or relate to the Proposed Muslim Ban / Extreme Vetting / Travel Ban, and which were created by, sent by, or received by any of the following individuals: (i) Donald J. Trump, (ii) Rudolph Giuliani, (iii) Senator Jeff Sessions, (iv) Kansas Secretary of State Kris Kobach, (v) Stephen Bannon, or (vi) Stephen Miller.

RESPONSE:

4. All documents, communications, or analyses created after November 8, 2016 and prior to January 20, 2017 which refer or relate to the Proposed Muslim Ban / Extreme Vetting / Travel Ban, and which were created or transmitted by any of the “several” Congressional employees or staff members referenced in news articles published in late January or early February 2017.² This request includes but is not limited to the nondisclosure agreements reportedly signed by the Congressional employees or staff members at issue in this request.

RESPONSE:

² <http://www.politico.com/story/2017/01/trump-immigration-congress-order-234392>;
<http://www.cnn.com/2017/01/31/politics/house-staff-worked-on-trump-executive-orders/>;
<https://www.msn.com/en-us/lifestyle/family-relationships/capitol-hill-staff-secretly-wrote-trump%E2%80%99s-travel-ban-order/vp-AAmrcKo>.

Dated: April 6, 2017

Respectfully submitted,

/s/ Jason C. Raofield

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Arab American Studies Association,
Adeeb Saleh, Sofana Bella, Hilal
Alkateeb and S.A., a minor through
her Parent and Next Friend, Hilal
Alkatteeb*

CERTIFICATE OF SERVICE

On April 6, 2017, I caused to be served PLAINTIFFS' FIRST SET OF DOCUMENT REQUESTS TO DEFENDANTS on all Parties to this action in the following manner:

- (1) On counsel for Plaintiffs by electronic mail
- (2) On counsel for Defendants by hand delivery and electronic mail to the following:

Joshua S. Press (Joshua.Press@usdoj.gov)
Briana Yuh (Briana.Yuh@usdoj.gov)
Gisela Westwater (Gisela.Westwater@usdoj.gov)
U.S. Department of Justice
Civil Division, Office of Immigration Litigation
450 5th Street, NW
Washington, DC 20530

/s/ Jason C. Raofield
Jason C. Raofield (D.C. Bar #463877)

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

**ARAB AMERICAN CIVIL RIGHTS
LEAGUE**, et al.,

Plaintiffs,

v.

DONALD TRUMP, et al.,

Defendants.

Case No. 2:17-cv-10310-VAR-SDD

Hon. Victoria A. Roberts

Mag. J. Stephanie D. Davis

**PLAINTIFFS' FIRST SET OF INTERROGATORIES
TO DEFENDANTS**

Plaintiffs hereby propound the following First Set of Interrogatories to Defendants, to be answered separately and under oath under Rule 33 of the Federal Rules of Civil Procedure.

DEFINITIONS AND INSTRUCTIONS

A. Definitions

As used herein, the identified terms or abbreviations have the following meanings:

1. **“DOCUMENT REQUEST”** refers to Plaintiffs' First Set of Document Requests to Defendants in this action.

2. **“INTERROGATORY”** refers to Plaintiffs’ First Set of Interrogatories to Defendants in this action.

3. **“TRUMP CAMPAIGN”** means Donald J. Trump for President, Inc., Trump Make America Great Again Committee, and all of their affiliates, parents, subsidiaries, predecessors, successors, partnerships, partners, and all related entities, as well as their officers, directors, employees, internal and outside counsel, agents, representatives, consultants, spokespeople, advisers, and any other person(s) acting under their control or on their behalf.

4. **“CANDIDATE TRUMP”** means Mr. Donald J. Trump, prior to January 20, 2017.

5. **“PROPOSED MUSLIM BAN / EXTREME VETTING / TRAVEL BAN”** means any and all proposals by or on behalf of Donald J. Trump involving any of the following: prohibitions or restrictions on entry into the United States by Muslims, enhanced vetting procedures for Muslims seeking to enter the United States, prohibitions or restrictions on entry into the United States by individuals from a list of countries to be identified, enhanced vetting procedures for individuals seeking to enter the United States from a list of countries to be identified, or the policy or policies reflected in Executive Order 13769 or Executive Order 13780.

6. **“EXECUTIVE ORDER 13769”** refers to Executive Order No. 13769, entitled “Protecting the Nation From Foreign Terrorist Entry Into the United States,” which was issued on January 27, 2017, and published at 82 Fed. Reg. 8977-82.

7. **“EXECUTIVE ORDER 13780”** refers to Executive Order No. 13780, entitled “Protecting the Nation From Foreign Terrorist Entry Into the United States,” which was issued on March 6, 2017, and published at 82 Fed. Reg. 13209-19.

8. **“IDENTIFY”** means:

a. when used with respect to a natural person, provide his or her full name, last known business address and telephone number, and last known business position or title and affiliation;

b. when used with respect to a document or written communication, provide its date; the name and job title of the preparer(s), sender(s), and recipient(s) of the document or written communication; the name and job title of all persons to whom copies of the document or written communication were furnished; the subject matter of the document or written communication; and the present or last known location and custodian or custodians of the document or written communication; except that with respect to any document produced in response to Plaintiffs’ Document Requests, you need only

identify such document in response to these interrogatories by listing its date, the name of the sender and recipient of the document, or the stamped production number if any;

c. when used with respect to oral communications, provide the nature and substance of the communication, the date when and place where such oral communication occurred, each person who participated in the communication, and each person present when the communication occurred.

9. “**COMMUNICATION**” means any meeting, telephone conversation, facsimile, incoming or outgoing e-mail message, text message, face-to-face conversation, letter, or other written, oral, or electronic transmittal or exchange of information.

10. “**MEETING**” means any discussion or conversation involving two or more people, whether conducted in person, by telephone, or electronically, and whether held formally or informally, and whether or not scheduled in advance, including conferences, conference calls, online meetings, and videoconferences.

11. “**DOCUMENT**” means, without limitation, and whether or not they are publicly available, the originals, marked copies, drafts, regardless of origin, whether sent or received, whether made or used internally, and both sides thereof, of the following items, whether printed, recorded, taped, written by hand, or produced, reproduced, or stored by any mechanical or electronic process:

agreements, brochures, communications, contracts, correspondence, diaries, electronic mail (“e-mail”) messages, letters, memoranda, manuals, handbooks, circulars, policy statements, minutes of meetings or conferences, notes, reports, summaries or records of personal conversations or interviews, summaries or records of telephone conversations, summaries or records of negotiations or investigations, computer printouts, computer tapes, computer programs, and any and all other electronically stored information (including available meta data), tangible things, writings, drawings, graphs, charts, photographs, sound recordings, images, spreadsheets, or other data or data compilations in whatever form they exist. The term “DOCUMENT” also means every copy of a document where such copy is not an identical duplicate of the original. Any copy of a document bearing any comment or notation that is not a part of the original text is to be considered a separate “DOCUMENT.” Any draft or other preliminary form of any document is also to be considered a separate “DOCUMENT.”

12. **“PERSON”** means any natural person, firm, corporation, partnership, proprietorship, cooperative, association, joint venture, organization, governmental body, committee, commission, group, or other entity, and any agent or employee of any of those individual entities.

13. **“RELATE OR REFER”** or **“RELATING OR REFERRING”** shall be construed broadly and shall mean, for example, pertaining to, containing,

describing, reflecting, regarding, illustrating, mentioning, evidencing, embodying, constituting, supporting, discussing, or having any logical or factual connection whatsoever with the subject matter in question.

14. **“YOU”** and **“YOUR”** refer to the Defendants in this action, including all of their departments, agencies, employees and agents, and any other person or entity acting or purporting to act on their behalf, at their direction, or under their supervision.

15. All uses of the conjunctive herein include the disjunctive and vice versa. Words in the singular form include the plural form and vice versa.

B. Instructions

1. Answer each Interrogatory set forth below separately and completely in writing under oath. Your response hereto is to be signed and verified by the person making it, and the objections signed by the attorney making them, as required by Federal Rule of Civil Procedure 33(b).

2. In responding to these Interrogatories, furnish all information that is available to you, including information that is available to you or your counsel, or in the possession, custody or control of you or any agent of yours.

3. Each Interrogatory shall be answered fully unless it is objected to in good faith, in which event the reasons for your objection shall be stated in detail.

4. If an objection pertains to only a portion of an Interrogatory, or a word, phrase, or clause contained within it, you are required to state your objection to that portion only and to respond to the remainder of the Interrogatory, using your best efforts to do so.

5. If any Interrogatory cannot be responded to in full after exercising due diligence to secure the information, respond to the extent possible, specifying your inability to respond to the remainder and stating whatever information you have concerning the unanswered portions.

6. If any information is withheld by you under a claim of privilege, please set forth in your written response for each document or information for which a claim of privilege is made:

- (a) Principals. The name and title of the author(s), sender(s), addressee(s), and recipient(s) of the information.
- (b) Date. The date the document or information was created or transmitted.
- (c) Publications. The date and title of each person to whom the contents of the information has been disclosed by copy, exhibition, reading, summarization, or otherwise.
- (d) Descriptions. A description of the nature and subject matter of the information.

(e) Privilege. A statement of the privilege(s) and the basis or bases upon which the privilege(s) is or are asserted.

7. These Interrogatories are continuing in nature. Therefore, you are obligated to provide, by way of supplemental responses and documents, whatever information may hereafter be obtained by you, or by anyone on your behalf, that will supplement this request.

INTERROGATORIES

1. With respect to the “commission” referred to in Document Request No. 2, identify (i) each person who was a member of the commission or its staff, (ii) the dates and locations and attendees of any meetings of the commission or its staff, and (iii) for each individual identified your response, state whether, during the period covered by Document Request No. 2, such individual had a security clearance, whether the individual was an attorney, and whether the individual was formally retained to provide legal advice to Donald J. Trump or the Trump Campaign.

RESPONSE:

2. Identify each of the “several” Congressional employees or staff members that are referred to in Document Request No. 4, and for each such individual, state whether the individual entered into a nondisclosure agreement relating to their involvement in this issue, and identify the date on which the individual entered into the nondisclosure agreement.

RESPONSE:

3. Identify all foreign-born individuals from Iran, Libya, Somalia, Sudan, Syria or Yemen, who are among the “hundreds of persons” referred to in Section 1(h) of Executive Order 13780 (i.e., “Since 2001, hundreds of persons born abroad have been convicted of terrorism-related crimes in the United States.”). For each such individual, identify the date of conviction, the court and docket number of the relevant case, the crime(s) with which the individual was convicted, the date the individual was admitted to the United States, and the nation(s) of origin and citizenship of the individual.

RESPONSE:

4. Identify all “foreign nationals” involved in the post-September 11, 2001 “attacks” referred to at the end of the first paragraph of Section 1 of Executive Order 13769 (i.e., “these measures did not stop attacks by foreign nationals who were admitted to the United States”). For each such individual, identify the date and location of the “attack,” the date the individual was admitted to the United States, and the nation(s) of origin and citizenship of the individual.

RESPONSE:

5. Identify every individual (i) whose nation of origin is Iran, Libya, Somalia, Sudan, Syria or Yemen, and (ii) who was involved in carrying out a terrorist attack in the United States involving at least one fatality since September 11, 2001. For each such individual, identify the date the individual was admitted to the United States.

RESPONSE:

Dated: April 6, 2017

Respectfully submitted,

/s/ Jason C. Raofield

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Arab American Studies Association,
Adeeb Saleh, Sofana Bella, Hilal
Alkateeb and S.A., a minor through
her Parent and Next Friend, Hilal
Alkatteeb*

CERTIFICATE OF SERVICE

On April 6, 2017, I caused to be served PLAINTIFFS' FIRST SET OF INTERROGATORIES TO DEFENDANTS on all Parties to this action in the following manner:

- (1) On counsel for Plaintiffs by electronic mail
- (2) On counsel for Defendants by hand delivery and electronic mail to the following:

Joshua S. Press (Joshua.Press@usdoj.gov)
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Gisela Westwater (Gisela.Westwater@usdoj.gov)
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Civil Division, Office of Immigration Litigation
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Washington, DC 20530

/s/ Jason C. Raofield
Jason C. Raofield (D.C. Bar #463877)