

THE HONORABLE JAMES L. ROBERT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOHN DOES, et al.,
Plaintiffs,

v.

DONALD TRUMP, et al.,
Defendants.

CASE NO. C17-0178JLR

**JEWISH FAMILY SERVICE
PLAINTIFFS' SUPPLEMENTAL
BRIEFING ON THE INAPPLICABILITY
OF SUPREME COURT STAY ORDERS
TO THE PENDING PRELIMINARY
INJUNCTION MOTIONS**

(RELATING TO CASE NO. C17-1707JLR)

JEWISH FAMILY SERVICE, et al.,
Plaintiffs,

v.

DONALD TRUMP, et al.,
Defendants.

CASE NO. C17-1707JLR

1 The Supreme Court’s December 4 orders (the “Stay Orders”) staying preliminary
2 injunctions of portions of Proclamation No. 9,645, 82 Fed. Reg. 45,161 (Sept. 27, 2017) (“EO-
3 3”) in *Int’l Refugee Assistance Project v. Trump*, No. TDC-17-0361, 2017 WL 4674314 (D. Md.
4 Oct. 17, 2017) (“*IRAP*”) and in *Hawai’i v. Trump*, No. 17-00050 DKW-KSL, 2017 WL 4639560
5 (D. Haw. Oct. 17, 2017) (“*Hawai’i*”), have no impact on the preliminary injunction motions in
6 these cases. The Supreme Court did not opine on the merits or the equities in issuing the Stay
7 Orders, making it impossible to discern the bases on which they were granted. *See Trump v. Int’l*
8 *Refugee Assistance Project*, No. 17A560, 2017 WL 5987435 (U.S. Dec. 4, 2017); *Trump v.*
9 *Hawai’i*, No. 17A550, 2017 WL 5987406 (U.S. Dec. 4, 2017). Such stays do not require the
10 stay applicants to show that they are “more likely than not” to ultimately prevail on the merits.
11 *Leiva-Perez v. Holder*, 640 F.3d 962, 966 (9th Cir. 2011).

12 In any event, the Stay Orders have no effect here because this case and *IRAP/Hawai’i*
13 challenge different immigration policies, raise different legal and factual claims, and seek
14 different relief on behalf of different sets of parties. *IRAP/Hawai’i* challenge EO-3, the ban on
15 certain immigrant and non-immigrant entry from six Muslim-majority countries plus North
16 Korea and Venezuela, which the President proclaimed to be necessary after the conclusion of a
17 90-day “worldwide review” of immigration screening and vetting measures. 82 Fed. Reg.
18 45,161. This case, by contrast, challenges the Refugee Ban set forth in an agency memorandum
19 (“Memorandum”), which continues to suspend portions of the U.S. Refugee Admissions
20 Program (“USRAP”), purportedly so that the agencies can continue a review of the program that
21 was directed by, but apparently not completed under, prior Executive Orders. *See Exec. Order*
22 *No. 13,769 (“EO-1”), 82 Fed. Reg. 8,977, 8,979 (Feb. 1, 2017) (suspending the USRAP for 120*
23 *days during review); Exec. Order No. 13,780 (“EO-2”), 82 Fed. Reg. 13,209, 13,215 (Mar. 9,*
24 *2017) (same).* Plaintiffs’ challenge differs from those raised in *IRAP/Hawai’i* with respect to
25 every factor of the preliminary injunction inquiry: likelihood of success on the merits, irreparable
26 harm, balance of equities, and public interest. *See PI Mot. (ECF 42) at 9.*

1 First, on the merits, Plaintiffs’ statutory challenge to the Memorandum differs from
2 *IRAP/Hawai’i*, which challenge the President’s claimed authority to issue EO-3 under 8 U.S.C.
3 § 1182(f) and § 1185(a)(1). *See IRAP*, 2017 WL 4674314, at *19; *Hawai’i*, 2017 WL 4639560,
4 at *9. In contrast, here, the President has not invoked either statute. The statutory question in
5 this case is whether *the agencies*, not the President, have the authority to suspend the USRAP for
6 follow-to-join petitioners and for nationals of eleven countries on the Security Advisory Opinion
7 (“SAO”) list without rulemaking procedures and without an adequate justification. As the *JFS*
8 Plaintiffs explained for the SAO ban and *Doe* Plaintiffs explained for the FTJ ban, the answer is
9 no. *See* PI Mot. at 17-23; *Doe v. Trump*, PI Mot. (ECF 45) at 9-14.

10 Moreover, although Plaintiffs’ constitutional challenges to the Memorandum are legally
11 similar to those in *IRAP/Hawai’i*, the evidence is different. In addition to the evidence of this
12 Administration’s anti-Muslim animus presented in *IRAP/Hawai’i*, Plaintiffs here have submitted
13 evidence establishing that the purpose and the effect of the Refugee Ban in particular is to
14 disfavor Muslim refugees and favor Christian refugees. *See* PI Mot. at 13-17. The Refugee Ban
15 suspends admissions from countries that account for 80 percent of the Muslim refugees entering
16 the United States and prioritizes applications from countries whose refugees have been 70
17 percent Christian—changing the religious composition of the USRAP in precisely the ways that
18 this Administration promised, both before and after taking office. *See id.* at 7-8, 13-17. This
19 type of religious preference violates every test under the Establishment Clause. *See id.*

20 Second, with respect to irreparable harm, beyond the injuries that Plaintiffs share with the
21 *IRAP/Hawai’i* plaintiffs, refugees—who, by definition, face serious harm amounting to
22 persecution—suffer additional irreparable injury from being stranded in perilous circumstances.
23 *See Leiva-Perez*, 640 F.3d at 969-70 (recognizing likelihood of physical danger to be irreparable
24 harm). *Doe* 1, for example, is an Iraqi former translator for the U.S. military who was on the
25 verge of resettling in the United States in early October 2017, but his life remains at risk every
26 day because of the Refugee Ban. *Doe* 1 Decl. (ECF 52) ¶¶ 3-16. *Doe* 4 faces such dire threats to

1 her safety on a daily basis as a transgender woman in Egypt that the U.S. Embassy expedited
2 processing of her application prior to the Refugee Ban. Doe 4 Decl. (ECF 55) ¶¶ 3-7. Other
3 refugee Plaintiffs, their family members, and clients of the organizational Plaintiffs and their
4 family members are similarly at risk of physical harm because of the Refugee Ban. *See, e.g.*,
5 Doe 2 Decl. (ECF 53) ¶¶ 6, 10; Doe 5 Decl. (ECF 56) ¶¶ 4-6, 9; JFS-S Decl. (ECF 50) ¶¶ 21, 35;
6 JFS-SV Decl. (ECF 51) ¶¶ 24, 35, 42.

7 Finally, the balance of equities and the public interest also differentiate this case from
8 *IRAP/Hawai'i*. There, the government has argued that the stay was necessary to respond to
9 national security threats and to conduct foreign relations in accordance with the worldwide
10 review undertaken pursuant to the prior Executive Orders. App. to Stay, at 34-37, *available at*
11 <https://tinyurl.com/yaa7xxrh>. Here, after reviewing the USRAP under EO-1 and EO-2 since
12 January 2017, the Administration *still* has no justification for its SAO suspension beyond
13 generalized concerns and a desire to continue review of the USRAP. *See Mem.* at 2.
14 Refugees—particularly from the SAO countries—are already the most rigorously vetted group of
15 people entering the United States. *See Nat'l Sec. Decl.* (ECF 46) ¶¶ 8-11. The balance of
16 equities, as well as the public interest in the United States' statutorily codified commitment to
17 refugee admissions, *see Refugee Act of 1980, Pub. L. No. 96-212 § 101(b), 94 Stat. 102*, weigh
18 strongly in favor of Plaintiffs' request for preliminary relief—just as they did for EO-1 and
19 EO-2, which also suspended the USRAP pending review. *See Washington v. Trump*, 847 F.3d
20 1151, 1168-69 (9th Cir. 2017); *Hawai'i v. Trump*, 859 F.3d 741, 783-85 (9th Cir. 2017), *vacated*
21 *by* 874 F.3d 1112 (9th Cir. 2017).¹

22 For all the reasons stated, the Supreme Court stay orders do not affect this Court's
23 consideration of the pending preliminary injunction motions.
24

25 ¹ Notably, the Supreme Court did not stay the injunctions as to EO-2's suspension of the USRAP, except for people
26 lacking bona fide relationships to U.S. entities or persons, *Trump v. Int'l Refugee Assistance Project*, 137 S. Ct.
2080, 2089 (U.S. June 26, 2017)—a limitation that should not apply in this case given the record of harm to
Plaintiffs, as explained in Plaintiffs' motion, *see PI Mot.* at 23-24.

1 Respectfully submitted,

DATED: December 7, 2017

2 /s/ Lauren Watts Staniar

3 David Burman, WSBA No. 10611
4 Lauren Watts Staniar, WSBA No. 48741
5 Tyler Roberts, WSBA No. 52688
6 Perkins Coie LLP
7 1201 Third Avenue, Suite 4900
8 Seattle, WA 98101-3099
9 Telephone: 206.359.8000
10 Facsimile: 206.359.9000
11 dburman@perkinscoie.com
12 lstaniar@perkinscoie.com
13 troberts@perkinscoie.com

Justin B. Cox, *Pro Hac Vice*
National Immigration Law Center
PO Box 170208
Atlanta, GA 30317
Tel: (678) 279-5441
Fax: (213) 639-3911
cox@nilc.org

14 Mariko Hirose, *Pro Hac Vice*
15 Deepa Alagesan, *Pro Hac Vice*
16 Linda Evarts, *Pro Hac Vice*
17 Kathryn C. Meyer, *Pro Hac Vice*
18 International Refugee Assistance Project
19 40 Rector Street, 9th Floor
20 New York, NY 10006
21 Tel: (646) 459-3044
22 mhirose@refugeerights.org
23 dalagesan@refugeerights.org
24 levarts@refugeerights.org
25 kmeyer@refugeerights.org

Karen C. Tumlin, *Pro Hac Vice*
Melissa S. Keaney, *Pro Hac Vice*
Esther H. Sung, *Pro Hac Vice*
National Immigration Law Center
3450 Wilshire Blvd, #108-62
Los Angeles, CA 90010
Tel: (213) 639-3900
Fax: (213) 639-3911
tumlin@nilc.org
keaney@nilc.org
sung@nilc.org

26 Elizabeth Sweet, *Pro Hac Vice*
Mark Hetfield, *Pro Hac Vice*
HIAS, Inc.
1300 Spring Street, Suite 500
Silver Spring, MD 20910
Tel: 301-844-7300
liz.sweet@hias.org
mark.hetfield@hias.org

Lauren E. Aguiar, *Pro Hac Vice*
Mollie M. Kornreich, *Pro Hac Vice*
Abigail E. Davis, *Pro Hac Vice*
Four Times Square
New York, NY 10036
Tel: (212) 735-3000
Fax: (212) 735-2000
lauren.aguiar@probonolaw.com
mollie.kornreich@probonolaw.com
abigail.sheehan@probonolaw.com

Counsel for Plaintiffs Jewish Family Service, et al.

CERTIFICATE OF SERVICE

I hereby certify that on December 7, 2017, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all of the registered CM/ECF users for this case.

I hereby declare under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

DATED this 7th day of December, 2017.

/s/ Lauren Watts Staniar
Lauren Watts Staniar, WSBA No. 48741

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