Simpson Thacher

# Daily Update on Litigation Challenging the "Travel Ban" and "Sanctuary City" Executive Orders

**December 4, 2017** – The January 27, 2017 Executive Order titled "Protecting The Nation From Foreign Terrorist Entry Into The United States" banned individuals from Iraq, Iran, Libya, Somalia, Sudan, Syria, and Yemen from entering the United States for 90 days and suspended the refugee program for 120 days. The revised Executive Order, issued March 6, 2017, was substantially similar but removed Iraq from the list of affected countries and added certain exemptions. President Trump issued a new "Proclamation" on September 24, 2017, adding Chad, North Korea, and Venezuela, and dropping Sudan (and not addressing the refugee program). He issued yet another Executive Order on October 24 on the refugee program. The original Executive Order sparked litigation in federal courts around the country, and many suits are continuing forward to challenge the subsequent orders and proclamation.

The January 25, 2017 Executive Order titled "Enhancing Public Safety In The Interior Of The United States," which threatens to cut off federal funds from any jurisdiction deemed a "sanctuary jurisdiction," has also sparked challenges in the courts.

Since the first weekend that the travel ban brought about chaos in the airports and action in the courts, Simpson Thacher has been tracking the associated litigation. This memorandum provides an overview of the active cases.

For reference, throughout this memorandum new updates are highlighted in yellow and stayed cases are highlighted in grey.

## Latest Updates

Today, there was a major update in the travel ban litigation.

In the Supreme Court cases *Trump v. Hawaii* and *IRAP v. Trump*, the Court allowed EO-3 to go into effect despite the ongoing legal challenges against it. The orders, devoid of opinion or reasoning, lift restrictions on EO-3 until the resolution of the Government's appeal in the 4th and 9th Circuit, and any potential writ of certiorari.

In stark contrast to today's ruling, the Court had previously limited the scope of stays on EO restrictions to apply only to those foreign nationals who "lack any bona fide relationship with a person or entity in the United States." By imposing this limitation, the Court avoided having the Executive Order burden any American party. We are left to wonder why the Court has suddenly changed tack. Perhaps the Trump

administration's latest arguments differentiating EO-3 from its predecessors on the basis of its "extensive worldwide review process," or its application to countries where Muslims are not a majority, have finally struck a chord. Or perhaps the Court will shine an illuminating light on the uncertain relationship between *Mandel's* "facially legitimate and bona fide reason" for the President's exercise of its authority to exclude aliens, and the President's racially charged commentary. Whatever the Court's reasoning, the new stays may signal a favorable shift in the wind for the administration on EO-3 litigation.

But it is noteworthy that Justice Ginsburg and Sotomayor would have denied the application and left the lower court injunctions in place. In contrast, the Court's June 26 order was issued per curiam, though Justice Thomas wrote a separate opinion dissenting in part, which Justices Gorsuch and Alito joined. That opinion argued in favor of the type of full stays now granted by the Court. Justice Thomas wrote that the Government had met the "two most critical factors" in deciding whether to grant a stay by first making a strong showing that the Government would be likely to succeed on the merits, and then showing irreparable harm through interference with the Government's "compelling need to provide for the Nation's security." He concluded that, in weighing the Government's national security interest against denial of entry into the country, the balance favored the Government's stay in its entirety. Given the sudden change of direction in the Court's position, it is possible that Justice Thomas' arguments have finally found traction.

Today's stays will automatically terminate either when writ is sought and denied, or when the Court rules on the case. The Court urged both Court of Appeals to make their decisions with "appropriate dispatch."

By way of reminder, oral argument for *Hawaii v. Trump* in the 9th Cir. is scheduled for December 6 in Seattle, Washington. C-SPAN, CNN, and ABC will broadcast this argument live, and the live feed will be posted to the court's website. Likewise, oral argument for *IRAP v. Trump* in the 4th Cir. is scheduled for December 8th in Richmond, Virginia. C-SPAN will broadcast the argument live as well, and links to the audio feed will be posted on the court's website.

For a number of administrative updates, please refer to the yellow highlighting below.

**Travel Ban Cases**

This section provides an overview of the active litigation challenging the "Foreign Terrorist Entry" or "travel ban" executive orders and proclamation, arranged by circuit. Cases that have been dismissed are not included.

For filings in these cases, please check the University of Michigan Law School's Civil Rights Litigation Clearinghouse, available at https://www.clearinghouse.net/results.php?searchSpecialCollection=44.

*Supreme Court*

- ***Trump v. International Refugee Assistance Project ("IRAP")* (SCOTUS, Case No. 16-1436)**. Following the Fourth Circuit's May 25 decision to largely uphold a nationwide injunction blocking the second Executive Order, the Government filed a petition for a writ of certiorari on June 1. On June 26, the Supreme Court granted cert, consolidated this case with *Trump v. Hawaii*, and granted stay of the injunction with respect to people who lack any bona fide relationship with a person or entity in the U.S. On October 10, the Court vacated the Fourth Circuit's judgment and remanded the case with instructions to dismiss the challenge as moot. The Court expressed no view on the merits. Justice Sotomayor dissented from the order vacating the judgment below, and would have dismissed the writ of certiorari as improvidently granted.

- ***Trump v. Hawaii* (SCOTUS, Case No. 16-1540)**. The Government filed an application for a stay of the Hawaii District Court's preliminary injunction pending appeal in the Ninth Circuit. On June 26, the Supreme Court granted cert, consolidated this case with *Trump v. IRAP*, and granted stay of the injunction with respect to people who lack any bona fide relationship with a person or entity in the U.S. On October 24, the Court vacated the Ninth Circuit's judgment and remanded the case with instructions to dismiss the challenge as moot since sections 2(c) and 6 of EO2 have expired. The Court expressed no view on the merits. Justice Sotomayor dissented from the order vacating the judgment below, and would have dismissed the writ of certiorari as improvidently granted.

- ***Trump v. Hawaii* (SCOTUS, Case No. 17A-550).** On November 20, the Government filed an application to stay the injunction ordered by the Ninth Circuit regarding the President's September Proclamation ("EO-3") (*see* Case No. 17-17168 below). That November 13 order reversed in part the Hawaii District Court's preliminary injunction that halted all enforcement of EO-3. Specifically, the Ninth Circuit stayed the district court's injunction, except with respect to individuals from effected countries who possess a bona fide relationship with a person or institution in the United States. The Government's November 20 application asked the Supreme Court to stay the

injunction in its entirety so that EO-3 may be given full effect pending resolution of the Ninth Circuit appeal.

- On November 21, the Court asked Hawaii et al. to file a response to the Government's application by November 28.

- On November 28, Hawaii submitted its response to the Government's application for a stay, arguing that the Government cannot meet the standard for obtaining a stay before the lower court has ruled on the merits. Hawaii asserted that the Court had previously "considered and rejected a stay request indistinguishable from the one the Government now presses." Additionally, Hawaii emphasized that the Ninth Circuit's stay "strikes precisely the same equitable balance that this Court did earlier this year." Hawaii argued that, since the latest travel ban applies indefinitely, "while the Government's case for a stay is . . . weaker with respect to EO-3, Plaintiffs' asserted harms are greater." Moreover, Hawaii reiterated its arguments that EO-3, like previous version of the travel ban, violates the INA and the Establishment Clause.

- On November 30, the Government filed its reply in support of its application for a stay, arguing that the balance of equities favors a stay because the Proclamation is based upon a comprehensive, multi-agency review. The Government alleges that the injunction "impedes the President's ability to pressure foreign governments" and "prevents the nation from speaking with one voice on this important issue of national security and foreign relations." Additionally, the Government contends that any harm to the plaintiffs from a temporary stay would not be irreparable, as any visas denied before the courts decide the case on the merits could still be granted at a later time. The Government emphasizes throughout the brief the broad Presidential power over alien entry and immigration policy.

- On December 4, the Court allowed EO-3 to go into effect while legal challenges continue against it. The order, devoid of opinion or reasoning, states that the District Court's October 20, 2017 preliminary injunction is stayed until the resolution of the Government's appeal in the 9th Circuit and any potential writ of certiorari. The stay of the preliminary injunction will automatically terminate either when writ is sought and denied, or when the Court rules on the case. Following these directions, the Court urges the Court of Appeals to make its

decision with "appropriate dispatch." Justice Ginsburg and Sotomayor would have denied the application, leaving in place partial stays on the order.

- ***Trump v. International Refugee Assistance Project ("IRAP")* (SCOTUS, Case No. 17A-560).** On November 21, the Government filed an application to stay the injunction ordered by the District Court of the President's September Proclamation ("EO-3"). The October 17 order enjoined enforcement of specific sections of EO-3 with respect to individuals with a credible claim of a bona fide relationship with a person or entity in the United States. The Government's appeal, as well as the plaintiffs' cross-appeal, are currently pending in the Fourth Circuit (*see* Case No. 17-2231 below).
  - On November 21, the Court asked IRAP to file a response to the Government's application by November 28.
  - On November 28, IRAP submitted its response to the Government's application for a stay, arguing that the "requested stay would upend the status quo, rather than preserve it, and would threaten the plaintiffs with grave and irreparable hardships." Noting that the Court had previously declined to grant the complete stay the Government seeks, IRAP argued that the Government offered no "persuasive reason for [the] Court to second guess the 'equitable balance' it struck." Additionally, IRAP reiterated its arguments that EO-3, like previous version of the travel ban, violates the INA and the Establishment Clause.

*Second Circuit*

- ***Brennan Center for Justice at New York University School of Law v. United States Department of State* (S.D.N.Y., Case No. 1:17-cv-07520) (Muslim Advocates, Americans United for Separation of Church and State, and Covington & Burling LLP as co-counsel for plaintiff).** Plaintiff is the Brennan Center for Justice at New York University School of Law, a nonprofit and nonpartisan law and policy institute. The Brennan Center is seeking expedited processing of an outstanding FOIA request for "all records pertaining to the worldwide review process conducted under Section 2 of the Executive Order 13780 and 17 STATE 72000" which includes reports submitted to President Trump, instructions on requirements for foreign governments to avoid travel restrictions, and a list of countries designated as having provided adequate versus inadequate information to the U.S. government. The Brennan

Center asserts a compelling need for expedited processing in order for the public to effectively inform itself about the new federal procedures under the September 24, 2017 Presidential proclamation, which goes into effect on October 18, 2017 and will affect individual civil liberties. Plaintiff alleges that failure to release the information requested would impair individuals' due process rights and harm humanitarian interests.

- On November 6, defendant filed an answer to the complaint, denying the plaintiff's allegations and raising the following defenses: (1) the court lacks subject matter jurisdiction over plaintiff's requests for relief that exceed the relief authorized under FOIA; (2) some or all of the documents are exempt from disclosure; and (3) defendant requires additional time to complete processing of plaintiff's FOIA requests due to the existence of exceptional circumstances.

*Third Circuit*

- ***IRAP v. Kelly* (D.N.J., Case No. 2:17-cv-01709) (ACLU of New Jersey Foundation as counsel for plaintiff).** Petitioner, a citizen of Afghanistan, filed an emergency TRO to enjoin the respondents from (1) preventing his access to counsel and (2) transferring or moving him to any location outside the district of this court. Judge Linares originally denied the emergency TRO on March 15, finding that the court lacked jurisdiction over the matter because the petitioner did not have a valid Special Immigrant Visa (SIV), and the authority to admit or exclude him lay "strictly with the executive branch." On August 15, the petitioner filed a motion to amend the petition including the proposed amended petition (none of which are publicly available), and on August 16, the court granted the motion to seal the appendix and exhibits.

  - On September 1, the defendants filed a response to the motion to amend the petition. It is not publicly available.

  - On October 11, plaintiffs filed a Motion for Preliminary Injunction. This motion is not publicly available.

  - On October 16, the court granted the petitioner leave to amend, and dismissed all defendants other than Orlando Rodriguez, the sole proper habeas corpus respondent as the warden of the facility in which the petitioner is housed.

  - On October 23, defendants filed a response to plaintiff's habeas petition. This document is not publicly available.

- On October 30, IRAP filed a reply to defendants' response to plaintiff's habeas petition. This document is not publicly available.

*Fourth Circuit*

- ***IRAP v. Trump* (D. Md., Case No. 8:17-cv-00361) (IRAP, HIAS, Inc. as plaintiffs; ACLU of Maryland, National Immigration Law Center as counsel for plaintiffs).** On February 7, plaintiffs filed this nationwide class action challenging the Executive Order as causing substantial harm to IRAP's and HIAS's missions. The individual plaintiffs are Muslim U.S. citizens and lawful permanent residents (LPRs). The plaintiff-organizations seek to represent a class of plaintiffs including all U.S. citizens and LPRs who have petitioned for family members from one of the seven countries, any refugees in the U.S. who seek to be united with their families, and any current visa holders who cannot leave the country because of the Executive Order.

    - On March 1, the court granted plaintiffs leave to proceed under pseudonyms in light of potential religious persecution and retaliation for their ties to the U.S. On March 6, defendants notified the court of the new Executive Order, explaining key provisions and how defendants believe judicial concerns have been addressed. In particular, defendants argued that exempting LPRs and persons with valid visas and establishing a waiver procedure for those without visas mitigates the due process concerns raised by the Ninth Circuit. On March 8, defendants filed opposition briefs in response to plaintiffs' motion for expedited discovery and motion for a preliminary injunction (PI). In their PI opposition, the Government noted that plaintiffs declined to revise their PI motion and conceded that plaintiffs' arguments with respect to Section 5(d) of the old Executive Order would apply to the substantially similar Section 6(b) of the new Order.

    - A conference was held on March 10, after which the plaintiffs filed an amended complaint, revised motions for PI and TRO, a motion for expedited discovery, and a motion to proceed under a pseudonym. On March 11, plaintiffs filed what appears to be a revised version of their March 10 motion for PI and TRO. On March 12, plaintiffs filed a reply in support of their motion for a PI enjoining the reduction in refugee admissions for 2017. On March 13, defendants filed oppositions to plaintiffs' motions for expedited discovery and a PI or TRO. On March 14, plaintiffs filed a reply to defendants' response memo, which reasserts

plaintiffs' basis for standing and the claim that the new Executive Order is unconstitutional religious discrimination.

- On March 15, a hearing was held on the plaintiffs' PI and TRO motion. Judge Theodore Chuang issued a ruling on March 16 granting in part the plaintiffs' motion for a preliminary injunction, enjoining the Government from enforcing Section 2(c) of the new Executive Order. Judge Chuang held that plaintiffs had shown a likelihood of success on the merits for their general Establishment Clause claim and the claim that, as to the issuance of immigrant visas, the new Executive Order violates Section 1152(a) of the INA. On March 17, the Government filed a notice of appeal, taking the PI decision to the Fourth Circuit. On March 20, the National Immigration Law Center wrote the court to request leave to file a PI motion with respect to Section 6 of the revised Executive Order.

    - ***IRAP v. Trump* (4th Cir., Case No. 17-1351).** This appeal arose out of the District of Maryland's order granting the plaintiffs' PI motion on March 16. The Government immediately appealed. On May 25, the Fourth Circuit decided 10-3 to uphold the injunction against the Executive Order. Chief Judge Gregory, writing for the majority, described the Executive Order as one "that in text speaks with vague words of national security, but in context drips with religious intolerance, animus, and discrimination." The majority found that the plaintiffs "plausibly alleged with particularity that an immigration action was taken in bad faith"—a unique and notable finding. Because of this plausibility, the majority "looked behind" the Executive Order to determine its motivation. Taking the President's statements together, the majority found "direct, specific evidence" that the motivation of the Executive Order was "President Trump's desire to exclude Muslims from the United States." While the majority ultimately found that section 2(c) of the Order violated the Establishment Clause, other concurrences argued that the plaintiffs would also succeed on INA claims. The dissent, on the other hand, maintained that the court should defer to the Government's stated national security purpose and should not look to the broader context of statements. On June 1, the defendants filed a petition for certiorari which the Supreme Court granted. On October 12, the court vacated its previous decision and remanded the case to the district court. On November 17, the court issued a per curiam order dismissing the challenge as moot. Judge Niemeyer, with whom Judge Shedd and Judge Agee

joined, concurred in part and dissented in part from the order, stating that he would further vacate the district court's order and decision.

- After a case management conference held on March 21, the court on March 22 ordered that the parties submit briefing on the issue of the court's jurisdiction over the proposed motion and legal considerations concerning whether the court should stay or refrain from ruling on the proposed motion and the pending PI motion with respect to Section 5(d) of the old Executive Order.

- On March 24, plaintiffs moved for leave to file a motion seeking a preliminary injunction of Section 6 of the new Executive Order on constitutional grounds. This motion argues that the court retains jurisdiction over plaintiffs' claims related to Section 6, as those are not currently on appeal. On March 31, the Government filed a brief opposing the plaintiffs' motion for a preliminary injunction of Section 6 of the new Executive Order, arguing that because the scope of the 4th Circuit's review included the decision not to enjoin Section 6, the district court did not have jurisdiction. On April 5, plaintiffs filed a reply. On April 10, the court issued a memorandum order denying without prejudice the plaintiffs' motion for leave to file motion for PI and staying the court's resolution of the plaintiffs' motion for PI. The court concluded that it has been divested of jurisdiction of the plaintiffs' motion during the Fourth Circuit appeal. The court explained that a ruling by the district court that Section 6 should now be covered by the PI would "impermissibly 'move the target' for the court of appeals."

- On April 14, the Government sent a letter to the court, requesting leave to file an unopposed motion to stay proceedings pending resolution of the appeal, or in the alternative to file a motion to dismiss. On April 19, the court ordered a stay of the case pending the resolution of appellate proceedings.

- On May 25, the Fourth Circuit affirmed in part and vacated in part, essentially upholding the injunction against the Executive Order and vacating the injunction against President Trump. For more details, see the Fourth Circuit case below.

- On June 29, the court entered a copy of the Supreme Court's grant of the petition for a writ of certiorari and grant of a partial stay.

- On July 27, the court issued an order denying without prejudice plaintiffs' motion for a preliminary injunction of § 5(d) of the travel ban executive order of January 27, the section which capped the entry of refugees at 50,000. The court did so in light of the Supreme Court's ruling last month in *Trump v. IRAP*, which granted (in part) the Government's application to stay injunctions of the corresponding section of the March 6 order (§ 6(b)).

- On September 29, plaintiffs requested a pre-motion conference regarding their intent to file a motion for leave to amend the complaint to address the proclamation expanding the countries covered under the travel ban to include Chad, North Korea, and Venezuela. The plaintiffs also intend to file a motion for preliminary injunction.

- On October 3, the court held a case management conference to discuss plaintiffs' intent to file motions for leave to amend the complaint to address the proclamation and for preliminary injunction.

- On October 4, the court granted plaintiffs leave to file a Second Amended Complaint and a Motion for a Preliminary Injunction. Plaintiffs intend to file the Second Amended Complaint by October 5. The briefing schedule for the Motion for a Preliminary Injunction is as follows: (1) plaintiffs' motion is due October 6; (2) defendants' response is due October 12; (3) plaintiff's reply is due October 14; and, (4) a hearing on the Motion is scheduled for October 17.

- On October 5, plaintiffs filed a Second Amended Complaint challenging the September 24, 2017 proclamation (EO-3). Plaintiffs assert that EO-3 "achieves largely the same policy outcomes as both EO-1 and EO-2," primarily targeting nationals of Muslim majority countries and banning most, if not all, of them indefinitely. Plaintiffs argue that EO-3 violates the Establishment Clause, the equal protection component of the Due Process Clause, the procedural due process guarantee of the Due Process Clause, the Immigration and Nationality Act, the Administrative Procedure Act, the Religious Freedom and Restoration Act, and the Refugee Act.

- On October 6, plaintiffs filed a motion seeking a preliminary injunction of the visa and entry restrictions imposed by EO-3. Plaintiffs argue that EO-3 exceeds the President's authority under the Immigration and Nationality Act, allowing the President to "unilaterally revise the INA or to override the immigration law and policy judgments of Congress." Plaintiffs also argue that EO-3 violates the Establishment Clause and equal protection,

because, like its predecessors, EO-3 has a "primarily anti-Muslim purpose and message."

- On October 10, the court rescheduled the hearing on the motions for preliminary injunction for October 16.

- On October 12, defendants filed an opposition to plaintiffs' motion for a preliminary injunction, arguing that (1) plaintiffs' challenges to the proclamation are not justiciable; (2) plaintiffs' statutory claims are not likely to succeed on the merits; and, (3) the proclamation does not violate the Establishment Clause. Defendants contend that the proclamation falls squarely within the President's constitutional and statutory authority, and resolves the issues identified by the Ninth Circuit in Hawaii v. Trump in upholding the injunction of EO-3. Specifically, the proclamation expressly contains findings that: (1) "nationality alone renders entry of this broad class of individuals a heightened security risk to the United States;" (2) the risks "regarding adequate information-sharing practices and identity management protocols apply regardless of the degree of a foreign nation's connection to his or her country of citizenship;" (3) the current screening procedures are inadequate with respect to the 8 countries identified in the proclamation; and, (4) DHS has completed its comprehensive review of whether the foreign nationals' entry would harm the US, and that review forms the foundation of the proclamation's entry restrictions. Additionally, defendants argue that the proclamation is the result of a religion-neutral "worldwide review and diplomatic engagement processes designed to protect national security and improve nations' information sharing practices.

- On October 13, the court noted the case was remanded per the Supreme Court's October 10 order.

- On October 14, plaintiffs filed their reply in support of their motion for a preliminary injunction arguing (1) "EO-3" is a continuation in substance of the first two executive orders (2) "EO-3" violates the INA by violating the nondiscrimination provisions and instituting a national origin based approach to admission, which was repudiated by Congress in 1965 (3) "EO-3's" entry restrictions violate the Establishment Clause and (4) the balance of equities and public interest favor enjoining "EO-3's" ban provisions as the harm to plaintiffs would be "concrete and irreparable."

- On October 16, Judge Chuang held a hearing on the motion for a preliminary injunction.

- On October 17, plaintiffs filed a notice of related decision, with the decision in *Hawaii v. Trump* (D. Haw., Case No. 1:17-cv-00050) issuing a nationwide temporary restraining order enjoining sections of EO-3 attached.

- Also on October 17, Judge Chuang granted in part and denied in part plaintiffs' motion for preliminary injunction. The court issued a nationwide preliminary injunction, enjoining enforcement of sections 2(d) and 2(f) of Proclamation No. 9645 ("EO-3"). The injunction applies only to individuals with a credible claim of a bona fide relationship with a person or entity in the United States, and excludes Venezuela and North Korea. It found that plaintiffs have demonstrated a strong likelihood of success on the merits of their statutory claims, namely (1) that the President's authority under INA Sections 1182(f) and 1185(a) is bound by section 1152(a) which bars discrimination on the basis of nationality; (2) EO-3 discriminates on the basis of nationality in violation of Section 1152(a); (3) the President exceeded his statutory authority under 1182(f) by adding new criteria for the issuance of visas and entry of nationals to the Proclamation beyond those formally imposed by Congress. The court did not find the plaintiffs were likely to succeed on other statutory arguments, such as (1) the Proclamation fails to meet the requirements of section 1182(f) as it does not make a sufficient finding of detrimental interest to the United States; (2) that the Proclamation violates section 1182(f) by effectively legislating changes to the INA against Congressional intent; (3) that the Proclamation exceeded the limits of the President's authority under section 1182(f) regarding nonimmigrant visas. On the Establishment Clause claim, the court found that the plaintiffs "plausibly allege with sufficient particularity" a showing of bad faith in the rational for the Proclamation, thus allowing the court to look behind the Government's stated rationale. The Proclamation fails the first prong of the *Lemon* test for Establishment clause violations, requiring that an act have a secular purpose. The court took into consideration the past decisions finding EO-1 and EO-2 violated the Establishment Clause and held that the Government had not demonstrated a sufficient change to neutralize past Establishment clause violations.

- On October 20, defendants filed a notice of appeal to the Fourth Circuit.

- On October 23, plaintiffs filed a notice of cross-appeal resulting from Judge Chuang's preliminary injunction and the court consolidated the cross-appeals.

- ***IRAP v. Trump* (4th Cir., Case No. 17-2231).** This appeal arose out of the District of Maryland's order granting in part and denying in part the plaintiffs' motion for preliminary injunction on October 17 (see above). The Government filed a notice of appeal on October 20, and the plaintiffs cross-appealed on October 23.

    - On October 24, defendants filed a Motion to Expedite Merits Briefing Schedule, citing the possibility that the Supreme Court can then initiate review this term.

    - On October 25, plaintiffs filed a response to defendants' Motion to Expedite Merits Briefing, requesting three weeks—instead of the government's proposed two—to respond to the government's opening brief.

    - On October 27, defendants filed a letter requesting that the court schedule oral argument for the consolidated cross-appeals in *IRAP v. Trump* (4th Cir., Case Nos. 17-2231, 17-2240), *IAAB v. Trump* (Case No. 17-2232), and *Zakzok v. Trump* (Case No. 17-2233) for December 8, 2017.

    - On October 27, plaintiffs Iranian Alliances Across Borders (IAAB) and Zakzok filed a brief in opposition to the government's motion for an emergency stay pending appeal. In the brief, plaintiffs argued that the district court's preliminary injunction which halted enforcement of EO-3 should not be stayed. Specifically, plaintiffs asserted that the government's arguments for a stay of the EO-3 injunction are largely the same as their claims with respect to EO-2. These arguments—that the government would be irreparably be harmed by the stay, that plaintiffs would not suffer substantial injury absent the injunction, and that plaintiffs are unlikely to succeed on the merits—were all rejected by the Fourth Circuit when it considered EO-2 in *IRAP v. Trump*, 857 F.3d 554 (4th Cir. 2017) (en banc), *vacated as moot* (U.S. Oct. 10, 2017). Plaintiffs argued that because the same or worse harms would flow from EO-3, the court should again deny the government's request for a stay. Further, plaintiff International Refugee Assistance Project (IRAP) filed a brief in opposition to the government's motion for an emergency stay. The IRAP brief reiterated many of the same points as the IAAB/Zakzok brief, claiming that "[o]nce again, the government asks for an emergency stay without demonstrating any actual urgency . . . . [a]nd once again, the government trivializes the concrete irreparable harm that the ban would cause the plaintiffs."

- On October 30, defendants filed their reply brief in support of their motion for an emergency stay. Defendants note that the 4th Circuit decision relied upon by plaintiffs was vacated, and therefore does not control the current decision. They argue that the plaintiffs' claims are not justiciable because exclusion of aliens abroad does not violate plaintiffs' own rights and it is improper for the courts to review the determination of the political branch to exclude a given alien. Defendants further contend that the Proclamation is based on national security determinations, not animus, and therefore does not violate the INA, the Establishment Clause, or the Equal Protection Clause.

- On October 31, the court ordered an expedited briefing schedule with the opening brief due November 1, the Cross-Appellants' opening brief and the response brief due on November 15, the Response/Reply due on November 22, and the final reply brief due November 29. Oral argument is scheduled for December 8.

- On November 1, defendants filed their opening brief against the preliminary injunction, mostly echoing their arguments for an emergency stay on October 30, arguing: (1) plaintiffs' statutory and Establishment Clause claims are nonjusticiable under Article III and APA requirements, (2) plaintiffs are unlikely to succeed on the merits of their claims due to the breadth of the President's authority under the INA, and (3) the balance of harms favors the denial of preliminary relief because plaintiffs have not identified any cognizable or irreparable injury that they will personally incur.

- On November 6, the court issued an order granting hearing *en banc*. The oral argument is scheduled for December 8. Also on November 6, the immigration Reform Law Institute filed an amicus brief in favor of the government. The brief argued that the federal courts lack subject matter jurisdiction to hear a claim arising under the disputed section of the INA because the section provides no private right of action and sovereign immunity has not been waived. Further, the brief argued that the district court ignored applicable precedent in reaching its Establishment Clause holding and that its holding will lead to absurd consequences, such as permitting private litigants to "enjoin President Trump's War Against the Islamic State."

- On November 15, the defendants filed a letter with the court noting the Ninth Circuit decision granting in part and denying in part the defendants'

motion to stay the preliminary injunction pending appeal. The defendants requested that the court rule expeditiously on their pending motion for stay pending appeal and notified the court of their intention file for certiorari seeking a stay at the Supreme Court from the Ninth Circuit decision.

- On November 16, plaintiffs filed a cross-appeal brief arguing that the district court erred when it limited the preliminary injunction against EO-3 to only those individuals with a bona fide relationship to US persons or entities. The balance of harms, plaintiffs argue, strongly favors a comprehensive preliminary injunction. Furthermore, where the merits of the case are reached and the court finds that an executive action violates constitutional or statutory restraints, only a "comprehensive injunction can prevent the President from violating" those restraints. Plaintiffs also reiterate that their statutory and constitutional claims are justiciable, that the Proclamation violates the INA's non-discrimination mandate and the Establishment Clause, that it exceeds the president's delegated authority under Section 1182(f), and that a nationwide preliminary injunction is appropriate.

- On November 17, multiple amicus briefs were filed in support of Plaintiffs. Among the briefs is one filed by a group of 96 technology companies which includes Google, Intel, Airbnb, Microsoft, Amazon, Verizon, Tesla, and HP, who argue that the Proclamation harms innovation and economic growth. Another amicus brief in support of plaintiffs was filed by members of Congress, including 25 senators and 113 representatives, who assert that the Proclamation is unlawful.

- On November 21, the court granted C-Span's request to provide a live audio feed of the oral argument.

- On November 22, the defendants filed a cross-appeal brief against the preliminary injunction on EO-3, once again arguing that the balance of harms weighs strongly against a preliminary injunction, that plaintiffs' claims are not justiciable, and that the plaintiffs do not have a likelihood of success on the merits of their statutory or constitutional claims. Additionally, the court sent a letter to the defendants requesting that they supplement the record with two reports referenced in both the Proclamation and the defendants' opening brief.

- On November 24, the defendants responded to the court's November 22 letter, asserting that the requested reports contain classified national-

security information and are protected by various privileges, including the presidential-communications privilege and the deliberative-process privilege. If the court still decides to review the reports, defendants requested that the court order their submission *in camera* and *ex parte*.

- On November 29, the plaintiffs filed a reply cross-appeal brief arguing in part that the Proclamation's indefinite ban moves the balance of equities in favor of the plaintiffs. Plaintiffs further contend that IRAP, HIAS, and similar organizations have "bona fide" relationships with their clients, which qualify them for protection under the preliminary injunction.

- ***Sarsour v. Trump* (E.D. Va., Case No. 1:17-cv-00120) (Council on American-Islamic Relations and The Law Office of Gadeir Abbas as counsel for plaintiffs) [STAYED].** Plaintiffs here are Muslim Americans residing in the U.S., including citizens, students on visas, and LPRs, seeking injunctive and declaratory relief. The complaint focuses on the illegal purpose and effect of the order in that it applies only to Muslims. Plaintiffs seek a declaratory judgment that the defendants' policies, practices, and customs violate the Fifth Amendment and injunctive relief prohibiting the defendants from discriminating against Muslims in seven specific ways. Two parties have moved to intervene in support of defendants, but both have been subsequently denied;

  - On March 13, the plaintiffs filed an amended complaint addressing the new Executive Order, a motion to keep certain plaintiffs' names under seal, and an emergency motion seeking a temporary restraining order or preliminary injunction. On March 17, the Government filed a memorandum in opposition to the TRO motion.

  - On March 20, plaintiffs filed a Notice of New Evidence and Additional Authority to alert the court to President Trump's statements at a large rally on March 15, where he said that the revised Executive Order, which Judge Derrick Watson in Hawaii blocked, "was a watered-down version of the first order"—a statement he repeated two more times. Plaintiffs argued that this new evidence corroborates previous evidence which shows that President Trump "did not abandon his discriminatory intent" in revoking the original Executive Order and issuing the revised one. On March 21, the court held a hearing on the TRO motion. The court will issue a memorandum opinion. On March 23, the court granted the Doe plaintiffs' motion for a protected order and ordered their names to be kept under seal.

- On March 24, the court denied plaintiffs' motion for a TRO. In its opinion denying the TRO, the court found that plaintiffs had alleged sufficient injury to have standing. Regarding plaintiffs' statutory challenges to the Executive Order, the court found that "Section 1152's non-discrimination restrictions, which apply in connection with the issuance of immigrant visas, do not apply to the issuance or denial of non-immigrant visas or entry under Section 1182(f)," and that "[s]ections 1182(f) and 1152(a) deal with different aspects of the immigration process." As such, the court found plaintiffs had failed to show a likelihood of success on their statutory claims. On plaintiffs' Establishment Clause claims, the court rejected defendants' position that the court must confine its analysis of constitutional validity to the four corners of the order. However, it found the order facially neutral, and declared the revisions in the new Order "reduced the probative value of the President's statements to the point that it is no longer likely that Plaintiffs can succeed on their claim that the predominate purpose of EO-2 is to discriminate against Muslims based on their religion." As such, the court found plaintiffs had failed to show a likelihood of success on their Establishment Clause claims. Finally, the court found plaintiffs had failed to show a likelihood of success on their due process claims, finding that the new Executive Order was similar to a program that the Fourth Circuit had upheld against similar claims in *Rajah v. Mukasy*, 544 F.3d 427 (4th Cir. 2008).

- On April 21, the defendants submitted a consent motion to stay proceedings pending an appellate decision at the Fourth Circuit. On April 24, the court granted the order, staying proceedings until further order.

- On August 18, the court continued the stay until the resolution of *Trump v. Int'l Refugee Assistance Project*, which is pending before the U.S. Supreme Court.

- On October 25, the court ordered the parties to show cause within 10 days why this case should not be dismissed as moot, citing the October 10 decision of the Supreme Court to vacate and order the Fourth Circuit to dismiss *IRAP v. Trump* (4th Cir.) in light of the expiration of Section 2(c) of Executive Order No. 13,780. In issuing this order to show cause, the court cited the recent expiration of Section 6 of the same executive order.

- On November 3, defendants submitted a statement requesting that the case be dismissed as moot, in accordance with the Supreme Court's decision in *IRAP v. Trump*.

- On November 6, plaintiffs submitted their response to the court's October 25 order to show cause why the case should not be dismissed as moot. Plaintiffs argued that the President's September 24 Proclamation ("EO-3"), while asserting new rationales, largely replicates the same legal issues that gave rise to plaintiffs' case in the first place. For this reason, plaintiffs argued that the stay should be maintained until the appeals pending in the Ninth and Fourth Circuits relating to that Proclamation are resolved.

- On November 9, the court ordered that the stay be lifted for the limited purpose of allowing plaintiffs to file an amended or supplemental complaint within 45 days, and that if the plaintiffs do timely file such a complaint, the stay will be lifted in its entirety.

- ***Iranian Alliances Across Borders ("IAAB") v. Trump*** **(D. Md., Case No. 8:17-cv-02921) (Muslim Advocates; Americans United for Separation of Church and State; and Covington & Burling LLP as co-counsel for plaintiffs).** The plaintiffs are Iranian Alliances Across Borders and six unnamed individuals who are U.S. citizens or LPRs with family members or fiancés who are potentially barred from entering the United States under the September 24, 2017 proclamation. The unnamed plaintiffs seek permission to proceed under a pseudonym and to withhold their addresses under Local Rule 102.2(a). Plaintiffs challenge the proclamation on the grounds that it (1) violates the Immigration and Nationality Act's prohibition on discrimination in issuing visas under 8 U.S.C. 1152(a)(1); (2) exceeds the Executive's authority under the INA provisions for delineating classes of aliens that are inadmissible and ineligible for visas; (3) violates the Establishment Clause by showing an unconstitutional bias against Muslims; (4) violates the Free Speech Clause of the First Amendment by restricting the rights of IAAB to receive ideas and information from Persian scholars; (5) violates the Equal Protection Clause of the Fifth Amendment because the proclamation was motivated by animus and targets individuals for discriminatory treatment based on religion and national origin; (6) violates procedural due process under the Due Process Clause of the Fifth Amendment by depriving applicants of their statutory rights and citizens of their liberty interest in reuniting with noncitizen family members.

    - On October 5, Judge Chuang held a case management conference. Following the conference, the court granted plaintiffs leave to file the proposed Motion for a Preliminary Injunction, on the condition that the plaintiff's motion will be limited to joining the Motion for a Preliminary Injunction filed by the plaintiffs in *IRAP v. Trump* (D. Md., Case No. 8:17-cv-00361) (see above) and filing a 10-page Supplement limited to issue not

raised in the IRAP motion, such as standing and harm to plaintiffs. Defendants will file a consolidated Response to the Motions filed in both cases and plaintiffs will be permitted to file a separate reply that is not limited to the issues raised in their supplement. Briefing will proceed according to the schedule determined in *IRAP v. Trump*: (1) plaintiffs' motion is due October 6; (2) defendants' response is due October 12; (3) plaintiff's reply is due October 14; and, (4) a hearing on the Motion is scheduled for October 17.

- On October 6, plaintiffs filed their Motion for Preliminary Injunction, arguing that plaintiffs had standing to bring their claims and will suffer irreparable harm in the absence of an injunction.

- On October 10, the court rescheduled the hearing on the motions for preliminary injunction for October 16.

- On October 12, defendants filed their opposition to the plaintiffs' Motion for Preliminary Injunction (see above IRAP v. Trump (D. Md., Case No. 8:17-cv-00361). The plaintiffs filed their amended complaint reiterating their first six claims, detailed in the October 5 summary above, and asserting two other claims. The plaintiffs claim the Proclamation ("travel ban 3.0") violates the Administrative Procedure Act (APA) by not conducting formal rule making before engaging in action that impacts substantive rights, particularly as the Proclamation requires unspecified enhanced screening and vetting of Iranian students and those traveling with exchange visitor visas. The plaintiffs further allege a violation of the right to Free Association under the First Amendment by reducing the number of Iranian nationals able to attend the University of Maryland, and thus reducing the membership and harming the mission of IAAB affiliate organization ISF.

- On October 13, the plaintiffs moved for leave to file two additional declarations in support of their motion for preliminary injunction.

- On October 16, Judge Chuang held a hearing on the motion for a preliminary injunction.

- On October 17, Judge Chuang issued an order granting in part and denying in part plaintiffs' motion for preliminary injunction. Please see the summary in *IRAP v. Trump* (D. Md., Case No. 8:17-cv-00361) above for details.

- On October 18, Judge Chuang issued an order granting the plaintiffs' October 13 motion to file additional declarations in support of their motion for preliminary injunction.

- On October 20, defendants filed a notice of appeal to the Fourth Circuit from the order granting the plaintiff's October 13 motion. Additionally, plaintiffs Jane Doe #1-6 filed the "Joint Record" on which the Court relied in granting in part the preliminary injunction filings in *IRAP v. Trump*, Docket No. 8:17-CV-00361-TDC, upon which plaintiffs' motion for preliminary injunction in this case relied. The "Joint Records" were filed for administrative convenience.

*Sixth Circuit*

- ***Arab American Civil Rights League v. Trump*** **(E.D. Mich., Case No. 2:17-cv-10310) (Hammoud, Dakhlallah & Associates PLLC; Vida Law Group, PLLC; Ayad Law, PLLC; ACLU of Michigan; and Covington & Burling LLP as co-counsel for plaintiffs) [STAYED].** The plaintiffs here are the Arab American Civil Rights League (AACRL) and six named individuals, including LPRs, immigrants who were issued a visa to enter the U.S. as LPRs, and a U.S. citizen whose minor son was denied a visa to join his family in the U.S. On February 2, the court *permanently* enjoined the United States from banning the entry of the LPRs, since the White House had clarified that the Executive Order did not apply to LPRs. That court order, however, did not decide the issue for the non-LPR plaintiffs.

  - On February 5, plaintiffs filed an amended complaint adding new plaintiffs; the amended complaint includes AACRL, a LPR class, and an Immigrant Visa class.

  - On February 13, defendants filed a status update on its position on its pending potion to dissolve the injunction and amend the order, arguing that there is no live case or controversy and the preliminary injunction was overbroad. Plaintiffs responded on February 20, noting that the Government's position is constantly changing, and that the best course of action at this time is to hold the Government's motion to dissolve the injunction in abeyance. Plaintiffs requested ten days to access the effect of the new Executive Order once it is issued, and to provide the court with fuller briefing in support of the existing injunction at that point, if appropriate.

- On March 6, defendants notified the court of the issuance of the new Executive Order. The same day, plaintiffs filed a notice of intent to amend their complaint to challenge the new Executive Order. On March 16, plaintiffs filed a Second Amended Complaint, and motions to expedite both briefing and discovery. Additionally, twelve individual plaintiffs voluntarily dismissed their claims, stating the changes in the new Executive Order made them unnecessary.

- On March 20, defendants filed a renewed motion to vacate the court's February 2 permanent injunction enjoining enforcement of the original Executive Order, arguing that it was now moot since the original Executive Order was revoked. On March 21, the court issued an order deeming moot defendants' earlier motion to dissolve injunction and renewed motion to vacate injunction. On March 24, defendants filed a brief opposing plaintiffs' motion to expedite discovery, arguing the plaintiffs could not show good cause for expedited discovery, and that plaintiffs' broad discovery requests raised privilege issues. The plaintiffs filed a response on March 27, arguing that the discovery requests were both relevant and narrowly tailored, and that immediate discovery was necessary because should the Government prevail at the 4th Circuit, it would immediately attempt to enforce the Executive Order. On March 31, the court granted the parties' stipulated motion to extend time for the Government to answer by fourteen days, to April 17. The court also denied plaintiffs' motion for expedited discovery.

- On April 13, the status conference was held. The court also issued an order giving leave for the parties to file briefs of up to thirty-five pages, exceeding the original page limit of twenty-five pages. On April 17, defendants moved to dismiss the action, asserting that plaintiffs' claims are not fairly traceable to the Order, that plaintiffs lack standing, and that plaintiffs' arguments are foreclosed by case law. Defendants also moved to extend time for issuance of a scheduling order until at least twenty-one days after the court rules on the motion to dismiss. On April 21, plaintiffs filed a response to defendants' motion, to extend time for issuance of a scheduling order. On April 28, defendants filed a reply to the plaintiffs' response. On May 3, both parties filed joint motion to file excess pages for motion to dismiss briefings. The court granted the parties' motion to file excess pages on May 5.

- On May 8, the plaintiffs filed a response to the motion to dismiss, arguing that they have plausibly alleged that the executive order is motivated by religious animus.

- On May 11, the court denied the defendants' motion to extend time for issuance of a scheduling order. The court ordered defendants to respond to plaintiffs' document request 1 by May 19, and the remaining requests by June 2. Request No. 1, filed with the court on March 16, requests a copy of the memorandum or white paper that Rudy Giuliani and others provided to candidate Trump approximately May to July 2016, which was discussed extensively by Mr. Giuliani during public appearances. Other document requests cover other communications and documents created during the campaign referring to the proposed Muslim ban. Media outlets have picked up on this ruling, and it will be interesting to see if the Government turns over these papers as ordered.[1]

- On May 19, the Government failed to produce the requested Giuliani memorandum and objected to the order late that night. The government "argued, among other things, that a federal court cannot require the President to release documents" according to a statement issued on Saturday by the ACLU of Michigan and the Arab American Civil Rights League. In its statement, the ACLU of Michigan and the Arab American Civil Rights League argued that the Government has violated the court-ordered production deadline of May 19. On May 22, in a separate case on an unrelated matter, Mr. Giuliani submitted court documents that stated, *inter alia*, that he "ha[s] not participated in writing any of the Executive Orders on [the travel bans] issued by the Trump Administration." For the full statement, see Dkt. 250 in *U.S. v. Zarrab*, 1:15-cr-00867-RMB-1 (S.D.N.Y.).

- On May 22, defendants filed a reply to the plaintiffs' May 8 response, which was a response to the defendants' April 17 motion to dismiss. The reply rebuts plaintiffs' standing and further argues that plaintiffs'

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[1] *See, e.g.*, https://www.washingtonpost.com/news/post-nation/wp/2017/05/13/judge-orders-government-to-turn-over-documents-from-rudy-giuliani-on-travel-ban/?utm_term=.0cac0e1b8bd9.

Establishment Clause, Equal Protection, and Freedom of Speech and Association claims fail on the merits.

- On May 24, the plaintiffs filed an unopposed motion for leave to exceed page limitations in their forthcoming Motion to Compel copies of a memorandum sent from Rudy Giuliani to then-Candidate Trump. According to the plaintiffs' motion, the defendants are resisting turning over the memo, arguing that: (1) the Court lacks the power to order Defendants to respond to discovery; (2) the Memorandum is not relevant to any of Plaintiffs' claims; (3) Defendants may not have possession, custody, or control of the Memorandum; (4) it is too burdensome for Defendants to search for the Memorandum to determine whether it exists; and (5) the Memorandum, if it exists, could be protected by legal privileges that Defendants and third parties should be allowed to assert in the future if their other objections are overruled. Judge Roberts granted the plaintiffs' motion on May 25.

- On May 26, the plaintiffs filed their Motion to Compel production of the memorandum sent from Rudy Giuliani to then-candidate Trump. The plaintiffs argued that (1) the request is relevant to the plaintiffs' Establishment Clause, Free Speech, and Equal Protection claims; (2) the President is not immune from discovery and executive privilege should not apply to communications by a presidential candidate before assuming office in this case; and (3) the court has already rejected the defendants' arguments for delaying the production.

- On May 30, the court set a motion hearing on defendants' April 17 motion to dismiss for June 6.

- On May 31, the defendants filed a Motion to Stay Pending Supreme Court Proceedings in light of the "Supreme Court's likely consideration of the Fourth Circuit's decision." In response, the court ordered the plaintiffs to respond to the motion to stay by June 2 at 5:00 pm. The court also allowed the defendants to file a short brief in opposition to the plaintiffs' May 26 motion to compel the memo from Rudy Giuliani to then-candidate Trump; that brief is due by June 5. Deadlines for all other discovery requests (other than the Giuliani memo) were suspended pending the resolution of this motion to stay.

- Over plaintiffs' opposition, on June 1, the court granted defendants' motion to reschedule the hearing on their motion to dismiss—previously June 5—to June 13. In granting the order, the court did not address

plaintiffs' concern that pushing back the motion hearing also means pushing back discovery.

- On June 2, the plaintiffs filed their opposition to the defendants' Motion for Stay Pending Supreme Court Proceedings. The plaintiffs argued that (1) the defendants have not established irreparable harm absent stay; (2) the defendants have not shown it's likely that the Supreme Court will reverse the Fourth Circuit's decision in *IRAP v. Trump*. The plaintiffs also opposed the defendants' request for an extension to the plaintiffs' discovery requests, arguing for immediate responses to some of the interrogatories already submitted.

- On June 5, the defendants filed their opposition to Plaintiffs' Motion to Compel Production of the "Giuliani Memo." The government argued that (1) the plaintiffs should seek the memo from third parties; (2) Congress members who may have the document are not within the scope of discovery; (3) discovery against the President is improper in this case; and (4) the document is not relevant to the case.

- On June 6, the defendants filed their Reply in Support of Motion for Stay Pending Supreme Court Proceedings. The defendants argued that a Supreme Court decision will clarify the issues in this case, and the defendants argued that a stay of discovery will not prejudice the plaintiffs. The defendants are requesting a stay or, alternatively, a two-week extension to respond to the plaintiffs' discovery requests and a two-week extension to respond to the plaintiffs' motion to compel the Giuliani memo.

- On June 9, Judge Roberts granted the defendants' motion to stay pending Supreme Court proceedings. In her order, Judge Roberts emphasized judicial economy, referencing the many filings related to discovery requests and finding that "[r]equiring the parties and the Court to devote time and resources to resolve these matters during the appeal in *IRAP* would not be economical, because the Supreme Court's decision will be significantly relevant to, and possibly control, the Court's consideration of issues raised in this suit."

- On July 6, the parties jointly filed a discovery plan.

- On October 20, the parties filed a motion to set November 6, 2017 as the deadline for the "joint statement" called for by the court's June 9th Order,

so that the parties might have time to meet and confer regarding a proposed schedule for further proceedings.

- On October 24, the Court granted the parties joint motion to set November 6, 2017 as the deadline for their joint statement.

- On November 6, the parties filed a joint motion for clarification of the court's October 24 order, which directed the parties to file a joint statement "once proceedings are concluded in the Supreme Court concerning the portions of Proclamation 9645 being litigated." Plaintiffs argued that, since there are no proceedings pending in the Supreme Court regarding the proclamation, the court should allow further proceedings in this case. Defendants, however, interpreted the court's order as extending the stay on proceedings.

- On November 16, the court granted the parties joint motion for clarification, stating that the parties could disregard the above-quoted portion of the October 24 order. Additionally, because the challenged provisions of the Executive Order expired, plaintiffs' second amended complaint does not present a case or controversy. However, the court will allow the plaintiffs to file a third amended complaint on any new causes of action that have arisen from the issuance of the Proclamation.

*Ninth Circuit*

- ***Jewish Family Service of Seattle et al v. Trump* (W.D. Wash., Case No. 2:17-cv-01707).** This is a class action lawsuit against the Trump Administration on behalf of themselves, several individual plaintiffs, and all others similarly situated challenging "Refugee Ban 3.0", the Executive Order issued by President Trump on October 24, 2017. Refugee Ban 3.0 suspends entry of refugees from eleven countries designated in a Security Advisory Opinion ("SAO") and indefinitely suspends the "follow-to-join" program, which allows refugees admitted to the U.S. to apply for admission of their spouses and children. The proposed class includes: (1) individuals in the U.S. with family members overseas in the eleven SAO countries designated for suspension of refugee admissions; (2) individuals overseas in the USRAP who are nationals of SAO countries; (3) individuals in the U.S. who are petitioners for pending follow-to-join applicants. The plaintiffs assert that since his election, President Trump has been attempting to fulfill his campaign promise to ban Muslims, and Refugee Ban 3.0 is yet another attempt to fulfill that promise. Nine of the eleven SAO countries from which refugee admission is currently suspended are majority-

Muslim. The plaintiffs further assert that Refugee Ban 3.0 serves no genuine national security or foreign policy purpose, and that enforcement of Refugee Ban 3.0 will irreparably harm plaintiffs. Plaintiffs claim Refugee Ban 3.0 violates two provisions of the APA, the Establishment Clause, the Equal Protection Clause, and the Due Process Clause. The case has been assigned to Judge Ricardo S. Martinez.

- On November 16, plaintiffs filed a motion for preliminary injunction. The motion is not publicly available.
- On November 20, the court issued a minute order transferring the case from Judge Ricardo Martinez to Judge James L. Robart.
- On November 21, Judge Robart ordered both parties to submit memoranda by November 29 to show cause regarding consolidation of the action with the related case *Doe v. Trump et al.*, 17-cv-00178.
- On November 29, a stipulation and proposed order was filed regarding consolidation and scheduling for further proceedings. The court then consolidated the cases under *Doe v. Trump et al.*, 17-cv-00178.
- On November 30, all parties consented to a video recording of the in-court hearing scheduled for December 21, 2017.

- ***Mohammed v. United States* (C.D. Cal., Case No. 2:17-cv-00786) (Goldberg and Associates as counsel for plaintiffs) [STAYED].** This is a class action filed by a group of twenty-eight Yemeni-born people, including U.S. citizens and their family members who had been issued immigrant visas, alleging that the Executive Order illegally targets Muslims. On January 31, the court barred the Government from removing, detaining, or blocking entry of the plaintiffs or any person holding a valid immigrant visa from the seven listed countries. The court ordered the State Department to: (1) not cancel validly obtained and issued immigration visas of the named plaintiffs; (2) return valid visas to the plaintiffs; and (3) to inform airlines that the named plaintiffs are permitted to enter the U.S.
  - On February 5, defendants filed their opposition to the motion for a TRO and/or PI. Late on February 8, plaintiffs filed their reply.
  - On February 13, defendants filed a joint stipulation to continue the hearing on plaintiffs' emergency motion for a TRO and/or PI from February 14 to February 21, which the court approved later that day.

- On February 21, plaintiffs filed a First Amended Complaint and a motion to certify class. Also on February 21, a status conference was held before Judge James Otero, during which the court found that the plaintiffs had not demonstrated that any irreparable harm would occur in the event the TRO were dissolved given the existence of the nationwide TRO in *Washington v. Trump*, and "given Plaintiffs' counsel's inability to identify any named plaintiffs with validly issued immigrant visas who were currently being denied the ability to immigrate to the United States." Accordingly, the court did not extend the TRO issued on January 31.

- On February 27, the Government filed an *ex parte* application to continue time to respond to the First Amended Complaint and the hearing on the motion for class certification from April 7 and March 27 to May 7 and June 27, respectively. The court granted the motion on February 28. On March 1, plaintiffs filed an *ex parte* application requesting the court to reconsider its February 28 order that had extended the time to respond and class certification hearing. On March 2, the Government filed its *ex parte* opposition. The same day, the court denied plaintiffs' *ex parte* application and confirmed the deadlines set forth in the February 28 order. On March 7, the Government filed a notice to the court, presumably about the revised Executive Order.

- On May 1, the parties filed a stipulation and proposed order for an amended complaint and revised deadlines. The stipulation is not publicly available.

- On May 15, the plaintiffs filed a statement relating to the May 1 stipulation. The statement is not publicly available.

- On May 16, the court ordered, pursuant to the parties' stipulation, that (1) the defendants need not respond to the plaintiffs' First Amended Complaint; (2) the plaintiffs must file a Second Amended Complaint on or before May 16; and (3) the defendants must respond to the Second Amended Complaint on or before June 30. Later on May 16, plaintiffs filed a Second Amended Complaint. Like the May 1 stipulation and May 15 statement, this complaint is not publicly available.

- On June 1, a sixty day summons was issued with respect to the Second Amended Complaint.

- On June 6, the defendants filed an Opposition to the plaintiffs' Notice of Motion and Motion to Certify Class. This motion is not publicly available.

- On June 9, the plaintiffs filed an *ex parte* application to continue time to file their reply to the defendants' opposition to the plaintiffs' motion for class certification and to change the date of the hearing for class certification. The defendants did not oppose the application. These motions are not publicly available.

- The court approved the plaintiffs' *ex parte* motion on June 13. The deadline for the plaintiffs' reply is now July 14, and the hearing on plaintiffs' motion for class certification is now July 28.

- On June 26, the court invited the parties to submit a joint status report on or before July 6, 2017 in light of the Supreme Court's decision issued on the same day. The court asked the parties to clarify whether any class members "lack a bona fide relationship with a person or entity in the United States." The court also asked the parties to address whether the court should stay this action until the Supreme Court decides the merits of that case. The court also noted that the Government should not delay processing valid immigrant visa applications initiated by submitting Form I-130 petitions submitted by U.S.-based relatives of foreign nationals.

- On June 30, the defendants submitted a motion to sever and dismiss plaintiffs' mandamus claims and to dismiss the remaining claims in the plaintiffs' Second Amended Complaint. This motion is not publicly available.

- On July 6, the defendants filed a status report with the court. The report is not publically available.

- On July 7, the plaintiffs filed a status report with the court. The report is not publically available.

- On July 12, the plaintiffs filed an *ex parte* application to continue time to file their reply to defendants' opposition to plaintiffs' motion for class certification and to change the date of the hearing on the motion for class certification from June 13 and June 27 to July 14 and July 28. On July 13, defendants did not oppose the application in their response to plaintiffs' *ex parte* application. These motions are not publicly available.

- On July 17, the plaintiffs filed an opposition to the defendants' motion to sever and dismiss plaintiffs' mandamus claims and dismiss the remaining claims in plaintiffs' second amended complaint. This motion is not publicly available.

- On July 19, the court extended plaintiffs' deadline to file their reply brief in support of their motion for class certification. The plaintiffs' reply brief is now due by July 21, 2017. The hearing date on the motion will be held on August 7, 2017 10:00 a.m.

- On July 21, the plaintiffs filed their response to the defendants' June 30 motion to server and dismiss the mandamus claims and dismiss the remaining claims. This motion is not publicly available.

- On July 24, the Government filed its reply to the plaintiff's response to June 30th motion. This motion is not publicly available.

- On July 27, the court found the following motions suitable for disposition without oral argument and vacated the hearing: plaintiffs' motion to certify class and defendants' motion to sever and dismiss plaintiffs' mandamus claims and to dismiss the remaining claims in plaintiffs' second amended complaint. The briefing schedule remains as set by local rule.

- On August 21, the court denied plaintiffs' motion for class certification, but permitted plaintiffs to file a renewed motion for class certification on or before October 16, 2017, with a hearing date of December 11, 2017, that addresses each of the concerns highlighted in the court order. The court also granted in part and denied in part defendants' motion to sever and dismiss plaintiffs' mandamus claims and to dismiss the remaining claims in plaintiffs' second amended complaint for injunctive relief and petition for writ of mandamus. Plaintiffs' mandamus claims were severed from the action and dismissed without prejudice. Finally, the court stayed all discovery efforts related to plaintiffs' establishment clause claim until after SCOTUS issues an opinion in the consolidated cases *Trump v. IRAP* and *Trump v. Hawaii*.

- On August 31, defendants filed a motion to stay the case pending Supreme Court proceedings. The motion was set for hearing on October 10, 2017.

- On September 14, plaintiffs filed an opposition to defendants' Notice of Motion and Motion to Stay Case pending Supreme Court proceedings. This motion is not publicly available.

- On September 26, defendants filed a reply in support of their Notice of Motion and Motion to Stay Case pending Supreme Court proceedings. This motion is not publicly available.

- On October 5, the court found the Motion to Stay suitable for disposition without oral argument and vacated the motion. The briefing schedule remains as set by local rule.

- On October 16, the court granted the defendants' Motion to Stay pending resolution of the Supreme Court proceedings. The parties are required to file a joint status report within ten days of any decision by the Supreme Court on the merits of *Trump v. Hawaii* so that the court may reevaluate the stay.

- On November 6, plaintiffs filed a status report in response to the court's October 16 order. The document is not publicly available.

- ***Al-Mowafak v. Trump*** **(N.D. Cal., Case No. 3:17-cv-00557) (ACLU of Northern California, the ACLU of Southern California, the ACLU of San Diego, and the ACLU National Immigrants' Rights Project, along with Keker Van Nest & Peters LLP as counsel for plaintiffs) [STAYED].** Three students at California universities, along with Jewish Family & Community Services East Bay, filed suit arguing that the Executive Order constitutes an unconstitutional and discriminatory Muslim ban. The named plaintiff students have F-1 visas, and the purported class includes all people who are nationals of Iran, Iraq, Libya, Somalia, Sudan, Syria, or Yemen and who currently are, or recently have been, lawfully present in California and who would be able to travel to the United States or leave and return to the United States if it were not for the Executive Order. Plaintiffs also seek a declaration that the Executive Order is illegal and may not be enforced.

  - The case was assigned to Judge William H. Orrick.

  - On March 13, plaintiffs filed an amended complaint. On March 16, plaintiffs filed a motion for a preliminary injunction.

  - On March 28, the Government requested an extension of time to file its response to the class certification motion; plaintiffs filed an opposition/response on March 30. On March 30, the court granted the Government's motion.

  - On April 5, defendants filed a motion to stay proceedings and a stipulation with a proposed order to stay; these documents are not available on the docket. On April 6, the court ordered plaintiffs to file an opposition to defendants' motion to stay no later than April 11, with defendants' reply due April 13. On April 11, plaintiffs filed their opposition to defendants'

motion to stay, but it is not available on the docket. On April 13, defendants filed their reply, which is likewise unavailable.

- On April 18, the court continued the hearing on plaintiffs' motion for PI to May 31, and provided that the hearing may be continued further if the appellate proceedings arising from *Hawaii v. Trump* had not been resolved by May 24.

- On May 26, the court vacated a planned May 31 hearing on plaintiffs' motion for preliminary injunction for the time being in light of the Fourth Circuit's May 25 ruling in *IRAP v. Trump* and the Government's indication that it will appeal that case to the Supreme Court. Nevertheless, the court ordered the parties to attend a Case management Conference on May 31 to discuss "what, if anything, should occur in this matter during the pendency of" *IRAP v. Trump* and the Ninth Circuit's *Hawaii v. Trump* case.

- On May 31, the court held an Initial Case Management Conference, discussing related litigation and a discovery schedule.

- On June 19, the court ordered, pursuant to the parties' stipulation, to stay the case except for some limited discovery so long as the injunction from *Hawaii v. Trump* remains in effect.

- Some documents from this case are available on the ACLU Foundation of Northern California's website at https://www.aclunc.org/our-work/legal-docket/al-mowafak-v-trump-muslim-ban.

- ***Hawaii v. Trump* (D. Haw., Case No. 1:17-cv-00050) (Hawaii Attorney General, Hogan Lovells US LLP, Hawaii Disability Rights Center).** The state of Hawaii filed a complaint for declaratory and injunctive relief on February 3, as well as a motion for a TRO.

  - On February 6, defendants filed an emergency motion to stay pending the appellate proceedings in the *Washington v. Trump* case; Hawaii filed an opposition. On February 9, the court ordered a stay of the case as long as the injunction ordered in *Washington v. Trump* remains in place. On February 8, Hawaii filed a motion to partially lift the stay to file the Proposed First Amended Complaint, which was granted; the First Amended Complaint was filed on February 13. On February 14, Hawaii's Solicitor General filed a declaration stating that, due to the TRO in

*Washington v. Trump*, family members of one of the plaintiffs were able to return to the U.S.

- On March 6, defendants filed a notice enclosing the new Executive Order and explaining key portions, including how defendants believe judicial concerns have been addressed. In particular, defendants argue that exempting LPRs and persons with valid visas and establishing a waiver procedure for those without visas mitigates the due process concerns raised by the Ninth Circuit. On March 7, Hawaii filed a motion to lift the stay and for leave to file a Second Amended Complaint, attaching the proposed amended complaint to the motion. The Second Amended Complaint for Declaratory and Injunctive Relief asks the court to declare Sections 2 and 6 of the revised order unconstitutional and enjoin defendants from implementing or enforcing those sections. On March 8, the court granted plaintiffs' motion and approved the parties' joint proposed briefing schedule. The same day, plaintiffs filed the Second Amended Complaint and a motion for a TRO.

- On March 10, the Immigration Reform Law Institute, Human Rights First, Kids in Need of Defense (KIND), Tahirih Justice Center, and HIAS, represented by Simpson Thacher and local counsel Goodsill Anderson Quinn & Stifel, filed an amicus brief in support of plaintiffs' motion for a TRO. A number of amicus briefs in support of the plaintiff were filed on March 11–12.

- On March 13, defendants filed an opposition to plaintiffs' motion for a TRO, arguing the grounds that originally supported the TRO in *Washington v. Trump* no longer applied, and that the new waiver provisions made a TRO unnecessary. The court granted several news entities, including CNN and the Washington Post, permission to live-blog the hearing held on March 15.

- On March 15, Judge Derrick K. Watson granted a nationwide TRO against the new Executive Order. In his opinion, Judge Watson stated that the plaintiffs had established a likelihood of success on the merits based on their Establishment Clause claim. In particular, the opinion highlighted various statements made by Trump and his surrogates concerning the Executive Order as indicators of potential religious animus.

- On December 4, the court entered its formal mandate, officially putting the judgment entered on September 7 into effect.

- ***Hawaii v. Trump* (9th Cir., Case No. 17-15589).** This appeal arose out of the District of Hawaii's March 15 TRO, as well as the March 29 order converting that TRO to a PI. On June 12, the Ninth Circuit issued a per curiam opinion upholding most of the District of Hawaii's preliminary injunction of Sections 2 and 6 of the Executive Order. The Ninth Circuit upheld the injunction of the Executive Order's cap on the entry of refugees, suspension of the refugee admissions program and ban on entry of certain foreign nationals from six designated countries. The court vacated the district court's injunction as applied to the interagency review provisions of the Executive Order, and the court vacated the injunction as applied to the President. In upholding most of the injunction, the court held that the President exceeded the authority granted to him under the Immigration and Nationality Act ("INA"). Notably, the court did not reach the plaintiffs' Establishment Clause claim, ruling instead on statutory grounds. According to the court, the Executive Order likely violated the INA, in part, because (1) it lacked sufficient findings that the entry of the class of immigrants would be "detrimental to the interests of the United States"; (2) it lacked findings that the present vetting standards for immigrants is insufficient; and (3) it violated the INA's prohibition on nationality-based discrimination. The court also found that the injunction was in the public interest, citing the many amicus briefs filed in the case over the course of more than two pages in the opinion. On June 27, the court noted the case information of the Supreme Court appeal, particularly that a cert petition was filed and is docketed as 16-1540.

- On March 17, defendants filed a motion for clarification of the TRO, which enjoined enforcement of Sections 2 and 6 of the revised Executive Order. Defendants argued that although the TRO states it enjoins Sections 2 and 6, many of the provisions in those sections were not addressed in the briefs, and it is therefore unclear whether the court intended its injunction to extend to all of those provisions. On Saturday, March 18, plaintiffs filed an opposition. On Sunday, March 19, the court issued two orders. The first denied the defendants' motion for clarification, noting that the defendants' motion "asks the Court to make a distinction that the Federal Defendants' previous briefs and arguments never did." The second ordered the parties to advise the court on whether they agree on a stipulated path regarding proceedings for a possible extension of the court's TRO.

- On March 20, the parties filed a joint motion for briefing schedule and the court entered the following schedule: plaintiffs' motion to convert the TRO to a PI was due by March 21; defendants' opposition by March 24; and plaintiffs' reply by March 25. Plaintiffs filed their motion to convert on March 21. Per the parties' stipulation, the court also ordered that its March 15 TRO shall remain in place until such time as the court rules on whether the TRO should be converted to a PI or until otherwise ordered by the court. The Rule 16 scheduling conference was continued to April 18 at 9:30 a.m.

- On March 24, defendants filed a memorandum opposing plaintiffs' motion to convert the TRO into a PI. The memo urged the court to reject plaintiffs' arguments for the same reasons given in arguments over the original TRO. Additionally, it encouraged the court to limit any preliminary injunction to Section 2(c) and alleged plaintiffs lack standing to challenge Section 6.

- On March 28, the court granted requests from CNN and Daily Kos for permission to blog the March 29 proceedings on converting the TRO to a PI. Additionally, defendants filed a declaration from the Director of the Refugee Admissions Office to the effect that only twenty of the more than 500,000 refugees resettled in the U.S. from 2010 on were resettled in Hawaii.

- On March 29, the hearing on conversion of the TRO to a PI took place. Hawaii argued that the Executive Order hurt the state's tourism based economy by discriminating against Muslims, while the Government responded that it was within the president's power to protect national security, and that Hawaii had failed to allege specific harms. In addition, HIAS filed an amicus brief in support of Hawaii, presenting detailed accounts of various refugees affected by the Order.

- On March 30, the Government filed a notice of appeal from the court's March 29 order converting the TRO into a PI, "as well as all prior orders and decisions that merge into that Order" including the initial TRO.

- On April 3, all deadlines were stayed pending appellate proceedings at the Ninth Circuit. On April 10, the court posted the transcript for proceedings held on March 15.

- On June 19, the court issued an amended preliminary injunction pursuant to the Ninth Circuit's June 12 decision that affirmed in part and vacated in part the court's original March 29 injunction.

- On June 27, the court entered a copy of a notice from the Supreme Court to the Ninth Circuit that a petition for a writ of certiorari had been filed in the case, and docketed as No. 16-1540.

- On June 29, the plaintiffs filed an emergency motion tasking the court to clarify its preliminary injunction to cover fiancées, grandparents, grandchildren, brothers- and sisters-in-law, aunts, uncles, nieces, nephews, and cousins of persons in the United States, and refugees who have formal assurance from an agency in the U.S. that the agency will provide reception and placement services to that refugee. Plaintiffs urge that the State Department's guidance is an announcement that the Government will violate the Supreme Court's order. They also argue that immigration law clearly recognizes the above relationships as "close." Finally, they argue that the guidance tries to rewrite the Supreme Court's order, by directing consular officers to "determine" whether a bona fide relationship exists and to deny visas if the answer is "unclear," when the Court said the injunction protected individuals with a "credible claim" of such a relationship.

- On June 29. the court ordered the defendants to file an opposition to the emergency motion asking for clarification of the preliminary injunction by July 3 and has ordered the plaintiffs to file a reply by July 6.

- On July 3, the Government filed a brief in opposition to the plaintiffs' emergency motion to clarify the scope of the PI. The Government argued that their definition of "close family member" is consistent with both the INA and the Supreme Court's decision, that a sponsorship assurance is not itself sufficient to establish a qualifying relationship, and that the Supreme Court's "credible claim" standard is properly implemented by the Government.

- On July 5, the plaintiffs filed a reply in support of their emergency motion to clarify the scope of the preliminary injunction. The plaintiffs argued that (1) the injunction should protect grandparents, grandchildren, brothers-in-law, sisters-in-law, aunts, uncles, nieces, nephews, and cousins; (2) the injunction should apply to refugees with formal assurances from a U.S. resettlement agency; and (3) refugees who have booked travel to the United States have a bona fide relationship with resettlement agencies. The plaintiffs also filed a declaration in support of their reply and an errata to fix an error in their proposed order.

- On July 6, Judge Derrick Watson issued a 6-page order denying plaintiffs' emergency motion to clarify the scope of the preliminary injunction. The judge reasoned that the parties' disagreement did not derive from the district court's orders, but rather from the Supreme Court's June 26 decision. "Accordingly, the clarification to the modifications that the parties seek should be more appropriately sought in the Supreme Court." The parties immediately appealed Judge Watson's order to the Ninth Circuit.

- On July 7, the Ninth Circuit dismissed the appeal for lack of jurisdiction.

- Also on July 7, plaintiffs the state of Hawaii and Dr. Ismail Elshikh filed a motion to enforce or, in the alternative, to modify the preliminary injunction. Plaintiffs requested emergency consideration, arguing that the Government's implementation of the Executive Order contravenes the aspects of the preliminary injunction that were not stayed by the Supreme court.

- On July 10, fifteen states—New York, California, Connecticut, Delaware, Illinois, Iowa, Maine, Maryland, Massachusetts, New Mexico, Oregon, Rhode Island, Vermont, Virginia, and Washington—and the District of Columbia filed an amicus brief in support of the plaintiffs' motion to enforce or modify. Primarily, the amici argue that the State Department's interpretation of "close familial relationship" excludes individuals who "fall squarely within [the injunction's] meaning and purpose."

- On July 10, the court partially lifted its April 3 stay "for the limited purpose of considering" plaintiffs' July 7 motion.

- Also on July 10, the court granted IRAP and HIAS's motion for leave to file an amicus brief.

- On July 11, 2017, defendants filed a memorandum in opposition to plaintiff's motion to enforce or, in the alternative, modify the preliminary injunction. Primarily, defendants argue that (1) this district court lacks jurisdiction to modify its PI to grant additional relief beyond what the Supreme Court has permitted and any order enforcing its injunction; (2) the Government's definition of "close family" is consistent with the Supreme Court's decision; (3) an assurance from a resettlement agency by itself does not establish a qualifying bona fide relationship between a refugee and a resettlement relationship; (4) and the remaining relief that plaintiffs seek in regards to other refugee-related issues is not ripe.

- On July 12, plaintiffs the state of Hawaii and Dr. Ismail Elshikh filed a reply in support of their motion to enforce or, in the alternative, to modify the preliminary injunction. Primarily, plaintiffs argue that (1) this court's intervention is urgently warranted and its authority to modify or enforce its injunction is indisputable; (2) this court's injunction continues to protect grandparents, grandchildren, brothers-in-law, sisters-in-law, aunts, uncles, nieces, nephews, and cousins of persons in the United States and the Government cannot identify a coherent reason for their exclusion from the country; (3) refugees with a formal assurance must be permitted to enter because of the harm to resettlement agencies from their exclusion; and (4) there is an urgent need to prevent the Government from violating this court's injunction with respect to refugees because of the "terrible harm" on refugees resulting from the Government's "unlawful interpretation" of the existing injunction.

- Also on July 12, Neal Katyal, on behalf of the state of Hawaii and Dr. Ismail Elshikh, filed a supplemental declaration in support of plaintiffs' motion to enforce, or in the alternative, to modify the preliminary injunction.

- On July 13, Judge Watson rejected the Government's guidance as to the definitions of "bona fide relationship" and "close familial relationship." The court rejected the Government's definition of "close familial relationship" as "unduly restrictive." The court also granted the plaintiff's motion to modify the injunction with respect to refugees who have received formal assurance from a settlement agency and members of the Lautenberg program. However, the court declined to modify the injunction as applied to refugees who are members of the Iraqi Direct Access Program and the Central American Minors program as well as those who have a relationship with legal service providers such as IRAP. Finally, the court rejected plaintiff's request to prevent the Government from applying a presumption of no bona fide relationship as unsupported by any substantive argument or authority.

    - ***Hawaii v. Trump* (9th Cir., Case No. 17-16426).** This appeal arose out of the District of Hawaii's July 13 order rejecting the Government's construction of the Supreme Court's "bona fide relationship" and "close familial relationship" language. On July 19, the court received the Supreme Court's order, denying the Government's motion seeking clarification of the Court's June 26 order and staying Hawaii's District Court order modifying the

preliminary injunction regarding refugees covered by a formal assurance pending resolution of the Government's appeal to the Ninth Circuit. On July 21, the parties filed a joint motion to revise and expedite the briefing schedule, requesting that the opening brief and excerpts of record be due July 27, the answering brief and supplemental excerpts of record August 3, and the reply brief August 9. The court granted this motion on July 24. On September 7, the Ninth Circuit affirmed the District of Hawaii's preliminary injunction preventing the government from interpreting "close familial relationship" to exclude grandparents, grandchildren, brothers-in-law, aunts, uncles, nieces, nephews, and cousins of persons in the United States. The court also upheld the District of Hawaii's injunction preventing the government from enforcing the travel ban against refugees who have formal assurances from resettlement agencies. Regarding the determination of who classifies as a close relative, the court found that the government did not meaningfully argue that these relatives had "no connection" or "lack any bona fide relationship" to persons in the United States. The court was not persuaded by the government's "cherry-picked" definition of "immediate relatives" from the INA because there is no indication that the Supreme Court's equitable decision was informed by these technical definitions. Further, this narrow definition conflicts with other sections within the INA. After detailing the process by which refugees are screened and granted admission to the United States, the court upheld the lower court's holding that these individuals have a bona fide relationship with an entity in the United States. The court found that the agencies who have sponsored refugees are faced with both tangible and intangible losses when a refugee who they sponsored is prevented from entering the United States.

- On July 20, the court granted IRAP and HIAS' *ex parte* motions to seal documents, finding that compelling reasons existed to file the designated exhibits under seal.

- On August 29, the court issued its mandate that the judgment entered July 7 take effect.

- On October 6, plaintiffs filed a motion to lift the stay on proceedings, increase the word limit for the parties' briefs in the forthcoming Motion for a Temporary Restraining Order, and set a briefing schedule for that

motion. As a result of the September 24, 2017 proclamation, plaintiffs argue that circumstances have changed such that the "Court's reasons for imposing the stay no longer exist or are inappropriate." If the stay is lifted, plaintiffs intend to seek leave to file a Third Amended Complaint and request a Temporary Restraining Order preventing the enforcement of the order before it goes into effect on October 17. The court granted the motion to life the stay and ordered plaintiffs to file their Motion for Leave to File a Third Amended Complaint and Motion for a Temporary Restraining Order by October 10. The government's response to both motions is due on October 14 and the plaintiffs' reply briefs are due on October 15. The request to increase the word limit for the Motion for a Temporary Restraining Order was denied.

- On October 10, plaintiffs moved for leave to file a Third Amended Complaint, which challenges the proclamation and adds three additional plaintiffs. Plaintiffs also filed their Motion for a Temporary Restraining Order, reiterating their argument that the proclamation, like the prior executive orders, violated the INA and the Establishment Clause. Plaintiffs noted that the court had previously enjoined the second executive order and the Ninth Circuit had affirmed the order. Additionally, plaintiffs clarified that they do not seek to enjoin the travel ban as to North Korea and Venezuela. Plaintiffs also filed a motion for leave for the Doe plaintiffs to proceed under a pseudonym, and for *in camera* review of the doe plaintiffs' statements. The court issued an order requiring the Government to provide a copy of the September 15, 2017 report submitted by the Secretary of Homeland Security, referred to in Section 1(h) of the September 24 Proclamation, by October 14. The Secretary's report, which he was directed to create by Section 2(e) of EO 13780 ("travel ban 2.0"), includes a list of countries that do not comply with U.S. information sharing and identity management protocols and are recommended for entry restrictions until such time as they are able to comply.

- On October 13, the Government filed a notice of *in camera, ex parte* lodging of the September 15th report, claiming the report contains information classified Secret. The Government objected to the court's order to produce the report and requested a briefing on the legal issues involved. The Government claims (1) the report is irrelevant to the case, as plaintiffs may not look beyond the four corners of the Proclamation, (2) that they cannot produce the report because it is classified, and (3) that the report is a privileged communication to the President.

- On October 14, the court granted plaintiffs' motion for leave for Doe plaintiffs to proceed under pseudonyms and for *in camera* review of their signed statements. The court also granted the plaintiffs leave to file a third amended complaint. The Government filed their motion opposing the TRO contending that (1) the claims based on a decision to exclude an alien abroad are not reviewable; (2) the Proclamation does not violate Hawaii's Constitutional rights and they have no *parens patriae* standing against the federal government; (3) the Proclamation is within the President's extremely broad power to suspend entry of aliens abroad; (4) the Proclamation is justified by national security and foreign affairs judgments; (5) the Proclamation does not violate the INA; and (6) the Proclamation does not violate the Establishment Clause as it gives a facially legitimate and bona fide reason for excluding aliens and the courts cannot look behind that reason.

- On October 15, the plaintiffs filed a third amended complaint asserting that Sections 2 and 3 of the new Proclamation inflict continuing injury on the plaintiffs by violating the antidiscrimination clause of the INA, exceeding the scope of the President's authority under the INA, violating the Establishment Clause, the Free Exercise Clause, and the Equal Protection Clause of the Fifth Amendment, violating the Religious Freedom Restoration Act, and violating the APA. Plaintiffs also filed their reply in support of their motion for a TRO asserting that their claims are reviewable (1) because courts can review executive policymaking as opposed to consular decisions to grant or deny a visa; (2) the APA allows injunctive relief against executive officials; (3) plaintiffs can assert Establishment Clause claims based on their own right to be free from federal establishments; and (4) the impact of the Proclamation is ripe for judicial review. Plaintiffs further contend that "EO-3" violates the INA and the Establishment Clause, and a nationwide injunction is appropriate.

- On October 16, the court granted plaintiffs' motion for leave to file a response to the Government's notice of *in camera, ex parte* lodging of the classified report. In their response, the plaintiffs contend the claims can be decided based on the public information available and the Proclamation itself, and therefore there is no need to consider the Government's report. If the court does decide to consider the report, plaintiffs request access, noting that lawyers on their team have or held clearance at or above secret level and so allowing them access would not endanger national security.

- On October 17, the court issued a nationwide temporary restraining order (TRO), putting a halt to the latest iteration of the travel ban that was set to take effect tomorrow. Specifically, the order temporarily enjoins the implementation and enforcement of sections 2(a), (b), (c), (e), (g), and (h) of Proclamation No. 9645 ("EO-3"). The TRO applies to six of the eight designated countries: Iran, Libya, Syria, Yemen, Somalia and Chad (excluding North Korea and Venezuela, about which the plaintiffs did not bring a claim). After finding that the plaintiffs had standing and the claims were ripe and justiciable, the court turned to the merits. It found that (1) plaintiffs have demonstrated a strong likelihood of success on the merits of their statutory claims, namely that the President exceeded his authority under INA Sections 1182(f) and 1185(a); and (2) EO-3 discriminates on the basis of nationality in violation of Section 1152(a). As such, the court declined to reach plaintiffs' constitutional claims.

- On October 20, the parties jointly stipulated that the Court's October 17 temporary restraining order (TRO) be converted to a preliminary injunction (PI). The Government wished to note, however, that it has requested that the Supreme Court vacate as moot the 9th Circuit's prior decision, and that to the extent vacatur of the 9th Circuit's decision would affect this Court's decision regarding conversion of its TRO to a PI, the Court may wish to wait until after the Supreme Court acts on the Government's request for vacatur. Pursuant to the joint stipulation, the court issued an order converting the TRO to a preliminary injunction.

- On October 24, defendants appealed the court's order converting the TRO to a preliminary injunction, as well as all other prior orders and decisions, including the October 17 order granting the TRO.

- On November 2, the case was remanded with directions to dismiss as moot the challenge to the March 6 executive order, following the Supreme Court order.

- On December 4, the court entered its formal mandate, officially putting the judgment entered on September 7 into effect.

- ***Hawaii v. Trump* (9th Cir., Case No. 17-17168).** This appeal arose out of the District of Hawaii's October 17 TRO, as well as the October 20 order converting the TRO to a preliminary injunction.

  - On October 24, defendants filed an emergency motion to stay the preliminary injunction of the lower court pending final disposition of the

appeal. Defendants, in the same motion, have also requested the court to grant an immediate administrative stay pending a ruling on a stay pending appeal.

- On October 25, the parties requested the court to enter an expedited briefing schedule pursuant to their agreement. On the stay motion, the government's stay motion is due on October 24, the opposition to stay is due on October 31, and the Reply to the opposition would be due on November 2. On the merits of the preliminary injunction, the Government's opening brief would be due on November 2, the answering brief would be due on November 18, and the reply brief will be due on November 29. The parties also requested that the court consider this case for oral argument on an expedited basis.

- On October 25, the court granted the emergency motion to expedite the briefing of the emergency stay motion and preliminary injunction. The request for expedited oral argument will be addressed by separate order.

- On October 26, the court ordered that the request for an immediate administrative stay would be addressed together with the motion for an emergency stay. The court also scheduled oral argument for December 6.

- On November 2, the Government filed its opening brief on the INA issues (the district court did not reach the Establishment Clause and other claims), and the court granted New York, Illinois, California, DC, and 12 other states leave to appear as amici.

- On November 3, a group of twelve states filed an amicus brief in favor of the government, and another group of fifteen states plus the District of Columbia filed an amicus brief in favor of the plaintiffs.

- On November 13, the court granted in part and denied in part the Government's motion for an emergency stay of the district court's preliminary injunction pending final disposition of the appeal. The preliminary injunction was stayed except as to foreign nationals with a "bona fide," "close familial relationship" with a person in the United States (including grandchildren, grandparents, brothers-in-law, sisters-in-law, aunts, uncles, nieces, nephews, and cousins). As for entities, the relationship must be "formal, documented, and formed in the ordinary course, rather than for the purpose of evading Proclamation 9645."

- On November 18, Plaintiffs-Appellees (including Hawaii) submitted their answering brief in support of the preliminary injunction, arguing, among others, that (1) it has standing to seek injunctive relief, (2) EO-3 exceeds the President's statutory authority under the INA and the Establishment Clause, and (3) a nationwide injunction is appropriate.

- On November 20, the court denied the motion to intervene filed by the States of Washington, California, Maryland, Massachusetts, New York, and Oregon. The abovementioned states are nonetheless allowed to proceed as amici.

- On November 21, a group called the International Law Scholars and Nongovernmental Organizations filed an amicus brief in support of the State of Hawaii. The brief argued, generally, that international law is relevant to assessing the legality of EO-3, and that international conventions relating to civil and political rights counsel against racially discriminatory government action. Another group of organizations including the Muslim Justice League, the Muslim Public Affairs Council, and the Council on American-Islamic Relations also filed an amicus brief in support of Hawaii.

- On November 21, C-Span's request to broadcast live and video/audio record for later broadcast was granted. Oral argument is scheduled to be heard scheduled to be heard at The William K. Nakamura Courthouse in Seattle, WA on Wednesday, December 6, 2017.

- On November 22, numerous groups, including the International Bar Association, the Cato Institute, several cities, and religious organizations filed amicus briefs.

- On November 29, Defendants filed a reply brief, arguing that Plaintiffs' INA claims are nonjusticiable and unlikely to succeed on the merits. Defendants also assert that Plaintiffs' Establishment Clause claim should not be heard because the district court did not reach that issue, and Plaintiffs do not have standing to raise it. Defendants also contend that Plaintiffs claims are meritless charges of bad-faith religious purposes to the Proclamation, which hamper the President's pursuit of good faith national security and foreign policy purposes.

- On November 30, the court granted CNN and ABC's requests to broadcast the December 6, 2017 hearing live.

- On December 4, the court granted KUOW News' request to video/audio record the December 6, 2017 hearing for later broadcast.

- ***Washington v. Trump* (W.D. Wash., Case No. 2:17-cv-00141) (State of Washington, State of Minnesota).** The State of Washington filed a complaint for injunctive and declaratory relief on January 30, identifying harm from the original Executive Order to Washington families, residents, and companies, as well as to the state's sovereign interests in welcoming immigrants and refugees. The State of Minnesota was later added as a plaintiff. After a TRO hearing on February 3, the court issued a TRO enjoining the U.S. from enforcing the Executive Order nationwide. Citing the judiciary's role in our "tripart government," the court ruled that Washington and Minnesota (the "States") had demonstrated that the Executive Order inflicts an immediate and irreparable harm on the States' residents in areas of employment, education, business, family relations, and freedom to travel. The court also found sufficient evidence that the Executive Order harms the States directly, damaging their institutions of higher learning and the States' operations, tax bases, and public funds. In enjoining the operative provisions of the Executive Order, the court specifically restrained the Government from enforcing the portions that purport to prioritize refugee claims of religious minorities.

    - On February 4, the Government appealed the TRO. On February 6, the parties filed a joint status report agreeing to proceed with the PI briefing while the Ninth Circuit considered the appeal. On February 14, Judge Robart issued an order concluding that, because the Ninth Circuit construed the court's TRO as an appealable PI, further briefing or submission of evidence concerning the injunction is inappropriate during the pendency of defendants' appeal.

        - ***Washington v. Trump* (9th Cir., Case No. 17-35105).** This appeal arose out of the Western District of Washington's TRO issued on February 3 (see above). The next day on Saturday, February 4, the Government filed an emergency motion for a stay of the district court's TRO. Soon after, the Ninth Circuit denied the Government's request for an immediate administrative stay and ordered more briefing. The court heard parties' arguments on February 7 at 3:00 p.m. in a highly publicized oral argument. On February 9, the Ninth Circuit issued a *per curiam* order denying the Government's emergency motion for a stay of the district court's TRO. First, the Ninth Circuit (1) rejected the States' argument that the TRO was not appealable given the extraordinary circumstances

of this case; (2) rejected the Government's argument that the States did not have standing given the concrete and particularized injury to the States' public universities; and (3) rejected the Government's separation of powers argument that the Executive Order was not reviewable. The Ninth Circuit then considered the legal standard for an emergency stay and denied the Government's motion because, among other things, it had not shown that it is likely to succeed on appeal of the States' Due Process Clause claim.

- On March 15, the Ninth Circuit issued an order denying vacatur of the court's previous order denying a motion of the Government for a stay of the district court's TRO pending appeal. The order noted that a judge on the Ninth Circuit called for a vote to determine whether the court should grant *en banc* reconsideration in order to vacate the published order denying the stay, but the vote failed to receive a majority of the votes of the active judges. Multiple concurrences and dissents were filed. Judge Reinhardt filed a concurrence noting that he is "proud to be a part of this court and a judicial system that is independent and courageous, and that vigorously protects the constitutional rights of all, regardless of the source of any efforts to weaken or diminish them."

- On November 13, the Supreme Court denied the Government's petition for a writ of certiorari.

- On March 6, defendants notified the district court of the issuance of the new Executive Order and argued that judicial concerns had been addressed. In particular, defendants argued that exempting LPRs and persons with valid visas and establishing a waiver procedure for those without visas mitigated the due process concerns raised by this court and the Ninth Circuit. On March 9, plaintiff filed a response brief, arguing that the new Order is merely "seeking to reinstate the 'same basic policy' this Court already enjoined" and asking the court to confirm that its previous injunction is still in force. Attached to this response, Washington submitted as exhibits various examples of statements made by the President, his campaign surrogates, and government officials concerning the Executive Order. The State of Minnesota also filed a response brief, arguing that defendants could not enforce the new order without asking the court to modify the PI.

- On March 13, the plaintiffs filed a motion for leave to amend and a proposed Second Amended Complaint. The proposed Second Amended Complaint was filed on behalf of Washington, California, Maryland, Massachusetts, New York, and Oregon, and challenged the new Executive Order. The Second Amended Complaint alleged the new Executive Order will harm the state universities' and hospitals' recruiting abilities and discourage tourism. Additionally, the plaintiffs filed an emergency motion to enforce the PI against the new Executive Order. Defendants responded to this motion on March 14, asserting that the existing injunction does not apply to the new Executive Order, and that new government policies are not constrained by judicial relief related to old policies.

- On March 15, the court held a hearing on whether the existing injunction should remain in force, with plaintiffs also filing a motion for a new TRO to be considered in the alternative. On March 16, plaintiffs filed a Second Amended Complaint. Later on the same day, Judge Robart denied Washington's motion to extend the existing injunction to the new Executive Order, ruling that its elimination of preference for religious minorities created "substantial distinctions" between the two orders that prevented the injunction from carrying over.

- On March 17, the court, *sua sponte*, stayed plaintiffs' TRO motion in light of the TROs issued in Hawaii (and Maryland). The court explained that Hawaii's TRO already provides plaintiffs the relief they seek in their TRO motion, and that the most efficient course is to wait for a decision from the Ninth Circuit in the Hawaii case. If circumstances change such that lifting the stay is warranted, either party may move to lift the stay. If the stay is lifted, the court will then rule on plaintiffs' TRO motion as soon as practicable.

- On March 30, defendants filed a motion to stay all district court proceedings pending resolution of appeal in *Hawaii v. Trump*. The court had previously, *sua sponte*, stayed consideration of the plaintiffs' TRO motion. The defendants' motion argued that all court proceedings should be stayed for the same reasons explained in the court's previous order, and noted that discussions with plaintiffs revealed that plaintiffs intend to seek "sweeping and invasive discovery." Also on March 30, defendants filed a motion for an extension of time to respond to plaintiffs' Second Amended Complaint; their response was due on April 3. They sought to extend the deadline to ten days after the court resolved their motion to stay. On April 5, plaintiffs filed a response to the defendants' motion to extend time,

arguing that defendants have had enough time and that the court should order a responsive pleading to plaintiffs' Second Amended Complaint by April 17. Defendants filed a reply on April 7.

- On April 5, the parties filed a joint status report and discovery plan. According to this report, the parties exchanged their initial disclosures on March 29. While the plaintiffs suggested that discovery be completed by March 16, 2018 and that bench trial start on September 10, 2018, defendants argued that discovery and trial are inappropriate because the case involves the Executive's discretionary national security and immigration authority.

- On April 10, the States responded to the defendants' motion to stay proceedings, arguing that plaintiffs face significant harm if the stay is granted because relevant evidence may be lost and memories of critical witnesses will fade.

- On April 13, the court granted in part defendants' motion to extend time, offering them an extension to respond to the Second Amended Complaint until seven days after the court's disposition of the pending motion to stay proceedings.

- On April 14, the Government submitted its reply to the state's opposition regarding the motion to stay proceedings, arguing that the court should follow the example of the District Court of Hawaii and stay proceedings, as the Ninth Circuit decision was likely to affect the scope of discovery.

- On May 17, the court granted the defendants' motion to stay the entire proceedings pending the resolution of *Hawaii v. Trump* in the Ninth Circuit and ordered the parties to file a joint status report within ten days of the Ninth Circuit's ruling to reevaluate the appropriateness of this stay. The court emphasized three factors that weighed toward granting the stay. First, the court found that the issues in *Hawaii v. Trump* were substantially similar, noting that a ruling in that case will likely provide guidance on both the allowable scope of discovery and whether the court can look beyond the four corners of the Executive Order. Second, the court noted that *Hawaii v. Trump* will likely have a ruling shortly, minimizing the risk of obtaining complete discovery from the defendants and third parties. Third, the court noted that a stay will protect the defendants from the burden of resource-intensive discovery while the Ninth Circuit determines the limits of discovery.

- On June 22, the parties stipulated that the parties file a joint status report on the continued appropriateness of the stay by July 6. The joint status report was originally due on June 22, but the parties filed this stipulation in light of the possibility that the Supreme Court will rule on the Government's stay applications and cert petitions soon. On June 23, the court ordered that the parties file a joint status report by July 6, pursuant to the parties' stipulation.

- On July 6, the parties filed a joint status report, agreeing that a stay should remain in place until the Supreme Court concludes its proceedings in *Trump v. Hawaii* and *Trump v. IRAP*.

- On October 11, the plaintiffs moved to lift the stay on proceedings, arguing that due to the issuance of the proclamation, circumstances have changed such that the court's reasons for imposing a stay no longer exist or are inappropriate. Plaintiffs also filed a motion for a temporary restraining order, arguing that the proclamation, like its predecessors, violates multiple provisions of the INA, the Establishment Clause, and the constitutional guarantee of equal protection.

- On October 12, the court granted the plaintiffs' motion to lift the stay and file a third amended complaint to address the proclamation. With respect to the plaintiffs' motion for a temporary restraining order, the court established the following briefing schedule: (1) defendants must file their response to the plaintiffs' motion no later than October 23; (2) the plaintiffs must file their reply no later than October 26; and, (3) the hearing will be held on October 30.

- On October 16, the plaintiffs filed a third amended complaint asserting that section 2 of EO3 violates (1) the Fifth Amendment Equal Protection Clause and was motivated by animus against Muslims; (2) the First Amendment Establishment Clause by favoring one religion over another; (3) the Fifth Amendment Procedural Due Process Clause by depriving noncitizens of Congressionally granted statutory rights and procedures without due process; (4) the antidiscrimination provisions of the INA; (5) The Religious Freedom Restoration Act by restricting Muslim's exercise of religion in a way that is not the least restrictive means of furthering a compelling government interest; (6) violating the APA both procedurally and substantively; and (7) the Tenth Amendment by commandeering state legislative processes.

- On October 17, plaintiffs filed a letter with the court requesting that Judge Robart maintain the October 30 hearing date on the TRO despite the TRO issued in *Hawaii v. Trump* (D. Haw.) and that the motion for TRO now be treated as a motion for a preliminary injunction.

- On October 19, plaintiffs filed 14 additional declarations in support of their Third Amended Complaint filed on October 11.

- On October 23, defendants filed their opposition to plaintiffs' motion for a temporary restraining order, arguing that (1) plaintiffs' challenges to the proclamation are not justiciable; (2) plaintiffs' statutory claims are not likely to succeed on the merits; and, (3) the proclamation does not violate the Constitution. Defendants noted that relevant portions of the proclamation have already been enjoined nationwide, precluding plaintiffs from demonstrating actual, imminent harm.

- On October 26, the parties jointly filed a stipulation and proposed order to extend the defendants' deadline to respond to plaintiffs' Third Amended Complaint by 14 days. Additionally, plaintiffs filed a reply in support of their motion for a temporary restraining order. Plaintiffs argued that (1) injunctions in other courts are no bar to this court acting; (2) the court has authority to review and enjoin EO3; (3) the states are likely to succeed on their INA claims; (4) the states are also likely to succeed on their constitutional claims, specifically that EO3 violates the Establishment Clause and Equal Protection; and (5) a nationwide injunction is appropriate as to all challenged parts of EO3.

- On October 27, the court stayed its consideration of that motion for a TRO since there is already a preliminary injunction in place from *Hawaii v. Trump*. The stay will remain in place for as long as *Hawaii's* injunction—or one of identical or broader scope—remains in place. In deciding to stay its consideration, the court stated that it weighs, (1) possible damage to the plaintiffs if the motion is stayed against (2) the possible hardship or inequity to the defendants resulting from going forward, and then considers (3) the "orderly course of justice," which includes the simplifying or complicating of issues, proof, and questions of law which could be expected from a stay. The court then found that the factors weighed in favor of imposing a limited stay on plaintiffs' TRO.

- ***Ali v. Trump* (W.D. Wash., Case No. 2:17-cv-00135) (Northwest Immigrant Rights Project, American Immigration Council and**

**National Immigration Project of the National Lawyers Guild as counsel for plaintiffs) [STAYED].** The named plaintiffs are U.S. citizens and LPRs with families in the seven affected countries with approved or pending visa applications, and the purported class includes all nationals of the seven countries designated in the Executive Order who have applied for or will apply for an immigrant visa or who have immigrant visas that have been or will be revoked. Plaintiffs seek a declaration that the Executive Order is unconstitutional and an order enjoining defendants from applying the Executive Order. On February 6, plaintiffs filed a motion for a PI and TRO.

- On Saturday, February 11, the plaintiffs moved to intervene in the *Washington v. Trump* Ninth Circuit appeal. On February 14, the court denied plaintiffs' motion to synchronize the briefing schedule on their motion for a PI with the briefing schedule in *Washington v. Trump*.

- On March 7, defendants filed a notice to the court. The notice is not yet publicly available, but is likely similar in nature to notices in other cases regarding the new Executive Order. On March 10, plaintiffs filed an amended complaint, a new motion for class certification, and a motion for a PI and TRO against the new Executive Order.

- On March 13, a telephone conference was held regarding scheduling for the plaintiffs' pending motions. On March 14, the Government filed a response brief against the plaintiffs' PI and TRO motion. The same day, the plaintiffs filed a brief arguing that the court should provisionally certify the proposed class for purposes of temporary injunctive relief. On March 15, the Washington State Labor Council moved for leave to file an amicus brief. Also on March 15, Judge Robart heard oral arguments on the plaintiffs' motion for a PI and TRO, and stated a written order would follow. On March 17, Judge Robart issued an order staying the plaintiffs' motion for a TRO in light of the Hawaii TRO (as in the *Washington v. Trump* case) and finding as moot the original motion for a PI related to the original executive order. On March 28, the parties filed a joint status report, outlining their plans for discovery.

- On March 30, defendants moved to stay district court proceedings—and moved for an extension of time to respond to the amended complaint and second motion for class certification—pending resolution of appeal in *Hawaii v. Trump*, using substantially the same briefing as their same motion in *Washington v. Trump*. Also on March 30, Judge Robart issued an order regarding the filing of amicus briefs, requiring amici to file a

motion seeking the court's permission to file the brief with the proposed brief attached as an exhibit. The amicus brief must specifically identify the pending motion to which it relates. On March 31, the court extended the deadline for the defendants' response to the amended complaint to April 5, and scheduled a telephone conference for the same day. On April 4, plaintiffs filed an opposition to the defendants' motion for extension of time, arguing that the plaintiffs should be able to move forward with the case despite the appeal in Hawaii. After hearing a telephone conference on April 5, the court granted in part and denied in part defendants' March 30 motion for an extension.

- On April 10, plaintiffs filed their opposition to defendants' March 30 stay motion. On April 14, the Government replied, with arguments substantially similar to those in *Washington v. Trump*. On the same day, the Government also filed a motion to dismiss, arguing that the claims in the amended complaint are nonjusticiable.

- On May 22, the court granted the defendants' motion to stay of the entire proceedings pending the resolution of *Hawaii v. Trump* in the Ninth Circuit and ordered the parties to file a joint status report within ten days of the Ninth Circuit's ruling to reevaluate the appropriateness of this stay. This order by Judge Robart closely mirrors his May 17 order in the sister case of *Washington v. Trump*. The court emphasized three factors that weighed toward granting the stay. First, the court found that the issues in *Hawaii v. Trump* were substantially similar, noting that a ruling in that case will likely provide guidance on both the allowable scope of discovery and whether the court can look beyond the four corners of the Executive Order. Second, the court noted that *Hawaii v. Trump* will likely have a ruling shortly, minimizing the risk of obtaining complete discovery from the defendants and third parties. Third, the court noted that a stay will protect the defendants from the burden of resource-intensive discovery while the Ninth Circuit determines the limits of discovery.

- On June 22, the parties filed a stipulation and proposed order to extend the deadline for submitting their joint status report to July 14. The joint status report was originally due on June 22, but the parties filed this stipulation in light of the possibility that the Supreme Court will rule on the Government's stay applications and cert petitions soon. On June 23, the court ordered that the parties file a joint status report by July 14, pursuant to the parties' stipulation.

- On July 14, the parties filed a Joint Status Report on the continued appropriateness of the stay in this case. The parties agreed that the stay is appropriate pending conclusion of the Supreme Court proceedings in *Trump v. Hawaii* and *Trump v. IRAP*.

- On October 31, the parties filed a jointly stipulated motion to extend the stay, in light of the preliminary injunction issued in *Hawaii v. Trump*, (D. Hawaii), until the Ninth Circuit enters a ruling on the government's appeal of that preliminary injunction.

- On November 1, the court granted the parties' jointly stipulated motion to extend the stay.

- ***Doe v. Trump* (W.D. Wash., Case No. 2:17-cv-00178) (ACLU of Washington and Keller Rohrback as counsel for plaintiff).** Plaintiffs in this purported class action are people with non-immigrant visas who were residents of the State of Washington when the Executive Order was issued; they are now either trapped inside the U.S. or stuck outside the U.S. The Episcopal Diocese of Olympia, which does charitable work including resettlement of refugees in Washington, is also a plaintiff.

  - On February 10, the case was assigned to Judge James Robart. On March 14, plaintiffs filed an amended complaint in response to the new Executive Order.

  - On April 6, the parties stipulated that the plaintiffs could proceed anonymously. On April 7, the court approved this stipulation. On April 10, the parties stipulated to an extension in light of the Ninth Circuit appeal in *Hawaii*, agreeing to extend defendants' deadline to respond to the plaintiffs' First Amended Complaint to April 28. On April 11, the court allowed the stipulated extension. On the same day, plaintiffs filed their motion to certify class with supporting declarations.

  - On April 12, the court entered a scheduling order setting the deadline for the FRCP 26(f) conference for April 26, the deadline for initial disclosures for May 10, and the deadline for a combined joint status report and discovery plan for May 17.

  - On April 26, the parties submitted a stipulation with a proposed order, according to which the plaintiffs shall file a Second Amended Complaint by May 8, and the defendants shall respond to the Second Amended Complaint by May 22 or ten days after the court resolves defendants'

pending stay motions in *Washington v. Trump* and *Ali v. Trump*, whichever is later. Later that day, the court adopted the proposed order. On May 8, the plaintiffs filed a Second Amended Complaint pursuant to the court's April 26 order.

- On May 17, the parties filed a joint status report and discovery plan. Plaintiffs indicated a desire to go ahead with discovery and trial, while defendants argued that the case should be stayed pending final decision in *Hawaii*. Defendants also argued—as in *Washington*—that discovery (and trial) would be limited or inappropriate due to Executive discretion and privileges.

- On May 22, Judge Robart ordered the parties to show cause why the case should not be stayed in light of his recent orders to stay two sister cases in the same district. Judge Robart stayed *Washington v. Trump* on May 17 and stayed *Ali v. Trump* on May 22; Judge Robart stayed both cases pending a ruling in the Ninth Circuit's *Hawaii v. Trump* case. Responses to the order to show cause are due by May 26.

- On May 26, the parties filed a stipulation and proposed order to stay the proceedings pending the Ninth Circuit's resolution of *Hawaii v. Trump* in light of Judge Robart's stays in the related cases of *Washington v. Trump* and *Ali v. Trump*.

- On May 30, Judge Robart stayed the case pending decision in *Hawaii v. Trump* and directed parties to file a joint status report within ten days of the Ninth Circuit's ruling.

- On June 22, the parties filed a stipulation and proposed order to extend the deadline for submitting their joint status report to July 14. The joint status report was originally due on June 22, but the parties filed this stipulation in light of the possibility that the Supreme Court will rule on the Government's stay applications and cert petitions soon. On June 23, the court ordered that the parties file a joint status report by July 14, pursuant to the parties' stipulation.

- On July 14, pursuant to a court order, the parties filed a Joint Status Report on the continued appropriateness of the stay in this case. The parties agreed that the stay is appropriate pending conclusion of the Supreme Court proceedings in *Trump v. Hawaii* and *Trump v. IRAP*.

- On November 2, the parties submitted a joint stipulation to lift the stay and allow the plaintiffs to submit an amended complaint addressing the September 24 Proclamation, as well as an October 23 Agency Memo and October 24 Executive Order regarding the resumption of the refugee admissions program with enhanced vetting. Plaintiffs also intend to file a motion for a preliminary injunction challenging the portions of the October 23 Agency Memo relating to the derivative refugee admissions process. The court issued an order lifting the stay and permitting plaintiffs to file the amended complaint and the motion for preliminary injunction.

- On November 6, plaintiffs filed a Third Amended Complaint and Motion for a Preliminary Injunction. At issue in both were EO-3 and an October 23 administration memo ("Agency Memo") that imposed an indefinite ban on the children, spouses, and other "derivatives" of refugees who have already been admitted. In the Complaint plaintiffs set out ten counts, alleging that EO-3 and the Agency Memo violate the First and Fifth Amendments, the Religious Freedom Restoration Act, the Immigration and Naturalization Act, and the Administrative Procedures Act ("APA"). The preliminary injunction motion asked the court to enjoin enforcement of the Agency Memo. The motion argued that the Memo violates procedural due process and the APA, injuring one plaintiff whose wife and three children have completed the screening process but have been denied entry.

- On November 16, defendants filed their opposition to plaintiff Joe Doe's Motion for a Preliminary Injunction, arguing that plaintiff's challenges are not justiciable, that plaintiff's claims are not likely to succeed on the merits, and that any injunction should be narrowly tailored to address only plaintiff's alleged injury.

- On November 21, Judge Robart ordered the parties to submit memoranda by November 29 to show cause regarding consolidation of the action with the related case *Jewish Family Service of Seattle v. Trump et al.*, 17-cv-01707.

- On November 22, plaintiffs filed their reply to the government's opposition brief regarding plaintiffs' November 6 Motion for Preliminary Injunction. In the reply, plaintiffs argued that the government has provided neither an end-date nor evidence of a national security need for the "pause" in admitting "follow-to-join" refugees that was ordered by the

Administration's October 23 Agency Memo. A hearing on the motion is scheduled for December 11.

- On November 29, a joint stipulation and proposed order regarding consolidation and scheduling for further proceedings was filed by the parties. Under this stipulation, *Jewish Family Service of Seattle v. Trump* (W.D. Wash.) and this case would be consolidated for further proceedings, and the preliminary injunction hearing in *Doe* scheduled for December 11 would be vacated in favor of a new hearing date. The court then granted the joint stipulation of the parties, consolidating the cases under *Doe v. Trump*. The December 11 hearing was vacated, and a hearing to address issues raised in both *Jewish Family Service* and *Doe* was set for December 21, 2017.

- ***Wagafe v. Trump* (W.D. Wash., Case No. 2:17-cv-00094) (ACLU, NIPNLG, WIRP, the Law Offices of Stacy Tolchin, and Perkins Coie LLP as counsel for plaintiffs).** This is a class action challenging the Executive Order as well as a current U.S. Citizenship and Immigration Service ("USCIS") program called the Controlled Application Review and Resolution Program ("CARRP")." The original complaint was filed on January 23, and an amended complaint—adding the new Executive Order challenge—was filed on February 1.

  - Plaintiffs filed a motion to certify class on February 9. On February 16, the Government moved for an extension of the deadline to respond to the plaintiffs' motion for class certification. On February 22, plaintiffs filed a response, and defendants filed a reply. On February 27, the court granted the Government's motion for an extension: the Government's response to plaintiff's motion to certify class was due by April 10.

  - On March 2, defendants filed a motion to transfer the case. On March 20, plaintiffs filed a response to defendants' motion to transfer. Defendants' reply to the transfer motion was filed on March 23.

  - On March 31, defendants filed a motion to extend deadlines, which the court granted on April 3. On the same day, the court stayed the motion to transfer venue. On April 4, plaintiffs filed the Second Amended Complaint for declaratory and injunctive relief against the federal government.

  - On April 10, plaintiffs filed their Second Amended Complaint and amended motion to certify class. Defendants' response to the amended motion for class certification was due by May 10, and plaintiffs' reply is

due May 19. An initial motion to certify class filed on February 9 was dismissed as moot. On April 11, the court denied defendants' motion to transfer venue because while the Government's motion was premised on the fact that there were no plaintiffs with viable claims remaining in Western Washington, now the plaintiffs' Second Amended Complaint adds three named plaintiffs residing in Western Washington.

- On April 18, defendants moved to dismiss this action. This motion is not publicly available. On May 8, plaintiffs filed an opposition, also not publically available.

- On May 10, the defendants filed a response to the plaintiffs' opposition, and on May 12, defendants filed a reply. These documents are not publicly available.

- On May 19, the plaintiffs filed a reply to the response to their amended motion to certify class. The reply is not publicly available.

- On June 13, the court, *sua sponte*, reassigned the case to Judge Richard A. Jones and struck the June 27 status conference.

- On June 19, the court ordered that the documents in this case be made fully accessible to the public, subject to certain redactions protecting the plaintiffs' personal information. Those redactions are due by June 21 at noon. The documents were only viewable on public access terminals at the courthouse because the case was filed as an immigration matter, leading the court's system to apply an automatic restricted access code. The court noted that this restriction was likely unwarranted and not the desire of the named plaintiffs.

- On June 21, the court granted plaintiffs' motion for class certification and granted in part and denied in part the defendants' motion to dismiss. The court certified two *nationwide* classes of plaintiffs: (1) a "naturalization class" of individuals whose applications for naturalization have or will be subject to the Controlled Application Review and Resolution Program (CAARP) and whose applications were not or will not be adjudicated within six months of filing, and (2) an "adjustment class" of individuals whose applications for adjustment of status have or will be subject to CAARP and whose applications were not or will not be adjudicated within six months of filing. The only claim that the court dismissed is the Due Process claim, and only for the class of plaintiffs alleging Due Process violations in the procedure for the adjustment of immigration status. The

rest of the claims—including other challenges to the Executive Order, "extreme vetting," and CAARP—remain in the court.

- On June 22, the court set the following deadlines: July 7 for the FRCP 26(f) Conference; July 14 to exchange initial disclosures; and July 21 to file a combined joint status report and discovery plan.

- On June 30, the parties filed a stipulation and proposed order to extend the deadline for the defendants' answer to July 12.

- On July 5, the defendants filed a motion for reconsideration of the court's June 21 decision to certify classes. The defendants asked that the court "reconsider its decision to certify a class action or, in the alternative, to modify the class definitions."

- On July 6, pursuant to the parties' stipulation, the court extended the answer deadline to July 12 and re-noted the motion for reconsideration date to July 18 pursuant to the briefing schedule set by the court. The court also set the following deadlines: The plaintiffs' responsive brief is due by July 13 and the defendants' reply is due July 18.

- On July 12, defendants filed an answer to plaintiffs' Second Amended Complaint for declaratory and injunctive relief against the federal government from April 4, denying the allegations that the federal government is "unconstitutionally preventing plaintiffs, and others like them, from obtaining immigration benefits, including, but not limited to, asylum, naturalization, lawful permanent residence, and employment authorization."

- On July 14, plaintiff's counsel filed a declaration to challenge defendants' version of events regarding defendants' Motion to Reconsider Class Certification. Plaintiff's counsel declares that the motion was in fact not filled after a good faith effort by defendants to confer with opposing counsel to reach an accord to eliminate the need for the motion.

- On July 18, defendants filed a reply in support of their motion to reconsider class certification. Defendants argue that the court erred in certifying two nationwide classes because classes may contain members lacking Article III standing.

- On July 21, by agreement of the parties, the deadline to submit a Joint Status Report was extended to July 28.

- On July 28, plaintiffs and defendants filed a Joint Status Report and Discovery Plan. Plaintiffs seek, among other things, discovery of the Government's "extreme vetting" policies. The government argues such discovery is not appropriate. The parties requested a discovery deadline of May 18, 2018.

- On August 2, the court issued a scheduling order setting a five day bench trial for September 24, 2018 with discovery to be completed by May 29, 2018.

- On August 15, the court issued an order regarding productions and the parties stipulated to a motion for a protective order governing discovery.

- On August 16, the court summarily denied defendants' motion for reconsideration of the court's June 21 decision to certify classes. The court concluded that defendants failed to show that there was a manifest error in the court's initial decision.

- On August 18, the parties stipulated to a motion for a protective order governing discovery.

- On August 29, the court granted the parties' stipulated motion of August 22 regarding e-discovery.

- On September 28, plaintiffs filed a Motion to Compel Production of Documents, specifically: (1) a list of class members, other documents sufficient to identify class members, and documents regarding why named plaintiffs have been subject to CARRP; (2) a log of any responsive classified documents that the defendants seek to withhold; (3) documents regarding consideration of CARRP in the promulgation of the First and Second Executive Orders; (4) documents relating to "extreme vetting" or any other screening procedures in the First and Second Executive Orders; and, (5) regional or individual communications about CARRP's application to specific categories of applications or people. Plaintiffs' counsel filed a declaration in support of their Motion to Compel Production of Documents.

- On October 10, defendants filed their response to plaintiffs' Motion to Compel, asserting that plaintiff's demands are inconsistent with Federal Rule of Civil Procedure 26, which limits discovery to relevant non-privileged material which is proportional to the needs of the case. The Government contends (1) that the common question is whether CARRP is

lawful and the identity of class members is not relevant to the court's decision (2) production of class members' identities would be unduly burdensome and (3) the identities are privileged. The Government further asserts that any discovery into the travel ban EO's is an inappropriate intrusion on the separation of powers as there is only an alleged potential connection between CARPP and the EO's.

- On October 13, the plaintiffs filed their reply to their motion to compel, asserting that class members' identities are plainly relevant and discoverable and that the defendants must produce documents related to the EO's, including classified documents.

- On October 19, the court granted in part and denied in part plaintiffs' October 10 Motion to Compel Production of Documents. The court's decision: (1) ordered defendants to produce a list of class members or other documents sufficient to identify class members, and documents regarding why named plaintiffs have been subject to CARRP; (2) ordered defendants to produce the relevant classified documents plaintiffs have requested, or otherwise provide plaintiffs with a privilege log from which their admissibility due to relevance can be determined; (3) with regard to plaintiffs' request for documents linking any "extreme vetting" process with the First and Second Executive Orders, denied plaintiffs' request, but required the parties to meet and confer within 30 days to discuss alternative custodians or non-custodial sources of information other than the Executive branch which could have such documents; (4) ordered defendants to allow plaintiffs to seek regional or individual communications about CARRP's application to specific categories of applications or people, with the caveats that (a) the Government has already searched them, and (b) the Government may produce a privilege log in lieu of the documents if appropriate.

- On November 2, defendants filed a motion for reconsideration of portions of the October 19 order regarding identification of class members. Specifically, the defendants argued that the court erred in its analysis of the law enforcement privilege, which the head of USCIS had invoked in order to prevent the release of the names of individuals subject to CARRP.

- On November 14, plaintiffs filed a brief in opposition to the defendants' motion for reconsideration of the court's October 19 order regarding identification of class members. Plaintiffs argued that reconsideration is not proper because the defendants have failed to show any new facts,

intervening case law, or manifest errors. The plaintiffs further argue that the court's balancing in the order was not erroneous because the plaintiffs had established that they need a list of members to litigate their claims, identify witnesses, and properly represent the class.

- On November 20, the parties filed a joint status report regarding documents related to the Executive Orders. Plaintiffs assert that they are entitled to discovery of documents related to any "extreme vetting" or other adjudicatory program being planned or implemented pursuant to EO-1 or EO-2. Defendants assert that they do not have any discoverable information, because Plaintiffs are entitled to discovery of those documents only if the extreme vetting program is a successor program to CARRP, and there is no connection between CARRP and any "extreme vetting" program. The parties seek the court's guidance on the appropriate scope of discovery.

- On November 28, the court denied the defendants' motion for reconsideration. The court noted that the defendants "may not merely say those magic words – 'national security threat' – and automatically have its requests granted in this forum."

*Tenth Circuit*

- ***Hagig v. Trump*** **(D. Colo., Case No. 1:17-cv-00289) (Alan Kennedy-Shaffer and Morgan L. Carroll as counsel for plaintiff) [STAYED].** Plaintiff is a lawful resident from Libya. He seeks declaratory and injunctive relief that would bar defendants from suspending, detaining, or removing him or similarly situated individuals solely on the basis of the Executive Order.

  - On February 10, the plaintiff filed a First Amendment class action complaint for declaratory and injunctive relief. A status conference was held on February 13. On February 17, the plaintiff requested an expedited briefing schedule on his motion for PI to accommodate his plans to travel to Canada to visit his family over spring break. Plaintiff noted in footnote 1 that other federal courts, including the Ninth Circuit, have stayed enforcement of the Executive Order, but he still requested relief here because of the temporary nature of those decisions and the uncertain future of the Executive Order. On February 21, the court denied this motion, noting that footnote 1 was not sufficient to show a need for expedited action in view of the Ninth Circuit's order.

- On March 6, defendants filed a notice with the court enclosing and summarizing the new Executive Order, and explaining how the new Order explicitly excludes the plaintiff. On March 10, defendants filed an unopposed motion to extend the deadline for response to the motion for PI. On March 13, the court granted this motion for an extension of time to respond, relying on the Government's assertion that the new order excluded plaintiff from its coverage. The defendants' deadline to respond to the plaintiff's motion for PI was April 9. On April 3, the defendants filed a stipulation for extension of deadlines. On April 5, the plaintiff withdrew his pending PI motion, which relates to the old Executive Order. Defendants consented to plaintiff's withdrawal and agreed that the plaintiff reserves his rights to raise any issues with the new Executive Order in subsequent motions as necessary.

- On April 21, defendants filed an unopposed motion to extend deadlines for filing an answer.

- On June 13, the court granted the defendants' April 21 motion to extend deadlines. The defendants' answer or response is now due by June 23.

- On June 22, the defendants filed an unopposed motion for stay pending Supreme Court proceedings, arguing that a Supreme Court decision would provide substantial guidance for the issues raised in this case.

- On June 26, the court granted the defendants' unopposed motion to stay.

*D.C. Circuit*

- ***Universal Muslim Association of America v. Trump*** **(D.D.C., Case No. 1:17-cv-00537) (Arnold & Porter Kay Scholer LLP as counsel for plaintiffs) [STAYED].** The Universal Muslim Association of America ("UMAA")—the country's largest organization of Shi'a Muslims—along with two individual plaintiffs who have been blocked from bringing their children home from Yemen filed suit challenging the validity of the Executive Order. The March 23 complaint, seeking injunctive relief, brought claims under the Establishment Clause, Fifth Amendment Equal Protection and Due Process Clauses, the First Amendment right to receive information and ideas, the INA, and the Administrative Procedure Act.

    - The government's response was due by April 10, and the plaintiffs' reply by April 17.

- On April 6, plaintiffs filed exhibits in support of its memorandum of law in support of their motion for a PI.

- On April 10, defendants filed their opposition to plaintiffs' motion for a PI. On the same day, the plaintiffs filed an amended complaint with supporting affidavits. On April 12, plaintiffs filed an errata including corrections to several of the April 11 filings.

- On April 18, plaintiffs filed a motion seeking leave to file a supplemental declaration in support of their motion for a PI. Later that day, after the court granted the motion, Azmat Husain, on behalf of UMAA, submitted his supplemental declaration.

- A hearing on the PI motion was set for April 21, during which the court was also set to hear arguments for the PI motion in *Pars Equality Center v. Trump*. On April 20, the court issued a minute order directing parties to limit their arguments to forty-five minutes per side, which plaintiffs will share with the plaintiffs in *Pars Equality Center*.

- On April 21, the court issued a minute order directing plaintiffs to file a supplemental brief on the following three questions: "(1) Is there any restriction on a judge's ability to issue a nationwide injunction on the provisions of the Order that have already been enjoined, and if not, what factors should guide the court's discretion in weighing whether such a duplicative injunction is in the public interest?; (2) If the court intends to issue injunctive relief specific to the individual plaintiffs, what would be the scope of that injunction and what authority does the court have to issue it?; (3) What is the authority for the court to issue the proposed injunctive relief in Section 2 of the Pars Proposed Preliminary Injunction (with particular focus on 2(e)) and Sections 4-9 of the UMAA Proposed Preliminary Injunction?" Plaintiffs' supplementary brief was due by April 27. Defendants' response was due by May 2. Plaintiffs' reply was due by May 5.

- On April 27, plaintiffs filed a joint supplemental brief with the plaintiffs in *Pars Equality Center v. Trump* in support of their motions for preliminary injunction. The brief asserted that the court has the authority to enjoin Sections 2 and 6 of the Order despite the injunctions entered by other courts, and presented several arguments on why an injunction is merited.

- On May 1, the Doe plaintiffs (but not plaintiff UMAA) voluntarily dismissed their claims because their two sons were able to travel to and

enter the U.S. on April 28. On May 3, the court issued an order dismissing the Doe plaintiffs' claims without prejudice. On May 5, plaintiffs in *UMAA* and *Pars Equality Center* filed a reply brief in support of their joint supplemental motions for a PI.

- On May 11, the court ordered a stay of resolution of plaintiffs' motion for a PI, noting that the irreparable harm element may not be met because two other nationwide injunctions are already in effect. The court also set new deadlines: defendants' answers or motions to dismiss are due by May 26; plaintiffs' oppositions to any motions are due by June 16 and defendants' replies are due by June 26.

- On May 22, the court granted the defendants' unopposed motion for extension of time to file their motion to dismiss. The motion is now due on June 9. Plaintiffs' opposition is due on June 30. Defendants' reply is due on July 14.

- On June 2, the Government filed an Emergency Motion to Stay Proceedings Pending Supreme Court Review, noting the pending cert petition in *Trump v. IRAP*. The government argued, in part, that waiting for Supreme Court guidance is the most efficient way to proceed.

- On June 7, the court vacated the deadline for the Government's Motion to Dismiss pending the court's decision on the Government's emergency motion to stay proceedings filed on June 2. If the court denies the stay, it will issue a new briefing schedule.

- Later on June 7, plaintiffs filed a memorandum in opposition to the Government's Motion to Stay, arguing that the Government will not likely win before the Supreme Court, that the Supreme Court's decision will not resolve all of the case's legal issues, and that the Government cannot meet their burden of establishing that a stay is necessary.

- On June 14, the Government filed a reply, emphasizing an overlap between the issues in this case and the issues at stake in *IRAP* and *Hawaii*.

- On June 20, the court granted the defendants' motion to stay pending the outcome of the cert petition in *Trump v. IRAP* and denied, without prejudice, the plaintiffs' request for a preliminary injunction. The court emphasized that a potential Supreme Court opinion would clarify the legal issues in this case.

- On November 2, the parties filed a joint agreement to continue to stay the proceedings. The statement notes that the *Pars Equality Center* plaintiffs in D.D.C. have moved for a preliminary injunction, and two other district courts (Hawaii and Maryland) have blocked the September 24 proclamation from going into effect.

- On November 3, pursuant to the parties' joint agreement, the court ordered that the case will remain stayed, pending final resolution of related preliminary injunctions in order jurisdictions.

- ***P.K. v. Tillerson* (D.D.C., Case No. 17-cv-1533) (ACLU, NILC, Jenner & Block LLP as counsel for plaintiffs).** Plaintiffs in this case are diversity visa lottery winners from countries implicated in the travel ban. After the March 6 executive order was issued, the State Department adopted a policy directing consular officials to deny diversity visas to these winners. By statute, if these visas lottery winners do not have visas issued by September 30, 201 7 (the end of fiscal year 2017), they will lose their opportunity. Plaintiffs are not challenging the travel ban itself, but rather are asking for their visa applications to be processed. The case is related to *Universal Muslim Association of America v. Trump* (Case No. 17-cv-00537) above.

    - On August 3, plaintiffs filed a petition for writ of mandamus, motion for a preliminary injunction and mandamus relief, and motion for class certification.

    - On September 11, defendants filed a joint status report indicating that certain plaintiffs had been issued visas. Defendants also reported that they are reaching the statutory maximum of 50,000 diversity visas for FY2017, so no more diversity visas were available. Plaintiffs filed a response indicating that the fact that the State Department is reaching the 50,000 cap makes this lawsuit all the more necessary.

    - Plaintiffs then moved for an emergency status conference, which was held on September 19. Plaintiffs filed an amended petition on September 22, and defendants responded one day later on September 23.

    - On September 27, plaintiffs submitted a status update informing the court about the travel ban 3.0, which they said did not change the plaintiffs' case.

    - On September 29, the court issued a memorandum opinion granting in part and denying in part the plaintiffs' motion for preliminary injunction

and emergency mandamus relief. The court found that the Supreme Court's June 26 order precluded the court from granting most of the injunctive and mandamus relief. However, the court found that it could grant the alternative relief plaintiffs sought: ordering the State Department to reserve any unused visa numbers until after the Supreme Court's ultimate decision.

- Defendants are ordered to report to the court, by October 15, the number of visa numbers returned unused for FY 2017 and hold those visa numbers to process the plaintiffs' visa applications in the event the Supreme Court finds the executive order unlawful.

- On October 4, defendants requested a two-week extension of time to respond to the plaintiffs' complaint and comply with the court's order seeking the number of unused visa numbers. The court granted the defendants' motion; defendants have until October 20 to respond to the plaintiffs' complaint.

- On October 15, the defendants filed a status report, stating the number of unused diversity-visas for fiscal year 2017 is 27,241, and 49,976 were issued in the same fiscal year. According to defendants, diversity visas expire on September 30, and so cannot be extended to plaintiffs now.

- On October 20, defendants filed their motion to dismiss plaintiffs' amended complaint, arguing that the court no longer has jurisdiction over plaintiffs' claims and that plaintiffs have failed to state a claim upon which relief may be granted. Specifically, defendants argued that plaintiffs' claims are moot because there is no longer a remedy available to them. Defendants assert that they cannot issue diversity visas to plaintiffs after the end of the fiscal year, which marks the diversity visa program's statutory deadline. Since Fiscal Year 2017 ended on September 30, the court can no longer provide plaintiffs with any meaningful relief. Defendants also argued that plaintiffs' claims are moot because the operative provision of the executive order that they challenged has expired by its own terms. Additionally, defendants contend that plaintiffs are not entitled to receive APA or mandamus relief because they failed to identify a clear non-discretionary duty of defendants to readjudicate plaintiffs' visa applications before their statutory eligibility expired.

- On November 3, plaintiffs filed their opposition to the defendants' motion to dismiss, arguing that the case is not moot because the court has the authority to grant effective relief. Plaintiffs argued in part that the

defendants' assertion that the end of the fiscal year made the plaintiffs' claims moot confuses questions of mootness with the legal merits of the plaintiffs' claims to relief. Additionally, plaintiffs asserted that acceptance of the defendants' arguments regarding mootness would render the court's previous order pointless. Plaintiffs argued that the court can and should enter an order nunc pro tunc directing defendants to process the plaintiffs' visa applications. Plaintiffs also submitted a response to the Government's October 15 status report concerning the number of visa numbers returned unused in fiscal year 2017. If the court denies the defendants' motion to dismiss, plaintiffs intend to file a motion for summary judgment, requesting the court to order the government to process the plaintiffs' visa applications using the visa numbers returned unused. Plaintiff also requested that the court grant class certification, due to the defendants' failure to respond to plaintiffs' motion for class certification for over three months.

- On November 13, defendants filed their reply in support of their October 20 motion to dismiss, reiterating the argument that the case is moot and that plaintiffs have failed to state a claim upon which relief may be granted. Defendants disputed the plaintiffs' claim that plaintiffs are entitled to diversity visas "without regard to the fiscal year deadline," arguing that it ignores a statutory bar on issuing such visas. Even when the denial of visas is alleged to be improper, defendants argued, case law establishes that the issue becomes moot at the end of the fiscal year. Defendants also argued that the plaintiffs' Administrative Procedure Act claim fails because the plaintiffs were not eligible to obtain visas in the first place. Finally, defendants asserted that the plaintiffs' case amounts to a request for the Court to ignore plain statutory language, and because the Court lacks the power to override Congress's clear intent, the case should be dismissed.

- On December 4, plaintiffs filed a status update, arguing that the defendants erroneously reported the total number of diversity visas issued for fiscal year 2017 as 49,976, when data released by the State Department shows that only 49,067 diversity visas were issued. So, plaintiffs argue, even if the court rejects their argument that the 27,241 visa numbers that were returned unused can be issued to members of the proposed class, this new information shows that there are at least 933 visas unissued visa numbers still available. Plaintiffs also filed a motion to schedule oral argument as quickly as possible.

- ***Pars Equality Center v. Trump* (D.D.C., Case No. 1:17-cv-00255) (Arnold & Porter Kaye Scholer LLP, the Lawyers' Committee for Civil Rights Under Law, and Mehri & Skalet, PLLC as counsel for plaintiffs).** This lawsuit, filed on behalf of several individuals and four Iranian-American organizations (Pars Equality Center, the Iranian American Bar Association, the National Iranian American Council, and the Public Affairs Alliance of Iranian Americans, Inc.), focuses on the impact of the Executive Order on the Iranian-American community.

    - Plaintiffs filed a motion for a PI on February 8. On February 16, the Government was granted a motion to stay existing deadlines pending issuance of a new Executive Order. On February 22, the parties filed a joint status report. In the report, defendants stated: "A new Executive Order has not been issued yet, but a new one is forthcoming in the near future. Thus far, no firm date has been set for when it will issue." Plaintiffs noted that, contrary to the President's stated commitment to rescind the Executive Order, the Administration may in fact be planning to continue to litigate it, citing a press briefing from Press Secretary Sean Spicer.

    - On March 2, the Government filed an opposition to plaintiffs' PI motion, arguing mainly that the plaintiffs here cannot establish any irreparable harm as the court in *Washington v. Trump* (W.D. Wash.) has already enjoined the challenged provisions of the Executive Order on a nationwide basis.

    - On March 6, defendants filed a notice of filing of executive order, which encloses the new Executive Order and explains key portions of the new Order, including how defendants believe judicial concerns have been addressed. In particular, defendants argue that exempting LPRs and persons with valid visas and establishing a waiver procedure for those without visas mitigates the due process concerns raised by the Ninth Circuit. On March 15, plaintiffs filed their amended complaint and PI motion. On March 16, the parties filed, and the court granted, a joint scheduling motion, asking that defendants' answer be due within fifteen days of the court's decision on plaintiffs' motion for a PI. On March 17, the court issued a minute order finding the plaintiffs' February 8 motion for PI moot given the plaintiffs' March 15 motion for PI.

    - On March 28, the Government filed its memorandum in opposition to the PI motion. In the memorandum, the Government argues that, in addition

to failing to meet the standards for a PI, the four organizational plaintiffs lack standing as they have suffered no direct injury, and the individual plaintiffs lack standing as aliens have no constitutional right to enter the U.S.

- On March 31, the Government moved to continue the hearing on plaintiffs' motion for PI until the next week, proposing dates between April 19 and 21. On April 3, the hearing was continued to April 21.

- On April 4, the court issued a minute order granting the parties joint briefing schedule, making defendants' answer or motion to dismiss due no later than fifteen days following the court's order on plaintiffs' PI motion. Also on April 4, plaintiffs filed a reply to the defendants' opposition to this motion.

- On April 6, plaintiffs requested leave to present live testimony at the hearing on their motion for PI. They would like to call up to four witnesses, one from each of the organizational plaintiffs.

- On April 7, over defendants' opposition, the court granted plaintiffs' request to present live testimony and scheduled a hearing for 2:00 p.m. on April 18 for that purpose. On April 17, plaintiffs notified the court that they intended to call only two witnesses, the president of the Iranian American Bar Association and the Executive Director of the Public Affairs Alliance of Iranian Americans.

- On April 18, the court heard testimony from plaintiffs' witnesses. Reports from the courtroom indicate the witnesses offered testimony on the effects of the first Executive Order, which drew objections from defendants and which Judge Chutkan sustained. On her own initiative, Judge Chutkan also asked counsel to move the testimony along to the second Executive Order currently at issue. The transcript was released on May 25, but is not accessible on PACER for ninety days.

- A hearing on the PI motion was set for April 21, during which the court would hear arguments for the PI motion in *UMAA v. Trump*. On April 20, the court issued a minute order directing parties to limit their arguments to forty-five minutes per side, which plaintiffs will share with the plaintiffs in *UMAA*. On April 21, the court issued a minute order for a supplementary brief identical to that in *UMAA*.

- On April 27, plaintiffs filed a joint supplemental brief with the plaintiffs in *UMAA v. Trump* in support of their motions for preliminary injunction. The brief asserts that the court has the authority to enjoin Sections 2 and 6 of the Order despite the injunctions entered by other courts, and presents several argument on why an injunction is merited. On May 2, the Government filed a response, presenting counterarguments and arguing in the alternative that the motion should be stayed pending appellate proceedings. On May 5, plaintiffs in *UMAA* and *Pars Equality Center* filed a reply brief in support of their joint supplemental motions for PI.

- On May 11, the court ordered a stay of resolution of plaintiffs' motion for PI, noting that the irreparable harm element may not be met because two other nationwide injunctions are already in effect. The court also set new deadlines: defendants' answers or motions to dismiss are due by May 26; plaintiffs' oppositions to any motions are due by June 16, and defendants' replies are due by June 26.

- On May 22, the court granted the defendants' unopposed motion for extension of time to file their motion to dismiss. The motion is now due on June 9. Plaintiffs' opposition is due on June 30. Defendants' reply is due on July 14.

- On June 2, the Government filed an Emergency Motion to Stay Proceedings Pending Supreme Court Review, noting the pending cert petition in *Trump v. IRAP*. The government argued, in part, that waiting for Supreme Court guidance is the most efficient way to proceed.

- On June 7, the court vacated the deadline for the Government's Motion to Dismiss pending the court's decision on the Government's emergency motion to stay proceedings filed on June 2. If the court denies the stay, it will issue a new briefing schedule.

- Later on June 7, plaintiffs filed a response on opposition of the Government's motion for an emergency stay, arguing that there is no basis for stay and that President Trump's recent statements—particularly his June 5 tweets—undermine the Government's argument and indicate that the court should move quickly in order to protect plaintiffs.

- On June 14, the Government filed a reply, emphasizing an overlap between the issues in this case and the issues at stake in *IRAP* and *Hawaii*.

- On June 20, the court granted the defendants' motion to stay pending the outcome of the cert petition in *Trump v. IRAP* and denied, without prejudice, the plaintiffs' request for a preliminary injunction. The court emphasized that a potential Supreme Court opinion would clarify the legal issues in this case.

- On June 28, plaintiffs moved to lift the stay, and for a TRO and PI enjoining the enforcement of §§ 2(c) and 6(a) of the Order against Jane Does #8 and #9 and others similarly situated, i.e. "refugee applicants who have no 'credible claim of a bona fide relationship with a person or entity in the United States.'" The court denied the motion for a TRO, and set the deadline for the Government's opposition for July 5.

- On July 4, plaintiffs filed a supplemental memorandum in support of their June 28 motions to lift stay and for a PI. The supplemental memorandum argued that the Government's implementation of the Supreme Court's decision "is arbitrary and capricious. Moreover, as applied to refugees, it is almost nonsensical." In further support of this argument, plaintiffs attached a declaration from a refugee who had been screened and assigned a United States sponsor, but who now lacks a "credible claim of a bona fide relationship" under the Government's implementation and thus may not be able to travel to the United States.

- On July 5, the defendants filed an opposition brief in response to the plaintiffs' motion to lift the stay. The government argued that the plaintiffs' request – a TRO and PI enjoining enforcement of the Executive Order against refugee applicants with no bona fide relationship with a person or entity in the United States – clearly violates the Supreme Court's June 26 order. Also, the Government argued that the plaintiffs lack standing and have failed to establish likelihood of success on the merits and irreparable harm to support their claim for injunctive relief.

- On July 7, the plaintiffs filed a reply to defendants' opposition brief, arguing that the Supreme Court did not consider the "hardships that would befall refugees rescheduled for resettlement." Further, plaintiffs challenged the Government's argument that nonresident aliens "have no rights regarding their admission to the United States."

- On July 14, plaintiffs filed a Notice of Supplemental Authority to bring to the court's attention the order from *State of Hawaii v. Trump* that rejected the Government's narrow interpretation of "close familial

relationship" and "bona fide relationship." The court also granted the motion for Susan S. Hu to appear pro hac vice on behalf of plaintiffs.

- On July 19, defendants filed a Notice of Supplemental Authority to bring to the court's attention the order from *State of Hawaii v. Trump* as well as the Supreme Court's stay of the Hawaii District Court's order modifying the Court's preliminary injunction with respect to refugees covered by a formal assurance pending resolution of the Government's appeal to the Ninth Circuit.

- Also on July 19, the court denied plaintiffs' motion to lift the stay and to preliminarily enjoin the enforcement of §§ 2(c) and 6(a) of the Order against Jane Does #8 and #9. The court considered Jane Does #8 and #9 covered by the plain language of the Supreme Court's Order, which specifically excluded from the stay refugees who lack a bona fide relationship with an American individual or entity.

- On October 9, plaintiffs filed a Motion to Lift the Stay and for Related Relief requesting that the court lift the stay, permit plaintiffs to file an amended complaint, and to re-file their motion for preliminary injunction enjoining enforcement of the Government's September 24 Proclamation. Plaintiffs argued that enforcement of the Proclamation, which becomes effective on October 18, would cause irreparable harm. In part, plaintiffs contended that irreparable harm would result because the Government has not carved out an exception those visa applicants with a bona fide relationship to entities or individuals in the United States.

- On October 10, plaintiffs filed a notice of supplemental authority in support of their Motion to Lift the Stay, referencing the Supreme Court's decision to vacate the judgment and remand *Trump v. IRAP*.

- On October 12, the court ordered that the stay is lifted and that plaintiffs may file a second amended complaint and re-file their motion for preliminary injunction. Defendants' opposition to the motion for preliminary injunction is due on October 19, 2017 and arguments on the motion is scheduled for November 2, 2017. Also on October 12, the plaintiffs filed an amended complaint based on the September 24 Proclamation ("travel ban 3.0") and filed a motion for preliminary injunction.

- On October 13, the court set the deadline for the Government's response to the motion for preliminary injunction for October 19 and set the preliminary injunction hearing for November 2 at 9:30 a.m..

- On October 19, Plaintiffs Jane Doe #10 and Jane Doe #11 filed respective notices of voluntary dismissal, dismissing without prejudice all claims they made against defendants. All other plaintiffs remain in the case.

- On October 19, defendants filed their opposition to plaintiffs' motion for a temporary restraining order, arguing that (1) plaintiffs' challenges to the proclamation are not justiciable; (2) plaintiffs' statutory claims are not likely to succeed on the merits; and, (3) the proclamation does not violate the Constitution. Defendants noted that relevant portions of the proclamation have already been enjoined nationwide, precluding plaintiffs from demonstrating actual, imminent harm.

- On October 25, Plaintiffs National Iranian American Council, Jane Doe 7, and Jane Doe 8 filed a Notice of Voluntary Dismissal, dismissing without prejudice all claim they made against defendants. All other plaintiffs remain in the case.

- On October 25, plaintiffs filed a supplement to their October 12 Motion for Preliminary Injunction. The plaintiffs argued that developments since October 12, including the President's October 24 Executive Order on the US Refugee Assistance Program (USRAP), affect the scope of the proposed injunction. In particular, plaintiffs objected to the 90-day heightened review period initiated by the Order, arguing that by the end of the period there is significant risk that all available USRAP spots for the fiscal year will be filled from other, non-Muslim countries. This, the plaintiffs argued, would effectuate a de facto "Muslim Refugee Ban." As such, in addition to the proposed injunction of October 12, the plaintiffs requested the court enjoin defendants from suspending refugee processing for the plaintiffs and all USRAP applicants from majority-Muslim countries.

- On October 26, defendants filed a response to plaintiffs' October 25 preliminary injunction supplement. In their response, defendants assert that the plaintiffs provided no notice of their intent to ask for new relief and have otherwise failed to follow appropriate procedure with their submission. Instead, plaintiffs argued that the court should direct defendants to file an amended complaint and new motion for preliminary injunction if they wish to expand the scope of their relief.

- On October 27, plaintiffs filed a response to defendants' October 26th submission, arguing that (1) the plaintiffs' October 25 filing neither warrants postponement of the November 2 hearing nor requires further filings by plaintiff, because the supplemental issues arise from a common nucleus of operative fact and there are significant economies in arguing all issues on November 2; and (2) defendants will suffer no harm from the court's hearing argument on the supplemental issue on November 2, as defendants have time to file a brief prior to argument.

- On October 27, the court entered a minute order stating that they would accept plaintiffs' Supplemental Submission, but reminded them that a party must first seek leave of court to file an amended pleading, and directed defendants to file any response to plaintiffs' Supplemental Submission by October 31, 2017.

- On October 31, the defendants filed a response to plaintiffs' supplemental submission, asserting that the submission should be denied as procedurally improper. Even if the procedure were proper, plaintiffs' supplemental claims should be denied for three reasons: (1) the claims are not justiciable because refugees outside the U.S. lack constitutional rights under the Establishment and Equal Protection Clauses; (2) admission and screening requirements for the refugee program are not controlled by the non-discrimination provisions of the INA; and (3) the claims fail under the *Kleindienst v. Mandel* standard because the government's national security foundation is "facially legitimate and bona fide."

- On November 2, the court held a hearing on the plaintiffs' motion for preliminary injunction. During the hearing, Judge Chutkan stated that the court is "very leery about ordering people to be admitted" into the country. Plaintiffs are permitted to submit an amended complaint.

- On November 3, plaintiffs filed their third amended complaint challenging the September 24 Proclamation, the October 24 Executive Order, "Resuming the United States Refugee Admissions Program with Enhanced Vetting Capabilities," and the October 23, 2017 Memorandum to the President implementing the October 24 Executive Order. Plaintiffs assert that the recent executive actions violate (1) the Establishment Clause, (2) the equal protection component of the Fifth Amendment Due Process Clause, (3) the Fifth Amendment Due Process Clause, and (5) the Administrative Procedure Act.

- On November 15, the plaintiffs filed a notice of supplemental authority in support of their motion for preliminary injunction, noting the Ninth Circuit's decision in *Hawaii v. Trump* (see above for details).

**Sanctuary City Cases**

This section covers litigation challenging the "Enhancing Public Safety in the Interior of the United States" Executive Order issued January 25, 2017, which threatens to cut off federal funds from any jurisdiction deemed to be a "sanctuary jurisdiction." It also includes cases related to Texas's SB4, which requires local governments cooperate with the federal government on immigration matters and punishes noncompliance, as well as cases related to certain federal law enforcement grants.

*First Circuit*

- ***Chelsea, Lawrence v. Trump* (D. Mass., Case No. 1:17-cv-10214) (Goodwin Procter LLP, Lawyers' Committee for Civil Rights and Economic Justice as counsel for plaintiffs) [STAYED].** This lawsuit, brought by the cities of Chelsea and Lawrence in Massachusetts, challenges President Trump's "Sanctuary City" Executive Order under the Tenth Amendment. No hearings have been set.
    - On May 2, plaintiffs filed an unopposed motion to stay proceedings until further motion by plaintiffs. They note the injunction issued in *Santa Clara v. Trump* grants most of the relief they sought, and so such a stay will conserve the resources of the court and the parties. On May 4, the court granted plaintiffs' motion to stay and ordered plaintiffs to submit a status report within sixty days.
    - On June 30 and again on August 15, the parties submitted a joint status report discussing updates in other cases challenging the same Executive Order.

*Third Circuit*

- ***Philadelphia v. Sessions* (E.D. Pa., Case No. 2:17-cv-03894)** This suit, filed on August 30, 2017, seeks to enjoin the Department of Justice from conditioning the receipt of federal funds for local police on compliance with three conditions issued this year. The conditions require that Philadelphia certify that it will (1) share immigration status information with federal authorities ("Section 1773 Condition"), (2) permit DHS personnel access to Philadelphia's detention facility to investigate a detainee's right to remain in

the United States ("Access Condition"), and (3) provide DHS 48-hours' notice before releasing a non-citizen arrestee ("Notice Condition"). Philadelphia seeks to enjoin the Department of Justice from imposing these three conditions, seeks a declaratory judgment that the new conditions are unconstitutional, arbitrary and capricious, and seeks a declaratory judgment that Philadelphia is in compliance with the Section 1773 Condition. Philadelphia argues that these conditions violate the statutory authority of the Byrne JAG program, Separation of Powers, the Administrative Procedure Act, the Spending Clause, and the Tenth Amendment. This case is before Judge Michael Baylson.

- On September 12, the Court set the government's time to respond to Philadelphia's complaint as October 13, 2017. If on that date, the government submits a Rule 12 motion, Philadelphia shall file its response by October 27, 2017, and the government may file its reply by November 3, 2017. Oral argument is scheduled for November 9.

- On September 28, Philadelphia filed a Motion for Preliminary Injunction to prevent the Attorney General from imposing the three new conditions on the city's FY 2017 Byrne JAG award. Plaintiff argued that: (1) the conditions are contrary to the statute authorizing the Byrne JAG program and the Attorney General "wholly lacks the authority to demand that States and localities accept these new conditions;" (2) even if Congress had delegated such authority to the Attorney General, that delegation would violate the Spending Clause; (3) should the Court find that Section 1373 is applicable to the Byrne JAG awards, Philadelphia "complies with all of the obligations the statute can be read to impose upon the City as a recipient of the grant;" and (4) imposition of the new conditions will cause immediate and irreparable harm to the City and its residents.

- On September 29, the court ordered defendant to file a response to the Motion for Preliminary Injunction by October 12 and scheduled oral argument for October 26.

- On October 12, Sessions filed his response to Philadelphia's Motion for Preliminary Injunction. Sessions argued that Philadelphia is unlikely to succeed on the merits as (1) federal statutes authorize imposition of conditions on grants administered by OJP (2) Congress's authority extends to attaching conditions to receipt of federal funds and delegating that power to the Executive branch (3) the imposition of

new conditions was not arbitrary and capricious and so does not violate the APA (4) the conditions are sufficiently related to the policy objectives such that the conditions don't violate the Spending Clause (5) Philadelphia does not comply with Section 1373 and declaratory judgment is at the discretion of the court and (6) Philadelphia fails to establish it will suffer irreparable harm.

- On October 17, the court granted Philadelphia's request to present live testimony during the hearing on October 26, on matters not covered in the sworn declarations already filed by the plaintiff. Plaintiff has identified five witnesses and a summary of their testimony. The court scheduled oral argument on issues relevant to the plaintiff's motion for preliminary injunction on November 2.

- On October 19, Santa Clara, among many others, filed an amicus brief in support of Philadelphia's Motion for Preliminary Injunction, arguing (1) the need for localized flexibility in law enforcement, (2) that policies restricting local immigration enforcement promote public safety, and (3) that the Byrne JAG conditions have created uncertainty and operational challenges. Eight non-profit civic organizations have also jointly filed an amicus brief, attesting positively to the efficacy of the plaintiff's own policies. Plaintiffs also filed a reply to Sessions' response to the Motion for Preliminary Injunction, reiterating earlier arguments made in its motion.

- On October 20, Philadelphia filed a notice in response to the court's order re: Pending Motion for Preliminary Injunction, in which Philadelphia states, among other items, that (1) Philadelphia intends to challenge certain statements made in the sworn declaration of Jim Brown, and (2) that Philadelphia intends to call only 5 witnesses.

- Also on October 20, the official transcript of the September 12, 2017 Pretrial Conference was filed.

- On October 26, the court filed notice that the preliminary injunction hearing is scheduled for November 2 at 9:30 AM Eastern.

- On October 27, as instructed by the court, Philadelphia filed notice of their October 27 response to the Department of Justice's October 11 letter pertaining to the certification sent by Philadelphia to the Department on June 22, 2017.

- On November 1, defendant and Philadelphia filed their Proposed Findings of Fact and Conclusions of Law on the issue of Section 1373 condition.

- On November 9, defendant filed a supplemental memorandum opposing Philadelphia's preliminary injunction motion. Defendant argues that Philadelphia's cooperation with federal immigration authorities in some instances does not mean that Philadelphia is in "substantial compliance" with the condition in Section 1373. Philadelphia responded with their own supplemental memorandum, arguing that the AG lacks the requisite authority to impose the notification-of-release condition on the City as part of its JAG grant. Philadelphia also contends that even if the AG did have the necessary authority to impose the condition, Philadelphia is already in "substantial compliance" with Section 1373, emphasizing that Philadelphia does provide ICE notice if the notification request is supported by a criminal judicial warrant. Additionally, Philadelphia emphasizes that it is already in "substantial compliance" with Section 1373 through its policies that allow the free sharing of information with federal authorities regarding current criminal threats, and that under a spending clause analysis, compelling the disclosure of immigration status information for individuals who pose no criminal threat does not further the purpose of the federal spending at issue.

- On November 15, the court granted Philadelphia's motion for a preliminary injunction, calling Session's phrase "sanctuary city" a misnomer and recognizing that "Philadelphia is not a sanctuary for anyone involved in criminal conduct." The court held that the conditions that Sessions placed on Byrne JAG grant recipients "have no relationship to successful police practice or the enforcement of criminal laws." The court further found that there is no evidence that non-citizens in Philadelphia commit more crimes than citizens. The court held that:

1) the Byrne JAG conditions violated the APA;

2) the DOJ failed to provide adequate reasons for its decisions and was therefore arbitrary and capricious;

3) the relatedness issue under the Spending Clause is a "close question," but the DOJ conditions would clearly interfere with Philadelphia's justifiable policies towards non-criminal aliens;

4) Philadelphia is likely to succeed on the merits of its Tenth Amendment anti-commandeering claim (the court was careful to note it was not specifically so holding);

5) Philadelphia is likely to succeed on its claim of substantial compliance with Section 1373; and

6) Philadelphia has adequately demonstrated irreparable harm.

- On November 16, two additional Amici Curiae briefs in support of plaintiff's motion for a preliminary injunction were entered.

- On November 21, the court set the pretrial conference for December 13, to be held before Judge Michael Baylson.

- On December 4, the court changed the date of the pretrial conference to December 20, at 10:00 a.m.

*Fifth Circuit*[2]

- ***El Cenizo v. Texas*** **(W.D. Tex., Case No. 5:17-cv-00404) (ACLU as counsel for plaintiffs) (consolidated with *El Paso County v. Texas*, No. 5:17-cv-00459; *San Antonio v. Texas,* No. 5:17-cv-00489*).*** This suit, filed on May 8, does not challenge President Trump's "Sanctuary City" Executive Order. Rather, this suit aims to challenge Texas's "Sanctuary City" legislation, which requires local law enforcement to cooperate with federal immigration officials and punishes them if they do not. El Cenizo filed this suit in federal court, arguing that (1) Texas's "Sanctuary City" legislation violates the 10th Amendment by commandeering local governments and (2) Texas's law is preempted under federal law. The plaintiffs seek declaratory and injunctive relief.

  - On June 5, plaintiffs filed a motion for preliminary injunction "enjoining all Defendants from enforcing Texas Senate Bill 4 ('SB4')." Plaintiffs argued three main points: (1) that SB4 is "patently unconstitutional," (2) that less harm would come from maintaining the status quo than from

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[2] For the filings in the Texas SB4 cases, please check the Texas Civil Rights Project site, at https://www.texascivilrightsproject.org/en/issues/racial-and-economic-justice/stopsb4/.

complying with the "vague and ambiguous terms" of the law, and (3) that public interest favors an injunction. Plaintiffs couched their argument in no uncertain terms: they argued that the bill "is an extraordinary intrusion on Plaintiffs' ability to govern" and that it could lead to detrimental policy decisions and intrusions of citizens' constitutional rights.

- On June 23, the U.S. Department of Justice filed a statement of interest in support of Texas's SB4 legislation. The federal government argues that SB4's legislation that promotes cooperation between state and federal officials is neither preempted by federal law nor unconstitutional.

- On June 23, the defendants filed a response to the plaintiffs' motion for a preliminary injunction. The defendants argued, in part, that (1) venue should be decided first; (2) SB4 is not preempted by federal law; and (3) SB4 does not violate Equal Protection, the Voting Rights Act, the Tenth Amendment, First Amendment, or Fourth Amendment.

- On June 26, the court held oral argument regarding the plaintiffs' motion for a preliminary injunction of SB4. The court allowed over one dozen reporters into the court room, and a number of local reporters live-tweeted the hearing.

- On July 10, Austin, El Paso County et al. (El Paso County, the Texas Organizing Project Education Fund [TOPEF], and Richard Wiles), Dallas, and Houston filed post-hearing briefs. Austin briefed in support of its motion for preliminary injunction and specifically discussed the evidentiary record: Austin argued that the record is relevant to showing plaintiffs' likelihood of success on the merits, and that "Texas' evidence reveals Fourth Amendment deficiencies in the 'show me your papers' provision of SB 4." The El Paso County's brief focused on the constitutional arguments against SB4: plaintiffs argued that the plaintiffs are substantially likely to succeed on their Equal Protection claim, that SB4 violates the First Amendment, that Texas sued TOPEF in retaliation, that the Fourth Amendment claim is valid, and that SB4 is unconstitutionally vague and will irreparably harm the plaintiffs. Houston's brief also focused on constitutional claims, but included discussion of how SB4 also violates various clauses of the Texas Constitution.

- Also on July 10, Travis County et al. (Travis County, Judge Sarah Eckhardt, and Sheriff Sally Hernandez), San Antonio et al. (San Antonio, Rey A. Saldaña, Texas Association of Chicanos in Higher Education, La

Union Del Pueblo Entero, and Workers Defense Project), Dallas, and El Cenizo et al. (El Cenizo, Mario A. Hernandez, League of United Latin American Citizens, Maverick County, Raul L. Reyes, and Tom Schmerber) filed supplemental briefs. Travis County et al. discussed SB4's provisions and argued that, together, they are vague and complicated, with severe penalties "for even the slightest misstep." San Antonio et al. argued that SB4 violates the Constitution and is both field and conflict preempted. Dallas's briefed argued that "[t]hrough its commands, SB4 strips local governments of discretion, shifts the cost of immigration law enforcement to local governments, and exposes local governments to liability for complying with SB4. SB4 is unconstitutional under the United States and Texas Constitutions." El Cenizo's brief similarly emphasized constitutional arguments, arguing that SB4's detainer provisions violate the Fourth Amendment, that SB4 is preempted and unconstitutionally vague, that the First Amendment is violated by the endorsement provision, and that SB4 infringes equal protection.

- On August 2, Texas responded to the plaintiffs' first amended complaint by renewing its motions to dismiss or transfer the complaint, or to consolidate it with *Texas v. Travis County, Texas*. On August 3, defendants, by and through the Texas AG, filed an amended answer to all operative complaints in the three consolidated cases (*El Cenizo*, *El Paso County*, and *San Antonio*).

- On August 15, the court denied the defendants' motion to dismiss or transfer the case to El Paso County. The court found that venue was proper under the general federal venue statute, 28 U.S.C. § 1391, since the defendants reside in W.D. Tex. and the events giving raise to the claim occurred there. The court also found that transfer under 28 U.S.C. § 1404(a) (for convenience) was not appropriate. Finally, since the case filed earlier in the Austin division was dismissed, the court rejected defendants' "first to file" rule argument.

- On August 30, in a 94-page order, the court granted a preliminary injunction, enjoining certain provisions of SB 4 that would have become effective September 1.

- On August 31, defendants appealed the preliminary injunction and also filed a motion to stay pending appeal. The court issued a minute order denying the motion to stay pending appeal on the basis that the preliminary injunction preserves the status quo and that a stay would alter

the status quo and allow the entirety of SB 4 to be implemented and enforced on September 1, despite prior findings of preemption and unconstitutionality.

- On September 1, defendants filed an amended notice of appeal.
- On September 11, defendants and plaintiffs filed exhibits from the preliminary injunction hearing. Plaintiff filed additional exhibits from the preliminary injunction hearing on September 12. These exhibits are not publicly available.
- On September 29, plaintiffs filed a notice of appeal from the denial of their requested relief in the August 30 preliminary injunction order.

- ***El Cenizo v. Texas* (5th Cir., Case No. 17-50762)**. This appeal arose out of the Western District of Texas' grant of preliminary injunction on August 30, enjoining certain provisions of SB 4 that would have become effective September 1 (see above).
  - On September 5, Texas filed an emergency motion to stay the preliminary injunction pending appeal. Texas argued that the district court erred in enjoining SB 4 and asked for a stay of that injunction. In support of its motion, Texas argued that SB 4 does not violate the Fourth Amendment, is not preempted by federal law, does not violate free speech, and is not facially vague. Texas argues that it will be irreparably harmed if it is not able to implement this public-safety statute.
  - On September 8, the court set a hearing date for the emergency motion to stay as Friday, September 22.
  - On September 12, the plaintiffs filed two separate responses to Texas' motion to stay the preliminary injunction. In both pleadings, the cities argued that Texas failed to demonstrate that it would succeed on the merits and credited the district court's detailed 94-page opinion. The cities also argued that they, not Texas, would suffer irreparable harm if an unconstitutional statute were to go into effect.
  - On September 14, the Court set a hearing for this appeal on November 6.
  - On September 19, Texas submitted a reply in support of its motion to stay the preliminary injunction, largely reiterating arguments in its opening brief. Regarding harm, Texas argues that "the state and its citizens suffer

harm from having to release individuals that the federal government itself is trying to detain with probable cause of legal violations." Texas also argues that any harm to plaintiffs does not outweigh the harm to the state.

- On September 19 that states of West Virginia, Louisiana, Alabama, Arkansas, Georgia, Missouri, Oklahoma, and South Carolina requested leave to file an amicus brief. These states outlined three principle reasons for their interest in this case: (1) "they have an interest in complying with federal immigration law and ensuring that the municipalities that exercise the States' power do the same;" (2) "sanctuary-city policies can harm neighboring States by making it easier for illegal immigrants who commit crimes to evade law enforcement and to travel out-of-state;" and (3) the "States have an interest in ensuring that courts follow the strict standards that govern requests to enjoin state laws."

- On September 20, plaintiffs responded to the eight-state amicus brief arguing that it was untimely. Plaintiffs argue that an untimely amicus brief submitted during an already-compressed briefing schedule is unduly prejudicial to plaintiffs. Further, plaintiffs argue that since the injunction relates to Texas, these states will not be significantly impacted by these proceedings.

- On September 22, the Fifth Circuit held oral arguments on Texas' motion to stay the district court's preliminary injunction. At oral argument, the court pressed Appellants hard on whether detention pursuant to an ICE request violated the Fourth Amendment. The court in turn pressed Appellees on whether ICE detainers were actually mandatory under SB4, as opposed to requests, as they have been historically. The court and the parties also struggled with whether SB4 was preempted, as the federal government has plenary authority over immigration. A recording of the oral argument is available here: http://www.ca5.uscourts.gov/OralArgRecordings/17/17-50762_9-22-2017.mp3. The court also denied without explanation the motion of West Virginia et al. to file an amicus brief.

- On September 25, the Fifth Circuit granted in part and denied in part Texas' request to stay the lower court's injunction. The court found that Texas was likely to succeed on the merits regarding two of the five enjoined provisions of SB4, and found that Texas was likely to suffer the irreparable harm of being unable to enforce its laws. The first provision, Section 752.053(b)(3) provides that local entities cannot "prohibit or

materially limit" law enforcement from "assisting or cooperating with a federal immigration officer as reasonable or necessary, including providing enforcement assistance." While the court stayed the injunction with respect to the prohibition of such assistance, the court upheld the injunction with respect to "materially limit[ing]" such assistance as that term needed additional clarification. The court also denied the stay of two other provisions that contained the same term. The court granted the stay of the injunction for Article 2.251(a)(1), which requires law enforcement agencies to "comply with, honor, and fulfill" a detainer request issued by ICE. The court notes that law enforcement need not comply with this request if the detainee provides proof of law immigration status and that the method of proof is not identified or limited by Article 2.251.

- On September 28, Texas (with the other defendants) filed their merits brief, arguing that the plaintiffs can neither succeed on the merits nor establish the equitable factors necessary for a preliminary injunction. Defendants reiterated that SB 4 does not violate the Fourth Amendment nor the Free Speech Clause, and that it is not preempted by federal law nor facially void for vagueness.

- On September 29, the court calendared oral argument for Tuesday, November 7, in the afternoon session (in New Orleans).

- On October 3, defendants moved to modify the briefing schedule or separate the hearing for the appeal from the hearing for the cross appeals filed by plaintiffs. The court denied defendants' request for a separate briefing on the appeal and cross appeal, and granted in part defendants' motion to modify the briefing schedule. The court ordered an expedited briefing schedule to accommodate a cross-appellants' brief, with oral argument remaining scheduled for November 7. Plaintiffs then filed a motion requesting that the court reconsider and extend the briefing schedule under the time limits of Federal Rule of Appellate Procedure 28.1. Defendants filed a response opposing the plaintiffs' motion to modify the expedited briefing schedule.

- On October 4, plaintiffs filed a reply to the defendants' opposition to the plaintiffs' motion to extend the expedited briefing schedule.

- On October 5, the court denied plaintiffs' motion to extend the oral argument date and briefing schedule.

- On October 6, pursuant to the court's order on October 3, plaintiffs submitted letters stating the issues they intend to raise on their cross-appeal.

- On October 13, Houston and Dallas filed a brief arguing that SB4's enforcement provisions are preempted by federal law, that the trial court erred in failing to find that section 752.053(b)(1) and its penalty provisions are preempted, that the trial court was correct in finding section 752.053(b)(3) was preempted, and that Texas and the federal government collectively cannot force local governments to enforce federal immigration laws when neither could do so individually. San Antonio, El Paso, et al. filed a brief arguing that the trial court was correct in finding provisions of SB4 preempted by federal law, the court was correct in finding that the endorsement provisions of SB4 violated the First Amendment, the court failed to find that other provisions of section 752.053 are also preempted, the court correctly held that article 2.251 which requires local law enforcement to comply with all requests made in an ICE detainer violates the Fourth Amendment, and the court did not err in granting the injunction. Austin also filed its brief, arguing that the court correctly held (1) that the phrase "materially limits" is unconstitutionally vague; (2) certain provisions are preempted; (3) the detainer provisions violate the Fourth Amendment; (4) the endorsement prohibition violates the First Amendment; and (5) that a preliminary injunction was appropriate.

- On October 18, the court granted amicus curiae United States leave to participate in the oral argument on November 7 on the appeal and cross-appeals.

- On October 24, defendants filed their opposition to plaintiffs' brief, arguing that (1) SB4's ICE-detainer mandate is not a facial Fourth Amendment violation and is not preempted, (2) SB4's ban on local policies against assistance and cooperation with federal immigration law enforcement is not preempted, (3) SB4's "materially limit" language is not facially void for vagueness, (4) SB4 does not limit private-capacity speech, and (5) the injunction causes Texas irreparable harm, whereas the disputed SB4 provisions cause no harm to plaintiffs.

- On October 26, two groups filed motions to join as amici on behalf of the plaintiffs and included briefs with their submissions. Immigration law firm Gonzalez Olivieri, LLC filed a brief that argued key provisions of SB4 violate the Supremacy Clause by impeding the policy objectives of the

Violence Against Women Act and the Victims of Trafficking and Violence Prevention Act. Another amicus brief filed by a coalition of groups including the National Queer Asian Pacific Islander Alliance argued that SB4 will negatively impact Asian Americans and exacerbate the targeting and detention of LGBT immigrants. The government filed motions in opposition to each amicus's request to be heard.

- On October 27, the Harris County Attorney's Office filed a motion to file an out-of-time amicus brief.

- On October 27, the Texas Department of Public Safety and Mr. Greg Abbott, among others, filed a response/opposition to the Harris County Attorney's Office's out-of-time amicus brief, arguing that the State had already filed its timely response/reply brief, and would therefore necessarily be prejudiced, as it is unable to respond to the movant's claims.

- On October 27, three of the plaintiffs filed reply briefs in their cross-appeal of the district court's failure to enjoin certain provisions of the Texas sanctuary city law, SB4. All three briefs focused on preemption arguments, claiming that the State of Texas lacks the authority to force localities to enforce federal law. Much of the briefs overlapped, but in total four provisions of the law were at issue. To summarize, first, plaintiffs argued that subsections 752.053(a)(1) and 752.053(a)(2) of the law, which compel local officials to enforce federal law, are field preempted because they make no mention of federal oversight for the program. Second, subsections 752.053(b)(1) and 752.053(b)(2) of the law, which require local law enforcement to inquire into immigration status without federal oversight, is field preempted by 8 U.S.C. § 1357, which requires such inquiries to be performed by federal officers and requires training, certification, and direct federal supervision. Third, plaintiffs argued that the penalty provisions of the law violate well-established precedent that States may not seek to achieve even parallel federal goals by imposing their own sanctions. And finally, they argued that the balance of equities and public interest favor enjoining SB4.

- On October 30, the court denied immigration firm Gonzalez Olivieri's motion to file an out-of-time amicus brief.

- On November 7, the court heard oral argument. Texas argued that SB4 falls squarely within the US Supreme Court's decision in Arizona v. United States. Arizona allows local law enforcement to inquire about a lawfully stopped individual's immigration status. Texas also characterized SB4 as

permitting cooperation and assistance by state officials, though the court pressed on whether SB4 actually requires cooperation and assistance. Regarding plaintiffs' vagueness and free speech challenges to SB4's prohibition on local officials endorsing violations of SB4, Texas urged the court to adopt a narrow construction of the term "endorse," while Judge Jones suggested the whole section might be severed. Arguing on behalf of the plaintiffs, Nina Perales of the Mexican American Legal Defense and Educational Fund spent the bulk of her time arguing the law was preempted. She argued that SB4 compels local officials and employees—even community college professors—to enforce federal immigration law or face heavy financial sanctions. When asked if the Justice Department's support of SB4 changes this argument, she responded the Congress, not the executive, creates preemption. She also rebuffed the suggestions that plaintiffs lack standing to bring Fourth Amendment claims, arguing that plaintiffs include local law enforcement officials who claim SB4 requires them to violate their oaths of office, an injury sufficient to confer standing. Finally, Lee Gelernt of the ACLU argued SB4 fails to provide adequate guidance to local officials on appropriate enforcement measures, and so should be struck down for vagueness.[3]

*Seventh Circuit*

- ***Chicago v. Sessions*** **(N.D. Ill., Case. No. 1:17-cv-05720) (Chicago AG for plaintiffs).** This suit, filed on August 7, 2017, seeks to enjoin the Department of Justice from conditioning receipt of federal funds for local police on compliance with two conditions issued on July 25, 2017. These conditions require that grant recipients (1) provide 48-hours' notice to the Department of Homeland Security before a non-citizen arrestee is released and (2) permit Department of Homeland Security personnel to access any correctional or detention facility to investigate the detainee's right to remain in the United States. Chicago challenges these conditions on the grounds that they violate Separation of Powers, the Spending Clause, the Tenth Amendment, the statutory authority of the Byrne JAG program, and the Administrative Procedure Act. Chicago also challenges an earlier-issued condition to the receipt of the Byrne JAG funds, which required Chicago to certify that it was not restricting the sharing of immigration status information with federal immigration agents.

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3 A recording of the oral argument can be found at: http://www.ca5.uscourts.gov/oral-argument-information/oral-argument-recordings

Chicago argues that this condition is unlawful and also asks the Court to declare that Chicago is in compliance with this condition.

- On August 10, plaintiff filed a motion for a preliminary injunction restraining the Attorney General "from imposing unauthorized and unconstitutional conditions on FY 2017 Byrne JAG funds." Plaintiffs argued three main points: (1) that the notice and access conditions and the Section 1373 condition are unlawful under the Constitution; (2) that Chicago will suffer an irreparable harm to its sovereignty, goodwill that it has built with immigrant communities and its budget through loss of federal dollars through being indirectly coerced by the federal government to adopt its policy through the ultimatum being presented to it; and (3) that Chicago's interest in its sovereignty and its citizens' interest in community policing far outweigh the federal government's interest in enforcing its unconstitutional grant conditions.

- On August 14, Sessions filed an opposition to plaintiff's motion to expedite the briefing schedule, requesting that his opposition to plaintiff's motion for a preliminary injunction be due on August 24 (per the normal schedule). He argued in part that September 5, 2017 is not a decisive date in the Byrne JAG program since although the plaintiff must apply for the grant by that time, it does not have to accept or reject the challenged grant conditions at that time.

- On August 24, Sessions filed an opposition to plaintiff's motion for preliminary injunction. He argues that Congress expressly authorized the AAG to place conditions on grants and ensure that grantees of Byrne JAG funds "comply with . . . all other applicable Federal laws." The government also argues the conditions are not "unmistakably" coercive, and that Chicago's other claims of injury are speculative. Finally, the government contends that the public interest is in having agencies enforce regulations that Congress directed them to develop and enforce, and that a preliminary injunction would run directly counter to that.

- On August 31 and September 1, a number of amicus briefs were filed in support of plaintiffs' motion for a preliminary injunction.

- The preliminary injunction hearing was held on September 11 before Judge Harry D. Leinenweber. The outcome of this hearing is not yet clear from the docket.

- On September 15, the court issued its order and opinion on Chicago's motion for a preliminary injunction, granting it as to the notice and access conditions, and denying as to the condition requiring local governments certify compliance with 8 U.S.C. 1373. The court found that Congress had not granted the DOJ authority to impose substantive conditions on Byrne JAG grants, making Chicago likely to succeed on challenges to the first two conditions. The court also found the certification requirement was authorized, and that Chicago was unlikely to succeed on its claim that the related provision, 8 U.S.C. § 1373, is unconstitutional because "[u]nder current case law, . . . only affirmative demands on states constitute a violation of the Tenth Amendment." However, the court also suggested that Section 1373 might implicate the anti-commandeering doctrine under *Printz* by preventing state and local governments from controlling the scope of their officials' employment.

- On September 26, Sessions filed a Notice of Appeal to the Seventh Circuit from the September 15th Memorandum Opinion and Order. Sessions also filed a Motion to Stay the nationwide application of the preliminary injunction pending appeal. He argued that Chicago suffers no harm from the imposition of conditions for Byrne JAG grants on other cities, and that the other Byrne JAG 2017 applicants are facing irreparable harm because the DOJ will not release the awards without including the conditions at issue. Sessions included a Declaration by Alan R Hanson, the Acting Assistant Attorney General for the Office of Justice Programs, which administers the Byrne JAG program, in support of his motion.

- On October 6, the U.S. Conference of Mayors moved to intervene and assert its rights as a co-plaintiff with Chicago. In response to the defendants' motion to stay the nationwide injunction, the Conference seeks "to protect its members' rights to rely upon this Court's nationwide injunction and the ultimate declaratory and injunctive relief sought by Chicago in this action."

- On October 6, Chicago filed its opposition to defendants' motion to stay, arguing that the court properly enjoined the Attorney General from unlawful conduct, as defendant before the court, and the mere fact that non-parties benefit from the injunction is not a reason to stay or limit the injunction.

- On October 11, Sessions filed a notice of supplemental authority for the September 26 Motion to Stay, noting that the Supreme Court on October 10 vacated the Fourth Circuit's decision in *IRAP v. Trump*, which the court relied on in granting a nationwide injunction.

- On October 13, the court denied Sessions' Motion to Stay the court's Preliminary Injunction. The court (1) held that the potential constitutional violation extends beyond the boundaries of Chicago, and thus a nationwide stay is appropriate; (2) noted the Supreme Court's decision to uphold the Fourth Circuit stay in *IRAP v. Trump*; (3) rejected on grounds of judicial economy Sessions' argument that cities unwilling to assent to the new conditions can file separate lawsuits; and (4) reaffirmed that a nationwide stay is an extraordinary remedy but is necessary here to prevent potentially legally unauthorized conduct by the Attorney General not just in Chicago but across the nation. Chicago filed a motion for reconsideration regarding the court's preliminary injunction order, requesting that the court also enjoin Section 1373 which requires cooperation in sharing immigration status information as well as general custody and release dates. Chicago claims the federal government's recent representations in a letter received by Chicago on October 12 from the Department of Justice differ from the representations made to the court during argument on the preliminary injunction.

- On October 17, the court held a hearing on Chicago's motion for reconsideration. The defendants' response to the motion must be filed by October 23 and Chicago's reply brief must be filed by October 30.

- On October 23, the U.S. Conference of Mayors filed a motion for preliminary injunction against the defendant, adopting by reference the arguments made by Chicago in moving for its preliminary injunction on August 10. The defendant also filed a motion opposing the Chicago's motion for reconsideration. The Court also released a transcript of the September 28 proceedings, which can be obtained through the Court but is not available online.

- On October 27, Sessions filed a brief in opposition to the United States Conference of Mayors' Motion to Intervene on Friday. The brief argued that the Conference's motion was not timely, and should be denied on that basis alone. Further, the brief claimed that the Conference has no cognizable interest that could be compromised by a ruling in the case,

and that it lacks standing because the cities its members represent (other than Chicago) may not be bound by a judgment in the case.

- On October 30, Chicago filed its reply brief in support of its motion for partial reconsideration reiterating the arguments from its October 13 motion.

- On November 2, Sessions invoked Local Rule 78.5 to entreat the court to decide the plaintiff's fully-briefed and pending Motion for Partial Reconsideration, filed on October 13. Local Rule 78.5 provides that "[a]ny party may on notice . . . call a motion to the attention of the court for decision." Sessions stated that such decision is necessary in light of the Seventh Circuit's stays on appellate proceedings regarding two other Byrne JAG grant conditions not at issue in the motion for reconsideration, pending the October 13 motion.

- On November 3, the U.S. Conference of Mayors submitted a reply brief in further support of its motion to intervene. The Conference argued that, contrary to the defendant's assertions, its motion is timely because the Conference seeks to intervene to advance an argument against the defendant's motion to stay that Chicago cannot. The Conference further argues that the defendant will not suffer any prejudice from the Conference's intervention. Additionally, the Conference asserts that it has standing as an association to vindicate the rights of its members as a whole. In the alternate, the Conference requests that the court allow it to intervene under Rule 24(b) for permissive interventions.

- On November 16, the court denied Chicago's motion to reconsider the preliminary injunction for the compliance condition on the Byrne JAG grant. The court held that Chicago had not adequately shown that there was newly discovered evidence that precluded entry of the judgment. The court rejected Chicago's argument that a DOJ letter regarding Chicago's violation of Section 1373 constituted such new evidence, because the letter was not material to the Court's analysis of Section 1373 and consideration of the letter would not produce a new result. The court also denied the Conference of Mayors' motion to intervene. Under an intervention as of right analysis, the court held that the Conference had met most of its required showings, but had not been able to show the requisite impairment to its interests. Under a permissive intervention analysis, the court held that intervention was

premature, as the Conference's member cities are currently protected by the nationwide injunction.

- ***Chicago v. Sessions* (7th Cir., Case No. 17-02991) (Chicago AG for plaintiffs)** This appeal arose out of the Northern District of Illinois's grant of preliminary injunction on September 15 (see above).

    - On September 26, Sessions filed a notice of appeal with the district court. Sessions' brief is due to the court no later than November 6, 2017.

    - On October 16, the court ordered Chicago to file its response to Sessions' motion for a partial stay by October 18. Chicago filed a motion requesting that the court suspend consideration of Sessions' motion for a partial stay until resolution of Chicago's motion for reconsideration of the district court's preliminary injunction order.

    - On October 17, the court ordered Sessions to file a response to Chicago's motion to suspend briefing by October 20.

    - On October 18, Sessions filed a reply in opposition to Chicago's motion to suspend briefing, asserting that Chicago's motion for reconsideration does not strip the appellate court of jurisdiction because the claim to be reconsidered involves a third condition which the lower court declined to enjoin. The Government contends in the alternative that the court could consider the appeal under the All Writs Act.

    - On October 20, Chicago's motion to suspend briefing was granted, and proceedings were suspended until the district court resolves the City's motion for reconsideration. Specifically, the Court rejected the AG's argument that the Court retained jurisdiction because the motion to reconsider does not pertain to the grant of injunctive relief that is the subject of the appeal, stating that a "judgment" includes any order from which an appeal lies, and that the City has filed a motion to alter or amend the same judgment that the AG seeks to appeal, therefore rendering the notice of appeal ineffective until the motion to reconsider is resolved.

    - On November 17, Sessions filed a reply in support of his motion for partial stay of the preliminary injunction pending appeal, asserting that (1) Chicago has no standing to seek injunctive relief because the

injunction benefits nonparties and not Chicago itself; and (2) a nationwide injunction is inequitable because (a) a class action is more appropriate for the relief that Chicago seeks, and (b) it forecloses adjudication by a number of different courts and judges.

- On November 20, Chicago filed a status report pointing out to the court's attention the decision in *City of Philadelphia v. Sessions* (E.D. Pa.), which is in line with the judgment of the district court in this case holding that the Attorney General lacks authority to impose "notice" and "access" conditions. Chicago also notes that *Philadelphia* court nevertheless declined to enjoin the Byrne JAG grant conditions, reasoning that the City of Philadelphia was already protected by the injunction in this case.

- On November 21, the court denied the Attorney General's October 13 motion for partial stay of the district court's preliminary injunction pending this appeal. The court also set a schedule for briefing.

- On November 30, the court reordered that oral argument be heard on Friday, January 19, 2018 in the US Court of Appeals for the 7th Circuit.

*Ninth Circuit*[4]

- ***San Francisco v. Trump* (N.D. Cal., Case No. 3:17-cv-00485) (San Francisco AG for plaintiffs).** In this lawsuit, San Francisco challenges President Trump's "Sanctuary City" Executive Order under the Tenth Amendment. Similar challenges from Santa Clara (No. 3:17-cv-00574) and Richmond (3:17-cv-01535) are related to this case.

  - On April 25, the court granted San Francisco and Santa Clara's motion to enjoin Section 9(a) of the executive order. It found the plaintiffs had standing to sue, and issued a nationwide injunction finding that plaintiffs

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[4] The Northern District of California has collected information about its "Sanctuary City" litigation here: http://www.cand.uscourts.gov/who/sanctuary-litigation. The *San Francisco*, *Santa Clara*, and *Richmond* cases are all related before Judge Orrick.

were likely to succeed on all of their arguments challenging the order's validity.

- On July 20, the court issued an order denying the Government's motions for reconsideration and to dismiss with respect to San Francisco and Santa Clara. With respect to the motion for reconsideration, Judge Orrick concluded that Attorney General Sessions' memorandum of May 22, which put forth the DOJ's "conclusive" interpretation of the Executive Order, did not reflect a change in controlling authority, fact or evidence. Therefore, reconsideration of the PI Order was not warranted, as the AG's memorandum merely restated an analysis that the court had already rejected. With respect to the motion to dismiss, Judge Orrick concluded that the AG's memorandum did not impact his prior conclusions that both counties have standing, that their claims against the executive order are ripe, and that they are likely to succeed on the merits. Judge Orrick also addressed San Francisco's declaratory relief claim for the first time, determining that San Francisco has adequately stated a claim for declaratory relief.

- On August 3, the parties filed a stipulation agreeing that defendants' answer to the complaints in San Francisco and Santa Clara would be filed by August 16, 2017. On August 4, the court signed the parties' stipulated order.

- On August 15, San Francisco requested that this case be related to *San Francisco v. Sessions* (Case No. 3:17-cv-04642) above.

- On August 16, defendants answered plaintiff's second amended complaint and denied plaintiff's claims. Defendants also asserted that the plaintiff lacked standing, failed to state a claim upon which relief could be granted and that the plaintiff's claims were neither constitutionally nor prudentially ripe.

- On August 17, San Francisco filed a supplemental brief in support of its motion to relate this case to 3:17-cv-04642, pointing to a "Fact Sheet" issued by the White House an August 16 as additional evidence the cases are related.

- On August 18, defendants filed a short response objecting to the plaintiff's motion to relate this case to the new suit against Sessions (Case No. 3:17-cv-04642). The defendants "doubt" that the cases are similar enough to warrant relating to each other since the Sessions case concerns a program

operated through the Attorney General, while this case concerns the Sanctuary City Executive Order.

- On August 23, Judge Orrick granted San Francisco's motion to relate this case to *San Francisco v. Sessions*, and reassigned that case to himself.

- On August 30, San Francisco filed a motion for summary judgment asking the court to enter judgment that (1) San Francisco's laws comply with 8 U.S.C. § 1373 (concerning how local jurisdictions regulate communications with ICE about individuals' immigration status); (2) the funding restriction in the sanctuary city executive order violates separation of power principles, the Spending Clause, and Tenth Amendment; and (3) the enforcement directive in the order violates the Tenth Amendment. San Francisco emphasized that its rules allowing all of its residents, including undocumented residents, to use city services makes the city safer and healthier, and that President Trump has repeatedly threatened the city and tried to coerce them to enforce federal immigration policy. San Francisco seeks summary judgment, as well as a permanent injunction, "[t]o put an end to these unconstitutional threats and protect its legitimate local policy decisions." San Francisco also filed a request for judicial notice of multiple documents, including White House and DOJ press releases.

- On September 7, the government requested a two-week extension to respond to the plaintiffs' motion for summary judgment. The government states that because the court has preliminarily enjoined the provision of the Executive Order that plaintiffs challenge, the extension would not prejudice the plaintiffs in any way.

- On September 11, San Francisco filed an opposition to the government's motion for an extension. Although San Francisco has agreed to deadline extensions before, it said, it opposed this motion because it would prejudice San Francisco and undermine judicial economy and efficiency. Specifically, the extension would cause delay and uncertainty that would enable the Trump administration to coerce local jurisdictions.

- Later on September 11, the court conditionally granted defendants' motion for more time. Responses are now due on September 27 and replies by October 4. The hearing will be held October 18 at 2 pm. However, the court also said that the defendants "should not be allowed to benefit from the extension in any appellate maneuvering." Thus, the defendants cannot file any motion to stay until five days after they file their opposition. If the

defendants do not wish to delay their stay request, they can ask to revert to the October 4 hearing schedule.

- On September 18, defendants filed a notice of appeal to the Ninth Circuit. They will challenge the April 25 order granting the preliminary injunction and the July 20 order denying defendants' motion for reconsideration of the April 25 order.

- On September 27, the defendants filed an opposition to the plaintiff's motion for summary judgment, arguing in part that: (1) "since there is no live, concrete controversy arising from Section 9(a) of the Order regarding whether San Francisco's ordinances comply with Section 1373 on their face, any judicial ruling on the subject would constitute a prohibited advisory opinion; (2) factual development is necessary to determine whether the City's ordinances, as well as the policies and practices implementing those ordinances conflict with Section 1373; and (3) the City's challenges to Section 9(a) of the Order based on the Tenth Amendment, the Separation of Powers, and the Spending Clause are non-justiciable. The defendant emphasized that the plaintiff would be unable to meet the standard for challenging the facial constitutionality of the order based on separation of power principles, the Spending Clause, and the Tenth Amendment. If the court were to grant the plaintiff's motion, the defendant asked the court to not enter a nationwide injunction and to instead limit the injunction to the plaintiff.

- On October 4, plaintiff filed a reply in support of its motion for summary judgment, reiterating its previous arguments and requests for relief.

- On October 11, the parties filed a joint stipulation requesting the court reschedule argument on plaintiff's motion for summary judgment to October 23 or 24 due to attorney scheduling conflicts.

- On October 20, plaintiff submitted a request for judicial notice of prepared remarks by the Attorney General on carrying out the President's immigration priorities in support of its motion for summary judgment.

- On October 23, the court heard argument on the motions for summary judgment.

- On November 2, the plaintiff filed an administrative motion requesting the court to consider two developments that have occurred since arguments on the plaintiff's motion for summary judgment. First, defendants filed a

motion for summary judgment in *San Francisco v. Sessions*, which asserted that the case should be resolved without adjudicating San Francisco's Section 1373 claim. This contradicts defendants' arguments in their opposition to the motion for summary judgment that San Francisco's 1373 claims should be addressed in *San Francisco v. Sessions*. Second, defendants have not sought to take any discovery of San Francisco on matters related to Section 1373, which contradicts the defendants' contention that further factual development would assist in resolution of this claim.

- On November 6, defendants filed a response to plaintiff's November 2 administrative motion. In their response defendants stated that they do not object to plaintiff's request, but reject certain arguments made in plaintiff's motion.

- On November 16, plaintiff submitted a request for judicial notice of a letter to San Francisco Mayor Edwin Lee from the DOJ, dated November 15, in which the DOJ states that it is concerned that two San Francisco laws may violate Section 1373. A proposed order granting the request for judicial notice was also filed.

- On November 20, the court granted San Francisco's August 31 Motion for Summary Judgment. The ruling permanently enjoined the government from enforcing Section 9(a) of the President's January 25 Executive Order on "sanctuary jurisdictions." That section, at the heart of sanctuary city litigation, establishes a procedure for making municipalities ineligible to receive federal funds if they "fail to comply with applicable Federal law." Forcefully rejecting all of the Government's arguments for facial validity, the court concluded that "Section 9(a), by its plain language, attempts to reach all federal grants" and noted that the President has, in public comments, "called it a 'weapon' to use against jurisdictions that disagree with his preferred policies . . . ." These facts render the Executive Order unconstitutional for at least three reasons, the court announced. First, the Order violates separation of powers because it attempts to strip the spending power from Congress by placing non-statutory conditions on the receipt of federal funds. Second, the Order violates the Tenth Amendment's prohibition on commandeering state and local officials. Here the court reasoned that "[f]ederal funding that bears no meaningful relationship to immigration enforcement cannot be threatened merely because a jurisdiction chooses an immigration enforcement strategy of which the President disapproves." Finally, the court concluded that the

Order is so vague and "standardless" that it violates the Fifth Amendment's Due Process clause.

- On November 29, the parties stipulated and requested the court to dismiss, without prejudice, San Francisco's request for a declarative judgment that it complies with 8 U.S.C. § 1373 (concerning how local jurisdictions should regulate communications with ICE about individuals' immigration status). This is so that the court may enter final judgment in the instant case, leaving the parties to litigate the § 1373 issue in pending, related lawsuits.

- On December 1, the court granted the parties' stipulation (see above.)

- ***San Francisco v. Trump* (9th Cir., Case No. 17-16886) (San Francisco AG for plaintiffs).** This appeal arose out of the Northern District of California's grant of preliminary injunction on April 25 and the July 20 order denying defendants' request for reconsideration of the April 25 order (see above).

  - On September 19, the court set the following briefing schedule: opening brief due no later than October 16, 2017, answering brief due November 13 or 28 days after service of the opening brief (whichever is earlier), and the optional reply brief is due within 21 days after the service of the answering brief.

  - On September 22, defendants filed their mediation questionnaire, indicating it intended to seek consolidation of this appeal and that in *Santa Clara v. Trump* (9th Cir., Case No. 17-16887).

  - On September 25, defendants filed an unopposed motion to consolidate this appeal and that in *Santa Clara v. Trump* (9th Cir., Case No. 17-16887).

  - On September 28, defendants' motion to consolidate was granted. The consolidated opening brief is due October 16, 2017. The answering briefs are due November 15, 2017.

  - On October 6, defendants filed an unopposed motion to extend the deadline for their consolidated opening brief until December 15, 2017.

  - On October 10, the court granted the defendants' motion for an extension of time to file the opening brief. Defendants' opening brief is due December 18, 2017; plaintiffs' answering brief is due January 16, 2018;

and the option reply brief is due within 21 days after service of the answering brief.

- ***Santa Clara v. Trump* (N.D. Cal., Case No. 3:17-cv-00574) (Keker & Van Nest LLP as counsel for plaintiff).** *See San Francisco case above.*

    - On August 30, Santa Clara filed a motion for summary judgment asking the court to find the sanctuary city executive order unconstitutional and make permanent the preliminary injunction issued on April 25, 2017. Santa Clara argued that the executive order violates separation of powers and the Tenth Amendment, is void for vagueness in violation of the Fifth Amendment's Due Process Clause, and also violates procedural due process. Santa Clara emphasized that even though the defendants have recently taken the position that the order is "a legally meaningless internal directive," Santa Clara cannot depend on that "illusory promise, particularly when executive branch officials persist in making public declarations" that the order means what it says.

    - On September 11, Santa Clara filed an opposition to the government's motion for an extension of time. Like San Francisco, Santa Clara said that it has previously agreed to extensions but could not do so here because further delay would prejudice the county and there was no good cause for the delay.

    - See *San Francisco v. Trump* above for September 11 conditional grant of defendants' motion for more time and the September 18 notice of appeal.

    - On September 28, the defendants filed an opposition to the plaintiff's motion for summary judgment. The defendants argued in part that: (1) the plaintiff's claims are non-justiciable because the plaintiff "cannot establish the 'concrete' injury needed for standing and the 'concrete' impact needed for ripeness;" and (2) plaintiff is unable to meet the standard for challenging the facial constitutionality of the order based on separation of power principles, the Spending Clause, and the Tenth Amendment. If the court were to grant the plaintiff's motion, the defendant asked the court to not enter a nationwide injunction and to instead limit the injunction to the plaintiff.

    - On October 4, plaintiff filed its reply in support of its motion for summary judgment, asserting that the AG memorandum fails to cure the EO's unconstitutionality, that the EO section 9(b) expressly links compliance with civil detainer requests (which the plaintiff asserts violates the Fourth

Amendment, the EO violates the Tenth Amendment by commandeering local jurisdictions, and that section 9(a) is unconstitutionally vague on what is required to avoid penalties. The plaintiff further requests that the court make the nationwide injunction permanent.

- On November 17, plaintiff submitted a request for judicial notice of the following additional documents in support of plaintiff's motion for summary judgment: (1) a letter from the Acting Assistant Attorney General to the Executive Director of the California Board of State and Community Corrections regarding compliance with 8 U.S.C. § 1373; (2) a letter from the Acting Assistant Attorney General to the President of the Santa Clara County Board of Supervisors regarding compliance with 8 U.S.C. § 1373; (3) a DOJ press release about 29 letters it recently sent to jurisdictions regarding their compliance with 8 U.S.C. § 1373; and, (4) a letter from the Santa Clara County Counsel to the Acting Assistant Attorney General.

- On November 21, the court jointly granted plaintiffs' Motion for Summary Judgment in this case and *San Francisco v. Trump* (3:17-cv-00485; see above for details on the order).

- ***Santa Clara v. Trump* (9th Cir., Case No. 17-16887)** This appeal arose out of the Northern District of California's grant of preliminary injunction on April 25 and the July 20 order denying defendants' request for reconsideration of the April 25 order (see above).

  - On September 19, the court set the following briefing schedule: opening brief due no later than October 16, 2017, answering brief due November 13 or 28 days after service of the opening brief (whichever is earlier), and the optional reply brief is due within 21 days after the service of the answering brief.

  - On September 22, defendants filed their mediation questionnaire, indicated they will move to consolidate this appeal with that in *San Francisco v. Trump* (9th Cir., Case No. 17-16886), above.

  - On September 28, the defendants' motion to consolidate this appeal with that in San Francisco v. Trump (9th Cir., Case No. 17-16886), was granted. The consolidated opening brief is due October 16, 2017. The answering briefs are due November 15, 2017.

- On October 6, defendants moved for a 60-day extension of time to file their opening brief.

- On October 10, the court granted the defendants' motion for an extension of time to file the opening brief. Defendants' opening brief is due December 18, 2017; plaintiffs' answering brief is due January 16, 2018; and the option reply brief is due within 21 days after service of the answering brief.

- ***San Francisco v. Sessions*** **(N.D. Cal., Case No. 3:17-cv-4642) (San Francisco AG for plaintiffs).** This suit, filed on August 11, 2017, seeks to enjoin the Department of Justice from conditioning receipt of FY 2017 Byrne JAG federal funds for local police on compliance with two conditions announced by the Department on July 25, 2017. These conditions require that San Francisco (1) provide federal immigration officials access to local detention facilities to interrogate any suspected aliens held there; and (2) provide the Department of Homeland Security with 48-hours' notice before releasing an individual, where the federal government has requested notice in order to take that individual into custody for immigration reasons. San Francisco challenges these conditions on the grounds that they violate Separation of Powers and the Spending Clause. San Francisco argues that the conditions are unconstitutional and also asks the Court to permanently enjoin the defendants from using the conditions as funding restrictions for the grants. The initial case management conference is set for November 15, 2017 at 2:30 pm.

  - On August 17, the State of California moved to relate this case to its own case challenging the new conditions on JAG funds (Case No. 3:17-cv-04701), and filed a proposed order and declarations in support of its motion.

  - On August 22, Los Angeles moved to intervene so that it could similarly challenge the Notice and Access Conditions that the Department of Justice placed on Byrne JAG funds. Los Angeles seeks a declaration that both the Notice and Access Conditions are unconstitutional violations of the Separation of Powers, the Spending Clause, the Tenth Amendment and the Administrative Procedures Act. San Francisco consented to the intervention but the government withheld its consent until it had an opportunity to review the motion. Los Angeles also filed a motion for an expedited briefing scheduled with the opposition brief due August 29 and the reply brief due August 31. Los Angeles requested that the Court

resolve the motion without oral argument but, should the court determine that oral argument is necessary, requested September 13.

- On August 23, defendant consented that the State of California had met the requirements to relate this case to its own case challenging the new conditions on JAG funds (Case No. 3:17-cv-04701), but reserved the right to make any objections, including to California's choice of venue.
- On August 24, this case was reassigned to Judge William H. Orrick.
- On August 25, Judge Orrick related the State of California's case challenging the new conditions on JAG funds (Case No. 3:17-cv-04701) to this matter.
- On August 29, defendant filed an opposition to the Los Angeles' motion to intervene. Defendant argues intervention would cause significant prejudice to traditional venue and forum rules, and is inappropriate because Los Angeles and San Francisco have different public safety practices.
- On August 30, Los Angeles filed a reply, arguing that venue does not make an otherwise proper permissive intervention improper and that defendants have not offered a "concrete reason" why they would be disadvantaged by defending LA's claims in this court.
- On September 11, the court exercised its discretion to deny Los Angeles' motion to intervene, primarily because it felt intervention would "upend established venue and forum rules."
- On October 6, defendants requested a two-week extension on the deadline to respond to the plaintiff's complaint.
- On October 10, plaintiff filed an opposition to the defendants' motion for an extension of time to respond to the complaint, requesting that the court either deny the motion or limit any extension of time to no more than a week. Plaintiff emphasized the urgency of the case, noting that the defendants had recently moved to stay the nationwide injunction issued in *Chicago v. Sessions* (N.D. Ill.) and promised to issue Byrne JAG award documents containing the challenged conditions "in an expeditious manner" if the injunction is stayed.

- On October 11, the court granted defendants' request for extension of time, stating that plaintiffs are free to seek a preliminary injunction if the stay from *Chicago v. Session* (N.D. Ill.) regardless of whether the defendants have responded to the complaint.

- On October 19, a Case Management Conference was set for November 21, 2017.

- On October 31, defendants filed a motion for summary judgement, moving for judgement on the separation of powers and spending clause claims. Defendants argued that (1) separation of powers is not violated, as Congress may attach conditions to the receipt of funds incident to its spending power, and may also delegate some discretion to the President to decide how to spend appropriated funds; and (2) the spending clause is not violated because the Byrne JAG access and notice conditions are unambiguous, bear some relationship to the purpose of the federal spending (in that a purpose of the Byrne JAG program is to strengthen law enforcement and encourage intergovernmental liaison), and are not barred by other constitutional provisions. A motion hearing is set for December 12, 2017.

- On November 13, the parties, pursuant to a joint stipulation, petitioned the court to order that Plaintiff's deadline to respond to Defendants' Motion for Summary Judgment be extended from November 14 to two weeks after the same court issues its ruling in the pending, related case of *City and County of San Francisco v. Trump* (Case No. 3:17-cv-00485-WHO).

- On November 15, the parties filed a joint case management statement.

- On November 17, the court granted the parties' joint motion for relief from automatic referral to the ADR multi-option program, excusing the parties from mandatory participation in the court's alternative dispute resolution multi-option program.

- On November 27, the court scheduled a bench trial to begin December 10, 2018, and set deadlines for fact discovery and dispositive motions.

- On November 29, the City and County of San Francisco stipulated to a change of deadlines for plaintiff's amended complaint, defendant's response to the amended complaint, the hearing date for defendant's response, and the close of discovery.

- Based on the parties' stipulation (see above), the court extended the deadline for San Francisco to file an amended complaint in response to defendant's motion for summary judgment until December 12, the response to San Francisco's amended complaint until January 19, any hearing on defendant's response to San Francisco's amended complaint to February 28, and the close of fact discovery until July 31.

- ***California v. Sessions* (N.D. Cal., Case No. 3:17-cv-04701) (California AG as counsel for plaintiff).** This suit, filed August 14, 2017, also challenges the Department of Justice's "special conditions" on JAG funds. California argues that the DOJ's actions violate the separation of powers by imposing conditions on funds already appropriated by Congress. California further claims that the conditions violate the Spending Clause by being ambiguous, unrelated to the federal interest in the JAG funding program, and requiring states to violate the Fourth Amendment of the Constitution. The State also argues that the DOJ violated the Administrative Procedure Act in several ways: (1) by attempting to exercise Congress's lawmaking authority, (2) by exceeding its statutory authority, and (3) by imposing conditions that are arbitrary and capricious. On these grounds, California asks the court set aside the conditions, and issue a declaration that California's TRUST and TRUTH Acts do not violate the conditions. A summons has been issued in this case, but the government has yet to respond.

  - On August 25, this case was reassigned to Judge William H. Orrick as requested by the State of California in its August 17 motion to relate this case to *San Francisco v. Sessions* (N.D. Cal., Case No. 3:17-cv-4642).

  - On October 13, plaintiffs filed an amended complaint asserting the same claims detailed above from the original complaint, and requesting the court declare that the Values Act and California's Shield Confidentiality Statutes do not violate the conditions. The plaintiffs appended materials relating to the Byrne JAG application and requirements

  - On October 19, a Case Management Conference was set for November 21, 2017.

  - On October 31, plaintiffs filed a motion for a preliminary injunction, arguing that: (1) plaintiffs are likely to succeed on their claims that JAG Section 1373 condition violates the spending clause, because it is unrelated to the purpose of JAG, and because imposing JAG Section 1373 is arbitrary and capricious; (2) plaintiffs are likely to successfully show that

California's statutes do not violate Section 1373, as Section 1373 cannot be lawfully interpreted to reach California's confidentiality statutes, and would conflict with the 10th amendment if it were interpreted and enforced in a manner that did; (3) without intervention, the Section 1373 conditions would cause the State imminent and irreparable harm; and (4) the balance of hardships favors granting a preliminary injunction.

- On November 7, plaintiffs filed an Amended Motion for Preliminary Injunction reiterating many of the same arguments from their October 31 initial motion. In addition, however, plaintiffs argued that the JAG Section 1373 condition violates the Spending Clause because it is unrelated to the purpose of JAG. Plaintiffs reiterated their argument that California law does not conflict with Section 1373, this time adding the Values, TRUST, and TRUTH Acts to the state's confidentiality statutes mentioned in the initial motion.

- On November 13, pursuant to joint stipulation, the court issued an order setting the schedule for the filing and briefing of the Amended Motion for Preliminary Injunction. The deadline for Defendants' opposition to Plaintiff's motion is November 22, the deadline for Plaintiff's reply is December 1, and the hearing date is December 13.

- On November 13, pursuant to joint stipulation, the court issued an order setting the schedule for the filing and briefing of the Defendants' responsive pleading to the First Amended Complaint. The deadline for Defendants to file a responsive pleading is December 19, Plaintiff's opposition is due on January 9, 2018, Defendants' reply is due on January 19, 2018, and the hearing date is January 31, 2018.

- On November 14, the parties filed a joint case management statement.

- On November 27, the court granted the parties' joint motion for relief from automatic referral to the ADR multi-option program, excusing the parties from mandatory participation in the court's alternative dispute resolution multi-option program.

- On December 1, plaintiffs filed a reply in support of their November 7 Amended Motion for Preliminary Injunction, reiterating many of the same arguments articulated in the October 31 and November 7 motions. Specifically, plaintiffs argue that they are likely to succeed on their spending clause claim, APA claim, and in demonstrating that the Values Act does not violate Section 1373. Additionally, plaintiffs argue that their

Section 1373 claims are justiciable, and that without an injunction, the harm to the state will be irreparable.

- On December 4, in light of the parties stipulation in the related case *San Francisco v. Sessions*, the court updated its briefing schedule for defendant's responsive pleading and discovery issues. The deadline for defendants' response to plaintiff's amended complaint was moved to January 16, 2018, the hearing date for defendant's response to plaintiff's amended complaint was moved to February 28, and the close of fact discovery was moved to Tuesday, July 31.

- ***Los Angeles v. Sessions* (C.D. Cal., Case No. 2:17-cv-07215).** This suit, filed on September 29, 2017, seeks to enjoin the Department of Justice from conditioning the receipt of federal funds for local police on compliance with two conditions issued July 25, 2017. These conditions require that grant recipients (1) permit Department of Homeland Security personnel to access any correctional and detention facility to investigate non-citizen detainees' right to remain in the United States and (2) provide 48 hours' notice to the Department of Homeland Security before a non-citizen detainee is released. Los Angeles challenges the conditions as they apply to two federal programs, the Byrne JAG Program and the Community Oriented Policing Services ("COPS") Program. The City alleges that the conditions violate Separation of Powers, the Tenth Amendment, the Spending Clause, and constitute an arbitrary and capricious agency action under the Administrative Procedure Act.

  - On October 4, the parties stipulated to an expedited briefing schedule and set the date for the hearing on the preliminary injunction issue for October 23.

  - On October 12, defendants filed their opposition brief to plaintiff's preliminary injunction application of September 29.

  - On October 16, plaintiffs withdrew their Application for Preliminary injunction with respect to the COPS Program after concluding that the current year's award application was not affected by the inclusion of immigration-related considerations. However, plaintiffs' claims and request for permanent relief regarding COPS remain unaffected.

  - On November 21, plaintiffs filed a Motion for Partial Summary Judgment, asking the court to enjoin the Department of Justice ("DOJ") from enforcing the COPs program in the manner plaintiffs allege is outside the authority granted by Congress. Specifically, plaintiffs asserted that the

DOJ has impermissibly decided to award "bonus points" to applicants who adopt practices or procedures that reflect "partnership" with federal immigration authorities. Plaintiffs also argued that it is unlawful for the DOJ to give preferential treatment in the grant competition to applicants who promise to focus on "Illegal Immigration." The DOJ policies are "no small detail," plaintiffs argued, and therefore must be permanently enjoined.

- ***Seattle v. Trump*** **(W.D. Wash., Case No. 2:17-cv-00497) (Mayer Brown LLP as counsel for plaintiff)[STAYED]**. As in the cases above, the plaintiffs here (Seattle and Portland as of June 26) challenges the "Sanctuary City" Executive Order on the grounds that it violates the Tenth Amendment and the Spending Clause of the Constitution. Defendants have filed a motion to dismiss both the original and first amended complaint. Pursuant to the parties' stipulation, plaintiffs' opposition brief is due August 21 and defendants' reply is due September 1.

    - On August 21, plaintiffs filed their opposition brief in response to defendants' motion to dismiss which urged the court to follow the decisions in the *Santa Clara* actions, arguing that (1) Attorney General Sessions' memorandum of May 22 is not legally binding and has no effect on plaintiffs' claims; (2) plaintiffs' claims are justiciable; (3) plaintiffs have stated a claim for declaratory relief; (4) plaintiffs have stated a Tenth Amendment claim; (5) plaintiffs have stated a spending power claim; and (6) plaintiffs have stated a claim under the Take Care clause.

    - On September 1, defendants filed their reply, emphasizing that defendants have never actually taken any concrete action as a result of the executive order. They emphasize that the May 22 Attorney General memo clarified certain aspects of the order.

    - On October 17, plaintiffs filed a notice of supplemental authority to bring to the court's attention the following documents: (1) the defendants' notice of appeal in *Santa Clara v. Trump* (N.D. Cal.); (2) the government's notice of appeal in *San Francisco v. Trump* (N.D. Cal.); (3) the decision in *Chicago v. Session* (N.D. Ill.) granting in part and denying in part Chicago's motion for a preliminary injunction; and, (4) the text of a speech delivered by Sessions in Portland regarding Portland's sanctuary policies.

    - On October 19, the court denied the defendants' motion to dismiss, holding that (1) plaintiffs' complaint is ripe, (2) plaintiffs have standing for

a declaratory judgment action, and (3) plaintiffs state valid claims for a Tenth Amendment violation, Spending Clause violation, and separation-of-powers violation. The court also requested briefing from both parties regarding whether a stay in this case is appropriate, given its similarity to *Santa Clara v. Trump,* No. 3:17-cv-00574-WHO (N.D. Cal.).

- On October 30, the parties filed a joint stipulation asking the court to stay proceedings pending resolution of *Santa Clara v. Trump*, et al., No. 3:17-cv-00574-WHO (N.D. Cal.) (see above).

- On October 31, the court granted the parties' joint motion to stay proceedings.

## Conclusion

Simpson Thacher will continue to monitor developments in the travel ban and sanctuary city litigation on a daily basis, and we stand ready to assist those harmed by immigration-related executive orders and proclamations.