

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION**

INTERNATIONAL REFUGEE
ASSISTANCE PROJECT, et al.,

Plaintiffs,

v.

DONALD TRUMP, et al,

Defendants.

Civil Action No.: 8:17-CV-00361-TDC

**PLAINTIFFS' MOTION FOR EXPEDITED DISCOVERY
AND SUPPORTING MEMORANDUM OF LAW**

Plaintiffs respectfully submit this memorandum in support of their Motion for Expedited Discovery. As alleged in Plaintiffs' Complaint, the January 27, 2017 Executive Order violates two core constitutional protections—the guarantee that the government will not establish, favor, discriminate against, or condemn any religion, and the guarantee of equal protection of the laws—as well as federal statutes. Defendants have now indicated that they will replace that January 27 Order with another executive order similar in design and effect, but modified to address some of the problems noted by the Ninth Circuit in its decision declining to stay an injunction of the January 27 Order. *See Washington v. Trump*, No. 17-35105, Appellants' Supp. Br. on *En Banc* Consideration at 4 (9th Cir. Feb. 16, 2017); *see also* Gabby Morrongiello, "Miller: 'Nothing was wrong' with Trump's travel ban," *Washington Examiner*, Feb. 21, 2017, available at <http://www.washingtonexaminer.com/miller-nothing-was-wrong-with-trumps-travel-ban/article/2615418> (senior White House official stating that new executive order will have "mostly minor technical differences. Fundamentally, you're still going to have the same policy

outcome for the country.”). Based on these statements, Plaintiffs anticipate that the new executive order will threaten them with immediate irreparable injury and that they will need to swiftly seek to bar its implementation in its entirety by moving for a temporary restraining order and preliminary injunction.

Plaintiffs seek narrow and carefully tailored expedited discovery tied directly to the substance of their constitutional and statutory claims against the January 27 Order and its replacement executive order. Specifically, Plaintiffs request written discovery only covering: (1) any memoranda, policies, projections, reports, data, summaries, or similar documents relating to the development of the January 27 Order; (2) any instructions, guidance, memoranda, policies, projections, reports, data, summaries, or similar documents developed by or issued to relevant agencies (e.g., Department of State, Department of Homeland Security and all subcomponents) regarding the implementation and interpretation of the January 27 Order and subsequent court orders; (3) instructions, guidance, memoranda, policies, projections, reports, data, summaries, or similar documents relating to the development of any replacement for the January 27 Order; and (4) any instructions, guidance, memoranda, policies, projections, reports, data, summaries, or similar documents. *See* Exhibit 1 (Pl.’s Requests for Production), J.R. 1. The requested discovery is limited in scope and, given the rapidly changing political and legal landscape as well as the significant ongoing and anticipated harms to Plaintiffs in this case, appropriate to allow at this time. As set forth herein, this Court can and should authorize this expedited discovery, which is reasonable under the circumstances and supported by good cause.

FACTUAL BACKGROUND

On February 7, 2017, Plaintiffs filed this case, challenging in its entirety an executive order signed by President Trump on January 27, 2017, entitled “Protecting the Nation from Terrorist

Entry into the United States” (hereinafter, the “January 27 Order”), which violates various constitutional and federal statutory provisions. In particular, the January 27 Order violates two vital constitutional protections—the guarantee that the government shall make no law respecting an establishment of religion, and the guarantee of equal protection of the laws. *See Washington v. Trump*, No. 17-35105, ___ F.3d ___, 2017 WL 526497 at *7 (9th Cir. Feb. 9, 2017) (noting “the serious nature of the allegations the States have raised with respect to their religious discrimination claims”); *Aziz v. Trump*, No. 17-0116, ___ F. Supp. 3d ___, 2017 WL 580855, at *7-10 (E.D. Va. Feb. 13, 2017) (holding that the Commonwealth of Virginia is likely to succeed on its claim that the Executive Order violates the Establishment Clause).

On February 3, 2017, the U.S. District Court for the Western District of Washington issued a nationwide temporary restraining order enjoining the enforcement of certain sections of the January 27 Order (Sections 3(c), 5(a)-(c), and 5 (e)). *Washington v. Trump*, No. 2:17-cv-00141-JLR, Temporary Restraining Order, (W.D. Wa. Feb. 3, 2017). Following an appeal, on February 9, 2017, the Ninth Circuit denied Defendants’ motion to stay the injunction pending appeal, *Washington v. Trump*, 2017 WL 526497 (refusing to stay the district court’s preliminary injunction), and subsequently stayed *en banc* proceedings in anticipation of a new replacement Executive Order to be issued by President Trump. *Washington v. Trump*, No. 17-35105, Order Staying En Banc Proceedings (9th Cir. Feb. 16, 2017).

The *Washington v. Trump* decision enjoining certain sections of the January 27 Order remains in effect, but that injunction does not address other constitutionally and statutorily infirm provisions of the January 27 Order, including Section 5(d), which reduces the number of refugees permitted to enter the United States and further suspends the entry of refugees until President Trump “determine[s] that additional admissions would be in the national interest.” For the

organizational Plaintiffs in the present action—organizations dedicated to helping refugees resettle in the United States—as well as their clients, the harms they experience due to the January 27 Order have only just begun.

Once the replacement executive order is issued, Plaintiffs anticipate that they will need to move swiftly for a temporary restraining order and preliminary injunction to enjoin its enforcement and prevent further irreparable injury. Plaintiffs therefore request expedited discovery in order to develop the factual record available on the preliminary injunction motion.

ARGUMENT

A. Authority and Standard for Expedited Discovery Requests

District courts have broad discretion over discovery issues arising before them, *Carefirst of Maryland, Inc. v. Carefirst Pregnancy Centers, Inc.*, 334 F.3d 390, 402 (4th Cir. 2003), including those related to the timing of discovery requests. *Hinkle v. City of Clarksburg, W.Va.*, 81 F.3d 416, 426 (4th Cir. 1996) (“District courts enjoy nearly unfettered discretion to control the timing and scope of discovery.”); *Dent v. Montgomery Cty. Police Dep’t*, 745 F. Supp. 2d 648, 663 (D. Md. 2010) (“District courts have broad discretion to manage the timing of discovery, and the only formal limitation on this discretion with respect to consideration of motions to amend scheduling orders is that the moving party demonstrate good cause.”) (internal citations omitted).

The Federal Rules of Civil Procedure also authorize courts to adjust the discovery timeline and to order expedited discovery. *Dimension Data N. Am., Inc. v. Netstar–I, Inc.* 226 F.R.D. 528, 530 (E.D.N.C. 2005); *Malon v. Franklin Fin. Corp.*, No. CIVA 3:14cv671, 2014 WL 5795730 (E.D. Va. Nov. 6, 2014); *Tribal Casino Gaming, Enterprise v. W.G. Yates & Sons Construction Co.*, No. 1:16CV30, 2016 WL 3450829, at *3 (W.D.N.C. June 16, 2010). Fed. R. Civ. P. 26(d)(1) expressly provides that a party may obtain discovery before a Rule 26(f) scheduling conference

“when authorized . . . by court order,” as does Local Rule 104.4. Federal Rules of Civil Procedure 30(a), 33(b), 34(b) and 36 also permit the court to adjust the timing requirements imposed under Rule 26(d) and to expedite the time for responding to discovery requests.

Courts frequently grant expedited discovery in conjunction with preliminary injunction motions, particularly when plaintiffs are at risk of irreparable harm. *See, e.g., Malon v. Franklin Fin. Corp.*, CIV A 3:14cv671, 2014 WL 5795730, at *3 (E.D. Va. Nov. 6 2014) (granting expedited discovery to plaintiff prior to anticipated preliminary injunction motion, where plaintiff had made showing of irreparable harm); *Asheboro Paper & Packaging, Inc. v. Dickinson*, 599 F. Supp. 2d 664, 668 (M.D.N.C. 2009) (noting that the court had granted expedited discovery relating to issues raised by the plaintiff’s request for injunctive relief before the preliminary injunction hearing); *see also Ciena Corp. v. Jarrard*, 203 F.3d 312, 324 (4th Cir. 2000) (remanding to the lower court with instructions to provide the defendant an opportunity to conduct expedited discovery in order to file a motion to dissolve a preliminary injunction); *Dan River, Inc. v. Unitex Ltd.*, 624 F.2d 1216, 1220 (4th Cir. 1980) (describing expedited discovery in the district court in preparation for preliminary injunction hearing).

Although “specific standards for evaluating expedited discovery motions are not set out in the Federal Rules of Civil Procedure,” a “standard based upon reasonableness or good cause, taking into account the totality of the circumstances” is consistent with the Rules and should be applied when “plaintiff requests expedited discovery in preparation for a preliminary injunction determination.” *NetStar-1, Inc.*, 226 F.R.D. at 531-32 (collecting cases); *accord, e.g., Chryso, Inc. v. Innovative Concrete Sols. of the Carolinas, LLC*, No. 5:15-CV-115-BR, 2015 WL 12600175, at *3 (E.D.N.C. June 30, 2015) (noting that “[t]he Comments to the Rules of Civil Procedure

recognize that it may be appropriate to allow expedited discovery when a party seeks preliminary injunctive relief”).¹

B. Plaintiffs’ Narrow Request for Expedited Discovery is Reasonable and Supported by Good Cause

1. Plaintiff’s Request is Reasonable in Light of the Posture of this Case and the Timing of Underlying Events.

Plaintiffs’ request for expedited discovery is reasonable given Plaintiffs’ intention to seek a temporary restraining order and preliminary injunction against the replacement executive order that government officials have stated will issue this week.² Plaintiffs are making this motion for expedited discovery now in order to obtain additional facts directly relevant to that preliminary injunction motion as quickly as practicable, so that the Court may consider them in deciding on the motion.

Moreover, there is reason to believe that the replacement executive order will, like the January 27 Order, include provisions that are time-limited, so that if any relief is to be effective, it must be obtained quickly. For example, the initial seven-country ban contained in Section 3(c) of

¹ Instead of a reasonableness or good cause standard, some courts have adopted “a formulation of the preliminary injunction test” to determine whether to grant expedited processing. *ForceX, Inc. v. Tech. Fusion, LLC*, No. 4:11CV88, 2011 WL 2560110, at *5 (E.D. Va. June 27, 2011). However, as the court in *Netstar-I* explained, “where . . . a plaintiff seeks expedited discovery in order to prepare for a preliminary injunction hearing, it does not make sense to use preliminary injunction analysis factors to determine the propriety of an expedited discovery request.” 226 F.R.D at 531 (quoting *Merrill Lynch, Pierce, Fenner & Smith v. O’Connor*, 194 F.R.D. 618, 623 (N.D. Ill. 2000)). To do so would simply duplicate the preliminary injunction analysis—except without the very facts that the expedited discovery motion sought.

If this Court finds that a preliminary injunction test is the appropriate one to apply to this motion, Plaintiffs respectfully request that Plaintiffs’ anticipated motion for a temporary restraining order—which will address those factors—be incorporated by reference in, and considered by the Court in deciding, this request.

² Plaintiffs intend to file a Pre-Motion Conference letter with this Court outlining the scope of the proposed motion for a Temporary Restraining Order/Preliminary Injunction once the replacement executive order is issued.

the January 27 Order was to last for 90 days from the date of the Order; a judgment that the ban is unlawful issued on day 91 would have allowed a full 90 days of irreparable injury to accrue while the unlawful ban was being litigated. Plaintiffs' request for expedited discovery is reasonably timed in light of this ticking-clock problem.

2. Plaintiffs' Request is Narrowly Tailored.

The limited expedited paper discovery requested by Plaintiffs is reasonable in its scope and directly related to the claims upon which Plaintiffs intend to move for an injunction.

The discovery Plaintiffs are seeking on an expedited basis is not burdensome. Plaintiffs seek documents relating to the creation and implementation of the January 27 Order and the creation and implementation of the replacement order. These documents are already in the government's possession and should not require an extensive search. Moreover, the validity of the January 27 Order has been challenged in multiple cases around the country, and at least one case—*Washington v. Trump*—is proceeding to discovery at this time. *See Washington v. Trump*, No. 2:17-cv-00141-JLR, Order Regarding Initial Disclosures, Joint Status Report, and Early Settlement (W.D. Wa. Feb. 15, 2017) (setting the deadline for the Rule 26(f) conference at March 1, 2017 and the deadline for initial disclosures at March 15, 2017) (attached as Exhibit 2, J.R. 8). Thus, the incremental burden to the government of complying with the limited expedited discovery requested in this case should be minimal.

Even considered in isolation, the expedited discovery requested here is either in line with, or less burdensome than, what courts in this and other Circuits have ordered in other cases. *See, e.g., Tribal Casino Gaming*, 2016 WL 3450829 at *2, 4 (ordering one week of load testing of a hotel garage, requiring partial closure of the garage and potentially causing damage to structure); *Chryso*, 2015 WL 12600175, at *6 (seven interrogatories and six requests for production directed

for each of four defendants); *Malon*, 2014 WL 5795730, at *3-4 (five broad classes of documents); *JTH Tax, Inc. v. M & M Income Tax Serv., Inc.*, No. 6:13-cv-00265-GRA, 2013 WL 460316, at *3 (D.S.C. Feb. 6, 2013) (depositions as well as written discovery); *Nutrition & Fitness, Inc. v. Progressive Emu, Inc.*, No. 5:12-CV-192-F, 2012 WL 1478734, at *5 (E.D.N.C. Apr. 27, 2012) (five depositions including one Rule 30(b)(6) deposition, 20 document requests, and 10 interrogatories); *Laboratory Corp. of Am. Holdings*, 2010 WL 3945111, at *2-3 (seven broad classes of documents and a Rule 30(b)(6) deposition); *U.S. Commodity Futures Trading Comm'n v. Smith*, No. 1:10CV00009, 2010 WL 1759542, at *4-5 (W.D. Va. Feb. 23, 2010) (allowing more than 10 depositions and broad discovery to identify wrongdoing, assets, customers, and customers and Defendants' sources of funds); *Asheboro Paper and Packaging*, 599 F. Supp. 2d at 676-77 (at least one deposition, in addition to paper discovery); *Physicians Interactive v. Lathian Systems, Inc.*, No. CA 03-1193-A, 2003 WL 23018270, at *10 (document requests, interrogatories, and physical access to multiple computer systems for the purpose of forensic mirroring); *see also, e.g., Doe v. Johnson*, CV 15-250 TUC DCB (D. Az. Aug. 14, 2015) (granting Plaintiffs and their experts access to detention facilities for physical inspection and documentation via video and photography footage); *Bremson v. United States*, 459 F. Supp. 121, 124 (W.D. Mo. 1978) (deposition of IRS agent and interrogatories);.

Furthermore, the requested discovery is directly related to Plaintiffs' anticipated preliminary injunction motion because it provides further evidence of the discriminatory purpose and effect of the executive orders. To be sure, there is already extensive evidence of this unlawful purpose and effect in publicly available sources. *See, e.g., Aziz*, 2017 WL 580855, at *3-5 (findings of fact in opinion granting partial preliminary injunction); *Washington*, 2017 WL 526497, at *10 (noting that plaintiffs "have offered evidence of numerous statements by the President about his

intent to implement a ‘Muslim ban’ as well as evidence they claim suggests that the Executive Order was intended to be that ban”); Compl. (doc. # 1) ¶¶ 39-51. That evidence is more than sufficient to show they are likely to succeed in their claim that the January 27 Order or a similar successor violates the Constitution. *Accord Aziz*, 2017 WL 580855, at *7-9 (holding that the plaintiff had established a likelihood of success on claim that January 27 Order violates the Establishment Clause). However, the “sensitive inquiry into such circumstantial and direct evidence of intent as may be available” that the law mandates, *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 266 (1977),³ can only be enhanced by obtaining that evidence directly from the defendant. *Cf. Washington*, 2017 WL 526497, at *10 (“It is well established that evidence of purpose beyond the face of the challenged law may be considered in evaluating Establishment and Equal Protection Clause claims.”) (citing, *inter alia*, *Arlington Heights* and *Church of the Lukumi Babalu Aye, Inc.*); *Aziz*, *7-9 (discussing intent evidence).

Finally, evidence regarding the government’s implementation of the executive orders will shed light on its construction of those Orders and the various injuries, including irreparable injuries, those Orders cause Plaintiffs. The government’s implementation of the January 27 Order was chaotic, secretive, and marked by major reversals. *See, e.g., Aziz*, 2017 WL 580855, at *2 (explaining that lawful permanent residents from banned countries were initially denied entry under the January 27 Order but that on January 29 and 30, administration officials stated—for

³ *Arlington Heights* sets forth a non-exclusive list of factors relevant to intent analysis under equal protection and the Religion Clauses alike, including: the nature and degree of the disparate impact; the historical background and specific series of events leading to the enactment of the challenged Orders; the legislative or administrative history, including contemporaneous statements made by the decisionmaker(s); and any departures from normal processes or substantive considerations. 429 U.S. at 266-68; *see also Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 540 (1993).

differing reasons—that such individuals would be allowed into the country); Compl. (doc. # 1) ¶¶ 76-99. To the extent there is any ambiguity in the replacement executive order, a more complete evidentiary record regarding what actions the government took to implement the January 27 Order and why, as well as what, if any, further implementing instructions or interpretations the government is issuing with respect to the replacement Executive Order, will assist Plaintiffs and the Court in determining the likely effect of the replacement executive order on the Plaintiffs.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant their Motion for Expedited Discovery to assist Plaintiffs in preparing a motion for a temporary restraining order and preliminary injunction in connection with the replacement Executive Order.

Respectfully submitted,

Dated: February 22, 2017

/s/ Omar C. Jadwat

Karen C. Tumlin†
Nicholas Espíritu†
Melissa S. Keaney†
Esther Sung†
National Immigration Law Center
3435 Wilshire Boulevard, Suite 1600
Los Angeles, CA 90010
Tel: (213) 639-3900
Fax: (213) 639-3911
tumlin@nilc.org
espiritu@nilc.org
keaney@nilc.org
sung@nilc.org

Justin B. Cox (Bar No. 17550)
National Immigration Law Center
1989 College Ave. NE
Atlanta, GA 30317
Tel: (678) 404-9119

Omar C. Jadwat†
Lee Gelernt†
Hina Shamsi†
Hugh Handeyside†
Sarah L. Mehta†
American Civil Liberties Union
Foundation
125 Broad Street, 18th Floor
New York, NY 10004
Tel: (212) 549-2600
Fax: (212) 549-2654
ojadwat@aclu.org
lgelernt@aclu.org
hshamsi@aclu.org
hhandeyside@aclu.org
smehta@aclu.org

Cecillia D. Wang†
Cody H. Wofsy†
American Civil Liberties Union
Foundation

Fax: (213) 639-3911
cox@nilc.org

† Appearing *pro hac vice*

39 Drumm Street
San Francisco, CA 94111
Tel: (415) 343-0770
Fax: (415) 395-0950
cwang@aclu.org
cwofsy@aclu.org

David Cole†
Daniel Mach†
Heather L. Weaver†
American Civil Liberties Union
Foundation
915 15th Street NW
Washington, DC 20005
Tel: (202) 675-2330
Fax: (202) 457-0805
dcole@aclu.org
dmach@aclu.org
hweaver@aclu.org

/s/ David Rocah

David Rocah (Bar No. 27315)
Deborah A. Jeon (Bar No. 06905)
Sonia Kumar (Bar No. 07196)
Nicholas Taichi Steiner (Bar
No. 19670)
American Civil Liberties Union
Foundation of Maryland
3600 Clipper Mill Road, Suite 350
Baltimore, MD 21211
Tel: (410) 889-8555
Fax: (410) 366-7838
jeon@aclu-md.org
rocah@aclu-md.org
kumar@aclu-md.org
steiner@aclu-md.org

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of February, 2017, I caused a PDF version of the foregoing document to be electronically transmitted to the Clerk of the Court, using the CM/ECF System for filing and for transmittal of a Notice of Electronic Filing to all CM/ECF registrants.

By: /s/ Justin B. Cox

EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION**

INTERNATIONAL REFUGEE
ASSISTANCE PROJECT, et al.,

Plaintiffs,

v.

DONALD TRUMP, et al.,

Defendants.

Civil Action No.: 8:17-CV-00361-TDC

PLAINTIFFS' PROPOSED EXPEDITED

FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

Pursuant to Fed. R. Civ. P. 34, Plaintiffs request that Defendants produce and permit inspection and copying of the documents listed in this request within seven days from the date of service of this request, unless other arrangements for review or production are agreed upon by counsel.

Instructions

1. These instructions and definitions should be construed to require answers based upon the knowledge of, and information available to, you as well as your agents, representatives, employees, servants and, unless privileged, your attorneys. When addressing these Requests, you are to exercise due diligence to secure the requested information, and not merely to respond on the basis of your personal knowledge. The process of responding may require a search of past

and present records and securing information in the possession of current and former employees or other persons associated with Defendant in his official capacity.

2. Please produce all responsive documents that are in Defendant's possession, custody, or control.

3. Please produce all documents as they are kept in the usual course of business.

4. These Requests are continuing in nature. If Defendant obtains additional responsive documents, a supplemental response should be made promptly.

5. Each Request should be answered separately and fully. No part of a Request should be left unanswered merely because an objection is interposed to another part of the Request. If a partial or incomplete answer is provided, you shall state that the answer is partial or incomplete. If there are no responsive documents, then please so state in your Responses.

6. If for any reason it is claimed that any document called for by any Request or part thereof need not be produced, identify each portion of the Request and give each specific ground or reason asserted for not producing the document or part thereof. For any information withheld on the ground of privilege or work product protection, you must produce the information required by Fed. R. Civ. P. 26(b)(5), and specify which privilege is being claimed. For all Requests for which the answers involve both privileged or protected material, and non-privileged or unprotected matter, answer the Request to the extent that it calls for non-privileged and unprotected material.

7. Notwithstanding any definition below, each word, term, or phrase used in these Requests is intended to have the broadest meaning permitted under the Federal Rules of Civil Procedure.

Definitions

For the purpose of these Document Requests, the following definitions apply:

1. “Defendant” means any Defendant in the above-captioned action, and his or her representatives, employees, agents, attorneys, accountants, insurers and any person acting on behalf of any of the foregoing.

2. The terms “And,” “Or,” and “And/Or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

3. “All” means any and all.

4. “Concerning” means related to, referring to, reflecting, describing, evidencing, or constituting.

5. “Document,” “instructions,” “guidance,” “memoranda,” “projections,” “reports,” “data,” “summaries,” and “guidance” means any record of information in any medium, including, without limitation, handwritten, typed, printed and stored electronically on internal or external hard drives, floppy disks, flash drives, compact discs or “in the cloud,” microfilm, microfiches, recorded in sound and/or pictures, or created or reproduced by any other process. The terms “instructions,” “guidance,” “memoranda,” “projections,” “reports,” “data,” “summaries,” and “guidance” include, without limitation, emails, official forms or reports, blog posts, instant messages, text messages, letters, correspondence, diaries, memoranda, reports, summaries, handwritten notes, manuals, brochures, books, pamphlets, periodicals, professional manuals, appointment or other calendars, working papers, interdepartmental and/or interoffice communications, statistical statements, graphs, charts, drawings, minutes or records of meetings or conferences, policy

statements, employee files, disciplinary records, training materials, statements, affidavits, bookkeeping entries, financial statements, tax returns, records or recordings of oral conversations or meetings, work papers, drafts, and also including but not limited to, originals and all copies which are different in any way from the originals, whether by interlineations, receipt stamp, notation or indication of copies sent or received, preliminary notes or drafts that are now or have ever been in the possession, custody or control of Defendant. Each non-identical copy of a document is a separate document. If you are uncertain whether an item falls within or outside this definition, it falls within. If the document or documents you produce are only a part of the information requested, please provide the remaining information in writing in answer to the request to which you are responding. When a document to be produced is an e-mail, please produce all copies of the e-mail; any documents or records attached to the e-mail; any e-mails, notes, memoranda or other documents to which the e-mail was sent in response; any e-mails, notes, memoranda or documents sent subsequently to the e-mail which are in response to the e-mail, or which relate to the e-mail in any way; and any e-mails or documents forwarding the e-mail.

6. If any document identified is no longer in your possession or control, or is no longer in existence, please state (a) all such document(s) or, where not possibly, each category of documents; (b) who last had possession, custody or control of the document(s); (c) what disposition was made of the document(s), including when, how, why and by whom; (d) each person that authorized such disposition, including when, how, and why; and (e) each person with knowledge of the reasons for an/or circumstances of the disposition.

7. “Policy” or “Policies” refers to policies, procedures, regulations, guidelines, manuals, directives, rules and regulations. The terms are not limited to written policies but also include non-written practices.

8. Documents in the “possession, custody, or control” of Defendant means all documents held, stored, or maintained by Defendant and all documents to which Defendant has the legal or practical ability to obtain access and which are stored, held, or maintained by any other person.

9. “January 27 Order” refers to President Donald J. Trump’s executive order entitled, “Protecting the Nation from Terrorist Entry into the United States.”

10. “Relevant agencies” includes but is not limited to the Department of Justice, Department of State, the Department of Homeland Security and all subcomponents of those agencies that received or provided information on the executive order at issue in this case.

11. “Subsequent court orders” means court orders on the January 27 executive order, including but not limited to the decisions in *Darweesh v. Trump*, No. 17 Civ 480 (E.D.N.Y. Jan. 28, 2017), *Washington v. Trump*, No. ___ F.3d ___, 2017 WL 526497 (9th Cir. Feb. 9, 2017) and *Aziz v. Trump*, ___ F. Supp. 3d ___, 2017 WL 580855 (E.D. Va. Feb. 13, 2017).

12. The “replacement executive order” means the executive order that will take the place of and/or supplement the January 27 Order.

13. If any information is withheld, in whole or in part, for any reason, including any claim of privilege, whether work-product or attorney-client, confidentiality or trade secret, set forth separately, in response to these document requests, with respect to each such document:

- a. The nature of the privilege or ground of confidentiality claimed;
- b. The type of information;
- c. Who created such document;
- d. When the document was created;
- e. Each person who received or reviewed or had possession, custody or control of the document;
- f. The general subject matter of the document; and
- g. Each and every fact or basis on which such privilege is claimed or under which the document is withheld.

REQUESTS FOR PRODUCTION

Request for Production No.1

All memoranda, policies, projections, reports, data, summaries, or similar documents relating to the development of the January 27 Order.

Request for Production No. 2

All instructions, guidance, memoranda, policies, projections, reports, data, summaries, or similar documents developed by or issued to relevant agencies regarding the implementation and interpretation of the January 27 Order and subsequent court orders.

Request for Production No. 3

All instructions, guidance, memoranda, policies, projections, reports, data, summaries, or similar documents relating to the development of any replacement for the January 27 Order.

Request for Production No.4

All instructions, guidance, memoranda, policies, projections, reports, data, summaries, or similar documents issued to relevant agencies regarding the implementation and interpretation of the replacement executive order.

EXHIBIT 2

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

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STATE OF WASHINGTON, et al.,

Plaintiff(s),

v.

DONALD J. TRUMP, et al.,

Defendant(s).

Case No. 2:17-cv-00141-JLR

ORDER REGARDING INITIAL
DISCLOSURES, JOINT STATUS
REPORT, AND
EARLY SETTLEMENT

I. INITIAL SCHEDULING DATES

The Court sets the following dates for initial disclosure and submission of the
Joint Status Report and Discovery Plan:

Deadline for FRCP 26(f) Conference:	3/1/2017
Initial Disclosures Pursuant to FRCP 26(a)(1):	3/15/2017
Combined Joint Status Report and Discovery Plan as Required by FRCP 26(f) and Local Civil Rule 26(f):	3/22/2017

The deadlines above may be extended only by the Court. Any request for an
extension should be made by telephone to Ashleigh Drecktrah, Courtroom Deputy, at
(206) 370-8520. If Defendants have appeared, the parties are directed to meet and to

1 confer before contacting the Court to request an extension.

2 If this case involves claims which are exempt from the requirements of
3 FRCP 26(a) and 26(f), please notify Ashleigh Drecktrah, Courtroom Deputy, by
4 telephone at (206) 370-8520.

5 **II. JOINT STATUS REPORT & DISCOVERY PLAN**

6 All counsel and any pro se parties are directed to confer and provide the Court
7 with a combined Joint Status Report and Discovery Plan (the "Report") by
8 March 22, 2017. This conference shall be by direct and personal communication,
9 whether that be a face-to-face meeting or a telephonic conference. The Report will be
10 used in setting a schedule for the prompt completion of the case. It must contain the
11 following information by corresponding paragraph numbers:

- 12 1. A statement of the nature and complexity of the case.
- 13 2. A proposed deadline for the joining of additional parties.
- 14 3. The parties have the right to consent to assignment of this case to a full time
15 United States Magistrate Judge, pursuant to 28 U.S.C. §636(c) and Local Rule MJR 13
16 to conduct all proceedings. The Western District of Washington assigns a wide range of
17 cases to Magistrate Judges. The Magistrate Judges of this district thus have significant
18 experience in all types of civil matters filed in our court. Additional information about
19 our district's Magistrate Judges can be found at www.wawd.uscourts.gov. The
20 parties should indicate whether they agree that the Honorable Mary Alice Theiler
21 may conduct all proceedings including trial and the entry of judgment. When
22 responding to this question, the parties should only respond "yes" or "no". Individual
23 party responses should not be provided. A "yes" response should be indicated only

1 if parties consent. Otherwise, a "no" response should be provided.

2 4. A discovery plan that states, by corresponding paragraph letters (A, B, etc.),
3 the parties' views and proposals on all items in Fed. R. Civ. P. 26(f)(3), which
4 includes the following topics:

- 5 (A) initial disclosures;
- 6 (B) subjects, timing, and potential phasing of discovery;
- 7 (C) electronically stored information;
- 8 (D) privilege issues;
- 9 (E) proposed limitations on discovery; and
- 10 (F) the need for any discovery related orders.

11 5. The parties' views, proposals, and agreements, by corresponding paragraph
12 letters (A, B, etc.), on all items set forth in Local Civil Rule 26(f)(1), which includes
13 the following topics:

- 14 (A) prompt case resolution;
- 15 (B) alternative dispute resolution;
- 16 (C) related cases;
- 17 (D) discovery management;
- 18 (E) anticipated discovery sought;
- 19 (F) phasing motions;
- 20 (G) preservation of discoverable information;
- 21 (H) privilege issues;
- 22 (I) Model Protocol for Discovery of ESI; and;
- 23 (J) alternatives to Model Protocol.

1 6. The date by which discovery can be completed.

2 7. Whether the case should be bifurcated by trying the liability issues before
3 the damages issues, or bifurcated in any other way.

4 8. Whether the pretrial statements and pretrial order called for by Local Civil
5 Rules 16(e), (h), (i), and k, and 16.1 should be dispensed with in whole or in part
6 for the sake of economy.

7 9. Whether the parties intend to utilize the Individualized Trial Program set
8 forth in Local Civil Rule 39.2 or any ADR options set forth in Local Civil
9 Rule 39.1.

10 10. Any other suggestions for shortening or simplifying the case.

11 11. The date the case will be ready for trial. The Court expects that most civil
12 cases will be ready for trial within a year after filing the Joint Status Report and
13 Discovery Plan.

14 12. Whether the trial will be jury or non-jury.

15 13. The number of trial days required.

16 14. The names, addresses, and telephone numbers of all trial counsel.

17 15. The dates on which the trial counsel may have complications to be
18 considered in setting a trial date.

19 16. If, on the due date of the Report, all defendant(s) or respondents(s) have not
20 been served, counsel for the plaintiff shall advise the Court when service will be
21 effected, why it was not made earlier, and shall provide a proposed schedule for the
22 required FRCP 26(f) conference and FRCP 26(a) initial disclosures.

23 17. Whether any party wishes a scheduling conference before the Court enters

1 a scheduling order in the case.

2 18. List the date(s) that each and every nongovernmental corporate party filed
3 its disclosure statement pursuant to Fed. R. Civ. P. 7.1 and Local Rule 7.1.

4 If the parties are unable to agree to any part of the Report, they may answer in
5 separate paragraphs. No separate reports are to be filed. If the parties wish to have a
6 status conference with the Court at any time during the pendency of this action, they
7 should notify Ashleigh Drecktrah by telephone at (206) 370-8520.

8 **III. PLAINTIFF'S RESPONSIBILITY**

9 This Order is issued at the outset of the case, and a copy is sent by the clerk to
10 counsel for plaintiff (or plaintiff, if pro se) and any defendants who have appeared.
11 Plaintiff's counsel (or plaintiff, if pro se) is directed to serve copies of this Order on all
12 parties who appear after this Order is filed. Such service shall be accomplished
13 within ten (10) days after each appearance. Plaintiff's counsel (or plaintiff, if pro se)
14 will be responsible for starting the communications needed to comply with this Order.

15 **IV. JUDGE SPECIFIC PROCEDURAL INFORMATION**

16 All counsel and unrepresented parties should review Judge Robart's web page
17 for procedural information applicable to cases before Judge Robart. The judges'
18 web pages, in addition to the Local Rules, Electronic Filing Procedures for Civil and
19 Criminal Cases, court forms, instruction sheets, and General Orders, can be found on
20 the Court's website at www.wawd.uscourts.gov.

