

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

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

Plaintiffs,

Case No. 17-10310

v.

Hon. Victoria A. Roberts

DONALD TRUMP, President of the United  
States, *et al.*,

Defendants.

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**DEFENDANTS' MOTION FOR STAY PENDING  
SUPREME COURT PROCEEDINGS**

Defendants respectfully seek a stay of the proceedings in this case pending the Supreme Court's likely consideration of the Fourth Circuit's decision in a substantially similar challenge to Executive Order No. 13780 (the "Order"). *See Int'l Refugee Assistance Proj. v. Trump*, No. 17-1351, --- F.3d ---, 2017 WL 2273306 (4th Cir. May 25, 2017) ("*IRAP*"). Defendants respectfully request that this Court stay this case pending a decision from the Supreme Court, to be lifted two weeks after the final action in the Supreme Court. If the Court is not inclined to stay these proceedings, Defendants alternatively request a two-week extension of the June 2, 2017, deadline to respond to Plaintiffs' remaining pending discovery requests (*see* ECF No.89), or an extension until after the Court has acted on Plaintiffs' pending

motion to compel (ECF No. 104).<sup>1</sup>

Undersigned counsel conferred with counsel for the Plaintiffs on May 30, 2017, regarding the bases for this motion and the relief sought. Counsel for Plaintiffs stated that they do not concur with the request for a stay; they also stated that they did not concur with the extension as requested. Plaintiffs' counsel stated that, provided Defendants serve responses or objections to Interrogatories 1-5 by the current deadline of June 2, 2017, Plaintiffs would agree to a two-week extension for Defendants' responses or objections to Document Requests 2-4.

Respectfully submitted,

AUGUST FLENTJE  
Special Counsel

WILLIAM C. PEACHEY  
Director

GISELA A. WESTWATER  
Assistant Director

EREZ REUVENI  
Senior Litigation Counsel

By: /s/ Katherine J. Shinnars  
KATHERINE J. SHINNERS  
Trial Attorney  
United States Department of Justice  
Civil Division

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<sup>1</sup> Defendants also intend to seek leave to file a short opposition to Plaintiffs' motion to compel. Defendants believe that allowing an opposition will be useful to the Court's consideration of the novel and important discovery issues presented by Plaintiffs' request.

Office of Immigration Litigation  
District Court Section  
P.O. Box 868, Ben Franklin Station  
Washington, DC 20044  
Phone: (202) 598-8259  
Katherine.J.Shinners@usdoj.gov

JOSHUA PRESS  
Trial Attorney

BRIANA YUH  
Trial Attorney

*Attorneys for Defendants*

Dated: May 31, 2017

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**DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION FOR STAY**  
**PENDING SUPREME COURT PROCEEDINGS**

This case challenges the President's Executive Order No. 13780, titled "Protecting the Nation from Foreign Terrorist Entry into the United States" ("Order"), which is the subject of several other lawsuits across the country, including two cases in the Fourth and Ninth Circuits. *See Int'l Refugee Assistance Proj. v. Trump*, No. 17-1351, --- F.3d ---, 2017 WL 2273306 (4th Cir. May 25, 2017), *Hawai'i v. Trump*, No. 17-15589 (9th Cir.) (argued May 15, 2017). On Thursday, May 25, 2017, the Fourth Circuit, in an en banc decision, upheld the District of Maryland's preliminary injunction of the Order based on a finding of likelihood of

success on the plaintiffs' Establishment Clause Claim. *See Int'l Refugee Assistance Proj.*, --- F.3d ---, 2017 WL 2273306. Shortly thereafter, the Attorney General announced that the Government will seek review of the Fourth Circuit's decision in the Supreme Court.

In this case, Defendants' motion to dismiss the complaint is still pending, and Plaintiffs have served initial discovery requests to which Defendants object on numerous grounds. Defendants have served objections to Plaintiffs' Document Request No. 1, and Plaintiffs recently filed a motion to compel production of documents in response to Request No. 1 (ECF No. 104). Defendants' responses to the remainder of Plaintiffs' initial discovery requests are due June 2, 2017. *See* ECF No. 89.

Further review by the Supreme Court would be certain to provide substantial guidance to this Court and the parties in resolving (or eliminating) the many pending discovery disputes and Defendants' fully briefed and pending motion to dismiss. *See Landis v. North American Co.*, 299 U.S. 248, 253 (1936) (holding that a stay may be warranted where the resolution of other litigation will likely "narrow the issues in the pending cases and assist in the determination of the questions of law involved"); *Michael v. Ghee*, 325 F. Supp. 2d 829, 831 (N.D. Ohio 2004) (citing *Landis*, 299 U.S. at 255) (stating that the fact that "case on appeal to the Supreme Court may have a dispositive effect on the instant case . . . weighs heavily in favor

of granting the stay.”). Proceeding in the absence of such guidance would be inefficient, waste the resources of the Court and the parties, and potentially result in inconsistent rulings that would need to be corrected in light of any decision by the Supreme Court. Moreover, as noted, the wide-ranging discovery Plaintiffs seek imposes a heavy burden on Defendants and the Court. *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962) (stay is appropriate to eliminate “the hardship [and] inequity” Defendants would otherwise suffer “in being required to go forward”); *Ghee*, 325 F. Supp. 2d at 831 (citing *Landis*, 299 U.S. at 255). The public interest at this point also militates in favor of allowing the nation’s highest court to address the issues that would shape the next steps in this matter. “The high respect that is owed to the office of the Chief Executive,” which the Supreme Court has instructed “is a matter that should inform . . . the timing and scope of discovery,” *Cheney v. U.S. District Court for the District of Columbia*, 542 U.S. 367, 385 (2004), warrants a stay here.

For these very reasons, every other district court to squarely address a request to stay the proceedings in a lawsuit challenging the current Executive Order has entered a full or partial stay of proceedings pending resolution of binding appeals. As Judge Robart of the Western District of Washington concluded, a stay is appropriate pending appeal because the appeal “is likely to decide legal issues that will impact the court’s resolution of the parties’ discovery disputes [] by clarifying

‘the applicable law or relevant landscape of facts that need to be developed.’” *Washington v. Trump*, No. 17-0141-JLR, 2017 WL 2172020, at \*2 (W.D. Wash. May 17, 2017). The outcome of the appeal “is likely to provide guidance to this court on” the question of the appropriate standard and scope of review to apply to Plaintiffs’ merits challenges to the Order, “and by extension on the appropriate scope of discovery,” and “will also likely help the court in resolving Defendants’ motion to dismiss”; further, a stay is warranted due to “the ‘high respect’ owed to the Executive” and in order “to protect Defendants from the burden of resource intensive discovery while the [appellate court] addresses issues that may inform the appropriateness, scope, and necessity of that discovery.” *Id.* at \*5-6 (staying all proceedings pending resolution of Ninth Circuit appeal); *see also International Refugee Assistance Project v. Trump*, No. 17-361, 2017 WL 1315538 (D. Md. April 10, 2017), (staying consideration of a pending motion for preliminary injunction directed at section 6 of the Order pending the Fourth Circuit appeal, because “[t]he Fourth Circuit’s forthcoming analysis on the Establishment Clause claim on appeal would provide this Court with useful guidance on how to resolve the issues to be presented in the proposed motion.”); *International Refugee Assistance Project v. Trump*, No. 17361 (D. Md. April 19, 2017), ECF 184 at 1 (attached hereto as Ex. 1) (staying further proceedings directed at the operative complaint or “good cause” upon Defendants’ motion); *Sarsour v. Trump*, No. 17-120 (E.D. Va. April 24, 2017),

ECF 42 at 1 (attached hereto as Ex. 2) (staying further proceedings at the request of the parties pending resolution of the *IRAP* appeal); *Hawai'i v. Trump*, No. 17-50- (D. Haw. April 3, 2017), ECF 279 at 1-2 (attached hereto as Ex. 3) (ordering stay by the parties' stipulation); *Ali v. Trump*, No. 17-135, 2017 WL 2222873 (W.D. Wash. May 22, 2017) (staying all proceedings pending Ninth Circuit appeal); *cf. PARS Equality Center v. Trump*, No. 17 -255 (D.D.C. May 11, 2017), ECF 84 at 1-2 (attached hereto as Ex. 4) (staying consideration of plaintiffs' motion for preliminary injunction); *Universal Muslim Association of America, Inc. v. Trump*, No. 17 -537 (D.D.C. May 11, 2017), ECF 48 at 1-2 (attached hereto as Ex. 5) (same); *Doe v. Trump*, No. 17-178 (W.D. Wash. May 30, 2017), ECF 34 (attached hereto as Ex. 6) (staying proceedings pursuant to the parties' stipulation).

Accordingly, as the issues raised in this case will soon be on appeal to the Supreme Court, the Court should likewise enter a stay of these proceedings.

Should the Court decline to enter a stay, Defendants respectfully request a two-week extension of the June 2, 2017, deadline to respond to Plaintiffs' remaining discovery requests (*see* ECF No.89), or an extension until one week after the Court resolves Plaintiffs' pending motion to compel. *See Fed. R. Civ. P. 6(b)* (the Court may, for good cause, extend a deadline "if the request is made before the original time or its extension expires"). Defendants believe that good cause for an extension exists due to the complex nature of the legal questions raised by Plaintiffs' discovery



requests (which implicate novel questions regarding seeking private materials from government officials and agencies as well as from the President himself); the extensive briefing requirements for objections under this Court's discovery procedures set forth in its May 11 Order (ECF No. 89), and the need to coordinate with the numerous Defendant agencies regarding both objections and responses.

It may also be prudent to grant an extension until two weeks after a ruling on the pending motion to compel regarding Plaintiffs' Document Request No. 1. A ruling on that motion could clarify the Court's holdings on the relevance of certain topics and inform Defendant's objections and responses to the remaining requests that seek similar categories of documents and information. Such a ruling would also inform the parties' subsequent meet and confers on discovery issues. Accordingly, an extension would allow for full briefing<sup>2</sup> and hearing on Plaintiffs' motion to compel on the initial request before requiring another round of briefing, conferences, and motions practice as to the remainder of the discovery requests.

For the foregoing reasons, Defendants seek a stay of this case pending Supreme Court review of the Fourth Circuit's recent *IRAP* decision, which would lift two weeks after the final disposition in the Supreme Court. Alternatively,

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<sup>2</sup> As noted, Defendants intend to seek leave to file a short opposition to Plaintiffs' motion to compel. Defendants believe that an opposition will be useful to the Court's consideration of the novel and important discovery issues presented by Plaintiffs' request.

Defendants request a two-week extension to respond to Plaintiffs' pending discovery requests, or an extension until two weeks after a ruling on Plaintiffs' pending motion to compel (ECF No. 104), or any other extension the Court deems appropriate.

Respectfully submitted,

AUGUST FLENTJE  
Special Counsel

WILLIAM C. PEACHEY  
Director

GISELA A. WESTWATER  
Assistant Director

EREZ REUVENI  
Senior Litigation Counsel

By: /s/ Katherine J. Shinnars  
KATHERINE J. SHINNERS  
Trial Attorney  
U.S. Department of Justice, Civil Division  
Office of Immigration Litigation  
District Court Section  
P.O. Box 868, Ben Franklin Station  
Washington, DC 20044  
Phone: (202) 598-8259  
katherine.j.shinnars@usdoj.gov

JOSHUA PRESS  
Trial Attorney

BRIANA YUH  
Trial Attorney

*Attorneys for Defendants*

Dated: May 31, 2017

**CERTIFICATE OF SERVICE**

I hereby certify that on May 31, 2017, I electronically filed the foregoing Motion, including exhibits, with the Clerk of the Court for the United States District Court for the Eastern District of Michigan by using the CM/ECF system, which will electronically serve all counsel of record.

*/s/ Katherine J. Shinnors*

KATHERINE J. SHINNERS

Trial Attorney

United States Department of Justice

Office of Immigration Litigation