

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

ARAB AMERICAN CIVIL
RIGHTS LEAGUE, et al.,

Plaintiffs,

Civil No. 17-10310

Hon. VICTORIA A. ROBERTS

v.

Mag. Judge Stephanie D. Davis

DONALD TRUMP, et al.,

Defendants.

DEFENDANTS' NOTICE OF FILING OF EXECUTIVE ORDER

Undersigned counsel write to update this Court of significant developments since the Court entered its permanent injunction enjoining the Government from applying sections 3(c) and (e) of Executive Order 13,769 (the "Old EO") against lawful permanent residents. Earlier today, the President signed an Executive Order titled "Protecting the Nation from Foreign Terrorist Entry into the United States" ("New EO," attached as Exhibit 1).¹ The New EO, by its terms, will not take effect until March 16, 2017. *See* New EO, § 14. As of that date, the New EO revokes the

¹ Based on the Government's representation to the Ninth Circuit that this New EO was forthcoming, the Ninth Circuit stayed en banc proceedings in *Washington v. Trump*, Case No. 17-35105 (9th Cir. Feb. 16, 2017). As of this filing, the Ninth Circuit has not yet issued a decision with respect to its call for en banc briefing from the parties, although the motions panel has issued a briefing schedule on the merits of the preliminary injunction issued by the district court.

Old EO, which is the subject of this litigation, and sets forth new policies that are substantially different in form and scope than the policies articulated by the Old EO. Although the Old EO did not apply to lawful permanent residents, the New EO explicitly exempts lawful permanent residents from its application. A similar exclusion of lawful permanent residents from the Old EO was clarified by the White House Counsel on February 1, 2017, and is the basis for the Government's pending motion to vacate this Court's Order entered February 2, 2017. *See* ECF No. 8 at 2 (permanently enjoining the Government "from applying Sections 3(c) and 3(e) of the January 27, 2017 Executive Order against lawful permanent residents").

Relevant to the issues before the Court, the New EO (i) suspends entry for 90 days of certain foreign nationals from six of the seven countries² designated in

² The suspension of entry no longer applies to nationals of Iraq because, since Executive Order 13,769 was issued, "the Iraqi government has expressly undertaken steps to enhance travel documentation, information sharing, and the return of Iraqi nationals subject to final orders of removal." New EO, § 1(g). Moreover, the New EO states there exists a close cooperative relationship between the United States and the Iraqi government, a strong U.S. diplomatic presence in Iraq, a significant presence of U.S. forces in Iraq, and a commitment by Iraq to combat ISIS. *See id.* Accordingly, the suspension of entry provisions no longer apply to Iraqi foreign nationals. *See id.* §§ 1(f), (g). Of course, even though the temporary suspension no longer applies to Iraqi foreign nationals, the New EO states that Iraq is still host to an ongoing conflict that has impacted the Iraqi government's ability to secure its borders and identify fraudulent travel documents. *See id.* § 1(g). Accordingly, the New EO notes that "[d]ecisions about issuance of visas or granting admission to Iraqi nationals should be subjected to additional scrutiny to determine if the applicants have connections with ISIS or other terrorist organizations, or otherwise pose a risk to either national security or public safety." *Id.* Section 4 of the New EO provides further guidance on this issue.

Executive Order No. 13,769, who do not hold valid visas; (ii) creates a case-by-case waiver process for those foreign nationals that is integrated into the visa application and admission processes; (iii) creates a 120-day suspension of certain aspects of the U.S. Refugee Admissions Program, which does not apply to refugee applicants who already have been formally scheduled for transit, and also allows for case-by-case waivers; and (iv) contains additional explanations in support of the newly issued policy.

In light of the New EO, undersigned counsel for the Defendants respectfully inform the Court as follows:

1. First, it is the Government's understanding that the New EO excludes from its coverage all individuals who were subject to this Court's permanent injunction order, *i.e.*, "the Court orders that the United States is PERMANENTLY ENJOINED from applying Sections 3(c) and 3(e) of the January 27, 2017 Executive Order against lawful permanent residents of the United States. This injunction applies to Plaintiffs Samir Alasmari, Sabah Alasmari, Hana Alasmari, and Mounira Atik, as well as all other lawful permanent residents of the United States who are similarly situated." ECF 8 at 2.

The suspension of entry provisions now apply to nationals of Iran, Libya, Somalia, Sudan, Syria, and Yemen who are outside the United States on the New EO's effective date of March 16, 2017, do not have a valid visa on that date, and did

not have a valid visa as of 5:00 p.m. Eastern Standard Time on January 27, 2017. *See* New EO, § 3(a). The New EO specifically excludes from its coverage, among other individuals:

- lawful permanent residents;
- any foreign national admitted to or paroled into the United States on or after the New EO's effective date;
- any individual who has a document other than a visa, valid on the effective date of the New EO or issued anytime thereafter, that permits the individual to travel to the United States and seek entry or admission, such as advance parole;
- any dual national traveling on a passport not issued by one of the six designated countries;
- any foreign national traveling on diplomatic, diplomatic-type, or other specified visas; and
- any foreign national who has been granted asylum, any refugee already admitted to the United States, or any individual granted withholding of removal, advance parole, or protection under the Convention Against Torture. *See id.*, § 3(b).

Again, these provisions *explicitly* exclude from the New EO all lawful permanent residents, the same group addressed in this Court's February 2, 2017

Order.³

Furthermore, it is respectfully submitted that because the New EO expressly provides that it shall not be the basis for the revocation of any visa, and does not apply to people in the United States, the New EO falls outside of the *Washington v. Trump* nationwide injunction. *See, e.g., Fusari v. Steinberg*, 419 U.S. 379, 387–90 (1975); *Diffenderfer v. Cent. Baptist Church of Miami, Inc.*, 404 U.S. 412, 414–15 (1972) (per curiam) (noting how injunctive relief was “inappropriate [after] the [challenged] statute ha[d] been repealed”). Accordingly, undersigned counsel respectfully submit that nothing in either the Western District of Washington’s nationwide injunction or this Court’s previous orders preclude enforcement of the New EO as of its effective date, March 16, 2017.

2. Second, to the extent Plaintiffs wish to challenge the New EO, the Government is prepared to confer regarding an appropriate schedule for amendment of the complaint and/or any other appropriate proceedings.

3. Third, given the foregoing, the Government respectfully submits that the New EO does not present a need for the same type of emergency, expedited

³ Although beyond the scope of this Court’s current injunctive order, the New EO also includes waiver provisions for numerous categories of aliens without valid visas, including aliens who may seek to come the United States due to a relationship with a U.S. resident or institution, *id.*, § 3(c), and once a recipient receives such a waiver and thereafter is lawfully admitted to the United States, *see* 8 U.S.C. § 1101(a)(13)(A), he or she will not be required to secure another waiver in order to leave and then return to the United States. New EO § 3(b)(ii).

litigation that occurred with respect to the Old EO. The concerns relied upon by the Plaintiffs in bringing this action are no longer at issue. Indeed, by its own terms, the New EO will apply only to specified foreign nationals from six countries who: (a) are outside the United States on the effective date of the New EO; (b) did not have a valid visa at 5 p.m. Eastern Standard Time on January 27, 2017; and (c) do not have a valid visa on the effective date of the New EO. *See* New EO, § 3. As to those individuals from the six countries covered by the New EO (that is, covered aliens overseas without a visa) applying for visas prospectively, the Government notes that the visa approval process is a lengthy one, and the type of temporary suspension of entry at issue in the New EO will not cause immediate harm where applicants have no entitlement to a visa and normally must wait a period of months or longer to apply and/or be issued a visa or travel document if found eligible. Notably, however, no such individuals are at issue in this litigation at this time.

In sum, there is no basis for a permanent injunction. Thus, the Government respectfully submits that proceedings in this matter should proceed in a manner to allow this Court a more complete opportunity to assess the provisions of the New EO and the constitutional claims of Plaintiffs.

Dated: March 6, 2017

Respectfully submitted,

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CERTIFICATION OF SERVICE

I hereby certify that on March 6, 2017, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

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