UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

IRANIAN ALLIANCES ACROSS BORDERS; et al.

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as President of the United States; et al.

Defendants.

Civil Action No.: 17-CV-2921
Judge Chuang

MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs respectfully request a preliminary injunction preventing Defendants from implementing or enforcing the presidential proclamation entitled "Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats" (the "Proclamation"). For the reasons stated in the memorandum in support of the motion for a preliminary injunction filed today, October 6, 2017, in *Int'l Refugee Assist. Project v. Trump*, No. 8:17-cv-00361, Plaintiffs are likely to succeed on the merits of their claims, and the balance of equities and public interest favor an injunction. For the reasons stated below, Plaintiffs have standing to bring their claims and will suffer irreparable harm without an injunction.

FACTUAL BACKGROUND

Plaintiffs are a national nonprofit organization with significant operations in Maryland and six Maryland residents. They will suffer substantial and irreparable harm if the Proclamation is not enjoined.

1. Iranian Alliances Across Borders ("IAAB") is a national organization whose mission is to strengthen the Iranian diaspora community through leadership and educational programming that encourages collaboration and solidarity across borders and between communities. Declaration of Mana Kharrazi ¶¶ 2, 4 (attached hereto as Exhibit 1). IAAB organizes camps for youths, regional summits, Persian-language educational events, international conferences on the Iranian diaspora, and other activities. *Id.* ¶¶ 9-17. IAAB invites prominent scholars and other participants from outside the country, including from Iran, to the United States for these events. *Id.* ¶ 18.

As a result of the President's travel bans, IAAB has devoted substantial time supporting its members who have been "subjected to hate speech and intimidation in public places." *Id.* ¶ 7. The travel bans also have harmed IAAB by causing a reduction in applications for IAAB's

summer camps from people residing abroad. *Id.* ¶ 9. If the Proclamation is not enjoined, it will significantly interfere with IAAB's ability to attract foreign visitors to its events. *Id.* ¶ 21. IAAB will hold an International Conference on the Iranian Diaspora in April 2018, which will include "scholars, students, journalists, artists, community leaders and other interested people" discussing "issues facing the Iranian diaspora community." *Id.* ¶ 17. Unless the Proclamation is enjoined, Iranian nationals will be unable to attend the conference. *Id.* ¶ 21.

2. Jane Doe #1 is a United States citizen who came to the U.S. in 2001 as a refugee, fleeing religious persecution in Iran. Declaration of Jane Doe #1 ¶¶ 2-3 (attached hereto as Exhibit 2). Until recently, she lived in Bethesda, Maryland. *Id.* ¶ 7. She has relocated to the United Arab Emirates on a temporary basis, because her husband currently lives there and does not currently have permission to reside in the United States. *Id.* ¶ 6. In June 2016, she submitted an I-130 immigration form for her husband, and the request was approved on September 20, 2017. *Id.* He is now waiting for his interview, which would typically occur within a few months. *Id.* If the Proclamation is not enjoined, his visa will be suspended, and Jane Doe #1 and her husband will be indefinitely prevented from building their life together in Maryland as they had hoped. *Id.* ¶ 8. Their residency status in the United Arab Emirates is uncertain; they can never receive permanent residency and must continue to reapply for temporary residency every three years. *Id.* ¶ 9. They would face persecution if forced to return to Iran. *Id.* ¶ 10.

3. Jane Doe #2 is a U.S. citizen of Iranian origin who has lived her entire life in Maryland. Declaration of Jane Doe #2 ¶ 2 (attached hereto as Exhibit 3). She is a recent graduate of the University of Maryland, College Park, and continues to live and work in Maryland. *Id.* ¶¶ 3-4. In February 2017, she applied for a K-1 visa for her fiancé who lives in Iran, and he completed his interview at the U.S. Embassy in Turkey on August 4, 2017. *Id.* ¶¶ 5-6. If the

Proclamation takes effect before the visa application is granted, Jane Doe #2 and her fiancé will not be able to live together in the United States. She will "have to choose between [her] home and [her] country here in Maryland and the love of [her] life, the man [she] want[s] to marry." *Id.* ¶ 7.

4. Jane Doe #3 is a U.S. citizen of Iranian origin who lives in Potomac, Maryland. Declaration of Jane Doe #3 ¶¶ 2, 4 (attached hereto as Exhibit 4). She came to the United States as a student in 1995 and became a citizen in 2004. *Id.* ¶ 3. She has a Master's Degree in Education from the George Washington University, and has been a special-education teacher for Montgomery County Public Schools since 2006. *Id.* ¶ 5. Her mother and oldest brother also immigrated and have become U.S. citizens, and her father is a Lawful Permanent Resident. *Id.* ¶ 6. Her youngest brother is the only family member remaining in Iran. *Id.* ¶ 7. Jane Doe #3 has an approved I-130 application for him to come to the United States, and he is waiting for an interview, which should be scheduled soon. *Id.* ¶ 7. If the Proclamation is not enjoined, processing of her petition will be suspended and she will be indefinitely prevented from reuniting here with her brother.

5. Jane Doe #5 is a 79-year-old Iranian national and Lawful Permanent Resident of the United States, who resides in Maryland. Declaration of Jane Doe #5 ¶¶ 2-3, 6 (attached hereto as Exhibit 5). She and her 90-year-old husband moved to the United States in 2010 to join their son, who became a U.S. citizen in 2009. *Id.* ¶¶ 2-3, 6. Her other son remains in Iran. *Id.* ¶ 4. His I-130 application has been approved, and he is now awaiting final approval to come to the United States. *Id.* ¶¶ 4-5. Jane Doe #5 is wheelchair-bound and her husband also has significant health problems. *Id.* ¶ 6. Given her age and health problems, the Proclamation has caused her to be "extremely anxious, sad, and worried" that she "will never be able to see [her] son." *Id.* ¶ 7.

6. John Doe #6 is an Iranian national and a Lawful Permanent Resident of the United States, who has lived in the United States for five years and works as an engineer. Declaration of John Doe #6 ¶¶ 2-3 (attached hereto as Exhibit 6). His wife is also Iranian; she works as a bio-chemistry researcher at the National Institutes of Health. *Id.* ¶ 2. They have together made their home in Maryland. *Id.* ¶ 3. John Doe #6 and his wife came to the United States to contribute their professional skills to their new home, but now they feel "targeted and threatened" by the Proclamation's "hostility to Iranians generally and to Muslims in particular." *Id.* ¶¶ 7, 9. His mother-in-law and sister-in-law have applied for tourist visas to visit them, and both had their interviews at the U.S. Embassy in Dubai on January 5, 2017. *Id.* ¶ 5. If their visas are not issued before the Proclamation takes effect, John Doe #6 and his wife will indefinitely be separated from some of their closest and dearest family members.

ARGUMENT

I. Plaintiffs Have Standing To Assert Their Claims.

A plaintiff has standing if three requirements are met: (1) she has "suffered injury in fact"; (2) the injury is "fairly traceable to the defendants' actions"; and (3) the injury is "likely" to be redressed by a favorable decision." *Int'l Refugee Assist. Project v. Trump*, 857 F.3d 554, 581 (4th Cir. 2017) ("*IRAP II*"). A claim is justiciable so long as one plaintiff establishes standing to bring it. *See Int'l Refugee Assist. Project v. Trump*, 241 F. Supp. 3d 539, 549 (D. Md. 2017) ("*IRAP I*"). Plaintiffs have standing to bring each of their claims.

Injury in fact. Plaintiffs will suffer injury-in-fact unless the Proclamation is enjoined. The Doe Plaintiffs will be injured because the Proclamation will indefinitely delay the issuance of visas to their loved ones, and could make it impossible for them to get visas. For example, Jane Doe #1 has an application pending for her husband to come to the United States, Jane Doe #2 has an application pending for her fiancé, Jane Doe #3 has an application pending for her

brother, Jane Doe #5 has an application pending for her son, and John Doe #6's mother-in-law and sister-in-law have pending applications for visitor visas. *See* pp. 1-4 *supra*. The Proclamation would prevent all of these applications from being granted.

These delays in issuing visas satisfy the injury-in-fact requirement. In *IRAP II*, the Fourth Circuit held that Doe #1 in that litigation had established injury-in-fact because the challenged executive order ("EO-2") would "bar his wife's entry into the United States and prolong their separation." *IRAP II*, 857 F.3d 554 at 583. The government did not challenge that "prolonged separation of family members can constitute an injury-in-fact," but instead argued that the injury was not imminent. *Id.* Rejecting that argument, the Fourth Circuit found "a 'real and immediate' threat that [EO-2] would prolong Doe #1's separation from his wife, either by delaying the issuance of her visa or denying her visa and forcing her to restart the application process." *Id.* at 584 (citation omitted). The Ninth Circuit reached the same conclusion in *Hawaii v. Trump*, holding that the plaintiff had standing because EO-2 created "a barrier to reunification with [plaintiff's] mother-in-law in light of her stalled visa process." 859 F.3d 741, 763 (9th Cir. 2017); *see also IRAP I*, 241 F. Supp. 3d at 549 (plaintiffs asserted sufficient injury because "the delay or denial of the issuance of visas will cause injury in the form of continued separation from their family members").[1]

Plaintiffs also suffer injury-in-fact because the Proclamation sends the message that Muslims "are outsiders, not full members of the political community." *IRAP II*, 857 F.3d at 582

[1] Plaintiffs similarly have standing to bring an equal protection claim because they allege that the Proclamation denies them the same opportunity as non-Muslims to seek visas for their relatives. *See, e.g., Ne. Fla. Chapter of Associated Gen. Contractors of Am. v. City of Jacksonville*, 508 U.S. 656, 666 (1993) ("The 'injury in fact' in an equal protection case of this variety is the denial of equal treatment resulting from the imposition of the barrier, not the ultimate inability to obtain the benefit.").

(quotation marks and citation omitted). As John Doe #6 explains, "I feel personally attacked, targeted, and disparaged by this new Proclamation, which shows hostility to Iranians generally and to Muslims in particular. . . . And it makes me fear for my safety and the safety of my wife, my loved ones, and my community." John Doe #6 Decl. ¶ 9. Other plaintiffs feel the same way. *See, e.g.*, Jane Doe #2 Decl. ¶ 9 ("I feel dismayed and fearful that my country is enacting official policies that discriminate against me and make me feel that I do not belong here.").

The Fourth Circuit held that this injury is sufficient to establish standing. As the court of appeals explained: "'Feelings of marginalization and exclusion are cognizable forms of injury.'" *IRAP II*, 857 F.3d at 582 (quoting *Moss v. Spartanburg Cty. Sch. Dist. Seven*, 683 F.3d 599, 607 (4th Cir. 2012)). That is because "one of the core objectives of modern Establishment Clause jurisprudence has been to prevent the State from sending a message to non-adherents of a particular religion 'that they are *outsiders*, not full members of the political community.'" *Id.* (quoting *Moss*, 683 F.3d at 607). In *IRAP II*, Doe #1 explained how EO-2 had "caused him to fear for his personal safety in this country and wonder whether he should give up his career in the United States and return to Iran to be with his wife." *Id.* at 584-85. The Fourth Circuit held that this evidence was sufficient to establish standing because it was "consistent with the '[f]eelings of marginalization and exclusion' injury [the court] recognized in *Moss*, 683 F.3d at 607." *Id.* at 585.

IAAB will also suffer injury-in-fact if the Proclamation is not enjoined. IAAB has had to "devote significant time responding to members of our community who were subjected to hate speech and intimidation in public places, and/or were otherwise distressed and stigmatized by" the President's travel bans. Kharrazi Decl. ¶ 7. The Proclamation will also interfere with IAAB's ability to put on its conferences. As IAAB explains, "At prior conferences, about half of

the invited speakers come from outside the United States, including from Iran. They often bring other members of their organizations or faculty." *Id.* ¶ 18. And "there is always an international presence that includes attendees from outside the United States, including Iran." *Id.* ¶ 19. The Proclamation will also hurt IAAB's summer camps, which attract visitors from overseas. *Id.* ¶ 9. The Proclamation would prevent many of these people from coming to the United States, thereby injuring IAAB by reducing attendance at events for which it invests significant resources to organize and promote. *See Hawaii*, 859 F.3d at 783 (state is injured by EO-2's "constraints to recruiting and attracting students and faculty members to the University of Hawai'i").

Traceability and Redressability. The remaining requirements for standing are easily satisfied. Plaintiffs' injuries can be directly traced to the Proclamation. Enjoining the Proclamation would allow the Doe Plaintiffs' relatives to have their visa applications processed and IAAB to invite speakers and attendees from Iran and other countries to its events. These requirements were not seriously disputed in the EO-2 litigation, and they should not be disputed here. As the Ninth Circuit explained, "While not challenged by the Government, it is also clear that [plaintiff] has established causation and redressability. His injuries are fairly traceable to the Order, satisfying causation, and enjoining EO2 will remove a barrier to reunification and redress that injury, satisfying redressability." *Hawaii*, 859 F.3d at 763. The same is true here.

II. Plaintiffs Will Suffer Irreparable Harm Absent Injunctive Relief.

Plaintiffs face irreparable harm from the Proclamation. In *Hawaii*, the Ninth Circuit held that there was irreparable harm based on, among other things, "prolonged separation from family members" and "constraints to recruiting." 859 F.3d at 782. These harms are irreparable because they "are not compensable with monetary damages." *Id.* at 782-83.

Plaintiffs suffer similar irreparable injuries. As in *Hawaii*, the Doe Plaintiffs face prolonged separation from their family and loved ones. Jane Doe #1 will be forced to choose

between living without her husband in the United States and living with him in a foreign country where they could be expelled for any reason. Jane Doe #1 Decl. ¶ 13. Jane Doe #2 must similarly "choose between my home and my country here in Maryland and the love of my life, the man I want to marry." Jane Doe #2 Decl. ¶ 7. Jane Doe #3 may never see her youngest brother again. Jane Doe #5, an elderly woman in poor health, may never see her son again. John Doe #5 Decl. ¶¶ 6-7. And John Doe #6 and his wife may never see his wife's mother and sister again. John Doe #6 Decl. ¶ 6. These injuries are more than sufficient to establish irreparable harm. Indeed, the harm here is substantially worse than in *Hawaii*. The Executive Orders were set to expire within a few months, but the Proclamation has no expiration date, and so the Doe Plaintiffs will be separated from family members indefinitely.

Like the State in *Hawaii*, IAAB faces difficulties in "recruiting and attracting" people to its events. 859 F.3d at 782. The Proclamation will interfere with IAAB's ability to attract leading scholars from Iran and other affected countries to its International Conference on the Iranian Diaspora. It will also hurt IAAB's summer camps, which attract visitors from countries subject to the Proclamation.

Even without this evidence of concrete harms that will flow from the Proclamation, Plaintiffs could demonstrate irreparable harm based on their likelihood of success on their Establishment Clause claim. As the Fourth Circuit explained, "in the context of an alleged violation of First Amendment rights, a plaintiff's claimed irreparable harm is inseparably linked to the likelihood of success on the merits." *IRAP II*, 857 F.3d at 601 (quotation marks and citation omitted). That is because "loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Id.* at 602 (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion)). "[B]ecause of the inchoate, one-way nature of Establishment Clause

violations, they create the same type of immediate, irreparable injury as do other types of First Amendment violations." *Id.* (quotation marks and citation omitted). Plaintiffs thus suffer irreparable harm solely based on the violations of their rights under the Establishment Clause.

CONCLUSION

For the foregoing reasons and the reasons stated in the *IRAP* Plaintiffs' memorandum of law, Plaintiffs' motion for a preliminary injunction should be granted.

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Respectfully submitted,

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