

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**MOHAMMED ABDULLAH
TAWFEEQ,**

Plaintiff.

v.

**U.S. DEPARTMENT OF HOMELAND
SECURITY (“DHS”); JOHN F. KELLY,**
Secretary of DHS; **U.S. CUSTOMS AND
BORDER PROTECTION (“CBP”);**
KEVIN K. MCALEENAN, Acting
Commissioner of CBP; **CAREY DAVIS,**
Port Director, CBP ; **ANDY PRYOR,**
Manager, CBP; **SHANA WELLS,**
Manager, CBP; **U.S. DEPARTMENT
OF STATE (“Department of State”);**
THOMAS A. SHANNON, JR., Acting
Secretary of State, Department of State.

Defendants.

Case No. 1:17-cv-353

**EMERGENCY MOTION
TO EXPEDITE
PROCEEDINGS**

PLAINTIFF’S EMERGENCY MOTION TO EXPEDITE PROCEEDINGS

By and through undersigned counsel, Plaintiff moves for expedited consideration of this matter pursuant to 28 U.S.C. § 1657 and Local Rule 65.2, because the issues raised in the complaint rely on Plaintiff’s rights under the U.S. Constitution and federal immigration law that are of immediate importance and that could evade review if the regular briefing schedule is not significantly

accelerated to reflect the expedited timetable set forth in the proposed order. For the reasons outlined in the accompanying Memorandum of Law in support of the Motion, Plaintiff requests that the Court order Defendants to respond to his Complaint no later than 10 days after any order granting this motion, and that the Court set a summary judgment briefing schedule that will end no later than 20 days thereafter. Plaintiff further requests that Defendants be required to promptly respond to this Motion.

DATED February 1, 2017

Respectfully submitted,

/s/ Theresia Moser

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CERTIFICATE OF FONT AND POINT SELECTION

Undersigned counsel hereby certifies, pursuant to L.R. 7.1(D), N.D. Ga., that the foregoing **PLAINTIFF'S EMERGENCY MOTION TO EXPEDITE PROCEEDINGS AND SUPPORTING MEMORANDUM AND PROPOSED ORDERS** were prepared in Times New Roman, 14 point font, which is one of the font and point selections approved in L.R. 5.1, N.D. Ga.

/s/ Theresia Moser _____
Theresia M. Moser

CERTIFICATE OF SERVICE

I hereby certify that I have this day mailed a true and correct copy of the within and foregoing **PLAINTIFF'S EMERGENCY MOTION TO EXPEDITE PROCEEDINGS AND SUPPORTING MEMORANDUM AND PROPOSED ORDERS** by overnight Federal Express to each of the following:

The Honorable John F. Kelly,
Secretary of Homeland Security
U.S. Department of Homeland Security
245 Murray Lane, SW
Mail Stop 0485
Washington, DC 20528-0485

Kevin K. McAleenan, Acting Commissioner
U.S. Customs and Border Protection
1300 Pennsylvania Ave. NW
Washington, DC 20229

Carey Davis, Port Director,
Andy Pryor, Manager,
Shanna Wells, Manager,
U.S. Customs and Border Protection,
Atlanta Hartsfield/Jackson Int'l Airport
157 Tradeport Drive
Atlanta, GA 30354

Thomas A. Shannon, Acting Secretary of State
U.S. Department of State
2201 C St. NW
Washington, DC 20520

Courtesy copies of the above documents were sent via electronic mail to the following individuals with whom Plaintiff has made initial contact on behalf of the government:

Lori Beranek
Assistant United States Attorney
Northern District of Georgia
U.S. Department of Justice
Lori.Beranek@usdoj.gov

Sheetul S. Wall
Office of Immigration Litigation
U.S. Department of Justice
Sheetul.S.Wall2@usdoj.gov

This 1st day of February 2017.

/s/ Theresia Moser
Theresia M. Moser

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Defendants.

Case No. 1:17-cv-353

**MEMORANDUM OF LAW
IN SUPPORT OF
EMERGENCY MOTION
TO EXPEDITE
PROCEEDINGS**

**PLAINTIFF’S MEMORANDUM OF LAW IN SUPPORT OF
EMERGENCY MOTION TO EXPEDITE PROCEEDINGS**

By and through undersigned counsel, Plaintiff moves for expedited consideration of this matter pursuant to 28 U.S.C. § 1657 and Local Rule 65.2, because the issues raised in the complaint rely on Plaintiff’s rights under the U.S. Constitution and federal immigration law that are of immediate importance and

that could evade review if the regular briefing schedule is not significantly accelerated to reflect the expedited timetable set forth in the proposed order.

Authority to Expedite

28 U.S.C. § 1657 gives this Court the power to “expedite the consideration of any action...for temporary or preliminary injunctive relief, or any other action if good cause therefor is shown.” “[G]ood cause’ is shown if a right under the Constitution of the United States or a Federal Statute . . . would be maintained in a factual context that indicates that a request for expedited consideration has merit.” 28 U.S.C. § 1657(a). Local Rule 65.2 further permits this Court to waive motion time requirements and grant immediate hearings on any matter “requiring such expedited procedure.” L.R. 65.2.

Defendants’ Violation of Federal Law

Defendants Department of Homeland Security (“DHS”) and Customs and Border Protection (“CBP”) continue to inspect returning permanent resident aliens in violation of Section 101(a)(13) of the Immigration & Nationality Act (“INA”) (8 U.S.C. § 1101(a)(13)) by impermissibly applying a discretionary review of whether DHS is in “receipt of significant derogatory information” with respect to such aliens. To the extent that Defendants contend that “derogatory information” is present with respect to any such alien, then his or her “entry” would likely be

“barred” pursuant to the President’s executive order, in violation of the right to a removal hearing pursuant to INA §240 (8 U.S.C. §1229a). In this “barred entry” scenario, a returning permanent resident alien would furthermore be deprived of his or her constitutional due process rights. In short, INA Section 212(f) does not allow the President to trump the presumption in INA § 101(a)(13)(C) that returning permanent resident aliens have not legally exited the United States, nor to circumvent the hearing process available to such aliens whom the government believes do not qualify for that presumption. Defendants’ conduct, however, including toward Plaintiff, has violated this legal regime.

Expedited Consideration is Required

Plaintiff submits that “good cause” exists for expedited consideration of this matter for the following reasons:

First, Plaintiff’s position with CNN requires his ability to travel internationally to those countries targeted by the Executive Order. Compl. ¶ 47. His return to the United States on January 29, 2017, was encumbered by Defendant CBP’s application of the “discretionary entry” policy established by the Executive Order, in violation of his right to “return” to the United States without having to apply for “admission,” as set forth in INA § 101(a)(13)(C). Compl. ¶¶ 51-54. The

primary CBP inspecting officer in fact told him that he could be denied entry pursuant to the Executive Order. Compl. ¶ 51.

Second, the Executive Order currently imposes a 90-day period of uncertainty for those in Plaintiffs' position. *See* Executive Order at § 3(c). If normal procedural rules are applied in this matter, Plaintiff's dispute could easily be mooted by the Government's taking the full amount of time to respond permitted under the rules. The President would then be free to extend the current Executive Order, and Defendants would be free to mistreat Plaintiff during a subsequent international trip during the period the Order is in effect. The President could also issue a new order with similar effect that Defendants could use in a manner that would be capable of continuous repetition but could evade judicial review. Plaintiff's need to travel internationally during this time period is almost certain, as set forth in the Declaration of Deborah Rayner, Senior Vice President of International Newsgathering, CNN. Exhibit A.

There is, however, a well-established doctrine ensuring that review is made available in such situations. *See, e.g., Kingdomware Tech., Inc. v. United States*, 136 S.Ct. 1969, 137 S.Ct. 1976 (2016) (exception to mootness doctrine for controversy "capable of repetition, yet evading review"), *citing Spencer v. Kemna*, 523 U.S. 1, 17, (1998). There is thus "good cause" to expedite the briefing schedule of this

case because it is capable of repetition, yet absent prompt consideration of the legal issues raised, it could effectively evade judicial review. The most efficient manner to adjudicate Plaintiff's rights in the situation presented by this case is to allow this Court to render a decision within the current 90-day ban period. Absent such a briefing schedule, there is a significant chance that plaintiff's injury will "evade review."

Finally, this matter presents important statutory and constitutional issues. Judges around the country have acknowledged the fundamental rights raised by Defendants' implementation of the Executive Order, issuing numerous orders pausing certain of its applications. *See, e.g., Darweesh v. Trump*, Case No. 1:17-cv-480 (E.D.N.Y., January 28, 2017); *Aziz v. Trump*, Case No. 1:17-cv-116 (E.D.Va., January 28, 2017); *Tootkaboni v. Trump*, 1:17-cv-10154 (D. Mass., January 28, 2017); *Abdiaziz v. Trump*, 2:17-cv-00135 (W.D. Wash., January 30, 2017). Plaintiff seeks vindication of his due process and statutory rights under the INA that are provided to him as a lawful permanent resident. This is precisely the sort of constitutional or federal statutory controversy where the right under review is best maintained through expedited consideration of its merit. 28 U.S.C. § 1657(a).

Relief Requested – Expedited Briefing

Plaintiff submits that the rights under review can best be maintained through expeditious summary judgment briefing—without resort to more drastic temporary restraining order or preliminary injunction procedures. Plaintiff thus requests that the Court order the Government to respond to his Complaint no later than 10 days after any order granting this motion, and that the Court set a summary judgment briefing schedule that will end no later than 20 days thereafter, thus allowing the Court to rule on this matter expeditiously.

Counsel to Plaintiff confirms that it has met and conferred with counsel to Defendants, and that no agreement was reached on this motion. Plaintiff requests that the Government be required to promptly respond to this Motion.

DATED February 1, 2017

Respectfully submitted,

/s/ Theresia Moser

Theresia M. Moser

Georgia Bar No. 526514

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Attorneys for Plaintiff

EXHIBIT A

DECLARATION OF DEBORAH RAYNER

ATLANTA, GEORGIA

Pursuant to 28 U.S. § 1746, I declare as follows:

1. My name is Deborah Rayner. I am the Senior Vice-President of International Newsgathering, TV, and Digital for CNN International
2. My responsibilities include overseeing CNN's international newsgathering, including the International Desk, all international bureaus, correspondents, producers, and international digital editorial content.
3. One of the people who reports to me is Mr. Mohammed Abdullah Tawfeeq, News Desk Producer, on the International Desk at CNN.
4. I am familiar with the difficulties Mr. Tawfeeq encountered reentering the United States on January 29, 2017. In fact, I also returned to the United States from an assignment in the Middle East on that same night (on a different flight than Mr. Tawfeeq) and was also placed into secondary inspection even though I am a U.K. citizen.
5. Mr. Tawfeeq's duties at CNN continue to require him to travel internationally on both a regular and immediate basis. At this time, we expect to require his travel in the next few weeks to Iraq, Turkey, and Syria for CNN's coverage of news developments in those countries. Within the next 90 days, CNN will likely require Mr. Tawfeeq to travel to Abu Dhabi, which is the key news production center in the Middle East. Mr. Tawfeeq will undoubtedly be given additional assignments in the Middle East or elsewhere as the need arises -- which is the nature of our business -- and such assignments will certainly occur within the next 90 days.
6. Mr. Tawfeeq plays a critical role in CNN's coverage of the Middle East due to his extensive regional production experience in hostile environments and his fluency in Arabic. It is imperative both for CNN and for Mr. Tawfeeq that he be permitted to travel internationally without restriction and be able to rely on his ability to return to the United States upon completion of each assignment.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 1 , 2017



Deborah Rayner

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Defendants.

Case No. 1:17-cv-353

PROPOSED ORDER

ORDER REGARDING RESPONSE TO MOTION TO EXPEDITE

Pursuant to the Court’s authority under 28 U.S.C. § 1657 and Local Rule 65.2, the Court hereby orders

The Government’s Opposition to this motion will be due no later than: _____
_____.

IT IS SO ORDERED.

Honorable Timothy C. Batten

United States District Judge

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PROPOSED ORDER

ORDER SETTING EXPEDITED BRIEFING SCHEDULE

Pursuant to the Court’s authority under 28 U.S.C. § 1657 and Local Rule 65.2, the Court hereby orders

- (1) The Government’s Answer or other responsive pleading will be due no later than: _____.
- (2) Cross-motions for Summary Judgment will be due no later than: _____.
- (3) Responses to Cross-motions for Summary Judgment will be due no later than: _____.

IT IS SO ORDERED.

Honorable Timothy C. Batten
United States District Judge