The Honorable James L. Robart

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOHN DOE, et al., Plaintiffs, v. DONALD TRUMP, et al., Defendants.	CASE NO. C17-0178JLR
JEWISH FAMILY SERVICES, et al., Plaintiffs, v. DONALD TRUMP, et al., Defendants.	CASE NO. C17-1707JLR

PLAINTIFF DOE'S SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION IN CASE NO. C17-0178JLR

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Plaintiff Joseph Doe seeks an order, on behalf of himself and those similarly situated to him, enjoining the indefinite suspension of follow-to-join ("FTJ") derivative refugee admissions that Defendants improperly enacted via the Agency Memo. The Supreme Court's recent stay orders in *Hawai'i v. Trump* and *IRAP v. Trump* have no application here. They are summary orders that express no view on any particular issue. And the preliminary injunction motions in those cases are in all material respects distinct from this one. The scope of the order Plaintiff seeks is narrower; he challenges a policy not at issue in *Hawai'i* or *IRAP*; and he raises statutory, APA, and due process claims that are not presented in those cases. The Supreme Court's orders have no impact on Plaintiff's pending motion.

A. Plaintiff's Legal Arguments Are Distinct and Likely to Succeed on the Merits.

The Supreme Court's orders say nothing about Plaintiff's likelihood of success in challenging the Agency Memo's follow-to-join ban. The Agency Memo has not been challenged in those cases and has never been before the Supreme Court. Plaintiff's claim centers on a completely different statute, INA § 207(c)(2)(A), which creates an unambiguous statutory entitlement, requiring Defendants to admit the qualifying spouses and minor children of refugees who have resettled in the United States. This statute is not at issue in either *IRAP* or *Hawai'i*, where the plaintiffs rely on different statutes to make different claims. Nor do the plaintiffs in those cases raise the APA or due process claims that Plaintiff raises here. Plaintiff's arguments are both likely to succeed and of a different nature from those arguments raised in the other pieces of litigation over the various executive orders and proclamations.

Unlike the provisions at issue in *IRAP* and *Hawai'i*, the Agency Memo indefinitely nullifies a mandatory entitlement created by Congress. Congress drafted and passed into law INA § 207(c)(2)(A), which enables principal refugees who have passed extensive security screening and qualified to resettle in the United States to be reunited with their spouses and minor children—who have also passed extensive screenings. As long as the principal refugee's

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family members do not meet any of the statutory grounds for inadmissibility, they "*shall* … be entitled" to the same status as the principal refugee. 8 U.S.C. § 1157(c)(2)(A) (emphasis added). The statutory entitlement at issue presents entirely distinct legal issues for analysis.

B. The FTJ Suspension Causes Plaintiff Irreparable Harm.

Preliminary relief is designed to prevent irreparable harm during the pendency of litigation. The *Hawai'i* and *IRAP* orders did not analyze irreparable harm, and indeed the Court's prior stay order recognized that plaintiffs who are separated from their families suffer irreparable harm. *See Trump v. IRAP*, 137 S. Ct. 2080, 2087 (2017). In any event, nothing about the new stay orders diminishes the irreparable harm here. Plaintiff Joseph Doe has been separated from his wife and young children (who are 4, 5, and 9 years old) for nearly four years. They have completed the exhaustive screening process and are eager to join him in the United States. Every day that passes is lost time with his family that he cannot get back: he is missing the opportunity to be with, to parent, to emotionally support, and to bond with his children as they grow up. The milestones he has already missed and will continue to miss cannot ever be replaced, and the indefinite nature of the Agency Memo's suspension is mentally and emotionally punishing. This harm is irreparable. *See* Mot. Prelim. Inj. § IV.B., Dkt. # 45.

C. The Balance of Equities Tips in Plaintiff's Favor.

Although Defendants invoke "national security" as the rationale for the complete ban on FTJ admissions and as a compelling interest weighing against an injunction, they cite no actual evidence that the FTJ refugee screening process presents a security concern. Neither do they cite any evidence that their alignment of that screening process with the principal refugee screening process requires an indefinite suspension of all FTJ admissions—whether for national security or other reasons. There is simply no evidence to support an indefinite ban on all FTJ refugees, the vast majority of whom are women and children. Reply at 10, Dkt. # 54. The Agency Memo's recitation of national security as the rationale for this drastic measure is even thinner than the

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rationales asserted by the government in *Hawai'i* and *IRAP*. *See* Appl. for Stay at 3, *Trump v. Hawai'i*, No. 17A550 (U.S. Nov. 20, 2017) (describing review process).

A global ban on all FTJ refugees—that is, every spouse and child of a refugee who did not physically accompany the refugee to the United States—is by definition not tailored in any way. Moreover, Defendants have admitted that the ban is not even tailored to purported screening deficiencies. Defendants concede that the review process for FTJ refugees in Kenya and Thailand is sufficient, even though the Agency Memo on its face bans FTJ refugees from those countries. *Compare* Resp. at 7, Dkt. # 51, *with* Agency Memo at 2-3. The banning of FTJ refugees from countries with screening processes that are indisputably sufficient further highlights the fact that the ban is not tailored to serve a national security purpose.

While Defendants have not demonstrated any compelling national security interest for denying an injunction, enjoining the FTJ suspension is in the public interest. "'[P]ublic interest concerns are implicated when a constitutional right has been violated, because all citizens have a stake in upholding the Constitution.'" *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017) (citation omitted) (affirming grant of preliminary injunction on basis of due process claim). Defendants have violated Joseph Doe's due process rights.

D. Conclusion

Nothing about the recent stay orders addresses Plaintiff's pending motion, which challenges a different policy issued by different officials, invokes different statutes, makes different claims, and involves a different balance of equities. A preliminary injunction remains warranted where the "'balance of hardships … tips sharply towards the plaintiff … [and] the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest.'" *Does 1-10 v. Univ. of Washington*, No. C16-1212JLR, 2017 WL 5899243, at *4 (W.D. Wash. Nov. 30, 2017) (quoting *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2001)). The Supreme Court's orders do not change this analysis.

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DATED this 7th day of December, 2017.

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CERTIFICATE OF SERVICE

I hereby certify that on December 7, 2017, I electronically filed the attached document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the email addresses on the Court's Electronic Mail Notice List.

DATED this 7th day of December, 2017.

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