

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION**

EBLAL ZAKZOK, *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-02969-TDC

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

PRELIMINARY STATEMENT

The six Plaintiffs in this case, American citizens and lawful permanent residents, demonstrate the human tragedy that would be inflicted by the third iteration of President Trump’s unlawful attempt to impose a sweeping travel ban targeting majority-Muslim nations and make good on his promise to impose a shutdown on Muslims entering the United States.

The ban, now indefinite, cruelly divides families scattered across the globe at moments when being together is paramount. It separates a mother from her critically ill child, an American citizen receiving medical care in the United States. It divides husbands and wives. It separates a couple engaged to be married. It prevents an 81-year-old relative of American citizens from entering the country to receive cancer treatment. It blocks the sister of an American citizen from accepting offers of academic collaboration in the United States. It leaves family members alone and endangered in war-torn nations—illogically so. Indeed, the sister of one Plaintiff would be barred from entering the United States from Jordan simply because she is a Syrian national, despite never having set foot in Syria.

The litany of harms that just these six plaintiffs would suffer makes manifest the irreparable injury that this latest ban would cause them—and countless others similarly situated—and the urgency that calls for this Court to enjoin its enforcement.

Plaintiffs thus seek to enjoin the implementation and enforcement of Section 2 of the Presidential Proclamation Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats (the “Proclamation”). The unconstitutional and illegal nature of the Proclamation is amply demonstrated by the motions for preliminary injunction filed in two other cases pending before

the Court.¹ Plaintiffs submit this brief to set forth the reasons why they have standing and to demonstrate the irreparable harm that they—and countless others similarly situated—will suffer if the Proclamation is allowed to take effect on October 18, 2017.

FACTUAL BACKGROUND

Each Plaintiff is an American citizen or lawful resident of the Muslim faith who will suffer substantial and irreparable harm if the Proclamation is not enjoined.

Eblal Zakzok. Eblal Zakzok is a native of Syria, and a lawful permanent resident of the United States. (Zakzok Decl. ¶ 1.) Dr. Zakzok is married with five children and currently is an assistant professor of civil engineering at the Ohio State University. (*Id.* ¶¶ 2, 11.) After receiving his Ph.D. from the University of Manchester in 2007, Dr. Zakzok accepted a position as an assistant professor at Aleppo University in Syria. (*Id.* ¶¶ 3, 4.) He and his family soon found themselves caught up in Syria’s political deterioration and descent into civil war. (*Id.* ¶¶ 5–8.) By 2014, Dr. Zakzok’s commute—ordinarily 45 minutes—could take as long as six hours, as he was forced to traverse various Syrian regime and rebel checkpoints along the way. (*Id.* ¶ 5.) In February 2014, Dr. Zakzok was detained by the Syrian regime and held for two weeks in an approximately 30-square-meter cell—sometimes filled with so many people that it was impossible to move—and subjected to beatings and torture. (*Id.* ¶ 6.) Upon his release, Dr. Zakzok and his family fled to Istanbul, Turkey. (*Id.* ¶ 9.) Shortly thereafter, upon arriving in the United States for an academic conference, Dr. Zakzok sought and was granted asylum. (*Id.* ¶¶ 10–11.)

Dr. Zakzok thereafter sought derivative asylum benefits for his family members left

¹ Plaintiffs adopt and incorporate by reference the memoranda in support of the motions for a preliminary injunction filed on October 6, 2017 in *Int’l Refugee Assist. Project v. Trump*, No. 8:17-cv-00361 (“*IRAP*”), and *Iranian Alliances Across Borders, et al. v. Donald J. Trump, et al.*, No. 17-CV-2921 (“*IAAB*”).

behind in Turkey. That application was granted for Dr. Zakzok's wife and four of his children. (*Id.* ¶ 12–13.) One child, however, was not eligible for derivative benefits. Dr. Zakzok's eldest daughter did not qualify because she was more than 21 years old when Mr. Zakzok was granted asylum. Therefore, Dr. Zakzok has filed a Petition for Alien Relative, Form I-130, seeking approval for his daughter to immigrate to the United States. (*Id.* ¶ 14.) The petition is currently pending. (*Id.*)

Should the Proclamation be implemented, Dr. Zakzok's daughter would be barred from obtaining a visa to enter the United States. Dr. Zakzok and his family are distraught at the prospect of being indefinitely separated from his eldest daughter. (*Id.* ¶ 16.) Dr. Zakzok fears for his daughter's safety because she is living alone in Istanbul, where Syrian women are often targeted by criminals. (*Id.*) He also is concerned that his daughter—who is ineligible for permanent residency status in Turkey—may be required to return to Syria where she would risk the same horrific treatment experienced by Dr. Zakzok. (*Id.*) Further, if his daughter is indefinitely barred from entry into the United States, her ability to continue her education—she was accepted to the Ohio State University—and contribute to her family's income will be undermined. (*Id.* ¶ 17.) Dr. Zakzok currently supports his daughter financially and will need to continue to do so while she remains stranded in Turkey. (*Id.*)

Fahed Muqbil. Fahed Muqbil is a United States citizen of Yemeni descent. (Muqbil Decl. ¶ 1.) Mr. Muqbil and his wife, a Yemeni national, have two daughters, both of whom are United States citizens. (*Id.* ¶ 2.) One of Mr. Muqbil's daughters suffers from spina bifida—a debilitating birth defect. (*Id.* ¶ 4.) Unable to find adequate medical care for his daughter in Yemen as a result of ongoing civil war, Mr. Muqbil and his wife took their daughter to Egypt to seek treatment in November 2016. (*Id.* ¶ 5.) When his daughter's condition continued to

worsen, Mr. Muqbil brought his daughter to the United States to seek medical care. (*Id.* ¶ 6.) His wife and older daughter stayed behind in Egypt. (*Id.*) Even after extensive treatment in United States hospitals, his daughter remains too ill to travel. (*Id.* ¶ 9.)

In June 2017, Mr. Muqbil filed an I-130 petition on behalf of his wife, seeking to have her join him in the United States while he cares for their daughter. (*Id.* ¶ 13.) That petition was approved on August 17, 2017, but Mr. Muqbil's wife cannot enter the United States until her visa is approved following an interview. (*Id.*) She has not seen her infant daughter, who has undergone multiple surgeries, for five months. If her immigrant visa is not approved prior to the time the Proclamation becomes effective, Mr. Muqbil's wife will be indefinitely barred from the United States. Mr. Muqbil thus must face the impossible choice between seeing his wife and eldest daughter in Egypt or caring for his sick daughter in the United States. Moreover, because of his extensive responsibilities in caring for his sick daughter, Mr. Muqbil is unable to work in the United States or otherwise better his financial situation while his wife remains abroad. (*Id.* ¶ 12.) Mr. Muqbil's life will remain on hold if his wife cannot join him in the United States, and their infant daughter will continue to be without her mother at this critical time.

Sumaya Hamadmad. Sumaya Hamadmad is a United States citizen of Syrian descent, who received her Ph.D. in pharmacology from the University of Iowa in 2006 and received a postdoctoral fellowship from Yale University. (Hamadmad Decl. ¶¶ 1–2.) Dr. Hamadmad lives in the United States with her husband and three children. (*Id.* ¶ 1.) Her sister and father-in-law currently are abroad and will be barred from entry into the United States by the Proclamation. (*Id.* ¶¶ 6, 8, 9.)

Dr. Hamadmad's sister, in fact, has never been inside Syria. (*Id.* ¶ 8.) She was born and raised in Jordan, where, after recently graduating from Jordan University of Science and

Technology, she has continued her research into the impact of trauma on Syrian refugees.

(*Id.* ¶ 4.) Dr. Hamadmad's sister has been invited to continue her research at Yale University and the University of Florida. (*Id.* ¶ 5.) In October 2017, Dr. Hamadmad's sister applied for a B1/B2 visa in order to visit her siblings and participate in that academic project. (*Id.* ¶ 6.) No visa has yet been issued. (*Id.*) Yet the Proclamation will bar her entry into the United States—despite her complete lack of connection to Syria—solely because of her Syrian ancestry.

Dr. Hamadmad's 81-year-old father-in-law currently resides in Syria and has been diagnosed with skin and prostate cancer. (*Id.* ¶¶ 9, 11.) Dr. Hamadmad's husband filed an I-130 petition for his father seeking approval for him to immigrate to the United States in order to see his only grandchildren and seek medical treatment. (*Id.* ¶ 10.) That petition remains pending. (*Id.*)

Dr. Hamadmad will thus be blocked by the Proclamation from seeing her sister and father-in-law in the United States, enjoying their interactions with her children, experiencing her sister further her academic career and critical research, and facilitating her father-in-law's medical treatment. (*Id.* ¶¶ 5, 7, 13–15.)

John Doe #1. John Doe #1 is a United States citizen who married a Syrian national in August 2017. (John Doe #1 Decl. ¶¶ 1, 3.) John Doe #1's wife left the United States while John Doe #1 prepared to apply for her to immigrate to the United States on the basis of their recent marriage and ready himself for the arrival of his new family. (*Id.* ¶ 5.) John Doe #1 now realizes that he may never be joined by his wife in the United States or be afforded the opportunity to create the family he envisioned. (*Id.* ¶ 9.) It would be futile for John Doe #1 to file an I-130 petition on behalf of his wife, as there is no chance such a petition would be adjudicated and a visa issued prior to October 18, 2017. (*Id.* ¶ 8.)

John Doe #1 also feels discriminated against as a practicing Muslim. He believes that the Proclamation “single[s] out” his and his wife’s country of origin in order to target Muslims on the basis of “bigotry and hatred.” (*Id.* ¶ 12.)

Jane Doe #2. Jane Doe #2 is a United States citizen of Syrian descent. (Jane Doe #2 Decl. ¶¶ 1–2.) Jane Doe #2 is married with one son, and currently is expecting her second child. (*Id.* ¶¶ 8, 11.) Following the birth of her first child, Jane Doe #2’s mother, a Syrian national, joined her in the United States in June 2016. (*Id.* ¶ 9.) Her father, however, remained in Kuwait, where he continued to work in order to support the family. (*Id.* ¶ 10.) Now, as Jane Doe #2’s father approaches retirement, he plans to join his daughter, wife, and grandchildren in the United States. (*Id.* ¶ 11.) The United States has seen fit to previously authorize Jane Doe #2’s father to enter the United States on tourist visas on multiple occasions; yet now he shall be swept up in this indiscriminate ban. (*Id.* ¶¶ 10, 13.)

Earlier this year, Jane Doe #2 submitted an I-130 petition seeking approval for her father to immigrate to the United States. (*Id.* ¶ 12.) That petition was approved, but no visa has yet been issued. (*Id.*) The implementation of the Proclamation would bar Jane Doe #2’s father from entering the United States—purportedly because of conditions in Syria—even though he has not been inside Syria in more than 20 years.

Jane Doe #2’s continued separation from her father causes her tremendous anguish. Apart from the anxiety created by the fragmentation of her family, Jane Doe #2 fears for her father’s safety. (*Id.* ¶ 21.) Jane Doe #2 and her husband are politically active members of the Syrian American Council—an organization that advocates for a free and democratic Syria. (*Id.* ¶ 16.) As Jane Doe #2’s father nears retirement, he may be forced to leave Kuwait, where he must continue to work to retain his immigration status. (*Id.* ¶ 19.) If her father is unable to join his

family, he may well be forced to return to Syria, where he would face grave personal risk as a result of Jane Doe #2's political activities. (*Id.* ¶ 21.)

Jane Doe #2 also believes that the Proclamation—and the executive orders that preceded it—discriminate against her as a Muslim. (*Id.* ¶ 23.) She was naturalized as an American citizen and understood that the Constitution protects the rights of minorities. (*Id.* ¶¶ 1, 23.) The targeting of Muslim-majority countries for exclusion from the United States by the Proclamation does not accord with what she was led to believe about her adopted country.

Jane Doe #3. Jane Doe #3 is a United States citizen who immigrated to the United States as a Somalian refugee in 2006, after fleeing the wars that consumed her country of birth. (Jane Doe #3 Decl. ¶ 1.) She has been engaged to a Somali national since April 2016. (*Id.* ¶ 3.) Jane Doe #3's fiancé currently is studying in Malaysia, where he has lived for the last 9 years. (*Id.*) In December 2016, Jane Doe #3 filed an I-129F petition seeking a K-1 visa that would permit her fiancé to enter the United States, get married, and pursue permanent residence. (*Id.* ¶ 5.) The I-129F petition for Jane Doe #3's fiancé was approved in March 2017. (*Id.*) No visa has yet been issued. (*Id.*) Jane Doe #3's isolation from her fiancé—and the prospect of separation for an indeterminate length—not only takes a significant emotional toll, but also raises the prospect that Jane Doe #3 could be deprived of her fiancé's skills, labor, and finances. (*Id.* ¶¶ 4, 6–8.)

Jane Doe #3 came to the United States legally, passed the citizenship test, and was granted American citizenship in 2012. (*Id.* ¶ 9.) Despite being entitled to the same rights and legal protections as any other United States citizen, the Proclamation makes her feel like a “second class citizen,” who is stigmatized on the basis of her Muslim faith. (*Id.*)

ARGUMENT

I. Plaintiffs Have Standing to Assert Their Claims.

Plaintiffs easily clear the requirements to establish standing. Indeed, this Court and the

Fourth Circuit have found standing on nearly identical facts.

Plaintiffs are Muslim U.S. citizens and lawful permanent residents seeking visas for their barred family members. They have asserted two distinct injuries: the prolonged separation from their loved ones that would result should the Proclamation become effective, *see supra* at 2–7, and the exclusion and marginalization that flows from the Proclamation’s targeting of Plaintiffs’ religion and nationalities for exclusion from the United States, *see id.*

The Proclamation will indefinitely block the issuance of visas for the close relatives of five Plaintiffs whose applications are pending and already has rendered it futile for John Doe #1 to petition for a visa on behalf of his new wife of two months. This executive action not only delays Plaintiffs’ reunification with their family members but cuts off the Plaintiffs from relatives who, among other things, suffer from cancer (Hamadmad Decl. ¶ 11), are unable to reach the United States to care for a sick child (Muqbil Decl. ¶ 13), and risk being returned to dangerous countries embroiled in war and political strife (Zakzok Decl. ¶ 16; Jane Doe #2 Decl. ¶ 21). Moreover, Plaintiffs are personally injured by the Proclamation’s message of discrimination and exclusion.² For example, Jane Doe #3 feels that the Proclamation is “motivated by a desire to stigmatize Muslims” and makes her feel like a “second class citizen.” (Jane Doe #3 Decl. ¶ 9.) John Doe #1 similarly believes the Proclamation is the product of “bigotry and hatred.” (John Doe #1 Decl. ¶ 12.)

Each of those injuries is independently sufficient to establish the injury-in-fact necessary to confer standing. *See Int’l Refugee Assist. Project v. Trump*, 857 F.3d 554, 584–85 (4th Cir. 2017) (“*IRAP IP*”) (holding that “prolonged family separation” and “official action

² Each Plaintiff is a Muslim who feels marginalized and excluded by the Proclamation’s hostility toward their faith and its discriminatory targeting of Muslim-majority countries. (See Zakzok Decl. ¶ 18; Muqbil Decl. ¶ 15; Hamadmad Decl. ¶ 18; John Doe #1 Decl. ¶ 12; Jane Doe #2 Decl. ¶¶ 22–23; Jane Doe #3 Decl. ¶ 9.)

preferring or disfavoring a particular religion” are imminent and concrete harms that establish injury for standing purposes); *Int’l Refugee Assist. Project v. Trump*, 241 F. Supp. 3d 539, 550, 552 (D. Md. 2017) (same). The Ninth Circuit similarly concluded that standing will lie where executive action created “a barrier to reunification” with relatives as a result of a “stalled visa process.” *Hawaii v. Trump*, 859 F.3d 741, 763 (9th Cir. 2017). The same result should obtain here.³

II. Plaintiffs Will Suffer Irreparable Harm Absent Injunctive Relief.

The same injuries that establish Plaintiffs’ standing also constitute irreparable harm.

The First Amendment violations that Plaintiffs allege necessarily constitute irreparable harm. As the Fourth Circuit has recognized, the “loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *IRAP II*, 857 F.3d 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.* (internal quotation marks and citation omitted); *see also Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 303 (D.C. Cir. 2006) (“[W]here a movant alleges a violation of the Establishment Clause, this is sufficient, without more, to satisfy the irreparable harm prong for purposes of the preliminary injunction determination.”); *Am. Civil Liberties Union of Ill. v. City of St. Charles*, 794 F.2d 265, 275 (7th Cir. 1986) (finding irreparable harm in an Establishment Clause case and stating that the “harm is irreparable as well as substantial because an erosion of

³ The two standing requirements other than injury-in-fact—traceability and redressability—cannot credibly be contested in this case. *See IRAP II*, 857 F.3d at 581. Indeed, the government did not dispute the traceability or redressability prongs of the standing inquiry in litigation over the President’s prior executive orders limiting Muslim immigration. *See Hawaii*, 859 F.3d at 763. In any event, Plaintiffs’ injuries—the forced separation from their relatives and stigma from being among the religious group targeted by the Proclamation—are directly caused by the Proclamation and would be alleviated by enjoining its implementation.

religious liberties cannot be deterred by awarding damages to the victims of such erosion”).

Plaintiffs also suffer irreparable harm on the second, independent ground that the Proclamation would prolong their separation from family and loved ones. Dr. Zakzok is confronted with the painful knowledge that his eldest daughter—the only member of his immediate family who will not be permitted inside the United States—is alone in a new country without any prospect of reuniting with her family absent an injunction. Dr. Hamadmad finds herself separated from her sister. Even though her sister has spent no time in Syria, the Proclamation will bar their reunion simply because Dr. Hamadmad’s sister was born to Syrian parents. John Doe #1 was married only two months ago, but has no idea when he might see his new wife again. Each of the Plaintiffs suffers similar circumstances. *See supra* at 2–7.

The “prolonged separation from family members” faced by each of the Plaintiffs here constitutes irreparable harm. *Hawaii*, 859 F.3d at 782; *see Washington v. Trump*, 847 F.3d 1151, 1169 (9th Cir. 2017) (recognizing “separated families” as a “substantial injur[y]” and “irreparable harm[.]”); *cf. Moore v. City of E. Cleveland, Ohio*, 431 U.S. 494, 503–04 (1997) (“[T]he Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation’s history and tradition”). Like the individual plaintiff in *Hawaii*, who sought to “reunite his mother-in-law with his family,” *Hawaii*, 859 F.3d at 763, Plaintiffs—who seek to bring one or more of their loved ones to the United States—are “likely to suffer irreparable harm in the absence of preliminary relief,” *id.* at 783.

CONCLUSION

For the foregoing reasons and those stated in the *IRAP* and *IAAB* plaintiffs’ memoranda of law, Plaintiffs’ motion for a preliminary injunction should be granted.

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Respectfully submitted,

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†*Pro hac vice applications forthcoming*