IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

INTERNATIONAL REFUGEE ASSISTANCE PROJECT, *et al.*, Plaintiffs-Appellees, v. DONALD TRUMP, in his official capacity as President of the United States, *et al.*, Defendants-Appellants.	No. 17-2231 (L)
IRANIAN ALLIANCES ACROSS BORDERS, *et al.*, Plaintiffs-Appellees, v. DONALD TRUMP, in his official capacity as President of the United States, *et al.*, Defendants-Appellants.	No. 17-2232
EBLAL ZAKZOK, *et al.*, Plaintiffs-Appellees, v. DONALD TRUMP, in his official capacity as President of the United States, *et al.*, Defendants-Appellants.	No. 17-2233

REPLY IN SUPPORT OF MOTION TO ESTABLISH BRIEFING SCHEDULE REGARDING MOTION FOR STAY PENDING APPEAL

Given the gravity of the issues implicated by the motion for a stay, and the irreparable harm to the government and the public resulting from the district court's worldwide injunction barring enforcement of the Proclamation's tailored entry restrictions for nationals of six countries with a bona fide relationship to a U.S. person or entity, the government has proposed an expedited schedule for briefing. Although plaintiffs' opposition briefs raise several objections to the government's proposed schedule, none provides a good reason to delay briefing on, or this Court's consideration of, the stay motion.

1. Plaintiffs' primary objection is that the government's proposed briefing schedule, under which plaintiffs have four calendar days (and two business days) to respond to the stay motion, provides inadequate time to respond. The proposed schedule, however, is not substantially different from the highly expedited schedule under which, at plaintiffs' insistence, the parties briefed the three motions for a preliminary injunction in district court. Two of the motions for a preliminary injunction and accompanying memoranda were filed twelve calendar (and ten business) days after the Proclamation was issued, and the third memorandum was filed sixteen calendar (and eleven business) days after issuance of the Proclamation. (Here, in contrast, the government appealed and moved for a stay just three days after the preliminary injunction was entered.) The government was given just six

calendar (and three business) days to respond to the first two motions and memoranda, and just 48 hours to respond to the third, with the plaintiffs' combined memoranda totaling over 50 pages. Plaintiffs filed replies in support of their motions, responding to the government's 45-page opposition, less than 48 hours (and 1 business day) later. Plaintiffs have not explained why, in light of their view that such highly expedited briefing on the merits of the preliminary injunction was appropriate in district court, four days is inadequate to respond to a 23-page stay motion in the court of appeals.

2. Plaintiffs also point to the fact that this Court, in the prior appeal in *IRAP v. Trump*, No. 17-1351, ordered a schedule that provided seven calendar days for plaintiffs to file an opposition to the government's stay motion. But that briefing schedule was proposed by the government (and entered by the Court). The government proposed that schedule because it believed that the Court should have the benefit of both stay briefing and full merits briefing in ruling on the stay motion. The government accordingly proposed a schedule under which both the stay motion and the opening merits brief would be due the same day, and the opposition to the stay motion and the responsive brief would be due seven calendar days later. The Court ultimately decided to permit a longer period for plaintiffs to respond to the opening merits brief. Had the government not sought to align the briefing, it would have requested—and the Court would have considered, as the government is now

asking it to do—whether more expedited briefing on the stay motion was appropriate.[1]

3. Plaintiffs also accuse the government of being dilatory, either in issuing the Proclamation, in putting its operative provisions into effect, or in seeking relief in this Court. But the Proclamation was the culmination of a comprehensive, multi-agency review of over 200 countries' information-sharing practices and other terrorist risk factors, involving Department of State communication and consultation with numerous countries and extensive inter-agency consultation. That review resulted in a recommendation from the Acting Secretary of Homeland Security to the President, with which, after consulting further with high-level officials, the President acted in accordance.

Furthermore, the Proclamation went into effect immediately for those aliens who were already subject to the entry suspensions imposed by Executive Order 13,780, under the preliminary injunctions as partially stayed by the Supreme Court, and provided a slightly delayed effective date for all other aliens in order to permit the orderly implementation of the policy, by consular officials and others throughout

[1] The government has not yet proposed a schedule for briefing on the merits in this appeal, because it is consulting with plaintiffs in the hopes of agreeing on an expedited schedule to propose to the Court. The government intends to move early next week for an expedited merits briefing schedule.

the world. And the government sought a stay in this Court just three days after the district court entered an injunction.

4. Finally, the fact that the government has indicated to the district court in the *Hawaii v. Trump* litigation that it might be appropriate to wait before converting the temporary restraining order entered in that case into a preliminary injunction says nothing about the need for expedited briefing and consideration of this stay motion. Rather, it reflects the unique circumstances of that case. As the government notified the *Hawaii* district court, the government has requested that the Supreme Court vacate as moot the Ninth Circuit's prior decision, which was relied on by the *Hawaii* district court as precedent in issuing the temporary restraining order. The Government will notify the Supreme Court of further developments regarding mootness after the review process required by Section 6(a) of Executive Order 13,780 expires on October 24, 2017. The government explained that, because any Supreme Court vacatur of the Ninth Circuit's decision could affect the district court's decision regarding conversion, under those circumstances, it might be appropriate to await a Supreme Court order. No similar reasons apply here, given that the Supreme Court has already vacated this Court's prior decision as moot.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this motion complies with the type-face requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-volume limitations of Federal Rule of Appellate Procedure 27(d)(2)(A). This motion contains 927 words, excluding the parts of the motion excluded by Federal Rules of Appellate Procedure 27(d)(2) and 32(f).

s/Sharon Swingle
Sharon Swingle

CERTIFICATE OF SERVICE

I hereby certify that on this 21th day of October, 2016, I filed the foregoing reply brief through the Fourth Circuit's CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

s/Sharon Swingle
Sharon Swingle