

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

INTERNATIONAL REFUGEE)
ASSISTANCE PROJECT, *et al.*,)
Plaintiffs-Appellees,)

v.)

No. 17-2231 (L)

DONALD TRUMP, in his official capacity)
as President of the United States, *et al.*,)
Defendants-Appellants.)

IRANIAN ALLIANCES ACROSS)
BORDERS, *et al.*,)
Plaintiffs-Appellees,)

v.)

No. 17-2232

DONALD TRUMP, in his official capacity)
as President of the United States, *et al.*,)
Defendants-Appellants.)

EBLAL ZAKZOK, *et al.*,)
Plaintiffs-Appellees,)

v.)

No. 17-2233

DONALD TRUMP, in his official capacity)
as President of the United States, *et al.*,)
Defendants-Appellants.)

INTERNATIONAL REFUGEE ASSISTANCE PROJECT, <i>et al.</i> , Plaintiffs-Appellees,)	
)	
v.)	No. 17-2240
)	
DONALD TRUMP, in his official capacity as President of the United States, <i>et al.</i> , Defendants-Appellants.)	
)	

**MOTION BY FEDERAL DEFENDANTS-APPELLANTS
TO EXPEDITE MERITS BRIEFING SCHEDULE**

1. These consolidated appeals and cross-appeal concern Presidential Proclamation No. 9645, “Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or other Public-Safety Threats,” 82 Fed. Reg. 45,161 (2017). The Proclamation was issued after the Department of Homeland Security, in consultation with the Department of State and Director of National Intelligence, conducted a global review of foreign governments’ information-sharing practices and risk factors, culminating in a decision by the Acting Secretary of Homeland Security to recommend that the President impose entry restrictions on certain nationals of eight countries the information-sharing practices of which were deemed inadequate or that posed other risk factors. The Proclamation imposes country-specific restrictions that, in the President’s judgment, would most likely “encourage cooperation” in information

sharing and “protect the United States until such time as improvements occur.” *Id.* at 45,164.

2. On October 17, 2017, the district court issued a preliminary injunction in three cases that bars enforcement of the entry restrictions in the Proclamation (except for those applicable to North Korea and Venezuela) to nationals of the identified countries with a credible claim of a bona fide relationship with a person or entity in the United States. The district court granted a worldwide injunction, enjoining the defendants at “all places, including the United States, at all United States borders and ports of entry, and in the issuance of visas, with the above exceptions, pending further orders from [the] court.”

2. The defendants filed notices of appeal on October 20, 2017, and this Court consolidated the three cases. The same day, the defendants moved for an emergency stay pending appeal and an administrative stay, and also moved for expedited briefing on the stay motion. Those motions remain pending with the Court.

3. On October 23, certain plaintiffs filed a cross-appeal from the same district court order. This Court consolidated that cross-appeal with the government’s consolidated appeals, and designated the federal defendants as the appellants for purposes of the consolidated appeals, to proceed first at briefing and oral argument.

4. The parties have conferred regarding a briefing schedule for the merits of these consolidated appeals but have been unable to reach agreement on a proposed schedule.

The federal defendants proposed that the opening brief be due November 1, 2017; the response/cross-appellants' brief be due November 15, 2017; the reply/cross-appellees' brief be due November 24, 2017; and the cross-appeal reply brief be due December 1, 2017, with oral argument scheduled at the Court's soonest convenience following the conclusion of briefing.

The plaintiffs have proposed a lengthier briefing schedule, under which the federal defendants' opening brief would be due November 1, 2017; the response brief on the government's appeal and the opening cross-appeal brief would be due November 22, 2017; the government's reply on its appeal and cross-appeal response would be due December 6, 2017; and plaintiffs' cross-appeal reply would be due December 13, 2017.

5. The federal defendants believe their suggested schedule is preferable and should be adopted. The schedule proposed by the federal defendants would allow for this Court's timely consideration of the case, with the opportunity for it to be heard by the Court at its regularly scheduled December 5-7, 2017 oral argument sitting. Furthermore, the case could likely be heard by the Supreme Court this Term with reasonable expedition by the Parties. The parties in the *Hawaii v. Trump*

litigation challenging the Proclamation, in which an appeal of a preliminary injunction is also pending, have agreed to a very similar briefing and argument schedule, which would allow for oral argument in that case by December 4-8, 2017. It makes sense for the two cases to be heard on a similar timeline, and to be heard together by the Supreme Court, and only the federal defendants' proposed briefing schedule achieves that end.

This case warrants expedition that leaves open the possibility of prompt Supreme Court review. The district court's nationwide injunction prevents the government from implementing a national-security measure issued in response to a global review, undertaken by the Departments of Homeland Security and State, of foreign governments' information-sharing practices and risk factors. The injunction prevents the President from responding as he deems fit to risks the government has identified as currently affecting the Nation's safety. The immense public interest in the security of the Nation, and the injunction's significant incursion into areas ordinarily committed to the Executive and Legislative branches of government, together require that the case be heard as soon as is reasonably feasible, on a schedule that will allow for Supreme Court review in the current Term.

The additional time proposed by the IRAP plaintiffs also is unnecessary for briefing these appeals, given that plaintiffs are making—and the district court accepted—arguments that already have been briefed in whole or in part multiple

times. In addition, the briefing on the cross-appeal should not be substantial, given that the cross-appeal should be limited to the relief the district court declined to grant in the order on appeal—an injunction on behalf of individuals who lack a credible claim of a bona fide relationship with a person or entity in the United States, as defined in the court’s opinion.

Respectfully submitted,

s/Sharon Swingle

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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 861 words, excluding the parts of the motion excluded by Federal Rules of Appellate Procedure 27(d)(2) and 32(f).

s/Lowell V. Sturgill Jr.
Lowell V. Sturgill Jr.

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of October, 2016, I filed the foregoing motion by use of 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/Lowell V. Sturgill Jr.
Lowell V. Sturgill Jr.