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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

STATE OF HAWAII, ISMAIL ELSHIKH, JOHN  
DOES 1 & 2, and MUSLIM ASSOCIATION OF  
HAWAII, INC.,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as  
President of the United States; U.S.  
DEPARTMENT OF HOMELAND SECURITY;  
ELAINE DUKE, in her official capacity as Acting  
Secretary of Homeland Security; U.S.  
DEPARTMENT OF STATE; REX TILLERSON,  
in his official capacity as Secretary of State; and  
the UNITED STATES OF AMERICA,

Defendants.

**JOINT NOTICE  
REGARDING  
STIPULATION TO  
CONVERT TEMPORARY  
RESTRAINING ORDER  
TO PRELIMINARY  
INJUNCTION; JOINT  
STIPULATION TO  
CONVERT TEMPORARY  
RESTRAINING ORDER  
TO PRELIMINARY  
INJUNCTION;  
CERTIFICATE OF  
SERVICE**

Civil Action No. 1:17-cv-  
00050-DKW-KSC

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**JOINT NOTICE REGARDING STIPULATION TO CONVERT  
TEMPORARY RESTRAINING ORDER TO PRELIMINARY  
INJUNCTION**

On October 17, 2017, this Court issued a temporary restraining order (“TRO”) prohibiting Defendants from enforcing the Proclamation issued on September 24, 2017, entitled “Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or Other Public-Safety Threats,” across the Nation. Dkt. 387. The Court also ordered the parties to submit a stipulated briefing and hearing schedule to determine whether the TRO should be extended, or to “promptly indicate whether they jointly consent to the conversion of this Temporary Restraining Order to a Preliminary Injunction without the need for additional briefing or a hearing.” *Id.* at 39.

The parties, having met and conferred, stipulate and agree that the TRO shall be converted to a Preliminary Injunction. The parties’ joint stipulation regarding conversion is attached hereto and is being submitted to chambers consistent with Local Rules 10.4 and 100.8.2. The Government reserves its right to appeal the injunction.

The Government wishes to note, however, that it has requested that the Supreme Court vacate as moot the Ninth Circuit’s prior decision, relied on by the district court as precedent. And the Government will notify the Supreme Court of further developments regarding mootness after Section 6(a)’s review process

expires on October 24, 2017. *See* Letter Brief Regarding Mootness, *Trump v. Hawaii*, No. 16-1540 (Oct. 5, 2017); *cf. Trump v. IRAP*, No. 16-1436, --- S. Ct. ---, 2017 WL 4518553 (Oct. 10, 2017) (vacating the Fourth Circuit’s decision as moot due to expiration of Section 2(c) of EO-2 on September 24, 2017). Accordingly, to the extent vacatur of the Ninth Circuit’s decision would affect this Court’s decision regarding conversion of its temporary restraining order to a preliminary injunction, the Government notes that the Court may wish to wait until after the Supreme Court acts on the Government’s request for vacatur. *See Camreta v. Greene*, 563 U.S. 692, 713 (2011) (“The point of vacatur is to prevent an unreviewable decision ‘from spawning any legal consequences[.]’” (quoting *United States v. Munsingwear, Inc.*, 340 U.S. 36, 40-41 (1950))).

Plaintiffs note that the Supreme Court has not vacated the Ninth Circuit’s opinion. Moreover, even if the Supreme Court does ultimately vacate that opinion, that vacatur order would “express no view on the merits,” *IRAP*, 2017 WL 4518553, and “a vacated opinion still carries informational and perhaps even persuasive or precedential value,” *DHX, Inc. v. Allianz AGF MAT, Ltd.*, 425 F.3d 1169, 1176 (9th Cir. 2005) (Beezer, J., concurring) (collecting cases). For the reasons set forth in the Ninth Circuit’s opinion in *Hawaii v. Trump*, 859 F.3d 741 (9th Cir. 2017), and in Plaintiffs’ memorandum and reply in support of a TRO, the Ninth Circuit’s and this Court’s holdings regarding the meaning of 8 U.S.C.

§§ 1152(a)(1)(A), 1182(f), and 1185(a) are entirely correct. Therefore, Plaintiffs respectfully submit that there is no reason for this Court to delay conversion.

In addition, Plaintiffs continue to reserve their right to seek leave to amend their complaint to challenge any future actions regarding refugees, as appropriate.

*See* Mem. 5-6 n.3, Dkt. No. 368-1.

DATED: Washington, DC, October 20, 2017.

/s/ Neal K. Katyal

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STATE OF HAWAII, ISMAIL ELSHIKH, JOHN  
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DONALD J. TRUMP, in his official capacity as  
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ELAINE DUKE, in her official capacity as Acting  
Secretary of Homeland Security; U.S.  
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in his official capacity as Secretary of State; and  
the UNITED STATES OF AMERICA,

Defendants.

**JOINT STIPULATION TO  
CONVERT TEMPORARY  
RESTRAINING ORDER  
TO PRELIMINARY  
INJUNCTION**

Civil Action No. 1:17-cv-  
00050-DKW-KSC

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**JOINT STIPULATION TO CONVERT TEMPORARY RESTRAINING ORDER TO PRELIMINARY INJUNCTION**

Pursuant to Local Rule 10.4, Plaintiffs State of Hawaii, Ismail Elshikh, John Does 1 & 2, and the Muslim Association of Hawaii (collectively, “Plaintiffs”), and Defendants Donald J. Trump, U.S. Department of Homeland Security, Elaine Duke, U.S. Department of State, Rex Tillerson, and the United States of America (collectively, “Defendants”), by their respective counsel, hereby agree and stipulate that the Court’s October 17, 2017 Order Granting Motion for Temporary Restraining Order, Dkt. 387, shall be converted to a preliminary injunction. Defendants reserve their right to appeal the injunction.

DATED: Washington, DC, October 20, 2017.

*/s/ Neal K. Katyal*

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APPROVED AND SO ORDERED:

DATED: Honolulu, Hawaii, October \_\_\_\_, 2017.

\_\_\_\_\_  
Derrick K. Watson  
U.S. District Judge

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*State of Hawaii, et al. v. Trump, et al.*, Case No. 17-00050-DKW-KSC;  
STIPULATION AND ORDER CONVERTING TEMPORARY RESTRAINING  
ORDER TO PRELIMINARY INJUNCTION