

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

INTERNATIONAL REFUGEE ASSISTANCE)
PROJECT, a project of the Urban Justice Center,)
Inc., on behalf of itself; HIAS, INC., on behalf of)
itself and its clients; MIDDLE EAST STUDIES)
ASSOCIATION OF NORTH AMERICA, INC.,)
on behalf of itself and its members;)
MUHAMMED METEAB; PAUL HARRISON;)
IBRAHIM AHMED MOHOMED; JOHN DOES)
#1 & 3; JANE DOE #2,)
Plaintiffs-Appellees,)

v.)

No. 17-1351

DONALD J. TRUMP, in his official capacity as)
President of the United States; DEPARTMENT)
OF HOMELAND SECURITY; DEPARTMENT)
OF STATE; OFFICE OF THE DIRECTOR OF)
NATIONAL INTELLIGENCE; JOHN F. KELLY,)
in his official capacity as Secretary of Homeland)
Security; REX W. TILLERSON, in his official)
Capacity as Secretary of State; DANIEL R.)
COATS, in his official capacity as Director of)
National Intelligence,)
Defendants-Appellants.)

**DEFENDANTS-APPELLANTS' RESPONSE TO THE
COURT'S ORDER REGARDING INITIAL EN BANC REVIEW**

Defendants-Appellants Donald J. Trump *et al.* (collectively, the government) respectfully submit this response to the Court's March 27, 2017 order requesting the parties' position on the appropriateness of initial en banc review in this case. As we

have explained in our earlier filings and explain further below, the government urges expedited resolution of its appeal from the district court's nationwide injunction and its request for a stay pending disposition of the appeal. The government's stay motion and appeal raise weighty issues, and the district court's injunction imposes irreparable harm on the government and the public at large (while plaintiffs lack any concrete, irreparable harm in need of imminent redress). At the government's request, this Court entered an expedited briefing schedule on both the stay and the appeal. The government's paramount interest continues to be in expedited resolution on the existing schedule for briefing and argument. The government therefore supports initial en banc review only if the Court determines that such review would not delay the briefing, argument, or resolution of the stay or the appeal.

1. The district court entered a nationwide injunction barring enforcement of Section 2(c) of Executive Order No. 13,780, "Protecting the Nation from Foreign Terrorist Entry Into the United States," 82 Fed. Reg. 13,209 (Mar. 9, 2017). Section 2(c) suspends for 90 days the entry into the United States of certain foreign nationals from six countries.

2. As the government has set forth in its filings, this appeal raises constitutional and statutory issues of exceptional importance. The district court entered an extraordinary order enjoining the President of the United States and members of his Cabinet responsible for immigration, national security, and foreign

relations from enforcing a provision of the Order that the President determined was necessary to protect national security, a compelling interest. The issues presented are exceptionally important and clearly meet the standard for this Court's en banc consideration. Fed. R. App. P. 35(a)(2).

3. As the government explained in requesting expedited consideration of this appeal, though, the government's principal interest at this stage of the litigation is in a prompt resolution by this Court of the weighty legal questions presented by both the motion for a stay pending appeal and the appeal itself. Under the current schedule ordered by the Court, the appeal will be fully briefed by the parties and oral argument will be held on May 8, 2017; even more immediately and importantly, the stay motion will be fully briefed by April 5, 2017 (as the government proposed). In light of the government's interest in an expedited resolution of the important legal issues presented by both the stay motion and the merits appeal, the government supports initial review by the full Court if, but only if, the Court determines that initial en banc consideration would not delay the briefing, argument, or resolution of the stay or the appeal.

Respectfully submitted,

/s/ Sharon Swingle
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MARCH 2017

CERTIFICATE OF SERVICE

I hereby certify that on March 29, 2017, I electronically filed the foregoing Motion with the Clerk of the Court by using the appellate CM/ECF system. The 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

CERTIFICATE OF COMPLIANCE

I hereby certify that this Motion complies with the word count and typeface requirements set forth in Federal Rule of Appellate Procedure 27. The Motion contains 489 words and is prepared in Times New Roman font, 14-point type.

/s/ Sharon Swingle
Sharon Swingle