

**UNITED STATES DISTRICT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

ARAB AMERICAN CIVIL RIGHTS
LEAGUE, *et al.*,

Plaintiffs,

Case No. 17-10310

v.

Hon. Victoria A. Roberts

DONALD TRUMP, President of the United
States, *et al.*,

Defendants.

_____ /

DEFENDANTS' MOTION TO RE-SCHEDULE
MOTION HEARING

Defendants, by and through counsel, respectfully request the entry of an order re-scheduling the Hearing on Defendant's Motion to Dismiss (ECF 76). Currently, the Motion Hearing is scheduled for June 6, 2017, at 10:00 a.m. (*see* Minute Entry dated May 30, 2017). As set forth in the accompanying memorandum, given the pending stay motion as well as forthcoming Supreme Court litigation, and due to conflicts between the schedule of counsel for Defendants and the Court's schedule, Defendants request that the Court hold the hearing on June 13, 2017, or any date thereafter that is convenient to the Court.

Undersigned counsel conferred with counsel for the Plaintiffs by telephone and email on May 30, May 31, and June 1, 2017. Counsel for Plaintiffs stated that

Plaintiffs were willing to reschedule the hearing for a different day during the week of June 5, 2017, and the parties were able to agree to ask the Court to reschedule the hearing to June 8, 2017; however, counsel for both parties learned on May 31, 2017, that the Court is not available on June 8 and June 9. Counsel for Plaintiffs confirmed on June 1, 2017, that Plaintiffs oppose this motion to reschedule the hearing to later than June 9, 2017.

Respectfully submitted,

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GISELA A. WESTWATER
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Dated: June 1, 2017

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**MEMORANDUM IN SUPPORT OF DEFENDANTS’
MOTION TO RE-SCHEDULE MOTION HEARING**

Defendants respectfully ask the Court to re-schedule the hearing on Defendant’s Motion to Dismiss (ECF 76), which is currently scheduled for June 6, 2017, at 10:00 a.m. (*see* Minute Entry dated May 30, 2017). Defendants submit that good cause to reschedule the hearing exists in light of Defendants’ pending Motion to Stay Pending Supreme Court Proceedings, counsel’s scheduling conflicts, and the importance of the issues at stake in this case.

As the Court is aware, this case is of national significance because it is

challenges Executive Order No. 13780 (the “Order”) and is linked with substantially similar challenges to the Order that have been brought in courts across the country. One circuit court has already issued a decision on the validity of the Order, and a decision from another circuit court is anticipated in the near future. *See Int’l Refugee Assistance Proj. v. Trump*, No. 17-1351, --- F.3d ---, 2017 WL 2273306 (4th Cir. May 25, 2017) (“*IRAP*”); *Hawai’i v. Trump*, No. 17-15589 (9th Cir.) (argued May 15, 2017).

Lead counsel for the Defendants, August E. Flentje, Special Counsel to the Assistant Attorney General, has been heavily involved in the oversight and handling of this and other cases challenging the Order.¹ Due to his leading role in these cases and his level of expertise, Defendants have designated Mr. Flentje to handle oral argument in this case. In addition to his responsibilities in this case, Mr. Flentje has many additional responsibilities in managing the Office of Immigration Litigation.

Unfortunately, Mr. Flentje is unavailable to attend the June 6, 2017, hearing date due to scheduling conflicts. Specifically, Mr. Flentje will be traveling on personal leave today through Monday, June 5, 2017, that he scheduled over one year ago. The current hearing date would not allow adequate time for him to

¹ Mr. Flentje is in the process of obtaining CM/ECF credentials and will be formally entering his appearance as soon as possible.

prepare for argument, and travel to Detroit, particularly given his participation this week and last in the preparation of Supreme Court filings seeking review of the Fourth Circuit's decision in *IRAP*. Ms. Gisela Westwater, who was lead counsel on this case until now and will be accompanying Mr. Flentje to any hearing in this case, is also unavailable on June 6 because she will be preparing for a mediation hearing that is scheduled to take place in the Eastern District of New York on June 7, 2017, in a case involving the first Executive Order. Defense counsel's only other prior commitment is on June 12. Both Mr. Flentje and Ms. Westwater are available on June 8 and 9, as well as on June 13, 14, 15, and 16.

As soon as counsel for Defendants identified the scheduling conflict, they conferred with opposing counsel and agreed upon June 8 as a mutually-agreeable date. Nevertheless, upon jointly contacting the Court to propose this date, we were informed that the Court is unavailable on June 8 and June 9, 2017.

Undersigned counsel thus respectfully request that the Court reschedule the hearing on Defendants' Motion to Dismiss to June 13 or any date thereafter.

Further, postponing the hearing on the merits of Defendants' Motion to Dismiss may be the most efficient path for the parties and the Court in light of the Court's ongoing consideration of Defendants' Motion to Stay the Proceedings. As set forth in that Motion to Stay, the Attorney General has announced that the

Government is seeking review of the Fourth Circuit’s decision in the Supreme Court. That filing is forthcoming, and will likely result in a Supreme Court decision that will “decide legal issues that will impact the court’s resolution of the parties’ discovery disputes [] by clarifying ‘the applicable law or relevant landscape of facts that need to be developed’” and “will also likely help the court in resolving Defendants’ motion to dismiss.” *See Washington v. Trump*, No. 17-0141-JLR, 2017 WL 2172020, at *2, *6 (W.D. Wash. May 17, 2017) (granting motion to stay proceedings pending Ninth Circuit appeal). Supreme Court action would also assist the Court and the parties with respect to the oral presentations before the Court. The issues currently pending before this Court are both complex and novel, as evidenced by the issues of first impression raised in Defendants’ Motion to Dismiss and the complex nature of the legal questions raised by Plaintiffs’ discovery requests, the government’s objections, and the Plaintiffs’ motion to compel. That being said, Defendants stand ready to present arguments in support of dismissal to the Court if its stay motion is denied, but respectfully request a rescheduling of the argument that would result only in a brief postponement if the Court thinks it better to move forward on dismissal arguments.

This request is not made for purposes of delay.

Respectfully submitted,

AUGUST FLENTJE
Special Counsel

WILLIAM C. PEACHEY
Director

GISELA A. WESTWATER
Assistant Director

EREZ REUVENI
Senior Litigation Counsel

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Dated: June 1, 2017

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Civil No. 17-10310
Hon. VICTORIA A. ROBERTS
Mag. Judge Stephanie Dawkins Davis

v.

[PROPOSED] ORDER

DONALD TRUMP, *et al.*,

Defendants.

_____ /

Upon consideration of Defendants' Motion to Reschedule Hearing, the Court GRANTS Defendants' Motion and will reschedule the June 6, 2017, Hearing on Defendants' Motion to Dismiss to a date after June 12, 2017.

The Court hereby ORDERS that the June 6, 2017, Hearing on Defendants' Motion to Dismiss is continued to June _____, 2017, at _____ a.m./p.m.

IT IS SO ORDERED.

Date: June _____, 2017

Victoria A. Roberts
United States District Judge