

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

TAREQ AQEL MOHAMMED AZIZ,)	
<i>et al.</i> ,)	
)	
Petitioners,)	
)	
vs.)	Civil Action No. 1:17cv116
)	
DONALD TRUMP,)	
President of the United States, <i>et al.</i> ,)	
)	
Respondents.)	
_____)	

**RESPONDENTS’ OPPOSITION TO PUTATIVE INTERVENOR COMMONWEALTH
OF VIRGINIA’S MOTION FOR ISSUANCE OF RULE TO SHOW CAUSE**

The Commonwealth of Virginia filed a Motion for the Issuance of a Rule to Show Cause on February 1, 2017 and sought a hearing within two days. Respondents wish to state their opposition to the motion. With adequate time to brief this matter, Respondents would provide additional reasons why the Court should deny the motion.

Initially, the Commonwealth establishes no legal basis for a putative intervenor to seek to enforce a temporary restraining order (“TRO”). *Cf. In re Allied Pilots Class Action Litig.*, No. CIV.A.3:99-CV-0480P, 2000 WL 1405235, at *6 (N.D. Tex. Sept. 26, 2000) (“The TRO may only be enforced by parties to the suit from which the order emanated.”) (citing *Northside Realty Associates, Inc. v. United States*, 605 F.2d 1348, 1356–57 (5th Cir. 1979)).

Undersigned counsel for Respondents have engaged in extensive communications with the Petitioners’ counsel—who actually filed and thus procured the TRO—about its implementation and worked in good faith to help Respondents comply. The Commonwealth questions whether lawful permanent residents were provided physical access to counsel in the

immediate aftermath of the Court's order late in the evening of Saturday, January 28, 2017. The undersigned are continuing to determine what steps were taken by Customs and Border Protection ("CBP") to comply with the TRO in the late-night hours of January 28, 2017; however, CBP has informed us that no lawful permanent residents withdrew their admission or were removed from the United States from Dulles International Airport pursuant to the Executive Order after the entry of the TRO. The Commonwealth overlooks that, by the afternoon of Sunday, January 29, 2017, the counsel for the actual parties to the litigation had worked together on a plan for Respondent CBP to facilitate telephonic access to counsel should individuals be interested in soliciting legal advice, in lieu of providing counsel physical access to the secured space where secondary inspections occur. Importantly, the TRO does not specify whether physical or telephonic access to counsel is required, and the security demands of the airport customs environment raises significant concerns about physical access to those in secondary inspection. *See* Dkt. No. 3; *Fed. Nat'l Mortg. Ass'n v. Bell*, 576 Fed. Appx. 196, 197 (4th Cir. 2014) (per curiam) (holding, in conjunction with vacatur of civil contempt order, that "[c]ivil contempt is an appropriate sanction if we can point to an order . . . which set[s] forth in specific detail *an unequivocal command* which a party has violated" (quoting *In re Gen. Motors Corp.*, 61 F.3d 256, 258 (4th Cir. 1995) (emphasis added))).

It is significant that Petitioners themselves have not sought a rule to show cause; rather, the motion was filed by a putative intervenor, which was not a party to those extensive communications. Indeed, the Petitioners have joined the Respondents in asking that the Petitioner's claims be held in abeyance because the parties have worked cooperatively together to resolve the Petitioners' claims.

The Commonwealth also takes issue with the fact that by February 1, 2017, it did not receive a response to its letter sent on January 29, 2017 to the Secretary of Homeland Security, the United States Attorney, and others. The Commonwealth's letter squarely implicated matters that were the subject of pending litigation, and therefore, the United States was considering and coordinating whether it would be appropriate to provide a substantive response to the letter when the Commonwealth filed its motion.

If the Court wishes to inquire about the Respondents' compliance with its TRO, Respondents' counsel stands ready to answer the Court's questions, but the issuance of an order to show cause requested by the Commonwealth is unjustified.

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Respectfully submitted,

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DATE: February 2, 2017

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CERTIFICATE OF SERVICE

I hereby certify that on this date, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will transmit a true and correct copy of the same to the following:

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