

The Honorable James L. Robart

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOHN DOE, et al.,

Plaintiffs,

v.

DONALD TRUMP, et al.,

Defendants.

Civil Action No. 2:17-cv-00178JLR

JEWISH FAMILY SERVICE OF
SEATTLE, et al.,

Plaintiffs,

v.

DONALD TRUMP, et al.,

Defendants.

Civil Action No. 2:17-cv-01707JLR

**DEFENDANTS' EMERGENCY
MOTION FOR STAY OF
PRELIMINARY INJUNCTION
PENDING APPEAL**

(RELATING TO BOTH CASES)

NOTE ON MOTION CALENDAR:
December 29, 2017

INTRODUCTION

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2 Defendants hereby move the Court to stay its preliminary injunction barring enforcement
3 of two provisions of the October 23, 2017, Memorandum to the President (cited in the Court's
4 opinion as the "Agency Memorandum" and cited herein and in Defendants' prior submissions as
5 the "Joint Memorandum") pending a decision from the Ninth Circuit on Defendants' forthcoming
6 appeal. Defendants also request that the Court enter an order staying its injunction during the
7 interim period while the Court considers this motion.¹

8 As explained more fully below, the balance of harms weighs strongly in favor of a stay,
9 and the Government is likely to prevail on the merits of its appeal. The Supreme Court recently
10 stayed in full injunctions that district courts had entered against enforcement of the entry
11 restrictions in Presidential Proclamation No. 9645, 82 Fed. Reg. 45,161 (Sept. 24, 2017), based
12 in part on a balancing of harms and interests that are similar to those at issue here. The same
13 result is warranted in this case.

STANDARD OF REVIEW

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15 In deciding a motion to stay pending appeal, courts consider four factors: "(1) whether the
16 stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether
17 the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will
18 substantially injure the other parties interested in the proceeding; and (4) where the public interest
19 lies." *Nken v. Holder*, 556 U.S. 418, 434 (2009). A stay is appropriate if the movant demonstrates
20 that it has raised serious questions going to the merits on appeal and the balance of hardships tips
21 sharply in its favor. *See All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir.
22 2011).

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26 ¹ Defendants have reviewed the Court's Local Civil Rules and have determined that this
emergency stay motion is analogous to a motion for a temporary restraining order. Accordingly,
Defendants have adhered to the noting date and page count rules associated with such motions.

ARGUMENT

I. THE BALANCE OF HARMS WEIGHS STRONGLY IN FAVOR OF A STAY

The serious and irreparable harms to the Government and the public from this Court’s preliminary injunction outweigh any harm Plaintiffs might suffer if the injunction is stayed. The Supreme Court reached this conclusion when it stayed in full the injunctions issued by district courts in *Trump v. Hawaii*, No. 17A550, 2017 WL 5987406 (U.S. Dec. 4, 2017), and *Trump v. Int’l Refugee Assistance Project (IRAP)*, No. 17A560, 2017 WL 5987435 (U.S. Dec. 4, 2017). The Supreme Court necessarily determined that the Government’s national-security and foreign-policy interests outweighed the plaintiffs’ interests in those cases. *See Nken*, 556 U.S. at 434. The Government’s national-security interests here, which also relate to risks from the admission of aliens from abroad, are just as weighty. And Plaintiffs interests’ and alleged harms are significantly weaker than those of the plaintiffs in *IRAP* and *Hawaii* because the provisions of the Joint Memorandum that Plaintiffs challenge are temporary (and due to expire in the near future). Thus, the Supreme Court’s orders in *IRAP* and *Hawaii* counsel in favor of this Court staying its preliminary injunction against the Joint Memorandum pending appellate review.

A. THE PRELIMINARY INJUNCTION IMPOSES SERIOUS, IRREPARABLE HARM ON THE GOVERNMENT AND THE PUBLIC

This Court’s preliminary injunction undermines the Executive Branch’s constitutional and statutory authority to safeguard the Nation’s security by conducting appropriate screening of aliens seeking admission to the United States, and it intrudes on the political branches’ constitutional prerogatives. “[N]o governmental interest is more compelling than the security of the Nation,” *Haig v. Agee*, 453 U.S. 280, 307 (1981), and “the Government’s interest in combating terrorism is an urgent objective of the highest order,” *Holder v. Humanitarian Law Project (HLP)*, 561 U.S. 1, 28 (2010). The Executive Branch’s protection of these interests warrants the utmost deference, particularly where, as here, it acts based on “[p]redictive judgment[s]” regarding specific national-security risks. *Dep’t of the Navy v. Egan*, 484 U.S. 518, 529 (1988); *see HLP*,

1 561 U.S. at 33-35. Rules “concerning the admissibility of aliens” also “implement[] an inherent
2 executive power.” *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 542 (1950).

3 After conducting a review of the refugee program as required by Executive Order No.
4 13,780 (EO-2), and “[n]otwithstanding the additional procedures identified or implemented
5 during [that period],” the Secretaries of State and Homeland Security and the Director of National
6 Intelligence “continue to have concerns” about the admission of refugees from Security Advisory
7 Opinion (SAO) countries, which were “previously identified as posing a higher risk to the United
8 States.” Joint Mem. at 2. The officials thus concluded it was necessary to conduct a “tailored”
9 and “in-depth threat assessment” of each SAO country before continuing admissions and making
10 further eligibility determinations as to refugee applicants from the affected countries. Joint Mem.
11 Addendum at 3; *see id.* (explaining that the review “will include input and analysis from the
12 intelligence and law enforcement communities, as well as all relevant information related to
13 ongoing or completed investigations and national security risks and mitigation strategies”). The
14 review of the refugee program called for by EO-2 also highlighted that “[t]he majority of
15 following-to-join refugees do not [currently] receive the same, full baseline interagency checks
16 that principal refugees receive.” Joint Mem. Addendum at 4. The Cabinet Secretaries thus made
17 a joint determination that, in order “to ensure the security and welfare of the United States,” it is
18 necessary to “implement adequate screening mechanisms for following-to-join refugees that are
19 similar to the process employed for principal refugees” before continuing admissions and making
20 further eligibility determinations as to following-to-join refugees.

21 The Court’s Order enjoining enforcement of these two challenged provisions necessarily
22 imposes irreparable harm on the Government and the public interest. Even a single State “suffers
23 a form of irreparable injury” “[a]ny time [it] is enjoined by a court from effectuating statutes
24 enacted by representatives of its people.” *Maryland v. King*, 567 U.S. 1301, 1303 (2012)
25 (Roberts, C.J., in chambers) (citation omitted); *see, e.g., O Centro Espirita Beneficiente Uniao de*
26 *Vegetal v. Ashcroft*, 314 F.3d 463, 467 (10th Cir. 2002). *A fortiori*, this Court’s injunction imposes

1 irreparable injury on the Executive Branch and the public given that the Joint Memorandum rests
2 on the national-security judgment of three Cabinet Secretaries, officials charged with determining
3 what screening steps are needed to evaluate requests for admission. These Secretaries jointly
4 determined that the SAO and following-to-join refugee populations may presently pose an
5 elevated risk due to inadequate screening and vetting and that additional procedures were needed
6 before further favorable eligibility determinations could be made. The problem is all the greater
7 given the Court's extension of the preliminary injunction not only to refugee applicants and
8 organizations before the Court, or even to applicants nationwide who have close familial or
9 institutional ties to the United States, but also to an additional pool of applicants whose only
10 domestic link is through the attenuated resettlement assurance process. Defendants address this
11 latter concern in their pending motion for reconsideration, *see* ECF No. 93.²

12 These national-security and institutional harms exist notwithstanding the Government's
13 understanding that the preliminary injunction does not impact any new screening or vetting
14 processes adopted as a result of the Government's 120-day review pursuant to section 6(a) of
15 Executive Order 13,780, and that the injunction operates prospectively only—*i.e.*, prohibiting
16 enforcement of the Joint Memorandum's specified provisions beginning on the date of the
17 preliminary injunction's issuance (December 23, 2017). Defendants do not understand the
18 preliminary injunction to require affirmative action to undo any of the steps that were taken to
19 implement the Joint Memorandum prior to December 23, including decisions made before
20 December 23 about how to allocate resources consistent with the Joint Memorandum. For
21

22 ² In the litigation regarding the Proclamation, the Ninth Circuit recently determined that
23 the balance of equities and the public interest tilt in favor of the plaintiffs. *See Hawaii v. Trump*,
24 No. 17-17168, — F.3d —, —, 2017 WL 6554184, at *22-23 (9th Cir. Dec. 22, 2017). Defendants
25 respectfully disagree with that decision and intend to petition for a writ of certiorari. Moreover,
26 that court's analysis was based on the purported inadequacy of the President's national-security
findings, *see id.*, whereas here the Court did not hold the Joint Memorandum invalid on that basis.
Also, as noted above, the underlying injunction in that case is stayed pending disposition of the
Government's forthcoming petition for a writ of certiorari, *see Trump v. Hawaii*, 2017 WL
5987406, at *1.

1 example, prior to the injunction’s issuance and consistent with the Joint Memorandum’s terms,
2 the State Department’s Bureau of Population, Refugees, and Migration (PRM) scheduled federal
3 fiscal year Quarter 2 “circuit rides” for U.S. Citizenship and Immigration Services (USCIS)
4 officers to interview refugee applicants in different locations, and also scheduled almost all of the
5 refugee applicant interviews for those locations. Those interviewees (selected before the
6 injunction was issued, consistent with the Joint Memorandum’s terms) have already been notified
7 of their upcoming interviews. Defendants do not understand the preliminary injunction to require
8 affirmative actions to undo these types of decisions that were made during the approximately two-
9 month period while the Joint Memorandum was in effect. *Cf. Hernandez v. Sessions*, 872 F.3d
10 976, 999 (9th Cir. 2017) (noting that “[m]andatory injunctions” are “subject to a higher standard
11 than prohibitory injunctions”); Fed. R. Civ. P. 65(d)(1).

12 Compelling Defendants to undo these prior decisions would likely redound to the
13 detriment of innocent third parties who have no connection to this lawsuit. For instance, if USCIS
14 were required to modify the universe of refugees to be interviewed during upcoming circuit rides
15 (despite those circuit rides and interviews being scheduled prior to the injunction’s issuance),
16 USCIS might then need to cancel some of the existing interviews, including for refugee applicants
17 who have already been notified of their anticipated interview. Such cancellations would not be
18 consistent with the public interest. *Cf. Richland Park Homeowners Ass’n, Inc. v. Pierce*, 671 F.2d
19 935, 943 (5th Cir. 1982) (“The injury to the public interest that would be caused by the uprooting
20 of . . . 44 innocent families . . . weigh[s] heavily against the plaintiffs in the judicial consideration
21 of their demand for relief . . .”). Moreover, there is significant doubt about whether it would
22 even be possible for Defendants to undo some of their prior decisions. While Defendants may be
23 able to adjust the interview schedule slightly, it is not feasible on short notice either to shift these
24 already-scheduled circuit rides to different countries or substantially revise the existing interview
25 schedules to substitute different refugee applicants. That is because almost all of the necessary
26 preparatory work—including completion of pre-screening interviews, security checks, and

1 notification to refugee applicants—has already occurred. Furthermore, the USCIS officers
2 conducting these interviews have been working to complete necessary pre-travel requirements—
3 including obtaining visas, making travel arrangements, obtaining or verifying necessary
4 vaccinations, and scheduling participation in location-specific pre-departure trainings—so
5 redeploying to other locations is not feasible in the near term.³

6 In light of the above, Defendants do not understand the preliminary injunction to require
7 them to take affirmative steps to undo the decisions that were made consistent with the Joint
8 Memorandum prior to the preliminary injunction’s issuance. In the event that Plaintiffs or the
9 Court have a different understanding of the preliminary injunction, further proceedings would be
10 necessary to help inform the Court’s analysis of these potential burdens and harms. Even under
11 the present injunction, however, the Government suffers significant national-security and
12 institutional injuries warranting a stay.

13 **B. A BRIEF STAY PENDING EXPEDITED APPEAL WOULD NOT IMPOSE ANY**
14 **SUBSTANTIAL HARM ON PLAINTIFFS**

15 As the Government argued in its opposition briefs and at the December 21, 2017, hearing,
16 the individual Plaintiffs—perhaps excepting Joseph Doe—have not established that they have
17 been injured or, indeed, affected at all by the challenged provisions of the Joint Memorandum.
18 Plaintiffs have not adequately demonstrated that they are on the brink of travel such that, but for
19 the SAO provision or the following-to-join implementation period, they would have arrived in the
20 United States during the short time before those provisions expire. Rather, Plaintiffs’ own
21 declarations and allegations show that other circumstances may be delaying their travel.
22 Accordingly, these Plaintiffs both lack standing to challenge the Joint Memorandum and have

23
24 ³ Because most of the interviewees were selected prior to the injunction and consistent
25 with the Joint Memorandum, some refugee applicants from SAO countries were scheduled for
26 interviews because they met the Joint Memorandum’s criteria for continued, case-by-case
processing during the 90-day review period. If additional, urgent requests from SAO nationalities
are identified, PRM and USCIS will work together to try to add them to the scheduled circuit
rides.

1 failed to carry their burden of demonstrating irreparable harm sufficient to warrant a preliminary
2 injunction.

3 With respect to the following-to-join implementation period, only three individual
4 Plaintiffs purport to challenge that provision. However, the challenges brought by two of these
5 Plaintiffs (Joseph Doe and Afkab Hussein) fail at the outset because their family members are
6 apparently located in Kenya, where the following-to-join vetting protocols are already generally
7 aligned with the protocols for principal refugees. Therefore, following-to-join refugees from non-
8 SAO countries processed in those locations were not impacted by the suspension related to
9 alignment of vetting protocols. *Compare* Decl. of Afkab Mohamed Hussein in Support of Pls.’
10 Mot. ¶¶ 3, 10-11, *Jewish Family Service of Seattle, et al. v. Trump, et al. (JFS)*, No. 2:17-cv-
11 01707, ECF No. 48 (“Hussein Decl.”), *with* Decl. of Joseph Doe in Supp. of Mot. for Prelim. Inj.
12 ¶ 9, ECF No. 47; *see also* Decl. of Jennifer B. Higgins in Supp. of Defs.’ Opp’n to Pl. Joseph
13 Doe’s Mot. for Prelim. Inj. ¶ 11, ECF No. 51–1. John Doe 7 also challenges the following-to-
14 join provision; unlike the families of Joseph Doe and Afkab Hussein, John Doe 7’s son is located
15 in a country (Iraq) where following-to-join processing was suspended pending institution of new
16 vetting protocols. However, as discussed below, John Doe 7’s son has been waiting to travel
17 since November 2016, and there is no basis from which the Court could conclude that the
18 following-to-join implementation period is the cause of his delay.

19 With respect to the SAO provision, a recurring theme across Plaintiffs’ allegations and
20 declarations is that they have been waiting to travel for a long time—months, even years. It is
21 wholly speculative to presume that they would have arrived during the short period affected by
22 the challenged provisions of the Joint Memorandum:

- 23 • Jeffrey Doe alleges that his parents and siblings applied for refugee status in 2005,
24 received an approval letter in 2006, and were assured by a resettlement agency in 2015.
25 But he also alleges that their medical checks have expired. Third Am. Compl. ¶ 89, ECF
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1 No. 42. Taking those allegations as true, the Court has no basis to conclude that Jeffrey'
2 Doe's family is on the brink of travel.

- 3 • Afkab Hussein's declaration states that Forms I-730 for his wife and son were approved
4 in June 2016 and that his wife and son have "completed several stages of the follow-to-
5 join screening process." Hussein Decl. ¶¶ 16-17. The reference to "several" stages (rather
6 than "all" stages) itself suggests that these family members must still complete additional
7 steps before being approved to travel.
- 8 • John Doe 1 (who is also the subject of Allen Vaught's concerns) was conditionally
9 approved for resettlement in or around December 2016 and was told in October 2017 to
10 "get ready to travel," but he has been delayed due to problems with his passport. Decl. of
11 John Doe # 1 in Supp. of Pls.' Mot. ¶¶ 15-16, *JFS*, ECF No. 52.
- 12 • John Doe 2 (who is also the subject of John Doe 3's concerns) was conditionally approved
13 for resettlement in or around March 2016, and his sponsor was told to expect his arrival
14 by August 2016, yet in January 2017 he was still awaiting security checks. Decl. of John
15 Doe #2 in Supp. of Pls.' Mot. ¶ 9, *JFS*, ECF No. 53. Given that well over a year has
16 elapsed since John Doe 2 was expected to travel, it would be speculative to infer that the
17 SAO provision is the cause of his delay.
- 18 • Jane Doe 4 was referred for resettlement in June 2017 and had a pre-screening interview
19 with the International Organization for Migration in September 2017. It is unclear whether
20 she has completed her medical checks. Decl. of Jane Doe #4 in Supp. of Pls.' Mot. ¶ 5,
21 *JFS*, ECF No. 55.
- 22 • Jane Doe 5 (who is also the subject of Jane Doe 6's concerns) has been awaiting security
23 checks since 2016. Decl. of Jane Doe #5 in Supp. of Pls.' Mot. ¶ 7, *JFS*, ECF No. 56.
24 Irrespective of the Joint Memorandum, Jane Doe 5 must complete those security checks
25 before she can qualify for refugee admission.
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1 • John Doe 7’s son was assured by a resettlement agency in November 2016. Decl. of John
 2 Doe #7 ¶ 4, *JFS*, ECF No. 58. Given that his application apparently has not progressed in
 3 the thirteen months since he received his assurance, Plaintiffs offer no basis from which
 4 the Court could presume that, but for the SAO provision, John Doe 7’s son would be
 5 scheduled to travel before that provision expires.⁴

6 That leaves Joseph Doe. As Government counsel acknowledged at the December 21
 7 hearing, Joseph Doe’s family members do appear to be on the brink of travel. However, as set
 8 forth in the Declaration of Jennifer L. Smith, attached hereto as Exhibit A, Joseph Doe’s family
 9 falls within an exception under “[p]roposed interim guidance . . . which was in the process of
 10 being reviewed for clearance before the Preliminary Injunction was issued.” Smith Decl. ¶ 2.
 11 Pursuant to that proposed guidance, on December 21, 2017, PRM’s overseas staff requested that
 12 the Resettlement Support Center in Kenya provide the family with travel documents and begin
 13 planning their travel. *Id.* ¶ 3. At this point, the family is expected to travel in mid-to-late January,
 14 and the State Department anticipates that it will know the date of the travel booking by January
 15 2, 2018. *Id.* ¶¶ 3-4. Accordingly, even if the Court stays its injunction, Joseph Doe’s family will
 16 be processed for travel, subject to admissions and admissibility requirements not affected by the
 17 Joint Memorandum.

18 None of the individual plaintiffs therefore would suffer any concrete harm based on a stay
 19 of the preliminary injunction. Nor will any of the organizations, who may continue “serv[ing]

21 ⁴ The Court wrote that “[w]hether Doe 7’s son’s application has other hurdles to cross . . .
 22 does not diminish the fact that the SAO and FTJ provisions of the Agency Memo add two more.”
 23 *Doe v. Trump*, Nos. C17-0178JLR & C17-1707JLR, 2017 WL 6551491, at *9 (W.D. Wash. Dec.
 24 23, 2017). The Court likewise wrote that, regardless whether Plaintiffs are on the brink of travel,
 25 “their separation from their family members will be prolonged as a result of the SAO provisions,”
 26 since resources have been diverted to non-SAO countries during the 90-day review period. *Id.* at
 *10. However, Plaintiffs bear the burden at all stages in litigation to show that they have properly
 invoked the Court’s subject-matter jurisdiction. As the Government has argued, the refugee
 admissions process is complicated and time-consuming—and Plaintiffs have not adequately
 shown that the short delay in processing and admissions attributable to the SAO provision will
 have any material impact on them.

1 Muslim and Arabic-speaking refugees,” *Doe*, 2017 WL 6551491, at *23, regardless whether the
2 Joint Memorandum is implemented. Thus, the balance of equities strongly favors a stay.

3 **II. THE GOVERNMENT IS LIKELY TO PREVAIL ON THE MERITS**

4 The Government respectfully submits that, notwithstanding this Court’s
5 preliminary-injunction decision, the Government also is likely to succeed on the merits of its
6 appeal.⁵ There are serious flaws in the Court’s reasoning with respect to Plaintiffs’ statutory
7 claims. The Court concluded, for instance, that the following-to-join implementation period
8 likely violates 8 U.S.C. § 1157(c)(2)(A) because that statute provides that following-to-join
9 refugees “shall” be entitled the same admission status as the principal refugee. *Doe*, 2017 WL
10 6551491, at *19. Yet as the Government previously argued, the brief implementation period does
11 not alter in any respect the substantive rights of following-to-join refugees, so to whatever extent
12 § 1157(c)(2)(A) confers a benefit, the Government has not rescinded it. Further, the Government
13 is entitled to make eligibility determinations for each refugee; there is no mandatory timeframe
14 for making such determinations; and, as the Joint Memorandum explains, these new procedures
15 are needed in order to make such determinations.

16 The Court also held that the SAO provision likely conflicts with the Immigration and
17 Nationality Act (INA) by adding criteria to the Act’s definition of “refugee” and to the
18 admissibility requirements for refugees. *Id.* at *22. But neither Plaintiffs nor the Court have
19 identified any INA provision that would bar the agencies charged with administering the statute
20 from exercising their discretion to review or enhance screening and vetting measures to promote
21 national security and welfare, and that is all the Joint Memorandum does. Congress could not
22 have been clearer in 8 U.S.C. § 1157(c)(1): “the Attorney General *may*, in the Attorney General’s
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26 ⁵ The Government preserves and incorporates by reference its arguments concerning the nonjusticiability of Plaintiffs’ claims (including the application of the doctrine of consular nonreviewability).

1 *discretion* and pursuant to such regulations as the Attorney General *may* prescribe, admit any
2 refugee” (emphasis added).

3 Likewise problematic, especially from a functional standpoint, is the Court’s preliminary
4 determination that the Joint Memorandum was not properly promulgated pursuant to the
5 Administrative Procedure Act (APA). The agencies’ Joint Memorandum “did not alter the
6 substantive criteria by which it would approve or deny” refugee applications; “it simply changed
7 the procedures it would follow in applying those substantive standards.” *James V. Hurson*
8 *Assocs., Inc. v. Glickman*, 229 F.3d 277, 281 (D.C. Cir. 2000). For that reason, the Joint
9 Memorandum is consistent with the underlying refugee statutes (and 6 U.S.C. § 202(4)) and is
10 not a legislative rule requiring notice-and-comment rulemaking under the APA. *See id.*; *see also*
11 *Kessler v. FCC*, 326 F.2d 673, 681 (D.C. Cir. 1963). The Cabinet Secretaries merely determined
12 that favorable eligibility determinations could not be made in most cases—subject to case-by-case
13 exceptions for those from SAO countries—until the screening procedures are further reviewed,
14 and, as necessary, upgraded.

15 At the December 21 hearing, the Court expressed concern that accepting this argument
16 would allow agency heads to suspend the refugee program indefinitely or even permanently. *See*
17 *also Doe*, 2017 WL 6551491, at *21. But that hypothetical is simply not before the Court. The
18 Joint Memorandum’s provisions are expressly temporary and were expected to last for less time
19 than it would have taken to conduct a full round of notice-and-comment rulemaking. The Joint
20 Memorandum has not impaired any substantive rights, and refugee applicants remain eligible to
21 be processed for refugee status and admitted as refugees if they are found eligible and admissible
22 at the conclusion of the Joint Memorandum’s brief review and implementation periods.

23 Indeed, the Court’s reasoning enjoining enforcement of the Joint Memorandum on that
24 basis leads to an even more problematic result: any change in procedure that delays a prospective
25 refugee’s arrival in the United States, or makes it less likely for someone to be granted refugee
26 status, would suddenly become a substantive rule that would be invalid without notice-and-

1 comment. That is not only contrary to decades of practice and Ninth Circuit case law, *see In re*
 2 *Hill*, 811 F.2d 484, 487 (9th Cir. 1987) (“The application of virtually any procedural rule can
 3 result in the denial of a ‘substantive’ right, yet this does not transform the procedural rule into a
 4 substantive rule.”), it would also threaten agencies’ abilities to take important actions (such as
 5 improving their screening procedures) on a timely basis. For that matter, under this Court’s
 6 reasoning, the agencies could not have created an SAO procedure after the 9/11 attacks to ensure
 7 that proper screening was employed before making eligibility determinations (at least without
 8 first conducting a time-consuming and unwieldy notice-and-comment rulemaking process). As
 9 discussed at the hearing, even Plaintiffs appear to agree that agencies must have the discretion to
 10 quickly and continually revise their screening procedures. *See also* Joint Decl. of Former Nat’l
 11 Sec. Officials ¶ 4, *JFS*, ECF No. 46. Thus, a stay is also warranted because the Government has
 12 demonstrated a likelihood of success on the merits of its appeal.

13 CONCLUSION

14 For these reasons, Defendants respectfully request that, pending final disposition of their
 15 appeal, this Court stay its preliminary injunction. In addition, Defendants request that the Court
 16 stay its injunction pending its ruling on this emergency motion for a stay pending appeal.

17 DATED: December 29, 2017

18 Respectfully submitted,

19 CHAD A. READLER
 Acting Assistant Attorney General

20 JENNIFER D. RICKETTS
 Director, Federal Programs Branch

21 JOHN R. TYLER
 Assistant Director, Federal Programs Branch

22 /s/ Joseph C. Dugan
 23 MICHELLE R. BENNETT
 DANIEL SCHWEI
 KEVIN SNELL
 24 JOSEPH C. DUGAN
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Attorneys for Defendants

CERTIFICATE OF SERVICE

I certify that on December 29, 2017, a copy of the foregoing document was electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

DATED this 29th day of December, 2017.

/s/ Joseph C. Dugan
JOSEPH C. DUGAN

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Exhibit A

The Honorable James L. Robart

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
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**DECLARATION OF JENNIFER L.
SMITH IN SUPPORT OF
DEFENDANTS' EMERGENCY
MOTION FOR STAY OF
PRELIMINARY INJUNCTION
PENDING APPEAL**

(RELATING TO BOTH CASES)

NOTE ON MOTION CALENDAR:
December 29, 2017

I, Jennifer L. Smith, for my declaration pursuant to 28 U.S.C. § 1746, hereby state and
depose as follows:

1. I am the Overseas Section Chief of the Admissions Office of the Bureau of Population,
Refugees, and Migration (PRM/A) of the United States Department of State. I have held
this position since 2016. In my current position, I oversee the management of

1 | agreements with organizations for performance of the overseas processing activities for
2 | refugees being resettled in the United States, and manage the overseas refugee
3 | admissions “pipeline” of cases under consideration for U.S. resettlement. I submit this
4 | declaration in support of Defendants’ Emergency Motion for Stay of Preliminary
5 | Injunction Pending Appeal. The statements made herein are based on my personal
6 | knowledge and information made available to me in the course of carrying out my duties
7 | and responsibilities as Overseas Section Chief.

8 | 2. Proposed interim guidance of the U.S. Citizenship and Immigration Services (USCIS)
9 | for I-730 (“following to join”) cases processed by USCIS officers, which was in the
10 | process of being reviewed for clearance before the Preliminary Injunction was issued,
11 | provided that all I-730 refugee applicants who received valid travel letters on or before
12 | October 24, 2017, would be allowed to travel as planned, and travel documents for such
13 | cases could be re-issued after verifying the validity of the assurance, medical and
14 | security checks.

15 | 3. A Resettlement Support Center (RSC) in Kenya, administered under a cooperative
16 | agreement with PRM, administers refugee case processing for refugees in sub-Saharan
17 | Africa, including the cases of Joseph Doe’s wife and children. Based on the proposed
18 | USCIS guidance, on December 21, 2017 PRM/A’s Overseas staff requested the RSC in
19 | Kenya to provide travel documents and begin travel planning for Joseph Doe’s wife and
20 | children.¹ On December 26, 2017, PRM/A’s staff instructed the RSC to re-issue the
21 | travel documents and send the case forward to booking as quickly as possible. On
22 | December 27, 2017, the RSC responded that they would start the exit permit process
23 | with the Government of Kenya when government offices reopen after the holiday and
24 |

25 | _____
26 | ¹ Though Joseph Doe has proceeded pseudonymously in this Court, Defendants have
matched his profile (based on nationality, family members, location, and timing of application)
to an applicant in their system.

1 were preparing the case for travel. The exit permit process in Kenya usually takes three
2 to four weeks, so that travel is expected to take place in mid-to-late January.

- 3 4. The International Organization of Migration (IOM) is an inter-governmental
4 organization that, under a Memorandum of Understanding with PRM, administers a
5 PRM-funded program to arrange and pay for approved refugees' commercial transport
6 to the United States. Today, December 29, 2017, IOM has informed me that they have
7 requested their Africa regional office to make the travel booking for Joseph Doe's wife
8 and children. We expect to know the date of the travel booking by January 2, 2018.

9 I declare under penalty of perjury that the foregoing is true and correct. Executed on

10 December 29, 2017.

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13 Jennifer L. Smith
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