

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

JOHN DOE,

Plaintiff,

-against-

DONALD J. TRUMP, as President of the United States of America; JOHN F. KELLY, as Secretary of the Department of Homeland Security; THE DEPARTMENT OF HOMELAND SECURITY; LORI SCIALABBA, as Acting Director of the U.S. Citizenship and Immigration Services; U.S. CITIZENSHIP AND IMMIGRATION SERVICES; REX W. TILLERSON, as Secretary of State; U.S. DEPARTMENT OF STATE; and THE UNITED STATES OF AMERICA,

Defendants.

Civil Action No.: 17-cv-112

Chief Judge William M. Conley

**SECOND DECLARATION OF ANDREW B. BREIDENBACH
IN SUPPORT OF PLAINTIFF'S RENEWED APPLICATION FOR A
TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

Andrew B. Breidenbach, an attorney duly admitted to practice in the United States District Court for the Western District of Wisconsin, pursuant to 28 U.S.C. § 1746, declares under penalty of perjury as follows:

1. I am an associate with the law firm of Holwell Shuster & Goldberg LLP, attorneys for Plaintiff in this action. The facts stated herein are true to the best of my knowledge, information, and belief.

2. Attached as Exhibit FF¹ hereto is a true and correct copy of Executive Order

¹ On February 14, 2017, I submitted the Declaration of Andrew B. Breidenbach in Support of Plaintiff's Application for a Temporary Restraining Order, Preliminary Injunction, and Summary Judgment. *See* ECF No. 13. The exhibit names in this Second Declaration continue sequentially from those submitted with my first Declaration.

13780, *Protecting the Nation from Foreign Terrorist Entry into the United States*, dated March 6, 2017 (the “Executive Order”), which I obtained at <https://www.whitehouse.gov/the-press-office/2017/03/06/executive-order-protecting-nation-foreign-terrorist-entry-united-states> (last accessed March 10, 2017).

3. Attached as Exhibit GG hereto is a true and correct copy of a “tweet” issued by President Trump’s official Twitter account on January 30, 2017, which I obtained at <https://twitter.com/realDonaldTrump/status/826060143825666051> (last accessed March 10, 2017).

4. A video titled “Watch: White House Press Secretary Sean Spicer Joins Forum at George Washington University,” dated January 31, 2017, is available at <http://thenet24h.com/2611014/watch-white-house-press-secretary-sean-spicer-joins-forum-george-washington-university> (last accessed March 10, 2017).

5. Attached as Exhibit HH hereto is a true and correct copy of a news article by Kevin Liptak for *CNN Politics*, titled “Trump: I wanted month delay before travel ban, was told no,” dated February 9, 2017, which I obtained at <http://www.cnn.com/2017/02/08/politics/donald-trump-travel-ban-delay/> (last accessed March 10, 2017). The article quotes President Trump as stating, “The law enforcement people said to me, ‘Oh you can’t give a notice[.]’ . . . They said you can’t do that because then people are gonna pour in before the toughness.”

6. Attached as Exhibit II hereto is a true and correct copy of a news article by Taylor Link for *Salon*, dated February 22, 2017, titled “Stephen Miller admits the new executive order on immigration ban is same as the old,” which I obtained at <http://www.salon.com/2017/02/22/stephen-miller-admits-the-new-executive-order-on->

[immigration-ban-is-same-as-the-old/](#) (last accessed March 10, 2017). At a town hall hosted by Fox News, White House adviser Stephen Miller explained that “[o]ne of the big differences that you are going to see in the executive order is that it is going to be responsive to the judicial ruling which didn’t exist previously. . . . And so these are mostly minor, technical differences. Fundamentally, you are still going to have the same, basic policy outcome for the country.”

7. Attached as Exhibit JJ hereto is a true and correct copy of a document that, according to media reports, is a Department of Homeland Security (“DHS”) memorandum titled *Citizenship Likely an Unreliable Indicator or Terrorist Threat to the United States*, which I obtained at <http://www.msnbc.com/rachel-maddow-show/trms-exclusive-dhs-document-undermines-trump-case-travel-ban> (last accessed March 10, 2017). The report concludes, among other things, that “country of citizenship is unlikely to be a reliable indicator of potential terrorist activity.” Moreover, the report states that of the eighty-two U.S. residents DHS has identified as having been involved in terrorism-related offenses since the beginning of the Syrian conflict, *not one* came from Syria.

8. Attached as Exhibit KK hereto is a true and correct copy of a document that, according to media reports, is a report by the Department of Homeland Security Office of Intelligence Analysis, titled *Intelligence Assessment: Most Foreign-born, US-based Violent Extremists Radicalized after Entering Homeland; Opportunities for Tailed CVE Programs Exist*, dated March 1, 2017, which I obtained at <http://www.cnn.com/2017/03/03/politics/homeland-security-assessment-radicalization/>. The report concludes, among other things, that “most foreign-born, US-based violent extremists likely radicalized several years after their entry to the United States, limiting the ability of screening and vetting officials to prevent their entry because of national security concerns.”

9. Attached as Exhibit LL hereto is a true and correct copy of a news article by Laura Jarrett, Ariane de Vogue and Jeremy Diamond for *CNN Politics*, titled “Trump delays new travel ban after well-reviewed speech,” dated March 1, 2017, which I obtained at <http://www.cnn.com/2017/02/28/politics/trump-travel-ban-visa-holders/> (last accessed March 10, 2017). The article states that the Trump Administration decided to delay the signing of the Executive Order: “Signing the executive order Wednesday, as originally indicated by the White House, would have undercut the favorable coverage [of President Trump’s first address to Congress]. The [White House] official didn’t deny the positive reception was part of the administration’s calculus in pushing back the travel ban announcement. ‘We want the (executive order) to have its own ‘moment,’ the official said.”

10. Attached as Exhibit MM hereto is a true and correct copy of a news article by Greg Sargent for *The Washington Post*, titled “In leaked documents, the case for Trump’s ‘Muslim ban’ takes another huge hit,” dated March 5, 2017 (last accessed March 10, 2017).

11. Attached as Exhibit NN hereto is a true and correct copy of a news article by Philip Ricker, Robert Acosta, and Ashley Parker for *The Washington Post*, titled “Inside Trump’s fury: The president rages at leaks, setbacks and accusations,” dated March 5, 2017, which I obtained at https://www.washingtonpost.com/blogs/plum-line/wp/2017/03/03/in-leaked-document-the-case-for-trumps-muslim-ban-takes-another-huge-hit/?utm_term=.40fefede678d (last accessed March 10, 2017).

12. Attached as Exhibit OO hereto is a true and correct copy of a news article by Matthew Yglesias for *Vox*, titled “Report: Trump aides cheer up a moody president by talking about his travel ban,” dated March 6, 2017, which I obtained at <http://www.vox.com/policy-and-politics/2017/3/6/14827338/trump-travel-ban-cheer> (last accessed March 10, 2017). This article

explains “that the details [of the Executive Order] were hashed out over dinner, with the president’s chief political strategist in attendance but his national security adviser absent, at a lavish \$200,000 initiation fee private beach club, with the purpose of brightening the president’s mood.”

13. Attached as Exhibit PP hereto is a true and correct copy of a news article by Elena Schor and Kyle Cheney for *Politico*, titled “GOP critics praise Trump’s tweaked travel ban,” dated March 6, 2017, which I obtained at <http://www.politico.com/story/2017/03/donald-trump-new-travel-ban-congress-republicans-reaction-235726> (last accessed March 10, 2017). The article quotes White House Press Secretary Sean Spicer as stating that “the principles of the executive order remain the same.”

14. Attached as Exhibit QQ hereto is a true and correct copy of a news article by Mark Joseph Stern for *Slate*, titled “In Fundraising Pitch, Trump Says His Not-a-Muslim Ban Will Fight ‘Radical Islamic Terrorism,’” dated March 6, 2017, which I obtained at http://www.slate.com/blogs/the_slatest/2017/03/06/trump_says_his_not_a_muslim_ban_will_fight_radical_islamic_terrorism.html (last accessed March 10, 2017).

15. Attached as Exhibit RR hereto is a true and correct copy of an advisory memorandum created by the Trump Administration to help explain its revised Executive Order, titled *Q&A: Protecting the Nation from Foreign Terrorist Entry to the United States*, which I obtained at <https://www.dhs.gov/news/2017/03/06/qa-protecting-nation-foreign-terrorist-entry-united-states> (last accessed March 10, 2017). The report provides: “Can the exception for refugee admission be used for Refugee/Asylee Relative Petitions (Form I-730) cases where a family member is requesting a beneficiary follow to join? No. Individuals who already have valid visas or travel documents that permit them to travel to the United States are exempt from

the Executive Order. To the extent that an individual does not yet have such documents, please contact the Department of State.”

16. Attached as Exhibit SS hereto is a true and correct copy of an advisory memorandum created by the Trump Administration to help explain its revised Executive Order, titled *Fact Sheet: Protecting the Nation from Foreign Terrorist Entry to the United States*, dated March 5, 2017, which I obtained at <https://www.dhs.gov/news/2017/03/06/fact-sheet-protecting-nation-foreign-terrorist-entry-united-states> (last accessed March 10, 2017). The report provides that “[f]or the next 90 days, foreign nationals from Sudan, Syria, Iran, Libya, Somalia, and Yemen who are outside the United States on the effective date of the order, do not currently have a valid visa on the effective date of this order, and did not have a valid visa at 5:00 eastern standard time on January 27, 2017, are not eligible to travel to the United States.”

17. Attached as Exhibit TT hereto is a true and correct copy of an excerpt of the *Foreign Affairs Manual* issued by the U.S. Department of States, 9 FAM § 205.5, which I obtained at <https://fam.state.gov/Fam/FAM.aspx?ID=09FAM> (last accessed March 10, 2017).

18. Attached as Exhibit UU hereto is a true and correct copy of email correspondence between Plaintiff’s counsel, including myself, and Defendants’ counsel, Ms. Yamileth Davila, spanning February 16, 2017 to March 9, 2017. Plaintiff’s counsel responded to Ms. Davila’s last email by providing Plaintiff’s family’s address, which we have omitted from the exhibit for purposes of confidentiality.

19. In addition to the email correspondence described in Paragraph 19, my firm left Ms. Davila voicemails at 4:52 p.m. EST on March 8, 2017, 11:06 a.m. EST on March 9, 2017, and again on 2:29 p.m. EST on March 9, 2017.

Executed on March 10, 2017 in New York, New York.

/s/ Andrew B. Breidenbach
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