

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

STATE OF HAWAII, ISMAIL  
ELSHIKH,

Plaintiffs-Appellees,

ALI PLAINTIFFS; JOSEPH DOE;  
JAMES DOE; EPISCOPAL  
DIOCESE OF OLYMPIA,

Intervenors-Pending,

v.

DONALD J. TRUMP, in his official  
capacity as President of the United  
States; U.S. DEPARTMENT OF  
HOMELAND SECURITY; JOHN F.  
KELLY, in his official capacity as  
Secretary of Homeland Security;  
U.S. DEPARTMENT OF STATE;  
REX W. TILLERSON, in his official  
capacity as Secretary of State;  
UNITED STATES OF AMERICA,

Defendants-Appellants.

No. 17-15589

REPLY OF PROPOSED  
PLAINTIFFS-INTERVENORS  
JOSEPH DOE, JAMES DOE,  
AND THE EPISCOPAL  
DIOCESE OF OLYMPIA IN  
SUPPORT OF PROPOSED  
PLAINTIFFS-INTERVENORS'  
MOTION FOR LEAVE TO  
INTERVENE

The government's opposition does not contest the Proposed  
Intervenors'<sup>1</sup> most compelling argument in support of their

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<sup>1</sup> Proposed Intervenors Joseph Doe, James Doe, and the Episcopal  
Diocese of Olympia submit this reply pursuant to the Court's  
scheduling order. *See* Order, Dkt. No. 61 (9th Cir. Apr. 17, 2017).

intervention: The *Doe* Plaintiffs include the only plaintiffs or intervenors in this case who are individuals whose separation from family will be prolonged by the suspension of the Refugee Admissions Program.<sup>2</sup> Their presence would complement the arguments offered and injuries established by the State of Hawai'i and Dr. Elshikh, presenting a more complete picture of how EO-2 prevents the unification of families and frustrates efforts to resettle those fleeing war

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<sup>2</sup> As the *Doe* Plaintiffs explained, their family members completed all steps in the resettlement process short of being scheduled for travel to the United States. Proposed Pls.-Intervenors' Mot. for Leave to Intervene ("Mot.") 4–5, Dkt. No. 57-1 (9th Cir. Apr. 14, 2017). Importantly, the required medical clearances they obtained have a limited shelf life, and if travel is not scheduled within six months of that clearance, they must be obtained again. *See id.*, Ex. 2, Decl. Joseph Doe ¶¶ 10, 12, Dkt. No. 57-3; *id.*, Ex. 3, Decl. James Doe ¶¶ 10, 12, Dkt. No. 57-4; *id.*, Ex. 1, First Am. Compl. ¶ 217 n.54, Dkt. No. 57-2 (citing U.S. Dep't of State Diplomacy in Action, *U.S. Refugee Admissions Program FAQ's*, Bureau of Population, Refugees, and Migration (Jan. 20, 2017), *available at* <https://www.state.gov/j/prm/releases/factsheets/2017/266447.htm> (linking to <https://www.cdc.gov/immigrantrefugeehealth/guidelines/refugee-guidelines.html> (to prevent the spread of disease, refugee medical screenings are usually conducted days to weeks before the refugee departs)); *see also* Pls.' Mot. for Leave to File Mot. for Prelim. Inj. of § 6 on Constitutional Grounds 8, *IRAP v. Trump*, No. 17-361 (D. Md. Mar. 24, 2017), Dkt. No. 177 (citing Hetfield Decl. ¶ 11, *IRAP v. Trump*, No. 17-361, ECF No. 64-1 (D. Md. filed Feb. 22, 2017) (explaining that Section 6(b) cut weekly flight bookings for refugees from 2,000 per week to 400 per week)).

and persecution abroad, and would facilitate full and efficient review of the Executive Order.

The *Doe* Plaintiffs do not seek to “change the nature of the litigation” as the government suggests. Defs.-Appellants’ Opp’n to Mot. to Intervene by *Doe* Pls (“Opp.”) 8, Dkt. No. 76 (9th Cir. Apr. 19, 2017). They raise no new merits claims, advance no new legal theories, and challenge no new provisions of the Order. As explained in their Motion to Intervene, Mot. 3, the *Doe* Plaintiffs would file a single five-page brief (not a “lengthy brief,” Opp. 8–9) to set forth their standing to challenge Section 6 and irreparable harm were it to go into effect.

The *Doe* Plaintiffs are prepared to file that brief by Friday, April 21, 2017 (the same day the Answering Brief is due) if the intervention motion is granted before then—leaving the Government a full week to respond in accordance with the general briefing schedule. Nor can the government claim an undue burden, having already briefed the standing and harms of similar plaintiffs multiple times in recent weeks. *See, e.g.*, Defs.’ Mem. in Opp’n to Pls.’ Mot. for a Prelim. Inj. and/or TRO of the Executive Order, *IRAP v. Trump*, No. 17-361 (D. Md. Mar. 13, 2017), ECF No. 122. Finally, as the government recognizes, this is a

“highly expedited appeal” in a unique case. Opp. 1. This Court has ample reason to resolve the underlying issues regarding this Executive Order in a single appeal.

Because the requirements for intervention “are broadly interpreted in favor of intervention,” *Citizens for Balanced Use v. Montana Wilderness Ass’n*, 647 F.3d 893, 897 (9th Cir. 2011), and *Doe* Plaintiffs meet those requirements, their Motion to Intervene should be granted.

RESPECTFULLY SUBMITTED this 20th day of April, 2017.

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## CERTIFICATE OF COMPLIANCE

This Reply of Proposed Plaintiffs-Intervenors Joseph Doe, James Doe, and The Episcopal Diocese of Olympia in Support of Proposed Plaintiffs-Intervenors' Motion for Leave to Intervene complies with the type-volume limitations of Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 629 words, excluding the parts of the brief exempted by Rule 32(a)(7)(B)(iii). I relied on the word count of Microsoft Word 2016 in preparing this certificate.

This Reply complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because the brief—in both its text and its footnotes—has been prepared in 14-point Century Schoolbook font.

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

*s/ Lynn Lincoln Sarko*

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Lynn Lincoln Sarko

**CERTIFICATE OF SERVICE**

I hereby certify that on April 20, 2017, I electronically filed the foregoing with the U.S. Court of Appeals for the Ninth Circuit by using the Court's CM/ECF system. I certify that all appellate counsel of record to the parties to this appeal are registered with the Court's CM/ECF system.

*s/ Lynn Lincoln Sarko*

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Lynn Lincoln Sarko