

THE HONORABLE JAMES L. ROBART

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

STATE OF WASHINGTON; STATE
OF CALIFORNIA; STATE OF
MARYLAND; COMMONWEALTH
OF MASSACHUSETTS; STATE OF
NEW YORK; and STATE OF
OREGON,

Plaintiffs,

v.

DONALD TRUMP in his official
capacity as President of the United
States; U.S. DEPARTMENT OF
HOMELAND SECURITY; ELAINE
C. DUKE, in her official capacity as
Acting Secretary of the Department of
Homeland Security; REX
TILLERSON, in his official capacity
as Secretary of State; and the UNITED
STATES OF AMERICA,

Defendants.

CIVIL ACTION NO. 2:17-cv-00141-JLR

MOTION FOR TEMPORARY
RESTRAINING ORDER

Motion Noted: October 16, 2017

ORAL ARGUMENT
REQUESTED

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

- I. INTRODUCTION..... 1
- II. FACTUAL AND PROCEDURAL HISTORY..... 1
- III. ARGUMENT4
 - A. The States Have Standing5
 - B. Temporary Relief Is Warranted7
 - 1. The States Are Likely to Prevail on Their Claims7
 - a. EO3 Violates Multiple Provisions of the INA.....7
 - (1) EO3’s undisguised discrimination based on nationality
violates 8 U.S.C. § 1152(a)8
 - (2) EO3 contains insufficient findings to support suspension of
entry under 8 U.S.C. § 1182(f).....9
 - (3) Without authority, EO3 rewrites key INA provisions
governing visas.....13
 - b. EO3 Violates the Establishment Clause15
 - c. EO3 Is Discriminatory and Irrational, Violating Equal Protection19
 - 2. EO3 Will Cause Irreparable Harm to State Residents, Educational
Institutions, Businesses, and Health Care Systems20
 - 3. The Balance of Equities and Public Interest Strongly Favor Temporary
Relief23

- IV. CONCLUSION24

I. INTRODUCTION

1
2
3 “[I]mmigration, even for the President, is not a one-person show.” *Hawai‘i v. Trump*,
4 859 F.3d 741, 755 (9th Cir. 2017) (per curiam). The Constitution grants *Congress*, not the
5 President, control over immigration, and both the Constitution and many statutes limit the
6 President’s power to make discriminatory immigration policies. In recent months, this Court
7 and many others have found that President Trump violated these rules in issuing two executive
8 orders restricting immigration. Undeterred by these holdings, the President has issued a third
9 immigration order (“EO3”) that transforms what was supposedly a “temporary pause” on
10 immigration into a permanent ban, suspending entry into the United States by hundreds of
11 millions of people.

12 The new order features fresh window dressing, but the core policy remains the same.
13 Like its predecessors, EO3 restricts immigration based on national origin. This violates the
14 Immigration and Nationality Act (“INA”), as the Ninth Circuit has already held. *Hawai‘i*, 859
15 F.3d at 779. Like its predecessors, EO3 continues to target Muslim-majority countries, a focus
16 that, together with the President’s history of demagoguery towards Islam, demonstrates that
17 EO3 is again motivated by a discriminatory purpose and is irrational. And, like its
18 predecessors, EO3 will inflict grievous harms on the States and their residents. There is one
19 startling difference: this time, the ban is indefinite.

20 The States return to this Court to ask it to enforce again the constitutional guarantee
21 that the President respect the rule of law and act within his authority. The States ask the Court
22 to issue a temporary restraining order against enforcement of Sections 1(g) and 2 of EO3.

II. FACTUAL AND PROCEDURAL HISTORY

23 The State of Washington first filed this lawsuit challenging President Trump’s issuance
24 of Executive Order No. 13769 (“EO1”) on January 30, 2017. ECF 1. On February 3, 2017, this
25 Court granted the State’s motion for a temporary restraining order (“TRO”) and enjoined
26

1 enforcement of several provisions of EO1. ECF 52. The Ninth Circuit denied Defendants'
2 emergency motion for a stay of the injunction. *Washington v. Trump*, 847 F.3d 1151 (9th Cir.
3 2017) (per curiam). Defendants chose not to seek review by the Supreme Court.

4 On March 6, 2017, President Trump issued Executive Order No. 13780 (“EO2”), which
5 revoked EO1. Two days later, Defendants withdrew their Ninth Circuit appeal in this case.
6 ECF 111. Following the issuance of EO2, Washington, California, Maryland, Massachusetts,
7 New York, and Oregon (“States”)¹ filed an amended complaint challenging EO2. ECF 152.
8 The States moved for a TRO to enjoin Sections 2(c) and 6(a) of EO2. ECF 148.

9 On March 15, 2017, in a separate suit against EO2, the district court in Hawai‘i
10 enjoined Sections 2 and 6 nationwide. *Hawai‘i v. Trump*, 241 F. Supp. 3d 1119, 1140 (D. Haw.
11 2017). The next day, in a third lawsuit, the district court in Maryland issued a nationwide
12 injunction against Section 2(c). *Int’l Refugee Assistance Project (“IRAP”) v. Trump*, 241 F.
13 Supp. 3d 539, 566 (D. Md. 2017). In light of the *Hawai‘i* ruling, this Court stayed
14 consideration of the States’ motion for a TRO. ECF 164. The Court then granted Defendants’
15 request for a stay of this case pending the Ninth Circuit’s resolution of the *Hawai‘i* appeal.
16 ECF 175, 189.

17 The Ninth Circuit issued its opinion in *Hawai‘i* on June 12, 2017, largely affirming the
18 injunction. *Hawai‘i v. Trump*, 859 F.3d 741 (9th Cir. 2017) (per curiam). Defendants
19 petitioned the Supreme Court for a writ of certiorari, applied for a stay pending appeal, and
20 requested that the *Hawai‘i* case be consolidated with *IRAP*, where the Fourth Circuit had
21 largely affirmed the injunction entered by the district court. *IRAP v. Trump*, 857 F.3d 554 (4th
22 Cir. 2017) (en banc). The Supreme Court granted certiorari, granted the stay application “to the
23 extent the injunctions prevent enforcement of § 2(c) with respect to foreign nationals who lack
24 any bona fide relationship with a person or entity in the United States,” consolidated the two

25 _____
26 ¹ The Court had previously granted Oregon’s motion to intervene on March 9, 2017.
ECF 112.

1 cases, and set the case for argument. *Trump v. IRAP*, 137 S. Ct. 2080, 2087 (2017). The parties
 2 in this case agreed that the stay should remain in place pending the outcome of the Supreme
 3 Court proceedings, but that any party could move to lift the stay if circumstances changed.
 4 ECF 192.

5 On June 28, 2017, Defendants began to enforce the non-enjoined parts of EO2 and
 6 published guidance interpreting the Supreme Court’s definition of “bona fide relationship” to
 7 exclude many family members and most refugees. *See Hawai‘i v. Trump*, ___ F. Supp. 3d ___,
 8 CV No. 17-00050 DKW-KSC, 2017 WL 2989048, at *5-6 (D. Haw. July 13, 2017)
 9 (summarizing guidance). Plaintiffs in the Hawai‘i litigation successfully challenged
 10 Defendants’ interpretation of “bona fide relationship,” and the Ninth Circuit upheld the lower
 11 court’s injunction preventing Defendants from enforcing EO2 against grandparents and other
 12 family members or refugees who have formal assurances from resettlement agencies or are in
 13 the U.S. Refugee Admissions Program. *Hawai‘i v. Trump*, ___ F.3d ___, No. 17-16426, 2017
 14 WL 3911055, at *14 (9th Cir. Sept. 7, 2017). The Supreme Court stayed the Ninth Circuit
 15 mandate with respect to refugees covered by a formal assurance. *Trump v. Hawai‘i*, ___ S. Ct.
 16 ___, Nos. 17A275, 16-1540, 2017 WL 4014838, at *1 (U.S. Sept. 12, 2017).

17 On September 24, 2017, EO2 expired, and President Trump issued EO3, a Presidential
 18 Proclamation titled “Enhancing Vetting Capabilities and Processes for Detecting Attempted
 19 Entry into the United States by Terrorists or Other Public-Safety Threats.” 82 Fed. Reg. 45,161
 20 (Sept. 27, 2017). EO3 again suspends immigration by more than 150 million people from six
 21 Muslim-majority countries, and applies “additional scrutiny” to immigrants from Iraq, another
 22 Muslim-majority country. EO3 §§ 1(g), 2(a)–(c), (e), (g)-(h)²; 3d Am. Compl. ¶¶ 5, 202. The
 23 order also suspends large classes of non-immigrants like students, businesspeople, and tourists.
 24

25 ² The order also suspends immigration from North Korea, EO3 § 2(d)(ii), but this
 26 affects a vanishingly small number of people. In 2015, for example, 55 immigrants were
 admitted from North Korea, compared to 13,114 immigrants from Iran. 3d Am. Compl. ¶ 204.

1 EO3 §§ 2(a)-(h). The non-immigrant restrictions vary by country and by type of visa. *See* Ex.
2 A (chart summarizing EO3 suspensions). EO3’s restrictions contain no sunset date—they
3 apply indefinitely. The new entry restrictions and limitations go into effect at 12:01 a.m. EST
4 on October 18, 2017. EO3 § 7(b).

5 Following the issuance of EO3, the Supreme Court removed the *Hawai‘i* and *IRAP*
6 cases from the oral argument calendar and directed the parties to file letter briefs addressing
7 whether, or to what extent, EO3 rendered the cases moot. *Trump v. Hawai‘i*, __ S. Ct. __, No.
8 16-1540, 2017 WL 2734554, at *1 (U.S. Sept. 25, 2017). On October 10, 2017, the Supreme
9 Court dismissed *IRAP* as moot and directed the Fourth Circuit to vacate its opinion, finding
10 that there was no longer a live controversy because the only section of EO2 enjoined in *IRAP*
11 had “expired by its own terms on September 24, 2017.” *Trump v. IRAP*, __ S. Ct. __, No. 16-
12 1436, 2017 WL 4518553 (U.S. Oct. 10, 2017). The Court “express[ed] no view on the merits.”

13 *Id*

14 III. ARGUMENT

15 To obtain a temporary restraining order, the States must demonstrate their standing to
16 challenge EO3 as well as 1) a likelihood of success on the merits; 2) that irreparable harm is
17 likely in the absence of preliminary relief; 3) that the balance of equities tips in the States’
18 favor; and 4) that an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*,
19 555 U.S. 7, 20 (2008); Fed. R. Civ. P. 65(b)(1). A temporary restraining order “preserv[es] the
20 status quo and prevent[s] irreparable harm” until a preliminary injunction hearing may be held.
21 *Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Local 70*, 415 U.S. 423,
22 439 (1974). The States have standing and meet the burden to obtain temporary relief. The
23 Court should enjoin EO3 to prevent its new provisions from taking effect until it rules on a
24 preliminary injunction motion.

1 **A. The States Have Standing**

2 The very same harms that prompted this Court and the Ninth Circuit to find state
3 standing to challenge the prior two executive orders are triggered again by EO3. The States can
4 establish standing based on two independent grounds: (1) harms to the States' proprietary
5 interests, and (2) harms to the States' quasi-sovereign interests. This is especially clear given
6 the standard applied at this early stage of the case. *See Hawai'i*, 859 F.3d at 762 (“At this very
7 preliminary stage of the litigation, [Plaintiffs] may rely on the allegations in their amended
8 complaint and whatever other evidence they submitted in support of their [preliminary
9 injunction] motion to meet their burden.”) (alterations in *Hawai'i*) (quoting *Washington*, 847
10 F.3d at 1159).

11 First, the States have standing based on injuries to their proprietary interests. As the
12 Ninth Circuit repeatedly has confirmed, state standing may be grounded in a state's proprietary
13 interests as an operator of a state university. *Hawai'i*, 859 F.3d at 765; *Washington*, 847 F.3d at
14 1161. Here, the States have alleged and offered extensive evidence that EO3 will significantly
15 harm the States' public colleges and universities. Like its predecessors, EO3 constrains the
16 States' ability to recruit, enroll, and retain talented students, which will result in lost tuition
17 revenue. *See, e.g.*, ECF 194-40 (5th Decl. Chaudhry) ¶ 11 (“significant decline” in
18 international applications); ECF 194-39 (3d Decl. Branon) ¶ 4 (same); *id.* at ¶ 6 (admitted
19 students unable to obtain visas and have deferred enrollment); ECF 194-30 (2d Decl. Eaton) ¶
20 5 (same); ECF 194-44 (Decl. Ehsani) ¶ 11 (PhD student at the University of Washington plans
21 to leave program and return to Iran if EO3 goes into effect); ECF 194-54 (Decl. Nofallah) ¶ 8
22 (same); ECF 194-57 (Decl. Sheikhan) ¶ 7 (New York University PhD student will quit
23 program and return to Iran due to EO3's travel restrictions). Similarly, EO3 hampers the
24 States' ability to recruit, hire, and retain talented faculty members. *See, e.g.*, ECF 194-50
25 (Decl. Hajishirzi) ¶¶ 9-10 (two UW professors considering applying for jobs in Canada to
26 avoid EO3); ECF 194-52 (Decl. Hosseinzadeh) ¶ 8 (Iranian post-doctoral researcher at UW

1 | considering leaving United States); ECF 194-40 (5th Decl. Chaudhry) ¶ 9 (two visiting
2 | scholars from targeted countries unable to join faculty at Washington State University); ECF
3 | 194-55 (4th Decl. Riedinger) ¶¶ 3-4 (concerns that visiting scholars in highly specialized fields
4 | may leave UW). EO3 will also restrict the ability of students and faculty members to travel
5 | abroad for research and scholarship, will impede their ability to collaborate with foreign
6 | scholars, and will directly harm research projects and academic programs. *See, e.g.*, ECF 194-
7 | 44 (Decl. Ehsani) ¶ 8 (UW PhD student unable to travel for academic conferences); ECF 194-
8 | 49 (Decl. Greenbaum) ¶¶ 4-6 (UW professor limited in ability to collaborate with Iranian
9 | scholars); ECF 194-40 (5th Decl. Chaudhry) ¶ 8 (critical research project on hold due to
10 | Iranian scholar’s inability to come to WSU); ECF 194-57 (Decl. Sheikhan) ¶ 5 (NYU PhD
11 | student prevented from necessary travel for research in narrow field of computational
12 | geometry). The loss of tuition revenue, students, and talented staff establishes clear proprietary
13 | standing under the Ninth Circuit’s holdings. *See Hawai’i*, 859 F.3d at 763-65; *Washington*, 847
14 | F.3d at 1160-61 (holding that States’ proprietary interests give them “standing to assert the
15 | rights of students, scholars, and faculty affected by the Executive Order”).

16 | The States’ actionable proprietary interests extend beyond their colleges and
17 | universities. *See Hawai’i*, 859 F.3d at 763 (“[L]ike other associations and private parties, a
18 | State is bound to have a variety of proprietary interests.”) (quoting *Alfred L. Snapp & Son,*
19 | *Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 601 (1982)). The States have asserted injury to
20 | their economies, including the loss of tourism revenue and tax revenue. *See* ECF 194-60 (2d
21 | Decl. Oline) ¶¶ 10-15; 3d Am. Compl. ¶¶ 62-64, 70. This, too, establishes proprietary standing.
22 | *See City of Sausalito v. O’Neill*, 386 F.3d 1186, 1199 (9th Cir. 2004) (holding that lost
23 | property and sales tax revenues established standing); *Wyoming v. Oklahoma*, 502 U.S. 437,
24 | 448 (1992) (injury to state from loss of specified tax revenues adequate to establish proprietary
25 | standing).

1 Finally, the States have standing based on harms to their quasi-sovereign interests. The
 2 States have alleged and offered significant evidence that EO3 adversely affects thousands of
 3 the States’ residents in the areas of employment, education, business, family relations, and
 4 freedom to travel. For example, EO3 will prevent the States’ residents from receiving visits or
 5 reunifying with family members for an indefinite period of time. *See, e.g.*, ECF 194-23 (Decl.
 6 Bina) ¶¶ 4, 6; ECF 194-38 (Decl. Asheghabadi) ¶ 5; ECF 194-33 (Decl. Soroush) ¶¶ 9-11; ECF
 7 194-29 (Decl. Khadem) ¶ 5; ECF 194-27 (Decl. Heravi) ¶ 8; ECF 194-65 (Decl.
 8 Fotouhiyehpour) ¶ 5; ECF 194-31 (Decl. Nouri) ¶ 6. Likewise, the States’ interest in
 9 maintaining a robust healthcare system, including for underserved patients, is core to their
 10 quasi-sovereign interests. *See* ECF 118-32 (Decl. Fullerton) ¶¶ 5-7, 14-19; ECF 100 (Decl.
 11 Overbeck) ¶¶ 3-6. As this Court properly recognized, States have standing to address harms
 12 that “extend to the States by virtue of their roles as *parens patriae* of the residents living within
 13 their borders.” ECF 52 at 4-5; *see also Snapp*, 458 U.S. at 607 (states may sue to protect “the
 14 health and well-being” of their residents, “both physical and economic”); *id.* at 609 (affirming
 15 the “state interest in securing residents from the harmful effects of discrimination”).

16 **B. Temporary Relief Is Warranted**

17 **1. The States Are Likely to Prevail on Their Claims**

18 The States are likely to prevail on the merits in demonstrating that EO3 violates the
 19 INA, the Establishment Clause, and the equal protection guarantee. Pursuant to the Ninth
 20 Circuit’s direction in *Hawai’i*, 859 F.3d at 761, the States begin with their statutory claims.

21 **a. EO3 Violates Multiple Provisions of the INA**

22 Section 2 of the new order works an indefinite suspension on the entry of immigrants
 23 from Chad, Iran, Libya, North Korea, Syria, Yemen, and Somalia. EO3 §§ 2(a)–(e), (g)–(h).
 24 The Ninth Circuit upheld an injunction against a nearly identical provision of EO2 because it
 25 violated multiple sections of the INA. *Hawai’i*, 859 F.3d at 774-79. The *Hawai’i* analysis
 26

1 controls review of EO3 and demonstrates that the States are highly likely to prevail on their
2 INA claims.

3 **(1) EO3's undisguised discrimination based on nationality**
4 **violates 8 U.S.C. § 1152(a)**

5 The new order indefinitely suspends immigration from seven countries. EO2 § 2(c)
6 (Chad, Iran, Libya, North Korea, Syria, Yemen, Somalia). But the Ninth Circuit just upheld an
7 injunction against EO2 because “in suspending the issuance of immigrant visas and denying
8 entry based on nationality” the President violates 8 U.S.C. § 1152(a)(1)(A). *Hawai'i*, 859 F.3d
9 at 779. EO3 repeats the same violation.

10 Section 1152(a)(1)(A) of the INA provides “no person shall . . . be discriminated
11 against in the issuance of an immigrant visa because of the person’s race, sex, *nationality*,
12 place of birth, or place of residence.” (Emphasis added.) Congress passed the INA provision
13 “[c]ontemporaneous to enacting the Civil Rights Act of 1964 and the Voting Rights Act of
14 1965,” in order to “eliminate the ‘national origins system as the basis for the selection of
15 immigrants to the United States.’” *Hawai'i*, 859 F.3d at 776 (quoting H.R. Rep. No. 89-745, at
16 8 (1965)). Although EO2, by its terms, restricted only the entry of aliens, the Ninth Circuit held
17 that “[i]n prohibiting nationality-based discrimination in the issuance of immigrant visas,
18 Congress also in effect prohibited nationality-based discrimination in the admission of aliens.”
19 *Id.* at 778.³ In so holding, the Court rejected the government’s proffered comparisons to
20 previous executive orders that suspended immigrant entry, because previous orders “did not
21 suspend classes of aliens on the basis of national origin, but instead on the basis of affiliation
22 or culpable conduct.” *Id.* at 778-79. The court concluded that “§ 1152(a)(1)(A)’s non-

23 ³ Defendants have since abandoned the argument that the President is free to
24 discriminate based on nationality in the admission of aliens, even though the same
25 discrimination by government officials who issue visas is prohibited. Br. for Petitioners at 51-
26 52, *Trump v. IRAP*, 137 S. Ct. 2080 (2017) (conceding that “[t]he Department of State treats
aliens covered by exercises of the President’s Section 1182(f) authority as ineligible for
visas”).

1 discrimination mandate cabins the President’s authority under § 1182(f)” and that EO2
2 exceeded the President’s authority. *Id.*

3 *Hawai‘i* controls here. EO3 indefinitely suspends immigration from seven countries
4 based on nationality. EO3 § 2(a)(ii) (“The entry into the United States of nationals of Chad, as
5 immigrants . . . is hereby suspended.”); *id.* §§ 2(b)(ii), 2(c)(ii), 2(d)(ii), 2(e)(ii), 2(g)(ii), 2(h)(ii)
6 (same for Iran, Libya, North Korea, Syria, Yemen, and Somalia). EO3 thus “runs afoul” of the
7 INA provision “that prohibit[s] nationality-based discrimination.” *Hawai‘i*, 859 F.3d at 756.
8 The Court should enjoin the provisions of EO3 that suspend immigration based on national
9 origin.

10 **(2) EO3 contains insufficient findings to support suspension of
entry under 8 U.S.C. § 1182(f)**

11 EO3 suspends immigration from countries the President and Secretary of Homeland
12 Security identified as having “inadequate identity-management protocols, information sharing
13 practices, and risk factors.” EO3 § 1(g). This is an insufficient basis to invoke 8
14 U.S.C. § 1182(f), because the findings (1) improperly use nationality as a proxy for
15 dangerousness, and (2) are inconsistent with the restrictions the order actually imposes. The
16 States are likely to prevail on their claim that the President exceeded his authority under 8
17 U.S.C. § 1182(f).

18 In EO2, the President relied on § 1182(f) to ban entry of nationals from six countries.
19 *Hawai‘i*, 859 F.3d at 771.⁴ The order proffered “national security concerns,” including “the
20 risk that potential terrorists might exploit possible weaknesses in the Nation’s screening and
21 vetting procedures,” as justifications for the expansive restrictions. *Id.* (citing EO2 § 2(c)).
22 Specific country conditions included the existence of terrorist organizations within each

23 _____
24 ⁴ Like the new order, EO2 also cited 8 U.S.C. § 1185(a) as a source of Presidential
25 authority to bar the entry of immigrants. The Ninth Circuit held, and the government did not
26 dispute, that § 1185(a) provides no “independent basis for the suspension of entry.” *Hawai‘i*,
859 F.3d at 770 n.10. Accordingly, the relevant inquiry turns on the scope of Presidential
authority under 8 U.S.C. § 1182(f).

1 country, an insufficient “willingness or ability to share or validate important information about
2 individuals seeking to travel to the United States,” and difficulty removing or deporting such
3 nationals after entry. *Id.* The order found that admitting any national from the six countries
4 risked admitting someone “who intends to commit terrorist acts or otherwise harm the national
5 security of the United States.” *Id.*

6 The Ninth Circuit held that EO2 failed to offer “a sufficient justification to suspend the
7 entry of more than 180 million people on the basis of nationality.” *Id.* at 774. An exercise of
8 § 1182(f) authority “requires that the President’s findings support the conclusion that entry of
9 all nationals from the six designated countries . . . would be harmful to the national interest.”
10 *Id.* at 770 & n.11 (defining “detrimental” as “causing loss or damage, harmful, injurious,
11 hurtful”). But EO2 “ma[de] no finding that nationality alone renders entry of this broad class of
12 individuals a heightened security risk to the United States.” *Id.* at 772 (citing *IRAP v. Trump*,
13 857 F.3d 554, 610 (4th Cir. 2017) (Keenan, J., concurring in part and in the judgment) (“[T]he
14 Second Executive Order does not state that any *nationals* of the six identified countries, by
15 *virtue of their nationality*, intend to commit terrorist acts in the United States or otherwise pose
16 a detriment to the interests of the United States.”); *see also IRAP*, 857 F.3d at 610 (the statute
17 requires “more than vague uncertainty regarding whether [an alien’s] entry might be
18 detrimental to our national interests”). The court continued that “[t]he Order does not tie these
19 nationals in any way to terrorist organizations within the six designated countries,” find them
20 “responsible for insecure country conditions,” or provide “any link between an individual’s
21 nationality and their propensity to commit terrorism.” *Hawai’i*, 859 F.3d at 772.

22 The Ninth Circuit went on to explain that EO2’s findings related to “governments’
23 ability to share information about nationals” were insufficient, because the order did not make
24 a finding that “the current screening processes are inadequate.” *Id.* at 773. “As the law stands, a
25 visa applicant bears the burden of showing that the applicant is eligible to receive a visa . . .
26 and is not inadmissible.” *Id.* (citing 8 U.S.C. § 1361). “The Government already can exclude

1 individuals who do not meet that burden,” and findings based on country conditions offered an
2 insufficient basis to conclude that “this individualized adjudication process is flawed such that
3 permitting entry of an entire class of nationals is injurious to the interests of the United States.”
4 *Id.* at 773. The court held the President’s findings insufficient to justify a ban of EO2’s severity
5 and breadth. *Id.* at 773-74.

6 The Ninth Circuit’s analysis applies directly to EO3. Like its predecessor, EO3 lists
7 findings about country conditions, including the presence of terrorist groups, inadequacy of
8 information sharing about security threats, and deficiencies in foreign countries’ identity-
9 management protocols. EO3 §§ 1(h)–(i); 2(a)-(i). But EO3 makes no finding that the current
10 screening processes used by the United States are inadequate, and the order nowhere states that
11 our “individualized adjudication process is flawed such that permitting entry of an entire class
12 of nationals is injurious to the interest of the United States.” *Hawai’i*, 859 F.3d at 773. Instead,
13 EO3 substitutes general country conditions for specific findings that nationality alone
14 somehow makes each of the more than 150 million banned individuals “a heightened security
15 risk to the United States.” *Id.* at 772. This flaw is fatal. *Hawai’i*, 859 F.3d at 774 (“National
16 security is not a ‘talismanic incantation’”) (quoting *United States v. Robel*, 389 U.S. 258,
17 263-64 (1967), and citing *Korematsu v. United States*, 323 U.S. 214, 235 (1944) (Murphy, J.,
18 dissenting) (rejecting “the assumption that all persons of Japanese ancestry may have a
19 dangerous tendency to commit sabotage and espionage” as inconsistent with “reason, logic or
20 experience”)).

21 Moreover, many of EO3’s central features are unsupported by any credible evidence,
22 undermining any claim that the new findings “support the conclusion” to categorically ban
23 entry by millions of people. *Cf. Hawai’i*, 859 F.3d at 770. For example, although the order
24 claims a purpose “to protect [U.S.] citizens from terrorist attacks,” EO3 § 1(a), the ban “targets
25 a list of countries whose nationals have committed no terrorist attacks on U.S. soil in the last
26 forty years,” ECF 194-18 (Decl. Nat’l Security Officials) ¶ 11. Indeed, the ban takes a country-

1 based approach, despite this Administration’s own conclusion that “country of citizenship is
2 unlikely to be a reliable indicator of potential terrorist activity.” ECF 118-2 at 25. And the ban
3 does not explain its exclusion of “non-Muslim majority countries such as Belgium where there
4 have been widely-documented problems with information sharing, and whose nationals have
5 carried out terrorist attacks on Europe.” ECF 194-18 (Decl. Nat’l Security Officials) ¶ 12.

6 Finally, internal inconsistencies profoundly undermine EO3’s purported national-
7 security rationale. For example, the order finds that Iraq fails the “baseline” security
8 assessment, but then omits Iraq from the ban for policy reasons. EO3 § 1(g) (subjecting Iraq to
9 “additional scrutiny” instead of the ban, citing diplomatic ties, positive working relationship,
10 and “Iraq’s commitment to combating the Islamic State”). Likewise, Section 1 of the order
11 describes 47 countries that Administration officials identified as having an “inadequate” or “at
12 risk” baseline performance, EO3 §§ 1(e)-(f), but does not explain how it whittled that number
13 down to the eight countries named in the ban in Section 2. As a third example, the
14 individualized country findings make no effort to explain why some visitors from the country
15 are banned, while others are permitted to apply for visas using the ordinary vetting process.
16 *See, e.g.*, EO3 § 2(c) (describing Libya as having “significant inadequacies in its identity-
17 management protocols,” and then banning all tourist and business visitors without mentioning
18 students); *id.* § 2(g) (same for Yemen). An order grounded in these sorts of inconsistencies and
19 unexplained findings cannot lawfully justify an exercise of § 1182(f) authority, particularly one
20 as sweeping and unprecedented as this. *See Hawai‘i*, 859 F.3d at 772-73 (proper exercise of §
21 1182(f) authority must “provide a rationale” and “bridge the gap” between the findings and
22 ultimate restrictions).

23 In short, the States are likely to prevail on their claim that EO3 fails § 1182(f)’s
24 “precondition of finding that entry of an alien or class of aliens *would be* detrimental to the
25 interests of the United States.” *Hawai‘i*, 859 F.3d at 774.
26

1 **(3) Without authority, EO3 rewrites key INA provisions**
2 **governing visas**

3 In addition to wholesale suspension of immigration by certain nationals, EO3 works
4 dramatic changes in the admission criteria for *non-immigrants* like students, businesspeople,
5 and tourists. But it is Congress, not the President, that is constitutionally vested with the
6 authority to make immigration law. U.S. Const. art. I, § 8, cl. 4; *Arizona v. United States*, 567
7 U.S. 387, 409 (2012) (“Policies pertaining to the entry of aliens and their right to remain here
8 are . . . entrusted exclusively to Congress.”) (quoting *Galvan v. Press*, 347 U.S. 522, 531
9 (1954)). Congress has already enacted comprehensive visa and admissibility rules that conflict
10 with the terms of EO3. The States are likely to prevail on their claim that EO3 may not
11 override the INA by redrafting the visa rules.

12 The INA contains detailed visa and admissibility procedures, including in
13 circumstances related to terrorism and security. A visa applicant bears the burden of satisfying
14 the government of his or her admissibility. 8 U.S.C. § 1361. The INA allows the Secretary of
15 State and consular officials to tailor visa requirements by visa type and by the circumstances
16 presented by an individual applicant. 8 U.S.C. §§ 1202(c)-(d). Additional visa statutes set out
17 the terms of admissibility for individuals who have engaged in dangerous behavior or hail from
18 countries presenting security concerns. *See, e.g.*, 8 U.S.C. § 1182(a)(2) (inadmissibility based
19 on criminal conduct); 8 U.S.C. § 1182(a)(3)(B) (detailed inadmissibility provisions related to
20 “terrorist activities”); 8 U.S.C. § 1187(a)(12) (vetting procedures applicable only to certain
21 countries with security risks); 8 U.S.C. § 1202(h) (detailed provisions defining visa applicants
22 for whom an in-person interview is required). In short, Congress has deliberately and
23 meticulously crafted the visa application process.

24 EO3 is essentially a new piece of immigration legislation. The detailed line-drawing in
25 the visa provisions cause it to read like the “extensive and complex” provisions of the INA.
26 *Arizona*, 567 U.S. at 395. Under EO3, for example, nationals from Iraq and Somalia will

1 receive “additional scrutiny” in the non-immigrant visa process, EO3 § 1(g), all Iranian visitors
 2 *except* certain student and exchange visitors are banned, *id.* § 2(h)(ii), a small group of
 3 Venezuelan business and tourist visitors are suspended, *id.* § 2(f)(ii), and *all* business and
 4 tourist visitors from Chad, Libya, and Yemen are banned, though students will be allowed, *id.*
 5 §§ 2(a)(ii), 2(c)(ii), 2(g)(ii).⁵ The new order purports to create a discretionary “waiver” system,
 6 EO3 § 3(c), even though Congress already provides a detailed waiver scheme. *See, e.g.*, 8
 7 U.S.C. §§ 1182(a)(9)(B)(v), 1182(d)(3), 1182(h). Finally, and tellingly, the justification
 8 provided for these provisions is a *policy* justification: to “mitigate security threats” while
 9 “encourag[ing] . . . improvements” to countries’ “future cooperation” and “willingness to
 10 cooperate and play a substantial role in combatting terrorism.” EO3 § 1(h)(3) (explaining
 11 reasons for “more tailored approach with respect to nonimmigrants”).

12 EO3’s visa criteria conflict squarely with the INA. The Ninth Circuit has recently
 13 warned that the President’s power is “at its lowest ebb” when he seeks to override
 14 congressional policy related to the issuance of visas and the determination of admissibility.
 15 *Hawai‘i*, 859 F.3d at 781-82 (quoting *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579,
 16 637 (1952) (Jackson, J., concurring)); *see also Kent v. Dulles*, 357 U.S. 116, 128 (1958) (the
 17 President does not enjoy “unbridled discretion” to alter immigration regulations). Although it
 18 did not need to reach the claim that EO2 violated the INA’s visa provisions, the Ninth Circuit
 19 noted that “executive action should not render superfluous Congress’s requirement[s]” related
 20 to admissibility. *Hawai‘i*, 859 F.3d at 782 (citing *Abourezk v. Reagan*, 785 F.2d 1043, 1049 n.2
 21 (1986) (“The President’s sweeping proclamation power thus provides a safeguard against the
 22 danger posed by any particular case or class of cases that *is not covered* by one of the
 23 categories in section 1182(a).”) (emphasis added)). EO3 unlawfully rewrites the visa rules, and
 24

25 _____
 26 ⁵ It is no wonder that a reader needs a chart to understand the new order. *See Ex. A*
 (chart summarizing EO3 provisions).

1 the States are likely to prevail on their claim that the President has usurped the role of
2 Congress and violated the INA.

3 **b. EO3 Violates the Establishment Clause**

4 EO3 also violates the “clearest command of the Establishment Clause”: “that one
5 religious denomination cannot be officially preferred over another.” *Larson v. Valente*, 456
6 U.S. 228, 244 (1982); *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520,
7 532 (1993) (“[T]he First Amendment forbids an official purpose to disapprove of a particular
8 religion.”). EO3 targets six Muslim-majority countries for an irrational ban on immigration and
9 travel. And it follows on repeated statements by President Trump and his top advisers making
10 clear his desire to discriminate against Muslims entering the United States. Under controlling
11 law, EO3 violates the Establishment Clause.

12 To begin with, precedent requires that the Court evaluate EO3 in context. President
13 Trump’s most recent immigration ban is the third in a series, and this history matters. For
14 example, in *McCreary County, Kentucky v. ACLU of Kentucky*, 545 U.S. 844 (2005), the
15 Supreme Court evaluated whether a courthouse display that included the Ten Commandments
16 and a number of other texts violated the Establishment Clause. The Court took into account
17 that the display initially included only the Ten Commandments, and was changed twice in
18 response to litigation to include other texts, *id.* 868-73, holding that “the world is not made
19 brand new every morning” and “reasonable observers have reasonable memories,” so courts
20 must not “turn a blind eye to the context in which the policy arose,” *id.* at 866 (quotation marks
21 omitted). By the same token here, EO3 is the third in a series of government policies, adopted
22 after courts rejected the first two as unconstitutional. The Court should not treat it as if starting
23 from scratch.

24 Looking to the history of these executive orders reveals a mountain of evidence
25 indicating President Trump’s antipathy towards Islam generally and Muslim immigrants
26 specifically. During his campaign, President Trump called for “a total and complete shutdown

1 of Muslims entering the United States.” 3d Am. Compl. ¶ 136. He repeatedly refused to
2 disavow this shocking statement, instead leaving it on his campaign website until months after
3 taking office. *Id.* ¶¶ 136 n.7, 139. He and his advisers made countless other statements, both
4 before and after he was elected, demonstrating his animus towards Muslims. *See, e.g., IRAP*,
5 857 F.3d at 575-77 (recounting statements); *id.* at 591 (discussing “Trump’s numerous
6 campaign statements expressing animus towards the Islamic faith”). And he and his advisers
7 made many statements demonstrating that these executive orders were intended to “keep [his]
8 campaign promises.” *Id.* at 577.

9 Because the Ninth Circuit has struck down President Trump’s prior executive orders on
10 other grounds, it has not yet addressed how courts should evaluate these facts under the
11 Establishment Clause. The *en banc* Fourth Circuit, however, issued a detailed ruling holding
12 that EO2 violated the Establishment Clause, and its analysis provides the best roadmap for the
13 Court here. *See IRAP*, 857 F.3d 554. Though the Supreme Court subsequently directed the
14 Fourth Circuit to vacate this opinion as moot, it retains persuasive force. *See, e.g., Orhorhaghe*
15 *v. I.N.S.*, 38 F.3d 488, 493 n.4 (9th Cir. 1994) (holding that opinion vacated as moot “is still
16 persuasive authority”); *United States v. Joelson*, 7 F.3d 174, 178 n.1 (9th Cir. 1993) (same).

17 To begin with, the Court should apply the test from *Lemon v. Kurtzman*, 403 U.S. 602
18 (1971). *See IRAP*, 857 F.3d at 591-93 (holding that *Lemon* applies). Under that test,
19 Defendants must demonstrate that EO3 has “a secular legislative purpose,” that “its principal
20 or primary effect . . . neither advances nor inhibits religion,” and that it does not “foster an
21 excessive government entanglement with religion.” *Lemon*, 403 U.S. at 612 (internal quotation
22 marks omitted). Defendants cannot meet any prong of the test.

23 First, EO3’s purpose is not “secular” because President Trump’s purpose in issuing it—
24 as shown by his own statements—is to “disapprove of [Islam].” *Wallace v. Jaffree*, 472 U.S.
25 38, 56 (1985). The President’s “statements, taken together, provide direct, specific evidence of
26 what motivated both EO-1 and EO-2: President Trump’s desire to exclude Muslims from the

1 United States.” *IRAP*, 857 F.3d at 595. Making the ban permanent does not transform its
2 purpose. And while Defendants will no doubt argue that enhancing national security was
3 EO3’s primary purpose, the Fourth Circuit has already explained why that argument must fail:
4 it “is belied by evidence in the record that President Trump issued the First Executive Order
5 without consulting the relevant national security agencies”; “that those agencies only offered a
6 national security rationale after EO-1 was enjoined”; that “internal reports from [the
7 Department of Homeland Security] contradict this national security rationale”; that high
8 ranking national security officials have explained that the order “serves ‘no legitimate national
9 security purpose’”; and other evidence that national security was a pretext, not the true purpose
10 of these executive orders. *Id.* at 596. In short, this Court should reach the same conclusion as to
11 EO3 that the Fourth Circuit reached as to EO1 and EO2: its primary purpose was not secular,
12 so it fails *Lemon*’s first prong.

13 EO3 also violates *Lemon*’s second prong, which requires that the “principal or primary
14 effect . . . be one that neither advances nor inhibits religion.” *Lemon*, 403 U.S. at 612 (emphasis
15 added). Governmental action violates this prong “if it is sufficiently likely to be perceived by
16 adherents of the controlling denominations as an endorsement, and by the nonadherents as a
17 disapproval, of their individual religious choices.” *Vasquez v. Los Angeles Cty.*, 487 F.3d 1246,
18 1256 (9th Cir. 2007) (internal quotation marks omitted). The court analyzes this prong “from
19 the point of view of a reasonable observer who is informed . . . [and] familiar with the history
20 of the government practice at issue.” *See id.* In light of the President’s campaign statements,
21 his statements about EO1 and EO2, the post-hoc nature of the national security rationales for
22 these orders, and courts’ findings about the illegality and discriminatory purpose of the prior
23 orders, it is clear that an informed, reasonable observer would perceive EO3 as expressing the
24 President’s disfavor towards Islam. *See, e.g., IRAP*, 857 F.3d at 601 (“[T]he reasonable
25 observer would likely conclude that EO-2’s primary purpose is to exclude persons from the
26 United States on the basis of their religious beliefs.”).

1 As to the third prong, the Order “foster[s] ‘an excessive governmental entanglement
2 with religion” by favoring one religious group over another, which “engender[s] a risk of
3 politicizing religion.” *Larson*, 456 U.S. at 252-53. Selectively burdening those of the Muslim
4 faith creates improper “entanglement with religion.”

5 If past litigation is any guide, Defendants will offer three counterarguments. This Court
6 should follow every other court to consider these arguments and reject them.

7 First, Defendants may argue that this Court is prohibited from meaningfully evaluating
8 EO3’s constitutionality under *Kliendienst v. Mandel*, 408 U.S. 753 (1972). But both the Ninth
9 Circuit and the en banc Fourth Circuit have rejected that argument. *Washington*, 847 F.3d at
10 1162-63; *IRAP*, 857 F.3d at 588-93.

11 Second, Defendants may argue that EO1 and EO2 are irrelevant to consideration of
12 EO3 because EO3 adds Chad, North Korea, and Venezuela to the list of targeted countries. But
13 the Supreme Court has already made clear that Courts must look at the history of a policy in
14 assessing its purpose, and adding elements to make a policy seem more secular does not
15 eliminate the original, improper purpose. *See, e.g., McCreary Cty.*, 545 U.S. at 866-73.
16 Moreover, Chad is a Muslim-majority country, and the restrictions imposed on North Korea
17 and Venezuela bear all the hallmarks of a pretextual sham. Immigration from North Korea to
18 the United States is already virtually nonexistent and is restricted by separate sanctions orders
19 not challenged here. *See* 3d Am. Compl. ¶ 204.⁶ As to Venezuela, EO3 restricts only certain
20 government officials and their families, and only then from obtaining certain tourist visas, not
21 immigrant visas. EO3 § (f)(ii). In short, just as with EO1 and EO2, the only meaningful effect
22 of EO3 is on those from Muslim-majority countries.

23 Finally, Defendants may argue that in reviewing EO3, this Court must limit itself to the
24 four corners of that document. Again, however, both the Ninth and Fourth Circuits have

25 ⁶ *See* Exec. Order No. 13,810 §§ 1(a)(iv), 5, 82 Fed. Reg. 44,705, 44,705, 44,707 (Sept.
26 25, 2017) (sanctions against North Korea).

1 already rejected that approach. *See, e.g., Washington*, 847 F.3d at 1167 (“It is well established
2 that evidence of purpose beyond the face of the challenged law may be considered in
3 evaluating Establishment and Equal Protection Clause claims.”); *IRAP*, 857 F.3d at 597
4 (“[T]he Supreme Court has explicitly stated that we review more than just the face of a
5 challenged action.”).

6 In short, the record and the case law demonstrate that EO3 violates the Establishment
7 Clause, providing a separate basis to block it from taking effect.

8 **c. EO3 Is Discriminatory and Irrational, Violating Equal Protection**

9 EO3 also violates the Constitution’s guarantee of equal protection in several ways.

10 First, EO3 violates equal protection because, as shown above, it was motivated, at least
11 in part, by the President’s intention to disfavor Muslims. *See, e.g., Arce v. Douglas*, 793 F.3d
12 968, 977 (9th Cir. 2015) (holding that plaintiffs need not show that intent to discriminate “was
13 the sole purpose of the challenged action, but only that it was a motivating factor”); *Pers.*
14 *Adm’r of Massachusetts v. Feeney*, 442 U.S. 256, 277 (1979) (“Discriminatory intent is simply
15 not amenable to calibration. It either is a factor that has influenced the legislative choice or it is
16 not.”). Whether that discriminatory intent was motivated by the President’s own beliefs or
17 simply his desire to score political points with some portion of his base is irrelevant; either is
18 impermissible. *See, e.g., Mhany Mgmt., Inc. v. Cty. of Nassau*, 819 F.3d 581 (2d Cir. 2016)
19 (decisionmaker responding to constituents’ animus is also unlawful); *Ave. 6E Invs., LLC v.*
20 *City of Yuma*, 818 F.3d 493, 504 (9th Cir. 2016) (“The presence of community animus can
21 support a finding of discriminatory motives by government officials, even if the officials do
22 not personally hold such views.”).

23 Second, “its sheer breadth is so discontinuous with the reasons offered for it that the
24 [Order] seems inexplicable by anything but animus toward the class it affects.” *Romer v.*
25 *Evans*, 517 U.S. 620, 632 (1996). EO3 claims that its purpose is “to protect [U.S.] citizens
26 from terrorist attacks,” but it bans entry of immigrants from “a list of countries whose nationals

1 have committed no terrorist attacks on U.S. soil in the last forty years,” ECF 194-18 (Decl.
2 Nat’l Security Officials) ¶ 11. It bans entry of immigrants from these countries even if they
3 pose no plausible terrorist threat, such as grandparents seeking to visit their grandchildren,
4 those who are disabled or gravely ill, and young children. *See Pac. Shores Props., LLC v. City*
5 *of Newport Beach*, 730 F.3d 1142, 1160 (9th Cir. 2013) (“The principle that overdiscrimination
6 is prohibited undergirds all of constitutional and statutory anti-discrimination law.”). The order
7 makes nationality-based assumptions despite this Administration’s own conclusion that
8 “country of citizenship is unlikely to be a reliable indicator of potential terrorist activity.” ECF
9 118-2 at 25. And the ban does not explain why it allows entry of some individuals from these
10 countries (such as students from Iran and cultural exchange visitors from Libya) while
11 categorically excluding others, or why it ignores similarly situated “non-Muslim majority
12 countries.” ECF 194-18 (Decl. Nat’l Security Officials) ¶ 12. In short, EO3 “is at once too
13 narrow and too broad,” and cannot withstand any level of scrutiny. *Romer*, 517 U.S. at 633.
14 *See also, e.g., United States v. Windsor*, 133 S. Ct. 2675, 2693 (2013) (“The Constitution’s
15 guarantee of equality must at the very least mean that a bare [legislative] desire to harm a
16 politically unpopular group cannot justify disparate treatment of that group.”).

17 **2. EO3 Will Cause Irreparable Harm to State Residents, Educational**
18 **Institutions, Businesses, and Health Care Systems**

19 The States will suffer irreparable harm in the absence of temporary relief.

20 The Ninth Circuit has now twice recognized the harms States face when Defendants
21 abruptly suspend the entry of millions of immigrants and non-immigrants to the United States.
22 In this very case, the Ninth Circuit determined that EO1 irreparably injured the States by
23 “harm[ing] the States’ university employees and students, separat[ing] families, and strand[ing]
24 the States’ residents abroad.” *Washington*, 847 F.3d at 1169. In so holding, the Ninth Circuit
25 rejected Defendants’ argument that EO1’s waiver provisions alleviated the States’ harm,
26 reasoning that it was wholly unclear how such waiver provisions would operate in practice. *Id.*

1 After Defendants issued EO2, which excluded current residents and visaholders from its ambit
 2 and no longer stranded the States’ residents abroad, the Ninth Circuit held that “prolonged
 3 separation from family members, constraints to recruiting and attracting students and faculty
 4 members to the [state university], [and] decreased tuition revenue” still constituted irreparable
 5 harm. *Hawai’i*, 859 F.3d at 783 (citing *Regents of Univ. of Cal. v. Am. Broad. Co., Inc.*, 747
 6 F.2d 511, 520 (9th Cir. 1984) (recognizing intangible harms to include “impairment of [the
 7 university’s] ongoing recruitment programs [and] the dissipation of alumni and community
 8 goodwill and support garnered over the years”)).

9 The harms presented by EO3 are just as irreparable as those presented by EO1 and
 10 EO2.⁷ EO3 will again result in our States’ residents being separated from their families, often
 11 in heartbreaking situations—and, this time, indefinitely. *See, e.g.*, ECF 194-23 (Decl. Bina) ¶¶
 12 4, 6 (WA resident with rare form of cancer cannot travel and EO3 will prevent Iranian parents
 13 from coming to care for her); ECF 194-21 (Decl. Ayoubi) ¶ 10 (WA resident’s wife unable to
 14 move to United States if EO3 is implemented); ECF 118-4 (Decl. Althaibani) ¶¶ 8-12 (NY
 15 resident prevented from living with husband).

16 EO3 will also irreparably harm our States’ public universities and colleges. The States’
 17 public universities and colleges have hundreds of students and faculty members from the
 18 targeted countries. *See, e.g.*, ECF 194-40 (5th Decl. Chaudhry) ¶ 5 (140 students and 9 faculty
 19 members at WSU); ECF 194-43 (2d Decl. Eaton) ¶ 4 (105 graduate students at UW); ECF 194-
 20 51 (2d Decl. Heatwole) ¶¶ 4-5, 10 (180 students and 25 employees at University of
 21 Massachusetts); 3d Am. Compl. ¶¶ 53, 58 (529 students in the University of California
 22 system); *id.* ¶ 75 (University System of Maryland has employees from EO3 targeted countries).

23 ⁷ Indeed, harm is presumed where plaintiffs have shown a likelihood of success on their
 24 Establishment Clause claim. *See, e.g., Chaplaincy of Full Gospel Churches v. England*, 454
 25 F.3d 290, 303 (D.C. Cir. 2006) (holding an Establishment Clause violation “is sufficient,
 26 without more, to satisfy the irreparable harm prong”); *Parents’ Ass’n of P.S. 16 v. Quinones*,
 803 F.2d 1235, 1242 (2d Cir. 1986) (same). Each version of the immigration ban has violated
 the Establishment Clause. 3d Am. Compl. ¶¶ 222-226.

1 Like with the first two executive orders, the universities again risk losing current and future
 2 students from the targeted countries, along with the associated tuition revenue. *See, e.g.*, 3d
 3 Am. Compl. ¶ 53, 57 (California); *id.* ¶¶ 86, 94-95 (Massachusetts); *id.* ¶ 105 (New York);
 4 ECF 194-40 (5th Decl. Chaudhry) ¶ 11; ECF 194-39 (3d Decl. Branon) ¶¶ 4-6; ECF 194-43
 5 (2d Decl. Eaton) ¶ 5; ECF 194-59 (Decl. Yoganarasimhan) ¶¶ 5-7; ECF 194-42 (Decl.
 6 Detwiler) ¶ 5; ECF 194-44 (Decl. Ehsani) ¶ 11; ECF 194-54 (Decl. Nofallah) ¶ 8. They also
 7 risk losing talented faculty members, as several faculty members have already indicated that
 8 they are considering positions in other countries to avoid indefinite separation from their
 9 families under EO3. *See, e.g.*, ECF 194-26 (Decl. Hajishirzi) ¶¶ 9-10; ECF 194-37 (Decl.
 10 Alaghi) ¶ 9; ECF 194-52 (Decl. Hosseinzadeh) ¶ 8. The departure of such faculty members,
 11 many of whom teach or conduct research in highly specialized fields and bring in substantial
 12 research grants to the universities, will irreparably injure the universities' reputations and
 13 educational programs. *See, e.g.*, ECF 194-55 (4th Decl. Riedinger) ¶¶ 3-4. These harms are not
 14 compensable by an award of damages. *See Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053,
 15 1068 (9th Cir. 2014) (defining irreparable harm as harm "for which there is no adequate legal
 16 remedy").

17 States' businesses will also suffer irreparable injuries. *See Rent-A-Center, Inc. v.*
 18 *Canyon Tel. & Appliance Rental, Inc.*, 944 F.2d 597, 603 (9th Cir. 1991) ("[I]ntangible
 19 injuries, such as damage to ongoing recruitment efforts and goodwill, qualify as irreparable
 20 harm."). The State of Washington's technology industry, for example, heavily relies on
 21 immigrants and nonimmigrants from the banned countries to serve as data scientists and
 22 software engineers. *See e.g.*, Ex. 194-33 (Decl. Soroush) ¶¶ 1-6 (Apple software engineer); Ex.
 23 194-28 (Decl. Jazayeri) ¶ 2-6 (Facebook software engineer); Ex. 194-35 (Decl. Vaezi)
 24 (Microsoft data scientist) ¶¶ 2-6. Large companies, including Amazon, Expedia, and
 25 Starbucks, employ many people originally from the banned countries. *See, e.g.*, ECF 6 (Decl.
 26 Blackwell-Hawkins) ¶¶ 3,7; ECF 7 (Decl. Dzielak) ¶¶ 4, 18. Small businesses have also

1 sustained cumulative, irreparable harm with each successive EO. *See, e.g.*, ECF 194-62 (2d.
 2 Decl. Zawaideh) ¶¶ 2-8; *see also* 3d Am. Comp. ¶¶ 74, 86, 113 (impacts to businesses in
 3 Maryland, Massachusetts, and New York). EO3 also will negatively impact the States' coffers
 4 by reducing tourism tax revenue. *See, e.g.*, ECF 194-60 (2d. Decl. Oline) ¶¶ 10-15; ECF 194-
 5 61 (2d. Decl. Soike) ¶¶ 2-14; 3d Am. Comp. ¶ 121 (economic injury to Oregon).

6 EO3 will also cause lasting harm to the States' health care systems. Physicians from the
 7 banned countries provide health care for our residents. ECF 194-64 (2d Decl. de Leon) ¶¶ 5-7;
 8 ECF 118-46 (Decl. Johnson) ¶ 11; ECF 194-66 (2d Decl. Overbeck) ¶ 6 (Oregon Health
 9 Authority); ECF 194-64 (2d Decl. Akhtari) ¶¶ 13, 18. Like its predecessors, the order will
 10 impede the States' efforts to recruit and retain providers of primary care, dental health, and
 11 mental health services, particularly in underserved areas of our States. *See* ECF 118-32 (Decl.
 12 Fullerton) ¶¶ 5-7, 14-19; ECF 118-43 (Decl. Akhtari) ¶¶ 14, 16-17; ECF 100 (Decl. Overbeck)
 13 ¶¶ 3-6. EO3 will negatively affect physicians who perform critical public health work. *See*
 14 ECF 194-67 (2d Decl. Parsian) ¶¶ 5-16 (cancer radiologist); ECF 194-68 (Decl. Zangeneh) ¶¶
 15 3-8 (HIV prevention research). Our medical schools, and particularly those that participate in
 16 the National Resident Matching Program, will be unable to offer residency to students from
 17 restricted or banned countries. *See* ECF 118-47 (Decl. Scherzer) ¶¶ 15-17 (New York); 3d
 18 Amend. Compl. ¶ 60 (California), *id.* ¶ 127 (Oregon). These harms, which undermine the
 19 depth and strength of our health care systems, will have lasting effects for the provision of
 20 healthcare in our States.

21 **3. The Balance of Equities and Public Interest Strongly Favor Temporary** 22 **Relief**

23 The balance of equities and the public interest strongly weigh in favor of the States. *See*
 24 *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2013) (the balance of equities
 25 and public interest factors merge in cases against the government). The States have shown that
 26 EO3 will cause irreparable harm to their residents, educational institutions, economies,

1 businesses, and health care systems. These injuries far outweigh any harm to Defendants that
2 an injunction would cause. Defendants are not harmed by adhering to immigration procedures
3 that have been in place for years. *See Washington*, 847 F.3d at 1168. Although national
4 security interests are objectives of the highest order, they cannot justify the States' harms when
5 the President has wielded his authority unlawfully. *Hawai'i*, 859 F.3d at 783; *IRAP*, 857 F.3d
6 at 603 (national security is not a "silver bullet that defeats all other asserted injuries"). And
7 Defendants are "in no way harmed by issuance of a preliminary injunction which prevents [it]
8 from enforcing restrictions likely to be found unconstitutional." *IRAP*, 857 F.3d at 603
9 (quoting *Centro Tepeyac v. Montgomery Cty.*, 722 F.3d. 184, 191 (4th Cir. 2013)).

10 Moreover, it is in the public interest to "curtail[] unlawful executive action." *Hawai'i*,
11 859 F.3d at 784 (quoting *Texas v. United States*, 809 F.3d, 134, 187 (5th Cir. 2015)). The
12 public also "has an interest in free flow of travel, in avoiding separation of families, and in
13 freedom from discrimination." *Washington*, 847 F.3d at 1169; *see also Hawai'i*, 859 F.3d at
14 784-85, *Solis-Espinoza v. Gonzales*, 401 F.3d 1090, 1094 (9th Cir. 2005). Likewise, "it is
15 always in the public interest to prevent the violation of a party's constitutional rights."
16 *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (internal quotation marks omitted);
17 *Gordon v. Holder*, 721 F.3d 638, 653 (D.C. Cir. 2013) ("[E]nforcement of an unconstitutional
18 law is always contrary to the public interest."); *IRAP*, 857 F.3d at 604 ("[W]hen we protect the
19 constitutional rights of the few, it inures to the benefit of all."). In short, in weighing the
20 competing interests, the balance tips sharply in favor of preliminary relief.

21 IV. CONCLUSION

22 The law applies to everyone, including the President. In issuing EO3, the President has
23 again exceeded his constitutional and statutory authority. This Court should enjoin
24 implementation of Sections 1(g) and 2 of EO3 until such time as the Court can consider a
25 motion for preliminary injunctive relief.

26 ///

1 /RESPECTFULLY SUBMITTED this 11th day of October, 2017.

2 BOB FERGUSON, WSBA #26004
3 Attorney General of Washington

XAVIER BECERRA
Attorney General of California

4 /s/ Noah G. Purcell
NOAH G. PURCELL, WSBA #43492
Solicitor General
5 COLLEEN M. MELODY, WSBA #42275
Civil Rights Unit Chief
6 ANNE E. EGELER, WSBA #20258
Deputy Solicitor General
7 MARSHA CHIEN, WSBA #47020
PATRICIO A. MARQUEZ, WSBA #47693
Assistant Attorneys General
8 Office of the Attorney General
9 800 Fifth Avenue, Suite 2000
Seattle, WA 98104
10 (206) 464-7744
Noahp@atg.wa.gov
11 Colleenm1@atg.wa.gov

ANGELA SIERRA
Senior Assistant Attorney General
THOMAS S. PATTERSON
Senior Assistant Attorney General
TAMAR PACHTER
Supervising Deputy Attorney General
ENRIQUE A. MONAGAS
Deputy Attorney General

/s/ Alexandra Robert Gordon
ALEXANDRA ROBERT GORDON
Deputy Attorney General
Office of the Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-5509
E-mail:
Alexandra.RobertGordon@doj.ca.gov

13 BRIAN E. FROSH
14 Attorney General of Maryland

MAURA HEALEY
Attorney General of Massachusetts

15 /s/ Steven M. Sullivan
STEVEN M. SULLIVAN, Federal Bar #24930
Solicitor General
16 ROBERT A. SCOTT, Federal Bar #24613
Assistant Attorney General
17 MEGHAN K. CASEY, Federal Bar #28958
Assistant Attorney General
18 Office of the Attorney General of Maryland
200 St. Paul Place, 20th Floor
19 Baltimore, Maryland 21202
Telephone: (410) 576-6325
20 Fax: (410) 576-6955
ssullivan@oag.state.md.us
21 rscott@oag.state.md.us
22 mcasey@oag.state.md.us

/s/ Jesse M. Boodoo
JESSE M. BOODOO
Assistant Attorney General
GENEVIEVE C. NADEAU
Chief, Civil Rights Division
ELIZABETH N. DEWAR
State Solicitor
One Ashburton Place
Boston, MA 02108
617-963-2204
Bessie.Dewar@state.ma.us
Genevieve.Nadeau@state.ma.us
Jesse.Boodoo@state.ma.us

23 ERIC T. SCHNEIDERMAN
Attorney General of the State of New York

ELLEN F. ROSENBLUM
Attorney General of Oregon

24 /s/ Lourdes M. Rosado
LOURDES M. ROSADO
25 Bureau Chief, Civil Rights Bureau
ANISHA DASGUPTA
26 Deputy Solicitor General

/s/ Scott J. Kaplan
SCOTT J. KAPLAN, WSBA #49377
Senior Assistant Attorney General
Oregon Department of Justice
100 Market Street

1 Office of the New York State Attorney General Portland, OR 97201
120 Broadway 971-673-1880
2 New York, New York 10271 scott.kaplan@doj.state.or.us
(212) 416-8252
3 lourdes.rosado@ag.ny.gov

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was electronically filed with the United States District Court using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

October 11, 2017

/s/ Noah G. Purcell
NOAH G. PURCELL, WSBA 43492

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26