U.S. Department of Justice

Office of the Solicitor General

Washington, D.C. 20530

June 25, 2017

By Email

The Honorable Scott S. Harris
Clerk
Supreme Court of the United States
Washington, D.C. 20543

Re: *Donald J. Trump, et al.* v. *International Refugee Assistance Project, et al.*, Nos. 16-1436 & 16A1190

Dear Mr. Harris:

We write in response to the letter of June 24, 2017, of the respondents in *Trump* v. *IRAP*, Nos. 16-1436 and 16A1190, informing the Court that John Doe #1's wife has been issued a visa. Respondents in *IRAP* no longer can identify any individual plaintiff who is affected by Section 2(c) of Executive Order No. 13,780, 82 Fed. Reg. 13,209 (Mar. 9, 2017), in any concrete and particularized way. The fiancé of one individual respondent (Paul Harrison) was issued a visa before Section 2(c) took effect, Pet. 15 n.7, and the spouses of two others—John Doe #3, *ibid.*, and now John Doe #1—have since been issued visas, and as confirmed by the President's June 14, 2017, Memorandum, they will therefore not be denied entry based on the Order. The remaining individual respondent who claims that Section 2(c) would prevent a relative from obtaining a visa—Jane Doe #2, who is petitioning for a visa for her sister—has not shown that her sister's application would be affected during Section 2(c)'s 90-day pause given the multi-year backlog for such visas. *Ibid.* The other individual respondents claim injury based on the Order's refugee provisions, not Section 2(c), and none of the organizational respondents has identified any member or client whom Section 2(c) would prevent from entering. *Ibid.* The Fourth Circuit did not disagree with this analysis, relying solely on the purported injury to Doe #1. Pet. App. 25a-31a.

Respondents' case therefore now rests entirely on Doe #1's alleged injury from a purported message condemning his religion. Even the Fourth Circuit did not hold that alleged injury sufficient by itself to make respondents' claim justiciable—a theory that would enable any Muslim in the United States, and perhaps any person alleging offense at the Order, to sue; instead, it held that Doe #1 had a justiciable claim based on the combination of that purported message and the then-hypothetical (now-nonexistent) effect of Section 2(c) on his wife. Pet. App. 32a n.11. In all events, for the reasons the government has previously explained, this Court should not adopt that boundless and unprecedented theory of message-based injury, let alone deem such an injury sufficient to uphold a global injunction. Pet. 19-20, 31-32; Cert. Reply 4-5, 11-12. Respondents'

suit, or at least their request for a preliminary injunction, is now moot, which further warrants a reversal or vacatur of the ruling below and, at the least, a stay of the underlying injunction.

This latest development confirms that, especially because the message injury is insufficient, constitutional claims such as those raised by respondents should be entertained only if the alien abroad whose exclusion allegedly would violate a U.S. citizen's own rights is actually found otherwise eligible for a visa but is denied a waiver and therefore is denied a visa under Section 2(c). Only then would there be final agency action that could serve as a basis for judicial review and a ripe claim, and any relief would be limited to the U.S.-citizen plaintiff and the particular alien abroad whose exclusion allegedly violates the U.S.-citizen's rights.

Respectfully submitted,

/s/ Jeffrey B. Wall

Jeffrey B. Wall
Acting Solicitor General

cc: Counsel of Record *(via Email)*