

1 UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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HAMEED KHALID DARWEESH,

17-CV-480 (CBA)

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Plaintiff,

United States Courthouse  
Brooklyn, New York

5

- versus -

February 2, 2017  
2:30 p.m.

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DONALD J. TRUMP,

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Defendant.

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TRANSCRIPT OF CIVIL CAUSE FOR STATUS CONFERENCE  
BEFORE THE HONORABLE CAROL B. AMON  
UNITED STATES DISTRICT JUDGE

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APPEARANCES

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## 1 A P P E A R A N C E S: (Continued)

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11 Proceedings recorded by mechanical stenography. Transcript  
12 produced by computer-aided transcription.

## PROCEEDINGS

1 (In open court.)

2 THE COURTROOM DEPUTY: Darweesh versus Trump.

3 Please state your appearances for the record  
4 beginning with plaintiffs' table.

5 MS. COLYER: Jennifer Colyer from Fried Frank for  
6 Maryam Mikaniki.

7 MR. WISHNIE: Michael Wishnie, Jerome N. Frank Legal  
8 Service Organization, Yale Law School.

9 MR. GELERNT: Lee Gelernt, American Civil Liberties  
10 Union.

11 MS. TUMLIM: Karen Tumlin, National Immigration Law  
12 Center.

13 MS. WANG: Good afternoon, Your Honor, Cecillia Wang  
14 of the ACLU for plaintiffs.

15 MR. POLONSKY: Jonathan Polonsky, Kilpatrick  
16 Townsend & Stockton, for Hameed Darweesh.

17 THE COURT: Good afternoon.

18 And for the defendants?

19 MR. GO: Good afternoon, Your Honor. Samuel Go from  
20 the Department of Justice on behalf of the United States.

21 MR. PLATT: Good morning, Your Honor, Steven Platt,  
22 on behalf of the Department of Justice, Civil Division, Office  
23 of Immigration Litigation, District Court.

24 THE COURT: All right, good afternoon, everyone. I  
25 have set this matter down for a status conference. Just to

## PROCEEDINGS

1 clarify the status of the case, the temporary retraining  
2 order, what issues are still extant. There was a briefing  
3 schedule that was set by Judge Donnelly, and I think these are  
4 all the issues, individual issues that I thought needed to be  
5 clarified.

6 The first procedural matter I wanted to take up is  
7 that under Civil Rule 5.2(c) of Federal Rules of Civil  
8 Procedure, cases involving immigration and Social Security,  
9 the dockets are restricted for remote access.

10 And I think the thought behind that is that there's  
11 private information with regard to both Social Security cases  
12 and with immigration cases. There can be circumstances where  
13 the "A" file is in the filing. For that reason, remote access  
14 is limited.

15 I've had several requests by members of the press to  
16 lift this rule, which I have the discretion to do. I'm not  
17 sure that this case involves the same type of sensitive  
18 information that is routinely in Social Security cases or  
19 other forms of immigration cases.

20 So is there any objection by any of the petitioners  
21 or plaintiffs to lifting the rule and making remote access  
22 available to others?

23 MR. WISHNIE: Your Honor --

24 THE COURT: Just state your name for the court  
25 reporter.

## PROCEEDINGS

1 MR. WISHNIE: Michael Wishnie.

2 THE COURT: There's so many of you, I'm not sure  
3 they know who's who.

4 MR. WISHNIE: Michael Wishnie for plaintiffs.

5 With one exception as to one word, essentially, that  
6 Mr. Polonsky has requested redacted from certain papers,  
7 plaintiffs have no other objection.

8 I hesitate to give the word, of course, that would  
9 defeat the redaction. Mr. Polonsky perhaps maybe could  
10 address directly the concern.

11 MR. POLONKSY: If I may, Your Honor, the papers  
12 identify the ultimate city of relocation that Mr. Darweesh  
13 intended, and I would prefer that not to be -- that not to be  
14 released. The rest of what's in there is fine.

15 THE COURT: In what file does that appear?

16 MR. POLONKSY: That would be in the petition.

17 THE COURT: Well, you know, that has been available  
18 for anyone who came into the court here to see. So that's  
19 already -- you know, it's not as if that is sealed, so does  
20 remote access make that much of a difference?

21 MR. POLONKSY: Much easier to find.

22 THE COURT: Well, I don't know how we'll go about  
23 doing that. Do you want to --

24 MR. POLONKSY: File --

25 THE COURT: You can file a substituted document, I

## PROCEEDINGS

1 suppose.

2 MR. POLONKSY: And just remove the one word.

3 THE COURT: And make that document available.

4 MR. POLONKSY: Yes.

5 THE COURT: And everything else available with the  
6 exception of the original petition that has that word in it?

7 MR. POLONKSY: Yes.

8 THE COURT: Okay. I take it the government doesn't  
9 have a position on this, correct?

10 MR. PLATT: No, Your Honor, we don't.

11 MS. COLYER: Your Honor, Ms. Mikaniki also has an  
12 objection to the docket being opened with respect to the  
13 motion that she filed. She has privacy concerns that relate  
14 to security that I would be happy to share with Your Honor not  
15 in the open courtroom.

16 THE COURT: Well, I think she's just filed a letter,  
17 correct? Did she file anything other than a letter?

18 MS. COLYER: She filed a motion over the weekend,  
19 and the motion resulted in an order on the docket by  
20 Judge Donnelly. And then I filed a status update letter on  
21 Monday at Judge Donnelly's direction.

22 That letter -- in that letter, I asked to withdraw  
23 the motion.

24 THE COURT: That's right. Now that letter was on  
25 the docket. So what is of concern that's now on the docket?

## PROCEEDINGS

1 MS. COLYER: The information.

2 THE COURT: So it's information in that letter?

3 MS. COLYER: No, it's information in the motion that  
4 we filed.

5 THE COURT: Can you file a redacted motion?

6 MS. COLYER: I could file a redacted motion, Your  
7 Honor.

8 THE COURT: Now the original motion, again, will  
9 remain -- it's not under seal, it's only not available for  
10 remote access.

11 So do you understand how the rule operates? So if  
12 it hasn't been sealed, someone can go downstairs and walk into  
13 the clerk's office and read it.

14 If you are concerned about the remote access because  
15 it has private information in it, then that letter could still  
16 remain not subject to remote access and maybe you can file a  
17 redacted letter that could be --

18 MS. COLYER: Can we file a redacted motion that  
19 would substitute for the motion that's now docketed?

20 THE COURT: I don't think that works because that's  
21 already been filed and already been made public.

22 But that is not at the present moment subject to  
23 remote access, so that could remain not subject to remote  
24 access.

25 MS. COLYER: Right.

## PROCEEDINGS

1 THE COURT: It's sort of the same idea that we had  
2 with counsel, and you could file a substituted letter that  
3 could be available for remote access.

4 Now the question is whether technical people are  
5 capable of doing any of this, but we'll try and see if we can.

6 MS. COLYER: Okay.

7 THE COURT: So just file a substituted letter.

8 I guess the principal question that I have is  
9 there's a TRO in effect, Judge Donnelly's order of Saturday,  
10 and that enjoins and restrains in any manner by means removing  
11 individuals with refugee applications approved by U.S.  
12 citizenship and immigration services, and it goes on to say as  
13 part of the refugee program, and holders of valid immigrant  
14 and not immigrant visas and other individuals from Iraq,  
15 Syria, Iran, Sudan, Libya, Somalia, and Yemen legally  
16 authorized to enter the United States.

17 As I understand it, the two petitioners in this  
18 lawsuit have the been admitted into the United States; is that  
19 correct?

20 MR. GELERNT: Yes, Your Honor.

21 THE COURT: So is the matter moot with respect to --  
22 is the case now moot?

23 MR. GELERNT: No, Your Honor, because we filed it as  
24 a class action, and our class -- our motion for class  
25 certification was on file when the two people were admitted,



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1 so we think under Second Circuit law, they're well  
2 established. Second Circuit law, the case is not moot.

3 THE COURT: All right. Let me just ask the  
4 government a question.

5 Are there still people being held at the airport  
6 that would have been the subject of the order?

7 MR. GO: Your Honor, from our understanding, no,  
8 there is no one that's been detained at any airport.

9 THE COURT: Okay.

10 Well, is the government still opposing the temporary  
11 retraining order that's been signed by Judge Donnelly? I  
12 mean, do we need to have a hearing on this? Do we need  
13 briefing on this? It's not clear to me.

14 MR. GO: Your Honor, I think we still have to  
15 evaluate whether, you know, the TRO we think is moot,  
16 obviously the plaintiffs disagree.

17 But one thing that we have agreed upon, and this  
18 was -- we're able to have conversation with both counsel prior  
19 to this hearing, is that the current circumstances are not as  
20 essentially as before. So we feel like we can push the recent  
21 deadlines out. So the deadlines that were in place for the  
22 emergency motion we feel that we can push those out.

23 And rather than take up the Court's time trying to  
24 figure out some specific dates for any sort of briefing, we  
25 have agreed that we will confer after this hearing and agree

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1 on some mutually-agreeable dates for anything to occur and  
2 convey that to the Court in a letter perhaps by mid next week,  
3 if that's...

4 THE COURT: All right. Well, then here's a question  
5 that I have.

6 The temporary restraining order by law remains in  
7 effect for 14 days. It can be extended for good cause shown  
8 for another 14 days. With a consent of the government, it can  
9 be extended for an even longer period.

10 So do I understand the government to be consenting  
11 to the TRO remaining in effect pending the briefing that  
12 you've suggested, as well as any hearing that might follow?

13 MR. GO: Well, Your Honor, the TRO was issued on --

14 THE COURT: February 11th. No, I'm sorry.  
15 February 11th is --

16 MR. GO: The time for the initial TRO is not --

17 THE COURT: No, it hasn't ended, it's February 11th.

18 But before it expires, the Court can extend it for  
19 good cause shown within 14 days, and then it can be extended  
20 even longer than that as long as the government consents. So  
21 my question is: You want a longer briefing schedule than has  
22 originally been given. So I'm interpreting that as your  
23 consent to extending the TRO; is that correct?

24 MR. GO: Your Honor, I think I will have need to  
25 confer with the people in my office. But I think we can get

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1 an answer to you before the initial TRO expires.

2 THE COURT: Well, I think last time, by virtue of  
3 your requesting, the government requesting a longer period to  
4 brief it, I think that was, in effect, an extension, at least  
5 through the briefing date.

6 The additional 14 days would take it to  
7 February 25th. That's with good cause shown. Since the  
8 government had requested briefing on the last occasion through  
9 the 21st, it seems to me that the Court for good cause would  
10 extend it now at least until the 25th.

11 MR. PLATT: One second, Your Honor.

12 (Discussion was had off the record.)

13 MR. GO: One moment, Your Honor?

14 THE COURT: Sure.

15 (Discussion was had off the record.)

16 MR. PLATT: Steven Platt, Your Honor.

17 I think what the government had was thinking in  
18 terms of that longer briefing schedule, which goes past the  
19 14-day mark, was that that would be for turning the temporary  
20 retraining order under Rule 65(b) into a Rule 65(a)  
21 preliminary injunction, which could last until the end of the  
22 lawsuit.

23 So that's why we think that those are kind of two  
24 separate issues; one, being the expiration of the temporary  
25 retraining order, the other being turning that into a

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1 preliminary injunction.

2 THE COURT: No, it just extends the period of time  
3 that the Court has to consider whether it should be a  
4 preliminary injunction or not. It doesn't automatically -- a  
5 TRO expires, it doesn't automatically turn into a preliminary  
6 injunction.

7 MR. PLATT: Right. So, I apologize. I construed  
8 the plaintiffs' request to ask for both.

9 MR. GO: Your Honor, I don't believe we can consent  
10 to an extension of the TRO at this time, but we are going to  
11 submit a letter to the Court in the next week, and I believe  
12 then we can perhaps agree on whether the TRO should be  
13 extended or whether or not we consent to an extension of the  
14 TRO.

15 THE COURT: Well, do you want me to set down a  
16 hearing now if you don't want it extended? Do you want me to  
17 shorten the time for your papers and not extend it?

18 I understood you to be asking for even more time  
19 than you asked for originally, which was 'til the briefing  
20 would be competed by the 21st. That would pass the expiration  
21 date of the TRO.

22 MR. GO: Your Honor.

23 THE COURT: What briefing schedule had you intended  
24 to agree on? You had --

25 MR. GO: We had not set any specific time frames,

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1 but we had a general agreement that we would it set out  
2 further. But also we want to take that time to kind of  
3 evaluate the situation.

4 THE COURT: Right. And I don't want to rush the  
5 parties having the time to sit down and discuss it.

6 I mean, I think it's important if you can sit down  
7 and discuss matters, discuss the briefing schedule, discuss  
8 that there are parts of it that can be resolved. I don't  
9 know, there might be aspects of the case that people might  
10 reach some form of agreement on.

11 But I don't really want to leave this issue in limbo  
12 about the expiration of the TRO, and I assume that would not  
13 be a problem for the government because you were asking for  
14 the further time.

15 MR. GO: Your Honor, if I could just have one moment  
16 to confer?

17 THE COURT: Yes.

18 (Discussion was had off the record.)

19 MR. GO: Your Honor, unfortunately we can't consent  
20 to an extension of the TRO. We did want to have more time to  
21 consider it, but we do think that the case is moot and that we  
22 do plan to file a motion to dismiss. And I know that will be  
23 something that we will be submitting briefs on.

24 THE COURT: But that relates to the TRO. I mean,  
25 that relates to the liability of the TRO.

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1           And what type of briefing schedule are you asking  
2 for?

3           MR. GO: Your Honor, you know, we need a few days  
4 just to evaluate, but we do plan to file a motion to dismiss,  
5 and I guess the briefing schedule should be expedited along  
6 those lines. It's not something that we want to actually do  
7 but...

8           THE COURT: Well, it seems to me at this period of  
9 time that you can file papers, if you wish, counsel, objecting  
10 to this, but what makes sense is for all sides, it seems, to  
11 have the opportunity to brief this adequately, and I think the  
12 government wants the opportunity to brief this.

13           When the government came in before Judge Donnelly  
14 and said that, you know, they wanted to go 'til the 21st, I  
15 believe that Judge Donnelly had offered a more expedited  
16 schedule than that. And at that point in time the schedule  
17 was up to the 21st based on what the government had requested.  
18 And that would be, I think, interpreted as a good cause shown  
19 to extend the TRO for a certain period of time to have  
20 adequate briefing on it.

21           So I think that there needs to be some extension of  
22 the TRO. If we're going to have adequate briefing on it, then  
23 I think that's in the government's interest as well. So for  
24 good cause shown, I'm going to extend it just 'til the 21st,  
25 which was the first period of time that the government asked

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1 for an extension.

2 Now, I'm also willing, at the government's request,  
3 if they want matters expedited, see if they can -- to  
4 entertain that application as well. But we seem to be sort of  
5 in a limbo here with no one telling me a schedule they want,  
6 with the government wanting more time, and I don't see any  
7 other way to meet those competing concerns without some  
8 extension of the TRO, which the Court can do for good cause  
9 shown. And so I understand the government may not want to  
10 consent to any period past that, and the Court can only do 14  
11 days unless the government agrees.

12 So I think in fairness, we'll extend it at least to  
13 the 21st, which I interpreted the government to have been  
14 asking the very day that they were before Judge Donnelly, and  
15 I think in fairness it should extended to that date. And if  
16 the government has other applications that they want to make  
17 at a later time, fine.

18 But that gives both sides the time to, I think,  
19 adequately address some substantial issues that -- on both  
20 sides that I think for the parties' sake and for the Court's  
21 sake we need adequately addressed.

22 And I mean in terms of the TRO now, I don't see that  
23 there's some concern that the government has for immediately  
24 removing individuals from the country because there's no one  
25 held at the airports, as far as you know.

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1 MR. GO: That's correct, Your Honor.

2 THE COURT: And so I don't know what the concern  
3 would be.

4 So there was also a motion for class certification.  
5 Do we need to set a schedule for that?

6 MR. GO: Your Honor, I believe that we can arrive  
7 on --

8 MR. GELERNT: If it's okay with Your Honor, we were  
9 going to, in a letter, try and provide you a comprehensive  
10 scheduling so that we can keep everything in line and do it  
11 on -- I don't think it needs to be as expedited as we thought,  
12 but still fairly quick, but give you a schedule for all of it.

13 THE COURT: Yes, I think that would be very helpful  
14 and the parties' understand what issues they need to address.  
15 And as I said, I think it's important for both sides to have  
16 adequate time to address it.

17 And if the government requests that something needs  
18 to be expedited, they can make that request and the Court will  
19 certainly entertain it.

20 MR. GELERNT: And, Your Honor, we are prepared to  
21 proceed on any schedule, you know, that ultimately seems  
22 appropriate. We do think that whether it's called a TRO or  
23 something else, there needs to be no one deported while, as  
24 you said, Your Honor, these substantial issues get briefed  
25 properly. And so we're willing to work with the government,



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1 but we feel strongly there should be a stay.

2 And the only thing I would just say, Your Honor, I  
3 don't think we need to get into it now, is we do not actually  
4 understand this to be sort of a classic TRO. What we  
5 understand this to be is a stay of removal, and that's what we  
6 briefed under the Supreme Court.

7 THE COURT: Well, I mean the order does not address  
8 all of the relief that is sought --

9 MR. GELERNT: Oh, no, absolutely.

10 THE COURT: -- by any means, it's just -- it was a  
11 stay of removing individuals who were here in the United  
12 States.

13 MR. GELERNT: Absolutely, Your Honor, and so I think  
14 we're on the same page on that. And I would just -- and, you  
15 know, maybe I'm using too much sort of immigration parlance,  
16 but in immigration cases, is what it's called a stay of  
17 removal and that's how the Supreme Court talks about it, and  
18 it doesn't have the expiration date of a TRO, it's until the  
19 case can be decided by the Court, no should be removed.

20 And so what Judge Donnelly did is talk about the  
21 four factors under the stay of immigration removal, which  
22 would parallel a PI, not a TRO. And so at this point it seems  
23 like Your Honor is ready to say good cause to extend the TRO  
24 and maybe we can get the briefing done before the government  
25 has a need to try and remove anybody, but I just wanted to

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1 bring it to the Court's attention.

2 THE COURT: Well, I don't understand that there is  
3 an immediate need to remove anybody, that the government's  
4 even telling the Court about it, correct?

5 MR. GO: No, there's no.

6 THE COURT: Okay. And perhaps, you know, if the  
7 parties agree on some other language pertaining to a stay --

8 MR. GELERNT: Okay.

9 THE COURT: -- that, you know, you could agree you  
10 can replace what is now called a TRO. If someone can come to  
11 some other language that you can agree upon, that's fine as  
12 well.

13 MR. GELERNT: Okay. Thank you, Your Honor.

14 THE COURT: I mean, you know, if the government  
15 agrees to that. Maybe you can with work out different  
16 language.

17 MR. GELERNT: Exactly.

18 MR. GO: No, I agree, that's fine, we will try to  
19 see if we can something out to that effect.

20 MR. GELERNT: The only other thing, Your Honor, is  
21 whether there is an additional matter, is your Honor brought  
22 up to the government is anybody being detained now. And so  
23 that goes to the list that Judge Donnelly ordered on Saturday  
24 night telling the government to provide us with a list of  
25 everyone that is being subjected to the order and detained.

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1           We did not receive -- we still have actually not  
2 received complete confirmation that no one's being detained,  
3 and so we're still waiting for that. But I think it brings up  
4 a question, and my colleague will address it in more detail,  
5 if you'd like, about what happened to the people between  
6 Saturday night and now. We're very concerned and have  
7 evidence that people were removed, and so what we're going  
8 to --

9           THE COURT: Well, I have another case involving  
10 someone who contends --

11           MR. GELERNT: Absolutely, Your Honor, you do.

12           THE COURT: -- that they were removed.

13           MR. GELERNT: There are other people around the  
14 country, and so what we're asking the government for and what  
15 we think was the spirit Judge Donnelly -- the order  
16 Judge Donnelly issued was, we need to know who was detained  
17 since Saturday, so that if other people were removed, we can  
18 contact them and ask them would you like counsel, would you  
19 like to come back. Because our understanding is people were  
20 not removed voluntarily, obviously, and so we're asking the  
21 government --

22           THE COURT: I thought Judge Donnelly's order dealt  
23 with everyone who was being held --

24           MR. GELERNT: Right.

25           THE COURT: -- not people who were removed.

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1 MR. GELERNT: Well, so, Your Honor, I think that's  
2 an important point you just made.

3 But if we had got that list Saturday night or Sunday  
4 morning, we would have contacted them and been able to stop  
5 their removal or known about it. But the government still  
6 hasn't given us the list, so I think --

7 THE COURT: Well, wouldn't they have been people  
8 removed in violation of the order?

9 MR. GELERNT: Well, that's what I'm trying to say.  
10 There were people removed after the case and potentially  
11 after -- and my colleague can give you more detail, if you  
12 want to hear more.

13 THE COURT: Your application is what, Counsel, to  
14 have them give you a list?

15 MR. GELERNT: Give us a list of everyone who was  
16 detained and removed since Saturday and to update it daily.

17 Because, Your Honor, as to anybody being detained  
18 right now, which I think is the right starting point, but  
19 people are still coming in, at least some people, and so we're  
20 not going to know tomorrow if someone's detained and removed  
21 without a daily update.

22 But at least, retrospectively, between  
23 Judge Donnelly's order and now, we still haven't gotten  
24 complete confirmation that no one's being detained. I know  
25 the government represented now that they don't think so, but

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1 they have not been willing to put that in writing, they said  
2 they're still checking with Customs and Border Patrol.

3 THE COURT: Can you grant counsel's request?

4 MR. PLATT: Your Honor, so the list that  
5 Judge Donnelly ordered the government to turn over was who is  
6 currently being detained. And she didn't put anything in that  
7 order about updating it daily or about what happens to people  
8 that are removed. And we don't know of anyone that Customs  
9 and Border Protection took into custody and then removed  
10 solely on the basis of this executive order.

11 And I can confirm right now that neither Customs and  
12 Border Protection or immigration Customs enforcement, either  
13 of them are detaining anyone solely under this executive  
14 order. So the list is a null set.

15 MS. TUMLIM: Your Honor, if I may. That is actually  
16 contrary to a report that we not only have directly but that  
17 are put in sworn declarations before other courts across the  
18 country.

19 So like the case that you do have, I'd like to point  
20 the Court's attention case to the Azad case, which is in the  
21 Central District of California, it's 2:17-CV-00706.

22 In that case, the individual was removed at  
23 10:36 p.m. Eastern Time on Saturday after the order. The  
24 sworn declaration in that case of Sara Yarjani states that at  
25 that time she was communicating to the border patrol agent,

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1 who withheld her for 23 hours, since her arrival at LAX, and  
2 told them that a nationwide injunction was in place, to which  
3 the officer responded, quote, wowza.

4 THE COURT: I'm sorry, I didn't hear what you said.

5 MS. TUMLIM: To which the officer responded, quote,  
6 wowza, end quote.

7 Moreover, her declaration talks about how she was  
8 coerced to what's called withdraw her admission. And so we're  
9 really concerned about this evidence, which we've heard in  
10 more than one place, of individuals who, while they were being  
11 detained at airports, were told that the only thing they could  
12 do was to withdraw their application for admission under their  
13 visa and accept voluntarily return. And if they did not, they  
14 would face multiple-year penalties on reentry.

15 So there are examples like this, Your Honor, and  
16 that's why we think the list is so critical to find out --

17 THE COURT: Why don't you provide the government  
18 with a statement of exactly what it is you're requesting so  
19 they have it in print and they know precisely what you're  
20 requesting. They can respond to that request, or they can  
21 make an application to the Court as to why they don't believe  
22 they should be able to respond.

23 MR. GELERNT: Your Honor, so we will work with them  
24 again --

25 THE COURT: I think you need to talk --

## PROCEEDINGS

1           MR. GELERNT: I just want to point out that we have  
2 written correspondence with them back and forth; Monday,  
3 January 30th at 7:30 a.m.; Monday, January 30th at 9:36, they  
4 replied no information; Tuesday we wrote again, 9:24,  
5 requesting a list again. You know, it goes on and on written  
6 correspondence.

7           So I think there may be sort of a disagreement as  
8 counsel on the other said about do they actually have to tell  
9 us who was detained from Saturday 'til now. Because I think  
10 Judge Donnelly thought, well, this is going to go -- we're  
11 going to have this immediate information because the whole  
12 point is to stop people from being removed after this case was  
13 filed and after the Trump order went into effect --  
14 President Trump order went into effect, and I think them  
15 providing it now and saying we don't believe anybody's  
16 detained, doesn't really tell us that lots of people weren't  
17 removed who we would have reached, hopefully, if we had known  
18 they were detained.

19           THE COURT: Counsel, if you can't get the  
20 information from the government, tell them precisely what you  
21 want. If they refuse to give it to you, you can make an  
22 application to the Court.

23           MR. GELERNT: Okay, Your Honor. Thank you.

24           THE COURT: I think that's the best way. To deal  
25 with this in a vacuum is not helpful.

## PROCEEDINGS

1 MR. GELERNT: Right. Thank you, Your Honor.

2 THE COURT: That you can do.

3 There is one other application. The New York State  
4 Attorney General has moved to intervene in this litigation.

5 Do any of the petitioners or plaintiffs oppose that?

6 MR. GELERNT: No, Your Honor.

7 THE COURT: I just got this motion, I don't know if  
8 the government has seen it.

9 Do you want any time to respond to that motion?

10 MR. PLATT: No, the New York State Attorney  
11 General's Office actually were kindly enough to let us know  
12 this Tuesday, I think, that they intended to do this, so we do  
13 have a position, which is that we don't have a position, we  
14 neither consent to nor oppose their motion.

15 THE COURT: Okay. Well then I'll take it under  
16 advisement.

17 So I've got it straight, we've got the  
18 plaintiffs/petitioners, fine with them; government has no  
19 position. Okay.

20 All right, so I understand that the parties will  
21 submit a letter to the Court indicating what matters they're  
22 briefing and what schedule they've agreed upon; is that  
23 correct?

24 MR. GELERNT: Yes, Your Honor.

25 THE COURT: And that includes the outstanding



## PROCEEDINGS

1 motions for class certification.

2 MR. GELERNT: Yes, Your Honor.

3 MR. GO: Yes.

4 THE COURT: Okay. Is there anything further, then,  
5 that we need to take up from anyone?

6 MR. GELERNT: Not from us, Your Honor.

7 THE COURT: From government counsel?

8 MR. GO: Nothing from us, Your Honor.

9 THE COURT: All right, thank you, ladies and  
10 gentlemen.

11

12 (Whereupon, the matter was concluded.)

13

14 \* \* \* \* \*

15

16

17 I certify that the foregoing is a correct transcript from the  
18 record of proceedings in the above-entitled matter.

19

20 /s/ Linda D. Danelczyk

February 2, 2017

21 LINDA D. DANELCZYK

DATE

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