NO. 17-17168

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

STATE OF HAWAI'I, ISMAIL ELSHIKH, JOHN DOES 1 & 2, and MUSLIM ASSOCIATION OF HAWAI'I, INC.,

Plaintiffs-Appellees,

v.

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

Defendants-Appellants.

On Appeal From the United States District Court
for the District of Hawai'i
No. 1:17-cv-0050-DKW-KSC

STATES' EMERGENCY MOTION TO INTERVENE UNDER FEDERAL RULE 24 AND CIRCUIT RULE 27-3

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CIRCUIT RULE 27-3 CERTIFICATE

The undersigned counsel certifies that the following is the information required by Circuit rule 27-3:

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(2) Facts showing the existence and nature of the emergency.

As set forth in the Motion, the Government has moved for an emergency stay of the district court's preliminary injunction order, barring Appellants from enforcing provisions of a third executive action (EO3) imposing an immigration ban that will otherwise inflict irreparable harm on the States of Washington, California, Maryland, Massachusetts, New York, and Oregon (States). The States filed an Amended Complaint and Motion for Temporary Restraining Order (TRO) in the District Court for the Western District of Washington. The States' TRO motion was stayed based on the nationwide injunction issued by the federal district court for Hawai'i. As the district court for Washington noted in

issuing the stay, "[t]he Ninth Circuit's rulings on EO3 in *Hawai'i v. Trump* will likely have significant relevance to—and potentially control—the court's subsequent ruling here." Order Staying Decision on Pls.' Third Mot. for a TRO at 16, *Washington v. Trump*, No. 2:17-cv-141-JLR (Oct. 27, 2017), ECF 209.

(3) When and how counsel were notified.

Counsel for the State of Hawai'i were notified of the States' intent to file this motion by email on October 28, 2017. Counsel responded that Hawai'i takes no position on the motion. Service will be effected by electronic service through the CM/ECF system.

Counsel for the United States were notified of the States' intent to file this motion by email on October 28, 2017. Counsel responded that the United States opposes the motion. Service will be effected by electronic service through the CM/ECF system.

I. INTRODUCTION

If history is any guide, evidence as to the equities and irreparable harm will matter at least as much in this preliminary injunction appeal as arguments about statutory interpretation. *See Trump v. IRAP*, 137 S. Ct. 2080 (2017) (modifying injunction based on equities and harms). Indeed, the Government's Motion to Stay leads with arguments about the evidence and balance of harms, and throughout the immigration ban litigation, the Government has sought to weaken plaintiffs' cases by granting visas to interested parties and otherwise seeking to moot claims. The Government has been able to minimize and attack these harms only because this case currently presents just a small slice of the harms inflicted nationwide by President Trump's third immigration ban (EO3).

On behalf of our 83 million residents, the States of Washington, California, Maryland, Massachusetts, New York, and Oregon (States) move to intervene in this appeal to offer a more comprehensive view of those harms. We offer evidence of harms not otherwise presented, such as to our States' healthcare systems and technology industries, and we add detail and evidence as to the scope of the harms EO3 will cause State residents and institutions. Our States are home to hundreds of thousands of residents originally from the countries banned by EO3, including thousands of naturalized citizens who are indefinitely

separated from loved ones, thousands who are students and staff at our colleges and universities, and thousands who work in crucial industries. Our States sought a TRO against EO3 in the Western District of Washington to protect our residents and institutions from the severe harms EO3 would inflict, and we offered a mountain of evidence (including over 130 declarations) documenting our harms. Because of the injunction in this case, however, our case has been stayed.[1] Ignoring the harms we have documented, the Government now challenges the injunction entered here, seeking to re-inflict those harms on our States and to create precedent that will govern our claims.

The States are entitled to intervene. We would present evidence and arguments as to standing, irreparable injury, the equities, and the public interest that will otherwise go unpresented. Those arguments matter at this stage of this case. *Cf. IRAP*, 137 S. Ct. 2080. We have an overwhelming interest in this case, and our motion is timely and will cause no prejudice. In short, we meet the legal test for intervention, and allowing our intervention will ensure that the Court has a full picture of the harms EO3 inflicts. The Court should grant the motion.

[1] Order Staying Decision on Pls.' Third Mot. for a TRO at 16, *Washington v. Trump*, No. 2:17-cv-141-JLR (Oct. 27, 2017), ECF 209. All ECF citations are to the district court docket in *Washington v. Trump*.

II. STATEMENT OF THE CASE

The State of Washington challenged President Trump's issuance of Executive Order No. 13769 (EO1) on January 30, 2017. ECF 1. The district court for the Western District of Washington granted the State's motion for a temporary restraining order (TRO) and imposed a nationwide injunction as to several provisions. ECF 52. The Ninth Circuit upheld the TRO, and the Defendants chose not to seek Supreme Court review. *Washington v. Trump*, 847 F.3d 1151 (9th Cir. 2017) (per curiam).

On March 6, 2017, President Trump issued Executive Order No. 13780 (EO2). Washington, California, Maryland, Massachusetts, New York, and Oregon filed an amended complaint and moved to enjoin EO2. ECF 152; ECF 148. Separate suits against EO2 were brought in the District of Hawai'i and the District of Maryland. The district court in Washington stayed the States' motion for a TRO after nationwide injunctions were entered in Hawai'i and Maryland. ECF 164, 175, 189; *Hawai'i v. Trump*, 241 F. Supp. 3d 1119, 1140 (D. Haw. 2017); *IRAP v. Trump*, 241 F. Supp. 3d 539, 544 (D. Md. 2017). Both injunctions were largely upheld on appeal. *Hawai'i v. Trump*, 859 F.3d 741 (9th Cir. 2017) (per curiam); *Trump v. IRAP*, 857 F.3d 554 (4th Cir. 2017) (en banc). The Supreme Court granted review of both decisions.

EO2 expired September 24 and was replaced by EO3, a Presidential Proclamation indefinitely suspending and restricting immigration from nine countries based on national origin, including students, businesspeople, and tourists. 82 Fed. Reg. 45,161 (Sept. 27, 2017). In light of EO3, the Supreme Court dismissed the appeals as to EO2 as moot and vacated the lower court opinions without comment on the merits. *Trump v. IRAP*, __ U.S. __, 2017 WL 4518553 (Oct. 10, 2017); *Trump v. Hawai'i*, __ U.S. __, 2017 WL 4782860 (Oct. 24, 2017).

The States filed an amended complaint against EO3 on October 11, 2017, and sought a TRO. ECF 193. The plaintiffs in Hawai'i and Maryland did the same, and the courts in Hawai'i and Maryland granted nationwide injunctions. *Hawai'i v. Trump*, __ F. Supp. 3d __, 2017 WL 4639560 (D. Haw. Oct. 17, 2017); *IRAP v. Trump*, __F. Supp. 3d __, 2017 WL 4674314 (D. Md. Oct. 17, 2017). The Government has appealed both injunctions. On October 27, the district court in Washington stayed the States' motion for TRO based on EO3 already being enjoined. ECF 209. In issuing the stay, the court noted that "[t]he Ninth Circuit's rulings on EO3 in *Hawaii v. Trump* will likely have significant relevance to—and potentially control—the court's subsequent ruling here." ECF 209 at 16.

III. ARGUMENT

While intervention on appeal is unusual and is granted only for very good reason, the factors the court considers are the same as for intervention in district court. *Bates v. Jones*, 127 F.3d 870, 873 (9th Cir. 1997) ("Intervention on appeal is governed by Rule 24 of the Federal Rules of Civil Procedure."). "[I]f an absentee would be substantially affected in a practical sense by the determination made in an action, [it] should, as a general rule, be entitled to intervene." *Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003) (quoting *Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 822 (9th Cir. 2001)). Pursuant to Federal Rule of Civil Procedure 24(a), the States are entitled to intervene as a matter of right to protect their interests. Alternatively, if the Court determines that the States do not have a right to intervene, the Court should grant permissive intervention pursuant to Rule 24(b).

A. The States Are Entitled to Intervene Under Rule 24(a)

Intervention as a matter of right should be granted where a party claims an interest in the action and is so situated that "disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." Fed. R. Civ. P. 24(a)(2). This Court "construe[s] Rule 24(a) liberally in favor of potential

intervenors." *California ex rel. Lockyer v. United States*, 450 F.3d 436, 440 (9th Cir. 2006) (citing *Sw. Ctr. for Biological Diversity*, 268 F.3d at 818).

When seeking intervention as of right, an applicant must show that: (1) the application is timely; (2) it has a significant protectable interest relating to the subject of the action; (3) the disposition of the action may impair or impede the applicant's ability to protect its interest; and (4) the existing parties may not adequately represent the applicant's interest. *United States v. City of Los Angeles*, 288 F.3d 391, 397 (9th Cir. 2002) (citing *Donnelly v. Glickman*, 159 F.3d 405, 409 (9th Cir. 1998)). The States meet each of the four requirements.

1. The States' motion is timely

There can be no question that the States' motion is timely. To determine whether a motion to intervene is timely, courts consider (1) "the stage of the proceeding at which an applicant seeks to intervene," (2) "the prejudice to other parties," and (3) "the reason for and length of the delay." *United States v. Alisal Water Corp.*, 370 F.3d 915, 921 (9th Cir. 2004).

Here, the States moved to intervene the next business day after our case was stayed, and just four business days after this appeal was filed. *Cf. Day v. Apoliona*, 505 F.3d 963, 965 (9th Cir. 2007) (deeming motion timely two years after case was filed). No party can claim prejudice from the brief time it took the

States to coordinate among six Attorneys General, write this motion, and consult with the parties' counsel. And the States seek to intervene at a stage of the case where their evidence is particularly relevant: as the appellate courts weigh evidence of standing, irreparable injury, the equities, and the public interest. The States do not ask that any existing briefing schedules be altered, and would submit their first brief on the merits on November 18 in accordance with the current schedule for briefing the preliminary injunction appeal.

2. The States have a significant protectable interest in the outcome of this appeal

The States filed their own challenge to EO3 because of the massive harms that order will cause our residents and state institutions. Those harms are detailed below in Part 4, and include harms to the States' healthcare systems, harms to key industries in the States, State residents being separated from loved ones, lost tax revenue, financial and other harms to our state colleges and universities, and more. These plainly qualify as significant protectable interests. *See, e.g.*, *Alisal Water Corp.*, 370 F.3d at 919 (a "non-speculative, economic interest" is "sufficient to support a right of intervention"); *City of Sausalito v. O'Neill*, 386 F.3d 1186, 1199 (9th Cir. 2004) (holding that potential lost tax revenues are a sufficient economic concern to trigger a government entity's legally cognizable and protectable proprietary interest); *Colo. River Indian Tribes v. Town of*

Parker, 776 F.2d 846 (9th Cir. 1985) (holding that lost tax revenue showed that a government entity had a protectable proprietary interest); *Alfred Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 601-07 (1982) (recognizing States' interest in protecting "the health and well-being—both physical and economic—of residents").

Moreover, the district court for the Western District of Washington stayed the States' case in part because "[t]he Ninth Circuit's rulings on EO3 in *Hawaii v. Trump* will likely have significant relevance to—and potentially control—the court's subsequent ruling here." ECF 209 at 16. This Court has repeatedly recognized that a party has a protectable interest in the outcome of a suit that might, "as a practical matter, bear significantly on the resolution of [its] claims" in a "related action." *United States v. Stringfellow*, 783 F.2d 821, 826 (9th Cir. 1986), *vacated on other grounds sub nom. Stringfellow v. Concerned Neighbors in Action*, 480 U.S. 370 (1987); *In re Estate of Ferdinand E. Marcos Human Rights Litig.*, 536 F.3d 980, 986-87 (9th Cir. 2008) (holding intervention proper where "an issue [the intervenor] raised in one proceeding . . . lands in another proceeding for disposition").[2] It is thus beyond dispute that the States have a

[2] *See also, e.g.*, *United States ex rel. McGough v. Covington Techs. Co.*, 967 F.2d 1391, 1396 (9th Cir. 1992) (finding no "serious[] dispute" that a party may intervene in a suit that might "preclude [it] from proceeding with claims"

significant protectable interest here because "the resolution of the plaintiff's claims actually will affect the applicant." *S. Calif. Edison Co. v. Lynch*, 307 F.3d 794, 803 (9th Cir. 2002) (quoting *Donnelly*, 159 F.3d at 410).

3. The disposition of this action may impair the States' ability to protect their interests

To determine whether an intervenor's interests would be impaired or impeded if a matter continued without the intervenor as a party, a court "must determine whether [the intervenor's] interests would as a practical matter be impaired or impeded by the disposition of th[e] action." *Sw. Ctr. for Biological Diversity*, 268 F.3d at 822. "If an absentee would be substantially affected in a practical sense by the determination made in an action, he should, as a general rule, be entitled to intervene." *Citizens for Balanced Use v. Mont. Wilderness Ass'n*, 647 F.3d 893, 898 (9th Cir. 2011) (quoting Fed. R. Civ. P. 24 advisory committee's note). As Judge Robart himself recognized in staying the States' case, the Court's ruling in this appeal "will likely have significant relevance to—and potentially control—the court's subsequent ruling here." ECF 209 at 16.

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in a separate proceeding); *United States v. Oregon*, 839 F.2d 635, 638 (9th Cir. 1988) (granting intervention where "an appellate ruling will have a persuasive *stare decisis* effect in any parallel or subsequent litigation").

4. Absent intervention, the States' interests will not be adequately represented

The States should be allowed to intervene because on every factor relevant to this appeal of a preliminary injunction, our interests cannot be fully represented by the existing parties.

"The burden on proposed intervenors in showing inadequate representation is minimal, and would be satisfied if they could demonstrate that representation of their interests 'may be' inadequate." *Arakaki*, 324 F.3d at 1086 (quoting *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972)); *Citizens for Balanced Use*, 647 F.3d at 898 (same). Adequacy of representation is determined by considering whether (1) "the interest of a present party is such that it will undoubtedly make all of a proposed intervenor's arguments;" (2) "the present party is capable and willing to make such arguments; and" (3) "a proposed intervenor would offer any necessary elements to the proceeding that other parties would neglect." *Arakaki*, 324 F.3d at 1086.

Here, the States' concern is not that Hawai'i will fail to make the proper legal arguments about why EO3 is invalid; Hawai'i has forcefully articulated EO3's flaws. Rather, the States' concern is that the States have arguments as to standing (which goes to likelihood of success on the merits), irreparable injury, balancing the equities, and the public interest that the States are uniquely

positioned to present because of the unique scope of the harms the States are facing from EO3. The States are particularly concerned because the Government has repeatedly challenged and sometimes sought to eliminate parties' standing at earlier stages of this litigation and has made irreparable injury, the balancing of equities, and public interests key features of its arguments, to some effect in prior appeals in this case. *See Trump v. IRAP*, 137 S. Ct. 2080, 2087 (2017) (modifying injunctions as to EO2 based on these factors). The States offer concrete additional arguments and evidence on those fronts that will otherwise not be presented.

To begin with, it is beyond dispute that throughout this litigation, the Government has argued extensively that plaintiffs lack standing and have failed to show irreparable injury, and that the balance of equities and public interest tip in the Government's favor.[3] These issues are not a sideshow. Indeed, the only basis on which the Supreme Court modified the injunctions entered as to EO2 had nothing to do with the legal arguments as to the order's flaws; it was based solely on the Court's weighing of the other preliminary relief factors. *Id.* at 2087.

[3] *See, e.g.*, Br. for Appellants, *Hawai'i v. Trump*, No. 17-15589 (9th Cir. 2017), ECF 23; Reply Br. for Appellants, *Hawai'i v. Trump*, No. 17-15589 (9th Cir. 2017), ECF 281; Br. for Appellants, *IRAP v. Trump*, No. 17-1351 (4th Cir. 2017), ECF 36; Reply Br. for Appellants, *IRAP v. Trump*, No. 17-1351 (4th Cir. 2017), ECF 221; Br. for Petitioners, *Trump et al. v. IRAP et. al.*, Nos. 16-1436 and 16-1540, 2017 WL 3475820 (U.S. Aug 10, 2017).

Thus, it is a significant problem for the States if representation of our interests on these crucial issues "may be inadequate." *Arakaki*, 324 F.3d at 1086 (internal quotation marks omitted).

Moreover, throughout this litigation, Defendants have repeatedly sought to use their control over the immigration system to change plaintiffs' circumstances to affect their standing. This was Defendants' litigation strategy in both the *Hawai'i* and *IRAP* cases. *See, e.g.*, Br. for the Pet'rs, *Trump v. IRAP*, No. 16-1436 & 16-1540, 2017 WL 3475820, at *28 (U.S. Aug. 10, 2017) (arguing to the Supreme Court that two *Hawai'i* plaintiffs' "injuries are now moot because Doe #1's wife and Dr. Elshikh's mother-in-law have received visas"); Suppl. Br. for the Pet'rs at 10, *Trump v. IRAP*, No. 16-1436 & 16-15 (U.S. Oct. 5, 2017) (updated statement for both cases arguing "most of the individual respondents' family members have received visas during this litigation"). The timing of some of the visa issuances raises eyebrows. *See, e.g.*, Br. of Pls.-Appellees in Opp'n to Appellants' Mot. for a Stay Pending Appeal at 19 n.11, *IRAP v. Trump*, No. 17-1351 (4th Cir. Mar. 31, 2017), ECF 74 (conceding in the Fourth Circuit that the claims of one plaintiff "are now moot" after the State Department emailed the plaintiff's fiancé "at 11:13 PM ET on March 15," minutes before EO2 was to go into effect, "to let him know that it

had shipped him an unspecified document, which turned out to be his visa"); Tr. on Hearing on Mots. for Prelim. Inj. at 24, No. 17-00361-TDC (D. Md. Oct. 16, 2017) (attached as Exhibit A) (notifying the court that a plaintiff in EO3 litigation "just received her visa today," the day of the preliminary injunction hearing). Given that the States are home to hundreds of thousands of residents from the banned countries, have thousands of students and faculty from those countries at their universities, and have provided over 130 declarations offering detailed examples of harms to individuals, businesses, and public institutions, the States' claims are not subject to the same gamesmanship as to standing and irreparable injury. The States need to represent their unchanging harms as the case moves forward.

When it comes to standing, irreparable injury, and the balancing of the equities, the States offer important evidence that otherwise will be entirely lacking from this appeal. For example, the States have offered detailed evidence of the harm the immigration ban is inflicting on our healthcare systems. The States have explained that we are facing critical shortages of healthcare professionals, that recruiting from the banned countries is an important part of solving this challenge, and that the immigration ban is "is actively reducing patient access to healthcare" in our States. ECF 118-32 (Decl. of R. Fullerton,

Washington Department of Health) ¶ 19; *id.* at ¶¶ 5-19 (detailing shortage of doctors and dentists in rural areas of Washington and explaining that recruiting foreign medical professionals is a crucial means of increasing care); ECF 194-63 (Decl. of M. Akhtari, Immigrant Doctors Project) (explaining that 7,000 doctors nationwide are affected by EO3): ECF 194-66 (Decl. of M. Overbeck, Oregon Health Authority) (addressing the ban's impact on rural and underserved populations in Oregon). The States have also shown that the ban is harming our ability to recruit and retain medical students, interns, and resident physicians. ECF 202-15 (Decl. of E. Scherzer, Exec. Director of Committee of Interns and Residents/SEIU Healthcare). If the States are not permitted to intervene, the States' quasi-sovereign interest in protecting the health of our residents will be obstructed.

Similarly, the States have offered evidence that the immigration ban's impacts on business extend beyond the harm to tourism experienced by Hawai'i. The States are home to some of the world's leading companies, and have offered evidence demonstrating the ban's "brain drain" effect. *See, e.g.*, ECF 6 (Decl. of A. Blackwell-Hawkins, Amazon.com); ECF 118-35 (Decl. of D. Pashman, General Counsel of Meetup, Inc.); ECF 118-36 (Decl. of M. Rosenn, General Counsel of Kickstarter); ECF 118-38 (Decl. of J. Simeone, General Counsel of

Etsy, Inc.). The States have detailed not just harms to recruiting and retention, but very immediate lost sales, which also translate to lost state tax revenue. *See, e.g.*, ECF 118-37 (Decl. of M. Saunders, Redfin) (explaining that the ban has caused customers to walk away from real estate transactions); ECF 118-33 (Decl. of P. Johnson) (declaring loss of specific mortgages as a result of EO2); ECF 118-42 (Decl. of R. Zawaideh) (outlining harm to travel business and need to consider layoffs). Absent intervention, the States' business and economic interests will not adequately be represented.

More broadly, the six proposed intervenor States add significantly to the scope of the harms that Hawai'i, as only one severely affected state, is able to allege. The States are home to 83 million people, including hundreds of thousands originally from the countries impacted by EO3. *See* ECF 198 (Third Amended Complaint) ¶¶ 17, 51, 71, 84, 101, 120. Tens of thousands of these residents are naturalized U.S. citizens. *See, e.g.*, *id.* at ¶¶ 17, 101. Many of these residents now face indefinite separation from their loved ones, and the States have amassed dozens of declarations from individuals detailing specific ways in which the travel ban will upend their lives. *See, e.g.*, ECF 194-23 (Decl. B. Bina) ¶¶ 4, 6 (WA resident with rare form of cancer cannot travel, and EO3 will prevent her Iranian parents from coming to care for her); ECF 194-21 (Decl. A. Ayoubi)

¶ 10 (WA resident's wife unable to move to United States if EO3 is implemented); ECF 118-4 (Decl. R. Althaibani) ¶¶ 8-12 (NY resident prevented from living with husband). The States are thus able to provide greater insight into the degree and types of harms to their residents that will result from EO3, as well as the need for a nationwide injunction against EO3.

Similarly, while Hawai'i has offered evidence of significant harms to its universities, students, and faculty, the range and sheer numbers of affected institutions, students, and faculty in the States provide a deeper and more detailed picture of those impacts nationwide. Collectively, the States have thousands of students and faculty from the affected countries, and some of the States' universities individually have hundreds of students currently enrolled.[4] Many of these institutions are crucial engines for the States' economies,[5] in part because of specific world-leading research programs or academic departments that depend on the ability to recruit and retain leading international scholars,

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[4] *E.g.*, ECF 198 (Third Amended Complaint) ¶ 55 (529 in University of California system); *Id.* at ¶ 53 (250 in California State University system); ECF 194-51 (Decl. of D. Heatwole) ¶ 10 (180 at University of Massachusetts); ECF 202-6 (Decl. of S. Capalbo) ¶ 8 (142 at Oregon State University); ECF 194-40 (5th Decl. of A. Chaudhry) ¶ 5, 8 (140 at Washington State University).

[5] *See, e.g.*, ECF 198 ¶¶ 3-4 (the State University of New York (SUNY) is the largest comprehensive university system in the United States, is comprised of 64 institutions, and has approximately 2.5 million students enrolled); ECF 198 ¶ 90 (one in ten households in Massachusetts has a direct connection to the University of Massachusetts).

forge partnerships, and engage in international collaboration; EO3 jeopardizes their cutting-edge research projects, international funding, entire academic programs, and the universities' reputations as a whole.[6] EO3 poses different but no less serious problems for specialized colleges and universities in the States.[7] The States are thus uniquely able to document the nationwide harms EO3 inflicts on a broad range of colleges and universities.

In short, while Hawai'i is fully capable of explaining why EO3 is illegal, that is not the only question before the courts on this appeal, or the one that the Supreme Court previously found most difficult. On all of the other factors relevant to preliminary relief—standing, irreparable injury, the public interest, and the balancing of the equities—the States bring important new evidence and harms to bear that should be considered in this appeal. Absent intervention,

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[6] *E.g.*, ECF 194-69 (Decl. of D. Galvan) at 5 (University of Oregon); ECF 194-55 (Decl. of J. Riedinger) ¶ 1 (University of Washington); ECF 194-51 (Decl. of D. Heatwole) ¶ 12 (University of Massachusetts); ECF 194-40 (Decl. of A. Chaudhry) ¶ 1 (Washington State University); ECF 194-40 (5th Decl. of A. Chaudhry) ¶ 8; ECF 194-59 (Decl. of H. Yoganarasimhan) ¶ 7; ECF 194-45 (Decl. of A. Farhadi) ¶¶ 3-4, 7; ECF 194-50 (Decl. of H. Hajishirzi) ¶¶ 3, 10.

[7] *See, e.g.*, ECF 202-4 (Decl. of J. Billups) ¶ 6 (explaining that the loss of students and faculty from the affected countries would have "a particularly acute, and negative, impact" on the Oregon Health & Sciences University, a scientific research institute, which uniquely relies on collaborations from scientists around the world).

representation of the States interests on these issues "'may be' inadequate." *Arakaki*, 324 F.3d at 1086. Intervention is warranted.

B. In the Alternative, the States Should Be Allowed to Intervene Under Rule 24(b)

As an alternative to intervention as of right, the States should be allowed permissive intervention. Permissive intervention may be granted when the applicant (1) brings a timely motion; (2) has independent grounds for jurisdiction; and (3) the applicant's claim has a "common question of law and fact" with the main action. *Freedom from Religion Found., Inc. v. Geithner*, 644 F.3d 836, 843 (9th Cir. 2011); Fed. R. Civ. P. 24(b).

The States satisfy each of these requirements. First, this motion was timely filed one business day after entry of the district court order staying the States' case. Second, the jurisdictional question "drops away" because this case involves a federal question and the States do not seek to bring any counter or cross-claims. *Freedom from Religion Found. Inc.*, 644 F.3d at 844. Finally, the commonality requirement is plainly satisfied given the district court's recognition that "[t]he Ninth Circuit's rulings on EO3 in *Hawaii v. Trump* will likely have significant relevance to—and potentially control—the court's subsequent ruling here." ECF 209 at 16; s*ee also S. Calif. Edison Co.*, 307 F.3d at 804. The States seek the same relief sought by Hawai'i: an order upholding the district court's TRO.

IV. CONCLUSION

Intervention on appeal is admittedly unusual; "[t]his case, however, is nothing if not unusual." *Bates*, 127 F.3d at 873. EO3 imposes massive harms on our States, harms that Hawai'i, through no fault of its own, is unable to fully detail and present. Understanding those harms is necessary to a proper understanding of standing, irreparable injury, the public interest, and the balance of the equities in this case. The States should be allowed to intervene.

RESPECTFULLY SUBMITTED this 30th day of October 2017.

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CERTIFICATE OF COMPLIANCE

I hereby certify that this motion complies with the type-face requirements of Fed. R. App. P. 32(a)(5) and the type-volume limitations of Fed. R. App. P. 27(d)(2)(A). This motions contains 4,344 words, excluding the parts of the motion excluded by Fed. R. App. P. 27(d)(2) and 32(f).

s/ Noah G. Purcell
NOAH G. PURCELL

CERTIFICATE OF SERVICE

I hereby certify that on October 30, 2017, I electronically filed the foregoing with the Clerk of the Court of the United States Court of Appeals for the Ninth Circuit by using the appellate 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 30, 2017 *s/ Noah G. Purcell*
NOAH G. PURCELL

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

INTERNATIONAL REFUGEE ASSISTANCE PROJECT, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, et al.,

Defendants.

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Civil No. TDC-17-00361
TDC-17-2921
TDC-17-2969

Greenbelt, Maryland

October 16, 2017

2:00 p.m.

IRANIAN ALLIANCES ACROSS BORDERS, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, et al.,

Defendants.

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EBLAL ZAKZOK, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, et al.,

Defendants.

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TRANSCRIPT OF MOTIONS HEARING
BEFORE THE HONORABLE THEODORE D. CHUANG
UNITED STATES DISTRICT JUDGE

EXHIBIT A

THE COURT: Is that an anti-Muslim statement or an anti-terrorist statement?

MR. JADWAT: Well, both, Your Honor. I mean it's a -- you know, it's a statement that says that we will use specifically religious hostile means -- specifically religiously hostile means or that we should use specifically religiously hostile means including the desecration of bodies to combat terrorism and so, you know --

THE COURT: Are there other examples besides that or is that the only one you have?

MR. JADWAT: That's the one that I have that comes most readily to mind, Your Honor.

THE COURT: Okay.

MR. JADWAT: There's just one other thing I'd like to bring to the Court's attention, Your Honor, which is that one of our plaintiffs, Mr. Mashta, we have gotten word has just received his visa today or his wife's visa -- has just received her visa today and so we just wanted to apprise the Court of that information.

THE COURT: Okay.

MR. JADWAT: My understanding is that she's actually already on route to the United States.

THE COURT: Okay. Good. Thank you. Good afternoon.

EXHIBIT A