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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

INTERNATIONAL REFUGEE ASSISTANCE
PROJECT, et al.,

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

Plaintiffs,

v.

Greenbelt, Maryland

DONALD J. TRUMP, et al.,

October 16, 2017

Defendants.

2:00 p.m.

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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

1 violated. The fundamental difference between -- and that
2 is no different than this case. Right?

3 what they are saying is because of the treatment
4 of third parties, they have suffered an injury in fact.
5 No case -- they have not cited a single case that
6 recognizes establishment clause rights violation.

7 what they have tried to point is a case like
8 McGowan, but the fundamental difference in McGowan is that
9 McGowan was directly regulated by the law at issue. In
10 McGowan, it was a Sunday closing and so the people who
11 were subject to Sunday closing law were prosecuted and
12 fined. That is essentially no different than if the
13 government imposes a tax on people because of religion.
14 It was an indirect tax in the sense that rather than
15 saying you would have to pay money, it says you can't have
16 a business and if you do have a business, we'll fine you.
17 But the fundamental difference there is individual people
18 were subjected to a law directly because of what was
19 allegedly imposition of a religious law.

20 THE COURT: Let me ask you a different question.
21 Now let me move on to a different topic. I think I
22 understand your argument on that point. I asked the
23 plaintiffs whether they were interested in any of the
24 underlying materials. It sounds like they're not. But if
25 I'm not mistaken, ~~at least in another case, you have at~~

1 least objected to the Court looking at the September 15,
2 2017 Homeland Security report. Is that your general
3 position for all cases or just for that case?

4 MR. MOOPAN: No. In this case as well, Your
5 Honor.

6 THE COURT: And I wasn't in that case. So maybe
7 you can explain the reasoning for that.

8 MR. MOOPAN: Yes, Your Honor. So our primary
9 objection -- we have a couple of objections. First is the
10 report actually contains a lot of classified information.
11 But more importantly --

12 THE COURT: well, judges can see classified
13 information.

14 MR. MOOPAN: So I was going to say more
15 importantly for purposes of your questioning, the report
16 is also protected by both deliberative process
17 presidential communication privilege. That's a report
18 from the acting DHS Secretary to the President of the
19 United States. And so it is privilege and shouldn't be
20 considered.

21 THE COURT: But obviously, it's the underlying
22 support for this. The proclamation by its own terms says
23 it doesn't say everything that there is to say partly
24 because it's classified or otherwise. Are you
25 representing to me now as an officer of the court that

1 there's nothing in there that's inconsistent with the
2 proclamation?

3 MR. MOOPAN: I'm representing to you that the
4 proclamation report as to the aspects of the report that
5 it relied on and you can judge the proclamation on its own
6 terms. If you think what's in the proclamation supports
7 it under the relevant legal standards, then it should be
8 upheld. If you think that what's in the proclamation
9 isn't sufficient to support the relevant legal standards,
10 then it should be invalidated --

11 THE COURT: And you're prepared to rely on that
12 as the record. Correct?

13 MR. MOOPAN: Yes.

14 THE COURT: But I guess the other question I had
15 was suppose there was some discrepancy between
16 recommendations in the report or just important probative
17 facts in the report and what's in the proclamation and you
18 feel the government would have an obligation to bring that
19 to the Court's attention given that you're relying so
20 heavily on the contents of that report as the basis for
21 the proclamation?

22 MR. MOOPAN: I don't think so, Your Honor. It's
23 core deliberative process that, you know, it's potentially
24 possible that various government advisors disagree among
25 themselves. At the end of the day, the President is the

1 one who made the decision and the President has adopted
2 the rules he wants by issuing the proclamation.

3 THE COURT: So how is this different than
4 Korematsu where they relied on an executive order by the
5 president and many years after the fact, it was determined
6 that there was information within the justice department
7 that contradicted representations made to the court, led
8 to some action. I believe that the Supreme Court took to
9 create that error later on, but it didn't fix the problem
10 at the time. So can you assure me there's nothing in this
11 proclamation that is inconsistent with what or nothing in
12 the September 15th report that's inconsistent with what's
13 in the proclamation because if it were, I would feel like
14 that would be a material fact that you need to disclose.

15 MR. MOOPAN: Let me assure you of this which
16 hopefully should give you a fair amount of comfort and I
17 think you pointed this out early. The proclamation itself
18 expressly says that the eight countries it has selected
19 for restrictions are the eight countries that the report
20 designated or recommended be subject to restrictions.
21 That includes by the way, Somalia. If you look at Section
22 1(i) of the report, that makes that clear. So there is no
23 inconsistency in that regard which I can tell you without
24 breaching the privilege because it's referenced in the
25 proclamation itself.

1 THE COURT: Are you saying there are no
2 inconsistencies or just no others that you think you can
3 talk about without --

4 MR. MOOPAN: Your Honor, I'm not going to speak
5 to the contents of the report.

6 THE COURT: Have you yourself reviewed the
7 report?

8 MR. MOOPAN: I have.

9 THE COURT: Okay. And you are saying there are
10 no other inconsistencies?

11 MR. MOOPAN: I am not going to make
12 representations about what's in the report, Your Honor. I
13 understand where you're coming from. I understand why
14 you're asking me --

15 THE COURT: Do you agree with me that if there
16 were material inconsistencies, they should be disclosed to
17 the Court?

18 MR. MOOPAN: This is deliberative process
19 material, Your Honor.

20 THE COURT: That's an abstract question in
21 general. Leaving this report aside, but in a similar
22 situation, would you agree that they should be disclosed
23 to the Court if there's material inconsistencies?

24 MR. MOOPAN: I would not -- let me just put it
25 this way. If the facts asserted in the proclamation we

1 believe to not be true, I would think that we would have
2 an obligation to disclose it. I do not think we either
3 have the obligation or should be asked about whether there
4 were disagreements among presidential advisors in the
5 report and whether -- what one describes as an
6 inconsistency of what one agency thought or what another
7 agency thought. But if the ultimate factual
8 representations of the proclamation are what we
9 assert that -- if there were disagreements about that, I
10 can understand what your question is. But we stand behind
11 the factual representations in the proclamation.

12 THE COURT: Okay. Thank you.

13 MR. MOOPAN: Let me say one last issue on the
14 constitutional issue. As I said earlier, they have two
15 injuries. Their other asserted injury is the message and
16 just on the message injury, what I would point out is if
17 you take that injury by itself, it would blow a massive
18 hole in established clause standing because, for example,
19 in Valley Forge, it would be the plaintiffs there could
20 have come into court and said when the federal government
21 transferred the property to that church that sent a
22 message of endorsement of that religion or it sent a
23 message of disapproval of atheists and under their theory
24 and because that was alleged, that would be enough to get
25 to court and that simply doesn't make any sense. And I