

EXHIBIT 1

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MARYLAND

WANRONG LIN and HUI FANG)
DONG,)
)
Plaintiffs,)
)
vs.)
)
KIRSTJEN NIELSEN, et al.,)
)
Defendants.)
_____)

Case Number 8:18-cv-03548-GJH

TRANSCRIPT OF PROCEEDINGS
PRELIMINARY INJUNCTION HEARING
BEFORE THE HONORABLE GEORGE J. HAZEL
FRIDAY, MARCH 15, 2019; 9:30 A.M.
GREENBELT, MARYLAND

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Proceedings recorded by mechanical stenography, transcript
produced by computer.

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1 P R O C E E D I N G S

2 (Call to order of the Court.)

3 THE COURT: Good morning. You may be seated. You
4 can call the case for the record.

5 THE COURTROOM DEPUTY: Calling the case of Lin versus
6 Nielsen, et al., case number 18-cv-3548.

7 Parties, please identify yourselves for the record,
8 beginning with the plaintiff.

9 MR. STEINER: Good morning, Your Honor. My name is
10 Nick Steiner with the ACLU of Maryland.

11 THE COURT: Good morning.

12 MS. RODRIGUEZ: Good morning, Your Honor. Maria
13 Rodriguez with Venable.

14 THE COURT: Good morning.

15 MR. ROCAH: Good morning, Your Honor. David Rocah,
16 also with the ACLU of Maryland.

17 MR. KURZ: Good morning. Julian Kurz, from the
18 Department of Justice, for defendants.

19 THE COURT: Good morning to you. So we are here on
20 plaintiffs' motion for a preliminary injunction. I presume
21 it's just argument; that there are no witnesses, but I just
22 want to confirm that.

23 MR. STEINER: That's correct.

24 THE COURT: That's fine. I've obviously read the
25 briefing. I have read what appear to me to be the salient

1 cases. I obviously went back and reviewed some of what we
2 talked about the last time we were here together.

3 So I guess with that, I'm prepared to hear first from
4 plaintiffs -- unless there are any preliminary issues. Seeing
5 none, I'll hear first from plaintiff, then from defense, and
6 then I'll give plaintiff a brief chance for rebuttal. Just so
7 you know what to expect, I'm not intending to rule from bench.
8 This is a PI hearing, and I do often rule from the bench on PI
9 hearings. But, obviously, this one, there's more to say, so
10 I'll probably want to write something up afterwards.

11 I do note we have an interpreter. My understanding is
12 she's not a court interpreter. She's here, effectively, for
13 the convenience of the plaintiffs. I wouldn't be inclined to
14 have her sworn in, but I do recognize that she is here.

15 Unless there's anything else, I'll hear first from
16 plaintiff's counsel.

17 **ARGUMENT BY COUNSEL FOR PLAINTIFFS**

18 MR. STEINER: Good morning, Your Honor. I apologize
19 in advance. I'm fighting a cold. So if I start coughing,
20 that's the reason why.

21 THE COURT: As long as you keep it down there. I
22 certainly won't be asking you to approach.

23 MR. STEINER: May it please the Court. My name is
24 Nick Steiner, counsel for plaintiff petitioners, Mr. Wannong
25 Lin and Ms. Hui Fang Dong. Mr. Lin wasn't able to be here

1 frustrate the entire process if that's what the Government is
2 intentionally doing?

3 MR. KURZ: Well, Your Honor, plaintiffs are
4 portraying this as a process, but when an alien is a
5 beneficiary on an I-130, the Government has no way to know that
6 he intends to apply for an unlawful presence waiver. He's
7 still several steps away from that.

8 THE COURT: Well, they know at the time he shows up
9 for his interview, right?

10 MR. KURZ: They don't have any way to know that
11 necessarily, no.

12 THE COURT: There's not an appointment? They don't
13 know when he's coming in for his interview?

14 MR. KURZ: He's a beneficiary on a petition to
15 establish his relationship to his wife, a United States
16 citizen. No, there's no indication or way to know when an
17 alien is a beneficiary on an I-130, that he then intends to
18 apply for an I-212 and, thereafter, assuming he's approved, for
19 a provisional unlawful presence waiver.

20 THE COURT: So you're saying -- and this might be
21 something we flesh through in discovery, so maybe I shouldn't
22 spend too much time on it. But to be clear I understand what
23 you're saying, you're saying that there's no way that the
24 Government would know that Mr. Lin was coming in on whatever
25 day that was for his interview, such that they could say, as

1 plaintiffs suggested, and perhaps another jurisdiction, they
2 would circle his name and say, oh, he's got a final removal
3 order; when he comes in for his interview, we're going to step
4 him back and remove him. You're saying there's no way they
5 could have done that.

6 MR. KURZ: I'm not saying that the Government may not
7 be wanting to remove aliens who are subject to final removal
8 orders and come in for I-130 interviews.

9 THE COURT: Well, that's what I'm asking. So if
10 they're doing that, does that not frustrate the entire
11 provisional waiver process if people know, oh, well, if I show
12 up for that, there's a good chance I'm going to get deported?

13 MR. KURZ: The waiver regulations allow the
14 Government to do that. Plaintiffs need to show that removing
15 Mr. Lin would be inconsistent with the regulations or some
16 other provision of law and --

17 THE COURT: I'm just asking -- my question may or may
18 not be dispositive, right? You might answer the question by
19 saying, yes, Your Honor, it does frustrate that process, but it
20 doesn't matter. But what I'm asking you is do you concede that
21 it frustrates the process if someone coming in for their
22 interview is going to get removed? You can say yes or no and
23 neither answer is necessarily dispositive. I'm just trying to
24 understand whether or not you agree that frustrates the
25 process.

1 MR. KURZ: Well, I would agree, Your Honor, that if
2 an alien is arrested and removed from the United States, that
3 that prevents him from applying for a provisional unlawful --

4 THE COURT: It certainly frustrates the process for
5 that person. There's no getting around that.

6 MR. KURZ: That's right.

7 THE COURT: But does it also then frustrate the
8 entire process generally if everybody -- and the more of these
9 cases happen, we start to see that -- if everybody at some
10 point is under the understanding, oh, you can't go in for these
11 interviews because they're going to step you back and deport
12 you? Doesn't it render the entire process a nullity? Like,
13 why would anybody show up if that's the understanding of what
14 the Government is doing?

15 MR. KURZ: Your Honor, I'd note that many aliens who
16 apply for I-130s and then, later, provisional waivers don't
17 even come in for I-130 interviews. Every I-130 beneficiary is
18 not called in for an interview. And again, even if Mr. Lin was
19 removed here, he could still apply -- he could still file an
20 I-601, which is similar to the I-601(a), and obtain the legal
21 status that he seeks.

22 THE COURT: How long would he have to be gone to do
23 that?

24 MR. KURZ: He would be gone longer than he would if
25 he pursued the process that the plaintiffs are seeking here.

1 THE COURT: Right. And so the whole purpose of the
2 process is not to have to be gone from your family for that
3 long, correct?

4 MR. KURZ: That's not the point of the processes
5 embodied in the regulations. The regulations make clear that
6 the Government can remove aliens who start what they're calling
7 a single process here. It's not clear that there's just one
8 process. Many aliens apply for a waiver of one form of
9 inadmissibility, removal order based on admissibility, and
10 then, separately, apply for a waiver of unlawful presence based
11 inadmissibility.

12 Here, it so happens that Mr. Lin needs to -- to obtain
13 legal status needs to obtain waivers of both types of
14 inadmissibility, but it's not necessarily one process in the
15 mine-run of cases.

16 Again, when Mr. Lin came in for an interview on an I-130,
17 the Government had no way to know, as he now alleges, that he
18 intended to then apply for an I-212 and, later, to apply for an
19 I-601(a). At that point he was just a beneficiary on an I-130.
20 And the fact that the Government chose to arrest and detain him
21 because he had a final removal order is completely consistent
22 with the INA and with the regulations that are at issue.

23 The regulations themselves -- this is at 8 C.F.R. Section
24 212.7(e)(2)(i) -- state that a pending or approved provisional
25 unlawful presence waiver does not constitute a grant of a