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HUMAN RIGHTS FIRST,  
KIND (Kids in Need of Defense),  
TAHIRIH JUSTICE CENTER, and  
HIAS

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAI‘I**

STATE OF HAWAI‘I and ISMAIL  
ELSHIKH,

Plaintiffs,

v.

DONALD J. TRUMP, in his official  
capacity as President of the United States;  
U.S. DEPARTMENT OF HOMELAND  
SECURITY; JOHN F. KELLY, in his  
official capacity as Secretary of Homeland  
Security; U.S. DEPARTMENT OF  
STATE; REX TILLERSON, in his official  
capacity as Secretary of State; and the  
UNITED STATES OF AMERICA,

Defendants.

CV. NO. 1:17-cv-00050-DKW-KSC

**BRIEF OF AMICI CURIAE HUMAN  
RIGHTS FIRST, KIND (KIDS IN  
NEED OF DEFENSE), TAHIRIH  
JUSTICE CENTER, AND HIAS IN  
SUPPORT OF PLAINTIFFS’  
MOTION FOR TEMPORARY  
RESTRAINING ORDER**

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**INTERESTS OF AMICI CURIAE**

Human Rights First (formerly known as the Lawyers Committee for Human Rights) has worked since 1978 to promote fundamental human rights and to ensure protection of refugees' rights, including the right to seek and enjoy asylum. Human Rights First grounds its refugee protection work in the standards set forth in the 1951 Convention Relating to the Status of Refugees (the "Refugee Convention"), the 1967 Protocol Relating to the Status of Refugees (the "1967 Protocol"), the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, and other international human rights instruments, and advocates adherence to these standards in the policies, practices, and laws of the United States government. Human Rights First also operates one of the largest *pro bono* asylum representation programs in the country, providing legal representation without charge to hundreds of indigent asylum applicants each year. Human Rights First is committed to ensuring that all protections granted under the 1951 Refugee Convention and the 1967 Protocol remain available to refugees and asylum seekers in the United States.

Kids in Need of Defense (KIND) is a national non-profit organization that works to ensure that no child faces immigration court alone. KIND provides direct representation, as well as working in partnership with law firms, corporate legal departments, law schools, and bar associations that provide *pro bono* representation, to unaccompanied children in their removal proceedings. KIND advocates for

changes in law, policy, and practices to improve the protection of unaccompanied children in the United States. KIND staff and KIND pro bono attorneys seek to ensure that every child in removal proceedings receives the full measure of due process protections that the law affords. Accordingly, KIND respectfully joins this *amicus* brief, in the interest of improving consistency and even-handedness in the treatment of unaccompanied children who come before our immigration courts.

Tahirih Justice Center (“Tahirih”) is a national non-profit that has served courageous individuals fleeing violence since 1997. Through direct services, policy advocacy, and training and education, Tahirih protects immigrant women and girls and promotes a world where women and girls enjoy equality and live in safety and dignity. Tahirih serves immigrant women and girls who have rejected violence, but face incredible obstacles to justice, including language barriers, lack of resources, and a complex immigration system.

Founded in 1881, HIAS is the world’s oldest refugee resettlement agency, and the only Jewish refugee resettlement agency. HIAS assists those who are persecuted because of who they are, helping refugees find welcome, safety, and freedom around the world. While originally founded to protect Jewish people fleeing pogroms in Russia and Eastern Europe, today, most of the people HIAS serves are not Jewish. Since HIAS’s founding, it has helped more than 4.5 million refugees start new lives. In 2016, HIAS aided 350,000 refugees, many of them Muslim. HIAS is currently

one of nine federally designated organizations that resettle refugees, in collaboration with the Department of State and the Department of Health and Human Services. HIAS also provides legal services to immigrants seeking humanitarian protection, including asylum, in the United States. The Executive Order directly harms HIAS and its clients, and prevents HIAS from carrying out its mission to protect people fleeing persecution, and their families.

All *amici* have a direct interest in the outcome of this case.<sup>1</sup>

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<sup>1</sup> Plaintiffs have consented to the filing of this brief, and Defendants have taken no position. No party's counsel authored any part of this brief, and no party or person other than *amici*, their members, or their counsel made any monetary contribution intended to fund preparation or submission of this brief.

## SUMMARY OF ARGUMENT

As President George Washington wrote to a religious minority community containing many immigrants in 1790, “the Government of the United States . . . gives to bigotry no sanction, to persecution no assistance.”<sup>2</sup> From as early as the arrival of the Pilgrims, this land has been a haven for immigrants, regardless of their faith and country of birth. Freedom of religion and freedom from the establishment of religion are, of course, enshrined in our First Amendment.

The President’s latest Executive Order, issued on March 6, 2017 and entitled “Protecting The Nation From Foreign Terrorist Entry Into The United States” (the “Executive Order”), hews away at these foundations of our nation, baselessly labelling more than one hundred and eighty million citizens of Iran, Sudan, Syria, Somalia, Libya, and Yemen as terrorist threats, and banning them from traveling here based solely on their national origin.<sup>3</sup> That the targeted countries are all predominantly Muslim nations,<sup>4</sup> and that the President repeatedly campaigned on a

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<sup>2</sup> From George Washington to the Hebrew Congregation in Newport, Rhode Island, 18 August 1790, NATIONAL ARCHIVES, <https://founders.archives.gov/documents/Washington/05-06-02-0135>.

<sup>3</sup> Country Comparison :: Population, U.S. CENTRAL INTELLIGENCE AGENCY WORLD FACTBOOK, <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2119rank.html> (citing country populations).

<sup>4</sup> The six targeted countries are all at least 90% Muslim, and some are 99% Muslim. *Muslim Population by Country*, PEW RESEARCH CENTER (Jan. 27, 2011), <http://www.pewforum.org/2011/01/27/table-muslim-population-by-country>; *About Sudan*, United Nations Development Programme, <http://www.sd.undp.org/content/sudan/en/home/countryinfo.html>.



promise to ban the entry of Muslims, suggests that the Order was motivated at least in part by an unconstitutional disfavoring of Islam. This is not who we are as a country, and this is not allowed by our Constitution. The Executive Order also violates the Immigration and Nationality Act's prohibition on discrimination on the basis of national origin, for the reasons set forth in Plaintiffs' motion for a temporary restraining order.

Contrary to the Government's arguments to other courts that the President's exercise of powers concerning immigration and national security is "unreviewable,"<sup>5</sup> and assertions by the President's senior policy advisor that those powers "will not be questioned,"<sup>6</sup> this Court is indeed empowered to review and determine the legality of the Executive Order. The President's powers are derived from and circumscribed by the Constitution and delegated Congressional authority. Because we live in a nation "of laws and not men," *Marbury v. Madison*, 5 U.S. 137, 163 (1803), it is the responsibility of federal courts to determine when that authority has been exceeded. Judicial review of executive action is part of the "fundamental structure of our

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<sup>5</sup> Emergency Mot. Under Cir. Rule 27-3 for Admin. Stay & Mot. for Stay Pending Appeal at 2, *Washington v. Trump*, 847 F.3d 1151 (9th Cir. Feb. 4, 2017) (No. 17-35105), ECF No. 14.

<sup>6</sup> Aaron Blake, *Stephen Miller's authoritarian declaration: Trump's national security actions 'will not be questioned,'* WASH. POST, Feb. 13, 2017, <https://www.washingtonpost.com/news/the-fix/wp/2017/02/13/stephen-millers-audacious-controversial-declaration-trumps-national-security-actions-will-not-be-questioned> (reporting televised public statements by President Trump's senior policy adviser, Stephen Miller, regarding the Executive Order).

constitutional democracy,” *Washington v. Trump*, 847 F.3d 1151, 1161 (9th Cir. 2017) (per curiam), and now, more than ever, it is important to reaffirm this vital check and balance. This Court has the authority—and, in fact, the duty—to review the President’s Executive Order for compliance with the Constitution and federal law.

As organizations committed to serving and advocating on behalf of the nation’s immigrant communities, *amici* urge this Court to recognize the irreparable harm that those communities and others face under the Executive Order. Every U.S. resident who has family members in one of the targeted countries will be deprived of visits from those family members, as well as the ability to sponsor derivative immigrant visas. Our nation’s colleges and universities will be unable to admit students or recruit faculty from the targeted countries, hindering their ability to foster and maintain a rich, diverse, and inclusive educational environment. And employers in the public and private sectors will be unable to hire workers from the targeted countries, to the detriment of public institutions and businesses alike.

Aside from these concrete and tangible harms, the Executive Order works another less tangible but no less insidious harm: the marginalization of entire communities based on promulgation by Executive action of the false notion that nationals of the six targeted countries are “the ‘bad’”<sup>7</sup> and must be excluded on a blanket basis in the purported interests of national security. The security rationale

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<sup>7</sup> See Donald J. Trump (@realDonaldTrump), Twitter (Jan. 30, 2017, 5:31 AM), <https://goo.gl/FAEDTd>.

advanced by the Government is paper-thin, is belied by the President’s own actions in delaying signing of the new Executive Order (reportedly for publicity reasons), and cannot mask the religious animus and discriminatory intent that motivated the first Executive Order and its replacement. The speculative harms advanced by the Government as the basis for the new Executive Order—which itself seeks to upend the *status quo*—are far outweighed by the immediate harms that would be caused by implementation of the Order. *Amici* accordingly urge this Court to enjoin implementation of the Executive Order until its legality and constitutionality can be resolved on the merits.

## **ARGUMENT**

### **I. THE COURTS SERVE A CRITICAL ROLE IN REVIEWING EXECUTIVE ACTIONS**

The judiciary’s foremost obligation in our democratic system is to act as a check on the unconstitutional excesses of the political branches. Far from commanding that presidential directives “will not be questioned,” more than two centuries of precedent instructs that “[i]t is emphatically the province *and duty* of the judicial department to say what the law is.” *Marbury v. Madison*, 5 U.S. 137, 177 (1803) (emphasis added). Decisions of the Supreme Court and of this Circuit emphasize that this judicial duty does not dissipate simply because the challenged actions relate to immigration or national security, or even where the legislative branch has delegated significant discretion to the executive. As the Ninth Circuit

held in rejecting the Government’s argument that the first Executive Order was “unreviewable,” a ruling that is binding here, “[t]here is no precedent to support this claimed unreviewability, which runs contrary to the fundamental structure of our constitutional democracy.” *Washington v. Trump*, 847 F.3d 1151, 1161 (9th Cir. 2017) (per curiam).

Executive action does not become immune from review where the President claims a national security rationale. “[I]t is error to suppose that every case or controversy which touches foreign relations lies beyond judicial cognizance.” *Baker v. Carr*, 369 U.S. 186, 211 (1962). The Supreme Court recently reaffirmed that resolving legal challenges to the constitutional authority of one of the three branches of our federal government “is a familiar judicial exercise,” which cannot be avoided “merely ‘because the issues have political implications.’” *Zivotofsky v. Clinton*, 566 U.S. 189, 196 (2012) (quoting *INS v. Chadha*, 462 U.S. 919, 943 (1983)); *see also Zemel v. Rusk*, 381 U.S. 1, 17 (1965) (denying that the President has “totally unrestricted freedom of choice” where a statute deals with foreign relations); *Aptheker v. Sec’y of State*, 378 U.S. 500 (1964) (upholding constitutional rights despite national security concerns); *Ex parte Mitsuye Endo*, 323 U.S. 283 (1944) (same).

While courts properly accord substantial deference to the political branches where matters of national security are concerned, *see, e.g., Holder v. Humanitarian*

*Law Project*, 561 U.S. 1, 33-34 (2010), there is no precedent to support the idea that courts must grant them complete deference, which would amount to an impermissible abdication of judicial authority. *Cf. Ex parte Quirin*, 317 U.S. 1, 19 (1942) (“[I]n time of war as well as in time of peace, [courts are] to preserve unimpaired the constitutional safeguards of civil liberty . . . .”); *Ex parte Milligan*, 71 U.S. 2, 120-21 (1866) (“The Constitution of the United States is a law for rulers and people, equally in war and in peace . . . under all circumstances.”). Indeed, this Circuit’s precedent is clear that “courts are not powerless to review the political branches’ actions” when those actions are premised on national security concerns. *Alperin v. Vatican Bank*, 410 F.3d 532, 559 n.17 (9th Cir. 2005). As the Supreme Court has noted, “[i]t would indeed be ironic if, in the name of national defense, we would sanction the subversion of one of those liberties . . . which makes the defense of the Nation worthwhile.” *United States v. Robel*, 389 U.S. 258, 264 (1967).

The judicial duty to review the constitutionality of the Executive’s actions similarly does not disappear because the policy under consideration deals with immigration. As the Supreme Court has held, even in the realm of immigration the President and Congress are “subject to important constitutional limitations.” *Zadvydas v. Davis*, 533 U.S. 678, 695 (2001); *see also Chadha*, 462 U.S. at 940-41 (courts can review “whether Congress has chosen a constitutionally permissible means of implementing” its power over the regulation of aliens); *Galvan v. Press*,

347 U.S. 522, 531 (1954) (“In the enforcement of [immigration] policies, the Executive Branch of the Government must respect the procedural safeguards of due process.”). The Ninth Circuit has squarely held that ““the judicial branch may examine whether the political branches have used a foreign policy crisis as an excuse for treating aliens arbitrarily.”” *Am.-Arab Anti-Discrimination Comm. v. Reno*, 70 F.3d 1045, 1056 (9th Cir. 1995) (quoting *Shahla v. INS*, 749 F.2d 561, 563 n.2 (9th Cir. 1984)); *see also Washington*, 847 F.3d at 1161.

Finally, even where, as here, Congress has delegated a measure of discretion to the President, that discretion is not unchecked. Congressional action is itself bounded by the requirements of the Constitution, and under no circumstance can the legislature write the executive a blank check to operate free of constitutional strictures. The Supreme Court has held that the political branches may not “switch the Constitution on or off at will.” *Boumediene v. Bush*, 553 U.S. 723, 765 (2008). Here, the President relies on 8 U.S.C. § 1182(f)<sup>8</sup> as the legal basis for the Executive Order. But that statute’s grant of discretion to the President cannot plausibly be read to strip the courts of jurisdiction to review the President’s actions. The Supreme Court has required “‘clear and convincing’ evidence of congressional intent . . .

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<sup>8</sup> Section 1182(f) provides that “[w]henver the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants.”

before a statute will be construed to restrict access to judicial review.” *Johnson v. Robison*, 415 U.S. 361, 373-74 (1974). As another district court recently held in a case concerning the first Executive Order, “[m]aximum power does not mean absolute power.” *Aziz v. Trump*, — F. Supp. 3d. —, 2017 WL 580855, at \*6 (E.D. Va. Feb. 13, 2017) (granting preliminary injunction). Even where the President acts at the pinnacle of his power, courts still have a role to play in safeguarding individual rights. The Constitution “most assuredly envisions a role for all three branches when individual liberties are at stake.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 536 (2004) (plurality opinion).

Thus, as the Ninth Circuit and the Supreme Court have made crystal clear, this Court has the authority, and indeed the duty, to review the constitutionality and legality of Executive actions, including this Executive Order.

## **II. THE EXECUTIVE ORDER WILL CAUSE IRREPARABLE HARM**

*Amici* seek to strengthen diversity and promote justice and equality.

Connected by our common humanity, *amici* believe that protection of the interests of individuals and organizations affected by the Executive Order reinforces the broader interests of American society. The individual and organizational harms faced by these groups are irreparable, weighing in favor of a temporary restraining order.

The harms caused by the deprivation of a constitutional right, no matter how brief the duration, are by their very nature irreparable. Unlike with merely pecuniary

harms, one who suffers a constitutional harm cannot be made whole by *post hoc* compensation. That is particularly true where, as here, the harm arises from a violation of the First Amendment’s Establishment Clause. As the Supreme Court has recognized, “[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion).<sup>9</sup> Given the gravity of the harms to the constitutionally protected rights to be free of a government-established religion, to the equal protection of the law, to international travel, and to family integrity, there is no doubt that the Executive Order threatens irreparable harm to many individuals, families, and organizations.

U.S. citizens and lawful permanent residents (“LPRs”) with family members in the six targeted countries will suffer concrete harms to their recognized liberty interest in maintaining familial relationships. *See Moore v. City of E. Cleveland*, 431 U.S. 494 (1977). “[T]he Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation’s history and tradition.” *Id.* at 503; *see also Meyer v. Nebraska*, 262 U.S. 390 (1923). Yet under the Executive Order’s discriminatory nationality-based test, U.S. citizens and LPRs

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<sup>9</sup> While *Elrod* dealt with freedom of speech, the Ninth Circuit has recognized that this reasoning applies to other constitutional rights. *See Latta v. Otter*, 771 F.3d 496, 500 (9th Cir. 2014) (deprivation of right to marry constitutes an irreparable harm); *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (violations of Fourth and Fourteenth Amendments inflict irreparable harm).



will be unable to receive visits from loved ones who live in the banned countries or to sponsor family members from those countries for lawful permanent residence in the United States. The Executive Order will separate spouses and fiancés across continents,<sup>10</sup> deprive family members of time with ill or elderly relatives,<sup>11</sup> and force overseas visa applicants to miss births, weddings, funerals, and other important family events. U.S. citizens and LPRs will be forced to choose between career obligations in the United States and family members in the banned countries.<sup>12</sup> By interfering with familial relations on the basis of national origin, the Executive Order violates the constitutional rights of these U.S. citizens and LPRs to the equal protection guarantee inherent in the Due Process Clause of the Fifth Amendment.

*See Bolling v. Sharpe*, 347 U.S. 497 (1954).<sup>13</sup>

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<sup>10</sup> *See, e.g.*, Ex. 1, Decl. of Omid Moghimi; Ex. 2, Decl. of Jane Doe #1. The declarations cited in and attached to this brief are from pleadings filed on February 8, 2017 by Plaintiffs in *Pars Equality Center v. Trump*, No. 17-cv-00255 (D. D.C.), in support of a challenge to the first Executive Order. The attached declarations describe the circumstances of individuals who remain affected by the revised Executive Order.

<sup>11</sup> *See, e.g.*, Ex. 3, Decl. of Shiva Hissong.

<sup>12</sup> *See, e.g.*, Ex. 1, Decl. of Omid Moghimi, ¶ 19.

<sup>13</sup> The limited waiver provision in Section 3(c) of the Executive Order does not mitigate the harms suffered by those affected by the Order, who can have no reasonable expectation that they will be permitted to enter the United States under a discretionary exception that individual immigration officials may or may not authorize “on a case-by-case basis.” Exec. Order No. 13,209, 82 Fed. Reg. 13,209 (Mar. 9, 2017), *available at* <https://www.whitehouse.gov/the-press-office/2017/03/06/executive-order-protecting-nation-foreign-terrorist-entry-united-states>.

Moreover, immigrants and visitors from the targeted countries contribute to State and national life in numerous ways that will be stymied by the Executive Order. For instance, State and private colleges and universities recruit students, permanent faculty, and visiting faculty from the targeted countries. *See, e.g.*, Katyal Decl. Ex. D-1 (Supp. Decl. of Risa E. Dickson, University of Hawaii System) ¶¶ 6-8. The Executive Order will prevent visa applicants from the banned countries from studying or teaching at U.S. universities, irrevocably damaging their personal and professional lives and harming our educational institutions, not only in Hawaii, but throughout the country.<sup>14</sup> By way of further example, recent research by economists affiliated with Harvard and MIT shows that, across the United States, “14 million doctors’ appointments are provided each year by physicians” from the six affected countries.<sup>15</sup> Preventing doctors from these countries from coming to the United States, and making it harder for those already here to stay, such as by preventing their family members from visiting or joining them here, will adversely impact

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<sup>14</sup> For example, according to the Department of State, thousands of Iranian students study in the United States each year. *Study in the U.S.A.*, U.S. VIRTUAL EMBASSY IRAN, <https://ir.usembassy.gov/education-culture/study-usa/>.

<sup>15</sup> THE IMMIGRANT DOCTORS PROJECT, <https://www.immigrantdoctors.org> (analyzing statistics from Doximity, an online networking site for doctors that assembled this data from a variety of sources, including the American Board of Medical Specialties, specialty societies, state licensing boards, and collaborating hospitals and medical schools).

medical institutions and curtail the medical care available to the citizens of this State and others.

Singling out and banning nationals from the six predominantly Muslim targeted countries, as the Executive Order does, causes further harm by stigmatizing not only immigrants and refugees, but also Muslim citizens of the United States. The repeated calls by the President and his advisors for a “total and complete shutdown of Muslims entering the United States”<sup>16</sup> and for the implementation of a “Muslim ban”<sup>17</sup> are the *raison d’etre* of this Executive Order. That the Government has dressed the revised Executive Order in new clothing after its first effort was enjoined by the Ninth Circuit does not diminish the significance of the President’s prior statements or their relevance to this Court’s inquiry as to whether the Order passes legal muster. As revealed by a senior policy advisor to the President, the revised Executive Order still has “the same basic policy outcome for the country.”<sup>18</sup> Such declarations, and the Executive Order itself, have made immigrants and Muslim

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<sup>16</sup> Press Release, Donald J. Trump for President, Inc., Donald J. Trump Statement on Preventing Muslim Immigration (Dec. 7, 2015), *available at* <https://www.donaldjtrump.com/press-releases/donald-j.-trump-statement-on-preventing-muslim-immigration>.

<sup>17</sup> Amy B. Wang, *Trump asked for a ‘Muslim ban,’ Giuliani says — and ordered a commission to do it ‘legally,’* WASH. POST, Jan. 29, 2017.

<sup>18</sup> *Miller: New order will be responsive to the judicial ruling; Rep. Ron DeSantis: Congress has gotten off to a slow start* (Fox News television broadcast Feb. 21, 2017), *transcript available at* <http://www.foxnews.com/transcript/2017/02/21/miller-new-order-will-be-responsive-to-judicial-ruling-rep-ron-desantis/>.

citizens justifiably fearful. Against the backdrop of the recent rise in hate crimes against Muslims in the United States,<sup>19</sup> the Executive Order amplifies the sense of persecution that citizens and immigrants of Muslim faith suffer.

Further, the Executive Order's suspension of the U.S. Refugee Admissions Program will have catastrophic consequences for innumerable individuals and families fleeing war, violence, and political or religious persecution. In the words of the United Nations High Commissioner for Refugees, the Executive Order will "compound the anguish" for people "who remain in urgent need of life-saving assistance and protection."<sup>20</sup> The suspension of the refugee program is also antithetical to the interests of States and organizations committed to resettling and assisting refugees, including one of the *amici* here, HIAS. The U.S. Government has tasked States and non-profit organizations with primary responsibility for

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<sup>19</sup> See, e.g., Matt Zapotosky, *Hate crimes against Muslims hit highest mark since 2001*, WASH. POST, Nov. 14, 2016.

<sup>20</sup> Press Release, UNHCR, *UNHCR underscores humanitarian imperative for refugees as new U.S. rules announced* (Mar. 6, 2017), <http://www.unhcr.org/en-us/news/press/2017/3/58bdd37e4/unhcr-underscores-humanitarian-imperative-refugees-new-rules-announced.html>. The refugee ban may also have ripple effects on the treatment of refugees globally. See, e.g., *Trump's refugee clampdown stops Iranian path through Austria*, FOX NEWS WORLD, Jan. 27, 2017, <http://www.foxnews.com/world/2017/01/27/trump-refugee-clampdown-stops-iranian-path-through-austria.html>.

administering the U.S. Refugee Resettlement Program.<sup>21</sup> Aiding refugees is central to the culture, values, and mandates of these States and organizations, but the Executive Order will prevent them from fulfilling their missions to welcome refugees and serve refugee communities throughout the United States.

The Government will likely assert, as it has before, that the Executive Order addresses an urgent national security risk that represents a countervailing harm weighing against any injunction.<sup>22</sup> Yet, in enjoining enforcement of the first Executive Order, the Ninth Circuit found that “[t]he Government . . . pointed to no evidence that any alien from any of the countries named in the Order has perpetrated a terrorist attack in the United States.” *Washington*, 847 F.3d at 1168. And in the month since, Defendants have assembled little evidence that the Executive Order would promote national security. Indeed, the Executive Order points to only a single instance in which a national of one of the six targeted countries was convicted of a terrorism-related crime: the conviction of a Somali native who had been brought to

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<sup>21</sup> U.S. ADMIN. FOR CHILDREN & FAMILIES, ANNUAL REPORT TO CONGRESS: OFFICE OF REFUGEE RESETTLEMENT FISCAL YEAR 2015 at 6, *available at* [https://www.acf.hhs.gov/sites/default/files/orr/arc\\_15\\_final\\_508.pdf](https://www.acf.hhs.gov/sites/default/files/orr/arc_15_final_508.pdf).

<sup>22</sup> *See, e.g.*, Emergency Mot. Under Cir. Rule 27-3 for Admin. Stay & Mot. for Stay Pending Appeal at 20-21, *Washington v. Trump*, 847 F.3d 1151 (9th Cir. Feb. 4, 2017) (No. 17-35105), ECF No. 14.

the United States years before as a child refugee.<sup>23</sup> But the U.S. Attorney who prosecuted this individual said that “[h]is radicalization had precisely nothing to do with his refugee status,” as “[h]e was radicalized long after he became a United States citizen”; in fact, “[t]he assistance of the refugee community was crucial to th[e] investigation.”<sup>24</sup> That one incident is a facially insufficient basis on which to brand more than one hundred and eighty million citizens of the six targeted countries as terrorist threats and ban them from traveling to the United States.<sup>25</sup>

### **CONCLUSION**

For the foregoing reasons, as well as those set forth in the Memorandum in Support of Plaintiffs’ Motion for Temporary Restraining Order, *amici* respectfully

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<sup>23</sup> Exec. Order No. 13,209, 82 Fed. Reg. 13,209 (Mar. 9, 2017), *available at* <https://www.whitehouse.gov/the-press-office/2017/03/06/executive-order-protecting-nation-foreign-terrorist-entry-united-states>.

<sup>24</sup> Colin Miner, *Trump Travel Ban Won’t Keep Us Safe, Says US Attorney Who Prosecuted Would-Be Bomber*, PATCH, Mar. 7, 2017, <http://patch.com/oregon/portland/trump-travel-ban-wont-keep-us-safe-says-us-attorney-who-prosecuted-would-be-bomber>.

<sup>25</sup> The Government’s assertions that the Executive Order is motivated by urgent national security interests, and the President’s claim that “many very bad and dangerous people” will “pour[] in” if there is any delay in implementation of a travel ban, are also belied by the weeks of delay in finalizing the new Executive Order, including a five-day delay immediately prior to the Order’s signing based on what was reported to be the President’s desire to enjoy favorable reviews of his February 28 speech to Congress. *See* Donald J. Trump (@realDonaldTrump), TWITTER (Feb. 4, 2017, 1:44 P.M.), <https://goo.gl/kPP3Om>; Laura Jarrett et al., *Trump delays new travel ban after well-reviewed speech*, CNN, Mar. 1, 2017, <http://www.cnn.com/2017/02/28/politics/trump-travel-ban-visa-holders/>.

support Plaintiffs' request that the Court grant a temporary restraining order enjoining implementation of the Executive Order on a nationwide basis.

Dated: Honolulu, Hawai'i,  
March 10, 2017

Respectfully submitted,

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