LORRAINE WOODWARK
California State Bar No. 205005
Woodwark Law
Post Office Box 640
Goleta, California 93117
(202) 591-0962

JONATHAN F. MITCHELL*
Texas Bar No. 24075463
Mitchell Law PLLC
111 Congress Avenue, Suite 400
Austin, Texas 78701
(512) 686-3940

* *pro hac vice* application pending

Counsel for Movant
Attorneys United for a Secure America

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

Jane Doe, et al.,

Plaintiffs,

v.

Donald J. Trump, et al.,

Defendants.

Case No. 8:20-cv-00858-SVW-JEM

Notice of Motion and Motion for Leave to File An Amicus Curiae Brief in Support of the Defendants' Motion to Dismiss

Hearing Date: August 17, 2020
Time: 1:30 p.m.
Courtroom: 10A

Please take notice that on August 17, 2020, at 1:30 P.M. in Courtroom 10A, movant Attorneys United for a Secure America (AUSA) will move for an order permitting it to participate as *amicus curiae* in support of the government's motion to dismiss, which is currently scheduled to be heard on July 13, 2020.

This motion is made on the grounds that the Court has inherent authority to allow the participation of an *amicus curiae*. AUSA's participation as *amicus curiae* would be helpful and desirable and will facilitate a more complete understanding of the issues before the Court. This motion is based on this notice of motion and motion, the accompanying memorandum of points and authorities, the proposed amicus brief attached to this motion, all papers and pleadings on file in this action, and any further evidence or argument that may be presented to the Court in connection with the motion.

The motion is made following the conference of counsel pursuant to Local Rule 7-3, which occurred on June 22, 2020 (with counsel for the defendants) and June 24, 2020 (with counsel for the plaintiffs). The plaintiffs and defendants oppose the motion.

Respectfully submitted.

/s/ Lorraine Woodwark

JONATHAN F. MITCHELL*
Texas Bar No. 24075463
Mitchell Law PLLC
111 Congress Avenue, Suite 400
Austin, Texas 78701
(512) 686-3940 (phone)
(512) 686-3941 (fax)
jonathan@mitchell.law

LORRAINE WOODWARK
California State Bar No. 205005
Woodwark Law
Post Office Box 640
Goleta, California 93117
(202) 591-0962 (phone)
(202) 464-3590 (fax)
lorrainewoodwark@gmail.com

* *pro hac vice* application pending

Dated: July 1, 2020

Counsel for Amicus Curiae

LORRAINE WOODWARK
California State Bar No. 205005
Woodwark Law
Post Office Box 640
Goleta, California 93117
(202) 591-0962

JONATHAN F. MITCHELL*
Texas Bar No. 24075463
Mitchell Law PLLC
111 Congress Avenue, Suite 400
Austin, Texas 78701
(512) 686-3940

* *pro hac vice* application pending

Counsel for Movant
Attorneys United for a Secure America

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

Jane Doe, et al.,

Plaintiffs,

v.

Donald J. Trump, et al.,

Defendants.

Case No. 8:20-cv-00858-SVW-JEM

Memorandum of Points and Authorities in Support of Motion for Leave to File An Amicus Curiae Brief in Support of the Defendants' Motion to Dismiss

Hearing Date: August 17, 2020
Time: 1:30 p.m.
Courtroom: 10A

Attorneys United for a Secure America (AUSA) respectfully moves for leave to participate as *amicus curiae* in support of the defendants' motion to dismiss. The plaintiffs and defendants are opposed to this motion. A copy of the proposed amicus brief is attached as an exhibit.

Attorneys United for a Secure America (AUSA) is a non-partisan affiliation of attorneys dedicated to pursuing cases that serve the national interest when it comes to immigration law. This means prioritizing national security, defending our borders, safeguarding the public, protecting jobs, and valuing America's precious natural resources.

ARGUMENT

A "district court has broad discretion to appoint *amici curiae*." *Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982), *abrogated on other grounds by Sandin v. Conner,* 515 U.S. 472 (1995). The "classic role" of *amici curiae* is "assisting in a case of general public interest, supplementing the efforts of counsel, and drawing the court's attention to law that escaped consideration." *Miller-Wohl Co., Inc. v. Commissioner of Labor and Industry*, 694 F.2d 203, 204 (9th Cir. 1982).

The AUSA's proposed amicus brief discusses numerous issues that are undiscussed in the parties' briefing. These include: the constitutional problems with the relief that the plaintiffs are requesting, the improper inclusion of the President and Senator McConnell as named defendants in this lawsuit, and the public interest in requiring the plaintiffs to disclose their identities and preventing anonymous litigation from being used to shield criminal activities

that should be exposed and punished. *See, e.g.*, *Missouri v. Harris*, No. 2:14-cv-00341-KJM- KJN, 2014 WL 2987284 at *2 (E.D. Cal. Jul. 1, 2014) ("An *amicus* brief should normally be allowed when, among other considerations, the *amicus* has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide." (internal citation omitted)).

CONCLUSION

The AUSA's motion for leave to participate as amicus curiae and submit a brief in support of the defendants' motion to dismiss should be granted.

Respectfully submitted.

/s/ Lorraine Woodwark

JONATHAN F. MITCHELL*
Texas Bar No. 24075463
Mitchell Law PLLC
111 Congress Avenue, Suite 400
Austin, Texas 78701
(512) 686-3940 (phone)
(512) 686-3941 (fax)
jonathan@mitchell.law

LORRAINE WOODWARK
California State Bar No. 205005
Woodwark Law
Post Office Box 640
Goleta, California 93117
(202) 591-0962 (phone)
(202) 464-3590 (fax)
lorrainewoodwark@gmail.com

* *pro hac vice* application pending

Dated: July 1, 2020

Counsel for Amicus Curiae

CERTIFICATE OF SERVICE

I certify that on July 1, 2020, I served this document through CM/ECF upon:

HEATHER L. BLAISE
Blaise & Nitschke, P.C.
123 North Wacker Drive, Suite 250
Chicago, Illinois 60606
312-448-6602 (phone)
hblaise@blaisenitschkelaw.com

LANA B. NASSAR
THOMAS J. NITSCHKE
ELISABETH A. GAVIN
123 North Wacker Drive, Suite 250
Chicago, Illinois 60606
(312) 448-6602 (phone)
(312) 803-1940 (fax)
lnassar@blaisenitschkelaw.com

MATTHEW J. MATERN
JOSHUA D. BOXER
Matern Law Group
1230 Rosecrans Avenue, Suite 200
Manhattan Beach, California 90266
(310) 531-1900 (phone)
(310) 531-1901 (fax)
mmatern@maternlawgroup.com
jboxer@maternlawgroup.com

GUINEVERE M. MOORE
Moore Tax Law Group LLC
150 North Wacker Drive, Suite 1250
Chicago, Illinois 60606
(312) 549-9992 (phone)
(312) 549-9991 (fax)
guinevere.moore@
mooretaxlawgroup.com

MELISSA BRIGGS
JOHN D. ELLIS
Federal Building, Suite 7211
300 North Los Angeles Street
Los Angeles, California 90012
(213) 894-6165 (phone)
(213) 894-2740 (phone)
(213) 894-0115 (fax)
melissa.briggs2@usdoj.gov
john.ellis3@usdoj.gov

Counsel for the Defendants

VIVIAN KHALAF
OMAR ABUZIR
Khalaf & Abuzir, LLC
20 North Clark, Suite 720
Chicago, Illinois 60602
(708)-233-1122 (phone)
(708)-233-1161 (fax)
vkhalaf@immigrationjd.com

/s/ Lorraine Woodwark
LORRAINE WOODWARK
Counsel for Amicus Curiae

LORRAINE WOODWARK
California State Bar No. 205005
Woodwark Law
Post Office Box 640
Goleta, California 93117
(202) 591-0962

JONATHAN F. MITCHELL*
Texas Bar No. 24075463
Mitchell Law PLLC
111 Congress Avenue, Suite 400
Austin, Texas 78701
(512) 686-3940

* *pro hac vice* application pending

Counsel for Amicus Curiae
Attorneys United for a Secure America

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

Jane Doe, et al.,

Plaintiffs,

v.

Donald J. Trump, et al.,

Defendants.

Case No. 8:20-cv-00858-SVW-JEM

Brief of the Attorneys United for a Secure America as Amicus Curiae in Support of the Defendants' Motion to Dismiss

Hearing Date: July 13, 2020
Time: 1:30 p.m.
Courtroom: 10A

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

Constitutional Provisions

INTEREST OF AMICUS CURIAE

Attorneys United for a Secure America (AUSA) is a non-partisan affiliation of talented attorneys dedicated to pursuing cases that serve the national interest when it comes to immigration law. This means prioritizing national security, defending our borders, safeguarding the public, protecting jobs, and valuing America's precious natural resources.[1]

ARGUMENT

The complaint should be dismissed for all the reasons set forth in the government's thorough and well-reasoned brief. But the complaint suffers from additional defects as well.

I. THE RELIEF REQUESTED IN THE COMPLAINT IS UNCONSTITUTIONAL

The prayer for relief asks this Court to issue an injunction "prohibiting enforcement of the laws as written" and directing defendants to apply a different statute that the Court would impose by judicial decree. *See* First Amended Complaint (ECF No. 28) at 18–19. The plaintiffs also ask for "a declaratory judgment striking from the CARES Act those provisions that are violative of the protections afforded to Plaintiff and those similarly situated under the United States Constitution, federal statutes, and those cases interpreting the same under which this Court is bound under the principles of stare decisis."

1. No counsel for a party authored any part of this brief. And no one other than the amicus or its members or counsel financed the brief's preparation or submission.

Id. at 20. The courts have no power to issue declaratory or injunctive relief of this sort.

A federal court has no ability or authority to "strike" language from a duly enacted statute, even when the statutory language contradicts the Constitution. When a court declares a statute unconstitutional, the statute remains on the books as originally written, and it continues to exist until it is amended or repealed by the legislature that enacted it. *See, e.g.*, *Legal Tender Cases*, 79 U.S. (12 Wall.) 457 (1870) (overruling *Hepburn v. Griswold*, 75 U.S. (8 Wall.) 603 (1870), and enforcing the Legal Tender Act of 1862, without requiring reenactment of the Act after *Hepburn* had declared it unconstitutional); *Winsness v. Yocom*, 433 F.3d 727, 728 (10th Cir. 2006) (McConnell, J.) ("There is no procedure in American law for courts or other agencies of government—other than the legislature itself—to purge from the statute books, laws that conflict with the Constitution as interpreted by the courts."). A court may enjoin defendants who are enforcing a statute, but it has no authority to act on the statute itself. *See Massachusetts v. Mellon*, 262 U.S. 447, 488 (1923) ("If a case for preventive relief be presented, the court enjoins, in effect, not the execution of the statute, but the acts of the official, the statute notwithstanding."); *Okpalobi v. Foster*, 244 F.3d 405, 426 n.34 (5th Cir. 2001) (en banc) ("An injunction enjoins a defendant, not a statute."). The judiciary does not wield a "writ of erasure" that allows it to formally delete (or "strike") statutory language that it believes to be unconstitutional. *See* Jonathan F. Mitchell, *The Writ-of-Erasure Fallacy*, 104 Va. L. Rev. 933 (2018); *Texas v. United States*, 945 F.3d

355, 396 (5th Cir. 2019) ("The federal courts have no authority to erase a duly enacted law from the statute books, [but can only] decline to enforce a statute in a particular case or controversy." (citation and internal quotation marks omitted)).

The plaintiffs' prayer for relief appears to have been influenced by commonly used rhetoric in the legal profession that implies that litigants "challenge" statutes, and that courts "strike down" statutes when pronouncing them unconstitutional. *See, e.g.*, *New York State Rifle & Pistol Ass'n, Inc. v. City of New York*, 140 S. Ct. 1525, 1526 (2020) (per curiam) ("In the District Court, petitioners challenged a New York City rule regarding the transport of firearms."); *Citizens United v. Federal Election Commission*, 558 U.S. 310, 346 (2010) (describing *First National Bank of Boston v. Bellotti*, 435 U.S. 765 (1978), as having "struck down" a state-law prohibition on corporate independent expenditures related to referenda issues). But litigants are not "challenging" the underlying statute when they sue to enforce their constitutional rights. They are challenging the behavior of the defendants that they have sued—which may or may not be authorized by the allegedly unconstitutional statute. And they cannot obtain a remedy that "strikes down" or revises the statute; the only relief that courts may offer is a judicial declaration of the plaintiffs' rights and an injunction to stop the defendants' unlawful behavior.

The plaintiffs' requested relief also violates the Appropriations Clause, which provides that "no money shall be drawn from the treasury but in consequence of an appropriation made by law." U.S. Const. art. I, § 9, cl. 7. The

plaintiffs are asking this Court to compel the defendants to draw money from the Treasury in the absence of any congressional enactment authorizing those expenditures. *See* First Amended Complaint (ECF No. 28) at 19. Courts cannot issue remedies that compel federal officers to spend money that Congress has never appropriated. *See Office of Personnel Management v. Richmond*, 496 U.S. 414, 425 (1990) ("Any exercise of a power granted by the Constitution to one of the other branches of Government is limited by a valid reservation of congressional control over funds in the Treasury.").

II. Neither President Trump Nor Senator McConnell Is A Permissible Defendant

In recent years it has become fashionable to include the President of the United States as a named defendant in lawsuits challenging executive action, and this is especially true in lawsuits challenging the Trump Administration's immigration policies. *See, e.g.*, *Trump v. Hawaii*, 138 S. Ct. 2392, 2423 (2018). This is improper, and the Court should remove the President's name from the caption. Lawsuits challenging the legality of executive action should be brought against the President's subordinates, and not against the President himself. *See Mississippi v. Johnson*, 71 U.S. 475, 501 (1866) ("[T]his court has no jurisdiction of a bill to enjoin the President in the performance of his official duties; and that no such bill ought to be received by us."); *Franklin v. Massachusetts*, 505 U.S. 788, 802–03 (1992) (plurality opinion); *id.* at 825–29 (Scalia, J., concurring); *id.* at 827 ("The principals in whom the executive and legislative powers are ultimately vested—viz., the President and the Congress (as

opposed to their agents)—may not be ordered to perform particular executive or legislative acts at the behest of the Judiciary."); *al-Marri v. Rumsfeld*, 360 F.3d 707, 708 (7th Cir. 2004).

Senator McConnell should also be immediately dismissed from this lawsuit. There is no Article III case or controversy between the plaintiffs and Senator McConnell because Senator McConnell has no role in enforcing the CARES Act. More importantly, the Speech or Debate Clause immunizes the Senator from lawsuits over his legislative activities. *See Eastland v. U.S. Servicemen's Fund*, 421 U.S. 491, 501 (1975).

III. The Plaintiffs Should Not Be Permitted To Proceed Anonymously

The Federal Rules of Civil Procedure require plaintiffs to disclose their names in the complaint, and they make no provision for anonymous litigation. *See* Fed. R. Civ. P. 10(a); *W.N.J. v. Yocom*, 257 F.3d 1171, 1172 (10th Cir. 2001) ("The Rules provide no exception that allows parties to proceed anonymously or under fictitious names such as initials."). Because Rule 10(a) requires plaintiffs to disclose their names and makes no allowance for anonymous litigation, a plaintiff may proceed under a pseudonym only when some higher source of law—such as a federal statute, the Constitution, or a decision of the Ninth Circuit—compels a departure from the Rule's regime of disclosure.

The Ninth Circuit instructs courts to consider five factors when deciding whether a litigant may proceed anonymously: (1) the severity of the threatened

harm; (2) the reasonableness of the anonymous party's fears; (3) the anonymous party's vulnerability to such retaliation; (4) the prejudice to the opposing party; and (5) the public interest." *Doe v. Kamehameha Sch./Bernice Pauahi Bishop Estate*, 596 F.3d 1036, 1042 (9th Cir. 2010). The public interest in this case overwhelmingly supports disclosure, especially if the plaintiffs are proceeding anonymously to conceal crimes committed by their spouses or the employers of those spouses.

Illegal entry into the United States is a federal crime. *See* 8 U.S.C. § 1325. Employing an illegal alien is a federal crime as well. *See* 8 U.S.C. § 1324a. Of course, not every illegal alien in the United States is guilty of a criminal border crossing; some illegal aliens are here because they overstayed their visas. And not every alien who lacks a social-security number was illegally employed. But many individuals who lack social-security numbers are associated with criminal activities of this sort, and the public interest demands that these crimes be exposed and punished. The plaintiffs should not be allowed to proceed anonymously if they are seeking to conceal criminal activities committed by their spouses or their employers.

IV. The Plaintiffs' Constitutional Claims Are Meritless

The constitutional claims in this case are beyond meritless. The claim that the statute classifies on account of alienage is false. The statute classifies between those who have social-security numbers and those that don't; it draws

no distinction between citizens and aliens. And the claim that the statute violates the supposed constitutional "right to marry" is sophistry. The plaintiffs are free to marry whomever they want, and their situation is no different from an individual who lost out on a CARES Act credit because she married a high-income earner. The Court should swiftly dispatch these constitutional claims.

CONCLUSION

The government's motion to dismiss should be granted.

Respectfully submitted.

/s/ Lorraine Woodwark

JONATHAN F. MITCHELL*
Texas Bar No. 24075463
Mitchell Law PLLC
111 Congress Avenue, Suite 400
Austin, Texas 78701
(512) 686-3940 (phone)
(512) 686-3941 (fax)
jonathan@mitchell.law

LORRAINE WOODWARK
California State Bar No. 205005
Woodwark Law
Post Office Box 640
Goleta, California 93117
(202) 591-0962 (phone)
(202) 464-3590 (fax)
lorrainewoodwark@gmail.com

* *pro hac vice* application pending

Dated: July 1, 2020

Counsel for Amicus Curiae

CERTIFICATE OF SERVICE

I certify that on July 1, 2020, I served this document through CM/ECF upon:

HEATHER L. BLAISE
Blaise & Nitschke, P.C.
123 North Wacker Drive, Suite 250
Chicago, Illinois 60606
312-448-6602 (phone)
hblaise@blaisenitschkelaw.com

LANA B. NASSAR
THOMAS J. NITSCHKE
ELISABETH A. GAVIN
123 North Wacker Drive, Suite 250
Chicago, Illinois 60606
(312) 448-6602 (phone)
(312) 803-1940 (fax)
lnassar@blaisenitschkelaw.com

MATTHEW J. MATERN
JOSHUA D. BOXER
Matern Law Group
1230 Rosecrans Avenue, Suite 200
Manhattan Beach, California 90266
(310) 531-1900 (phone)
(310) 531-1901 (fax)
mmatern@maternlawgroup.com
jboxer@maternlawgroup.com

GUINEVERE M. MOORE
Moore Tax Law Group LLC
150 North Wacker Drive, Suite 1250
Chicago, Illinois 60606
(312) 549-9992 (phone)
(312) 549-9991 (fax)
guinevere.moore@
mooretaxlawgroup.com

MELISSA BRIGGS
JOHN D. ELLIS
Federal Building, Suite 7211
300 North Los Angeles Street
Los Angeles, California 90012
(213) 894-6165 (phone)
(213) 894-2740 (phone)
(213) 894-0115 (fax)
melissa.briggs2@usdoj.gov
john.ellis3@usdoj.gov

Counsel for the Defendants

VIVIAN KHALAF
OMAR ABUZIR
Khalaf & Abuzir, LLC
20 North Clark, Suite 720
Chicago, Illinois 60602
(708)-233-1122 (phone)
(708)-233-1161 (fax)
vkhalaf@immigrationjd.com

/s/ Lorraine Woodwark
LORRAINE WOODWARK
Counsel for Amicus Curiae