THE HONORABLE JAMES L. ROBART

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

Juweiya Abdiaziz, et al.,

Plaintiffs,

v.

DONALD TRUMP, et al,

Defendants.

No. 2:17-cv-00135-JLR

MOTION FOR LEAVE TO FILE *AMICUS* BRIEF RE TRO BY WASHINGTON STATE LABOR COUNCIL

Noted for Consideration:
March 15 , 2017

I. INTRODUCTION & RELIEF REQUESTED

The Washington State Labor Council ("WSLC") respectfully requests the Court grant it leave to file the *amicus* brief attached hereto as **Exhibit A**.

II. IDENTITY AND INTEREST OF *AMICUS CURIAE*

The WSLC is a state-wide labor council comprising more than 600 local unions, and it represents more than 450,000 rank-and-file union members working in Washington State. Declaration of Jeff Johnson ("Johnson Declaration"), ¶ 2. It is widely considered to be the "voice of labor" in Washington State. *Id*. WSLC has a strong interest in advocating for the liberty interests of Washington State workers. *Id*.

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The WSLC provides many services to its affiliated unions. Johnson Declaration, ¶ 3. The Council has a focus on legislative advocacy, political action, communication through its website "The Stand," supporting affiliated unions' organizing drives by rallying community leaders and elected officials, and programs that provide affiliate and direct worker assistance like dislocated worker assistance, increasing student awareness about apprenticeship programs within community and technical colleges, Project Help, education and training for union members, and assistance for unions with contract and economic research. *Id*.

On March 6, 2017, President Donald Trump issued an Executive Order titled "Protecting the Nation from Foreign Terrorist Entry into the United States," which like his previous order subject of this litigation bans all refugees from entering the country for 120 days and bans non-immigrants from six majority-Muslim countries from entering the U.S. for 90 days. The order further fans the flames of racism, xenophobia, and anti-Islamism and ignores the fact that America was built by immigrants and refugees and they will continue to play a part in the values upon which we define America. Johnson Declaration ¶ 4.

Among WSLC's affiliated unions, unions who have signed a Solidarity Charter with the WSLC, and other labor allies are unions whose members are directly impacted by the most recent Executive Order, because they are non-immigrant temporary workers from one of the six banned countries whose ability to travel into and out of the United States is prohibited outright or whose inability to re-enter the United States after traveling will put their livelihoods in jeopardy. Therefore, although the new Executive Order no longer covers Iraq or affects lawful permanent residents, its effect on members who are temporary or one-entry visa holders is just as harmful as the first Executive Order. The new order will also continue the adverse effect on union members who wish to reunite with family members who are in the process of applying for visitor or

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student visas or residency status and will be delayed during the 90-day hiatus. Johnson Declaration, ¶ 6.

The members of unions affiliated or allied with WSLC affected by the ban include hospitality workers, retail employees, health-care industry workers, laborers, factory workers, and state, county and municipal employees, among others. These union members are exceptionally diverse, comprised of an array of races, nationalities and religions. Many of these union members are immigrants from the six countries affected by the Executive Order or are non-immigrants whose heritage is from one or more of those six countries. A significant proportion of these members identify as Muslim and are American citizens, lawful permanent residents or lawful visitors. *Id*.

The negative policies the United States government establishes concerning immigrants, non-immigrant visitors, and refugees of certain national origins or religions reflects the attitudes the government has of its own citizens of those same national origins and religions: that they are less valued, less than equal. Such policies cause harm to our unions' members that cannot be undone. Johnson Declaration, ¶ 7.

III. ARGUMENT

WSLC seeks leave to file an *amicus* brief on the impacts of the most recent Executive Order on the members of unions across a wide range of industries and the irreparable harm suffered by those workers in Washington if the Executive Order is not enjoined. The foregoing facts establish the interest of the labor community in the outcome of this proceeding. WSLC will offer additional evidence of irreparable harm to individuals working and residing in Washington, further establishing that the elements for temporary injunctive relief are met. WSLC will offer

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some additional authority supporting, but not duplicating, the arguments made by the plaintiff in support of its Motion for a Temporary Restraining Order.

IV. CONCLUSION

For the foregoing reasons, the Court should exercise its discretion to grant WSLC leave to file the *amicus* brief attached hereto as **Exhibit A**.

RESPECTFULLY SUBMITTED this 15th day of March, 2017.

s/Kathleen Phair Barnard
Kathleen Phair Barnard, WSBA No. 17896
s/Dmitri Iglitzin
Dmitri Iglitzin, WSBA No. 17673
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Counsel for the Washington State Labor Council

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of March, 2017, I caused the foregoing Motion for Leave to File *Amicus* Brief by Washington State Labor Council, Declaration of Jeff Johnson, Joint Declaration of Madeleine K. Albright et al., and proposed order to be filed with the Court using the cm/ecf system, which will automatically provide notification of such filing to:

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EXHIBIT A

THE HONORABLE JAMES L. ROBART

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

Juweiya Abdiazi,z et al., Plaintiffs, v. DONALD TRUMP,et al., Defendants.	No. 2:17-cv-00135-JLR **BRIEF OF *AMICUS CURIAE* WASHINGTON STATE LABOR COUNCIL RE MOTION FOR TRO**

I. INTRODUCTION

One week after assuming office, President Donald Trump signed an Executive Order fulfilling his campaign promise to enact a "Muslim ban" and to subject immigrant applicants to "extreme vetting." This Court enjoined enforcement of that Executive Order. Dkt. 52. President Trump has issued a replacement Executive Order that continues to ban new immigrants and non-immigrant visitors from six predominantly Muslim countries—Iran, Libya, Somalia, Sudan, Syria, and Yemen—for 90 days, and to stop entry of all refugees into the country for 120 days.

The WSLC submits this brief in support of the Emergency Motion for TRO , Dkt. 53, and to ensure that the unconstitutional, unlawful Executive Order does not again go into effect.

II. IDENTITY AND INTEREST OF *AMICUS CURIAE*

The WSLC comprises more than 600 local unions and represents more than 450,000 rank-and-file union members working in Washington State. It is widely considered to be the

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"voice of labor" in Washington State. WSLC has a strong interest in advocating for the liberty interests of Washington State workers. Johnson Dec. ¶ 2. The WSLC provides many services to its affiliated unions. The Council has a focus on legislative advocacy, political action, communication through its website "The Stand," supporting affiliated unions' organizing drives by rallying community leaders and elected officials, and programs that provide affiliate and direct worker assistance like dislocated worker assistance, increasing student awareness about apprenticeship programs within community and technical colleges, Project Help, education and training for union members, and assistance for unions with contract and economic research. Johnson Dec. ¶ 3.

Among WSLC's affiliated unions, unions who have signed a Solidarity Charter with the WSLC, and other labor allies are unions whose members are directly impacted by the most recent Executive Order, because they are non-immigrant temporary workers from one of the six banned countries whose ability to travel into and out of the United States is prohibited outright or whose inability to re-enter the United States after traveling will put their livelihoods in jeopardy. Therefore, although the new Executive Order no longer covers Iraq or affects lawful permanent residents, its effect on members who are temporary or one-entry visa holders is just as harmful as the first Executive Order. Johnson Dec. ¶ 6. The new order will also continue the adverse effect on union members who wish to reunite with family members who are in the process of applying for visitor or student visas or residency status and will be delayed during the 90-day hiatus. *Id*. The members of unions affiliated or allied with WSLC affected by the ban include hospitality workers, retail employees, health-care industry workers, laborers, factory workers, and state, county and municipal employees, among others. These union members are exceptionally diverse, comprised of an array of races, nationalities and religions. Many of these union members are immigrants from the six countries affected by the Executive Order or are non-immigrants whose heritage is from one or more of those six countries. Many of these members identify as Muslim and are American citizens, lawful permanent residents or lawful visitors. Johnson Dec. ¶ 6.

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III. ARGUMENT & AUTHORITY

THE NEW EXECUTIVE ORDER VIOLATES THE ESTABLISHMENT CLAUSE OF THE U.S. CONSTITUTION AND THE IMMIGRATION AND NATIONALITY ACT AND IRREPARABLY HARMS WORKERS AND THEIR FAMILIES.

A. The Executive Order Unconstitutionally Discriminates Against Workers Of Muslim Faith And Their Families, Denigrates Them Because Of Their Religion, And Denies Them Equal Standing In Our Society. Absent Injunctive Relief That Irreparable Harm Will Continue.

The Executive Order discriminates against persons from Iran, Syria, Libya, Somalia, Yemen, and Sudan through the flawed logic that because they are more likely than not to be Muslim, they are more likely to be terrorists. Because the order is motivated by animus to a particular religious group, Muslims, and expresses that animus in ways that cause irreparable harm, it is unconstitutional under the Establishment Clause and under the Equal Protection aspects of the Due Process Clause of the United States Constitution. This disparate treatment and denigration of Muslim workers and their families is exactly what the Establishment Clause forbids. *Bd. of Educ. of Kiryas Joel Vill. Sch. Dist. v. Grumet*, 512 U.S. 687, 728 (1994) (Kennedy, J., concurring) ("[T]he Establishment Clause forbids the government to use religion as a line drawing criterion. In this respect, the Establishment Clause mirrors the Equal Protection Clause. Just as the government may not segregate people on account of their race, so too it may not segregate on the basis of religion.").

The Establishment Clause provides that "Congress shall make no law respecting an establishment of religion." U.S. Const. amend. I. "The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another." *Aziz v. Trump*, 2017 WL 580855, at *7 (E.D. Va. Feb. 13, 2017) (quoting *Larson v. Valente*, 456 U.S. 228, 244, 102 S. Ct. 1673, 72 L. Ed. 2d 33 (1982)). Thus, "[i]f there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, [or] religion …" *Wallace v. Jaffree*, 472 U.S. 38, 52–55, 105 S. Ct. 2479, 2487–89, 86 L. Ed. 2d 29 (1985) (quoting *West Virginia Board of Education v. Barnette*, 319 U.S. 624, 642, 63 S. Ct. 1178, 1187, 87 L. Ed. 1628 (1943)). President Trump's

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attempt to proscribe Islam dislodges this fixed star in our constitutional order and causes irreparable harm.

As Justice O'Connor explained in *Wallace v. Jaffree*, 472 U.S. 38, 69, 105 S. Ct. 2479, 2496, 86 L. Ed. 2d 29 (1985) (O'Connor, J., concurring):

> **[T]he religious liberty protected by the Establishment Clause is infringed when the government makes adherence to religion relevant to a person's standing in the political community.** Direct government action endorsing religion or a particular religious practice is invalid under this approach because it sends a message to nonadherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community.

Id., at 688, 104 S. Ct., at 1367 (emphasis added)(internal quotation omitted). The WSLC observes that very affect among its union members:

> The negative policies the United States government establishes concerning immigrants, non-immigrant visitors and refugees of certain national origins or religions reflects the attitudes the government has of its own citizens of those same national origins and religions – that they are less valued, less than equal. Such policies cause harm to our unions' members that cannot be undone.

Johnson Dec. ¶ 6.

Of course, this unconstitutional message to our Muslim brothers and sisters that they are outsiders without standing in our community causes irreparable harm as a matter of law. *Aziz v. Trump*, 2017 WL 580855, at *10 (E.D. Va. Feb. 13, 2017) (quoting *Newsom v. Albemarle Cnty. Sch. Bd.*, 354 F.3d 249, 261 (4th Cir. 2003) (citing *Elrod v. Burns*, 427 U.S. 347, 373, 96 S. Ct. 2673, 49 L. Ed. 2d 547 (1976)).

B. Absent Injunctive Relief, Workers In Washington And Their Families Will Suffer Irreparable Harm Because Their Government, In Clear Contravention Of The INA, Has Labeled Some Of Them As Being Less Valuable Than Others, And As Having No Rights.

In discussing the Immigration Act of 1965, Secretary of State Dean Rusk similarly observed that immigration rules have significant domestic, as well as foreign, meaning:

> [G]iven the fact that we are a country of many races and national origins, that those who built this country and developed it made decisions about opening our doors to the rest of the world; that anything which makes it appear that we,

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> ourselves, are discriminating in principle about particular national origins, suggests that we think ... less well of our own citizens of those national origins, than of other citizens....[1]

Attorney General Katzenbach accurately assessed the damage done by discriminatory immigration rules the 1965 Act was meant to abolish:

> I do not know how any American could fail to be offended by a system which presumes that some people are inferior to others solely because of their birthplace.... The harm it does to the United States and to its citizens is incalculable.

Hearings on S. 500 Before the Subcomm. on Immigration and Naturalization of the Senate Comm. on the Judiciary, 89th Cong. 119 (1965) 9.

Through the INA, the Congress abolished discrimination long codified in statutory national origin quotas which disfavored non-European immigrants:

> Except as specifically provided in paragraph (2) and in sections 1101(a)(27), 1151(b)(2)(A)(i), and 1153 of this title, no person shall receive any preference or priority or be discriminated against in the issuance of an immigrant visa because of the person's race, sex, nationality, place of birth, or place of residence.

8 U.S.C. § 1152 (enacted by Pub.L. No. 89-236, 79 Stat. 911 (1965)).

The quotas were introduced into law in 1921 and extended by the Immigration Act of 1924, which required a study of the ethnic sources of America's white population from the origins of settlement; and quotas were derived from the percentages of the U.S. population that were derived from any particular nation. This had the effect of limiting immigration from Asia, and non-Protestant eastern and southern Europe. Pub.L. 67-5; 42 Stat. 5 (1921); Pub.L. 67-5; 42 Stat. 5 (1924). The Immigration and Nationality Act of 1952, ch. 477, 66 Stat. 163, retained modified quotas that again reflected the existing demographic mix of U.S. inhabitants and had no purpose other than to maintain the existing ethnic and religious composition of the national

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[1] *Immigration: Hearings Before Subcomm. No. 1 of the Comm. on the Judiciary, House of Representatives, on H.R. 7700 and 55 Identical Bills*, 88th Cong. 901-02 (1964), *reprinted in* 10A Oscar Trelles & James Bailey, Immigration and Nationality Acts: Legislative Histories and Related Documents, doc. 69A (1979) 390. *See also id.* at 410 (remarks of Attorney General Robert Kennedy) (noting that the bill "would remove from our law a discriminatory system of selecting immigrants that is a standing affront to millions of our citizens").

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population. *See* Mary Jane Lapointe, *Discrimination in Asylum Law: The Implications of Jean v. Nelson*, 62 Ind. L.J. 127, 149 (1986). That discriminatory purpose became the focal point of intense debate which fueled the impetus for the 1965 Act.

President Harry Truman opposed the discriminatory quota system, and when his veto of the 1952 act was overridden, he denounced the system as being contrary to American values because it "discriminates, deliberately and intentionally, against many of the peoples of the world." The President's Veto Message, June 25, 1952, reprinted in *The President's Comm'n on Imm. and Nat., Whom We Shall Welcome* 277. President Truman's Commission on Immigration and National Origin had found that "the major disruptive influence in our immigration law is the racism and national discrimination caused by the national origins system," and that the present system should be replaced with a "unified quota system, which would allocate visas without regard to national origin, race, creed, or color." *The President's Comm'n on Imm. and Nat., Whom We Shall Welcome* 263 (submitted Jan. 1, 1953).

In 1958, then Senator John Kennedy published a broadside against the national origin quota system in which he criticized the system for having "strong overtures of an indefensible racial preference." John F. Kennedy, *A Nation of Immigrants* 77 (1964). As President, he introduced legislation to end the quota system, and President Lyndon Johnson strongly advocated for the bill, after President Kennedy's death. The INA was enacted in 1965 as one of three complimentary bills passed early in Johnson's presidency, the others being the Civil Rights Act of 1964, Pub.L. No. 88-352, 78 Stat. 241 (1964), and the Voting Rights Act of 1965, Pub.L. No. 89-110, 79 Stat. 437 (1965).[2] *See* Roger Daniels, *Coming To America: A History of*

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[2] Senator Hiram Fong described the purpose of the Act as "seeking an immigration policy reflecting America's ideal of the equality of all men without regard to race, color, creed or national origin," which he noted reflected the values of the Civil Rights Act:

> Last year we enacted the historic Civil Rights Act of 1964, which was designed to wipe out the last vestiges of racial discrimination against our own citizens . . . . As we move to erase racial discrimination against our own citizens, we should also move to erase racial barriers against citizens of other lands in our immigration laws.

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Immigration And Ethnicity In American Life 338 (1990) (observing that the Civil Rights Act, Voting Rights Act and Immigration Act "represent a kind of high-water mark in a national consensus of egalitarianism"); Vernon M. Briggs, Jr., *Immigration Policy and the American Labor Force* 62 (1984) ("Just as overt racism could no longer be tolerated in the way citizens treated their fellow citizens, neither could it be sanctioned in the laws that governed the way in which noncitizens were considered for immigrant status.").

In supporting passage of the INA, Senator Edward M. Kennedy argued that the national origins quota system was "contrary to our basic principles as a nation." 111 Cong.Rec. 24, 225 (1965). Senator Joseph Clark insisted that "the national origins quotas and the Asian-Pacific triangle provisions are irrational, arrogantly intolerant, and immoral" and that it was unjust that "[a] brilliant Korean or Indian scientist is turned away, while the northern European is accepted almost without question." *Id*. at 24, 501. Representative Paul Krebs stated that immigration rules based on national origin were "repugnant to our national traditions" and that "we must learn to judge each individual by his own worth and by the value he can bring to our Nation." *Id*. at 21, 778. Representative Dominick Daniels rejected the national origin quotas on the basis that "racism simply has no place in America in this day and age." *Id*. at 21, 787. Other senators and officials condemned the national origins quota system as "un-American" and "totally alien to the spirit of the Constitution," and praised the new bill for its recognition of individual rights. Hearings on S. 500 Before the Subcomm. on Imm. and Nat. of the Senate Comm. on the Judiciary, pt. 1, 89th Cong., 1st Sess. 11 (1965) (statement of Attorney General Katzenbach), 47 (statement of Secretary of State Dean Rusk), 127 (statement of Senator Hugh Scott), 165 (statement of Senator Paul Douglas) and 217 (statement of Senator Robert Kennedy); *see also* Hearings Before Subcomm. No. 1 of the House Comm. on the Judiciary, 88th Cong., 2d Sess.

Hearings on S. 500 Before the Subcomm. on Imm. and Nat. of the Senate Comm. on the Judiciary, pt. 1, 89th Cong., 1st Sess. 44-45 (1965).

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723 (1964), where the Secretary-Treasurer of the AFL-CIO, James B. Carey, quotes the AFL-CIO Declaration in support of the bill).

The INA repealed a system that, in the words of President Johnson, "violated the basic principle of American democracy—the principle that values and rewards each man on the basis of his merit . . . ." T. Aleinikoff & D. Martin, *Immigration Process and Policy* 55 (1985). In that regard, like Title VII of the Civil Rights Act of 1964, the INA's "focus on the individual is unambiguous. It precludes treatment of individuals as simply components of a racial, religious, sexual, or national class." *City of Los Angeles, Dep't of Water & Power v. Manhart*, 435 U.S. 702, 708, 98 S. Ct. 1370, 55 L. Ed. 2d 657 (1978). In enacting the INA, Congress intended to end discrimination based on national origin and religion and non-discrimination "requires … focus on fairness to individuals rather than fairness to classes. Practices that classify employees in terms of religion, race, or sex tend to preserve traditional assumptions about groups rather than thoughtful scrutiny of individual." *Manhart*, 435 U.S. at 709-10. The order works precisely as did the repealed quota system, by denying liberty to whole classes of people based on their national origin. The Executive Order thus directly contravenes the INA and the nation's values, which mandate that each individual is evaluated on his or her own merit.

C. The Executive Order Unlawfully Discriminates Against Classes of People Based Only On Their Membership In Groups The Federal Government Has Stigmatized Without Any Justification, Let Alone The Compelling Justification That Is Required For The Executive Order To Be Upheld.

The Executive Order at issue here is blanket discrimination against classes of individuals based on their national origin and religion, classifications that are not consistent with American law or even rational, and are at the same time over- and under-inclusive. It denies people from the six excluded nations evaluation on individual merit and instead imposes what our Constitution and laws protect against: invidious discrimination based on particular characteristics. It denies U. S. resident family members of people from those six nations the normal act of family visits and reunification without any individualized evaluation of risk .

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The invidious blanket assumption that United States residents from the six majority-Muslim countries or their family members and compatriots who may wish to join them here pose some sort of terror threat cannot possibly survive scrutiny. President Trump defends the Executive Order with rhetoric of national security without evidence to back up the rhetoric.[3] The WSLC joins in the following statement of former national security, foreign policy, and intelligence officials in the United States Government condemning the Executive Order as antithetical to American law and values:

> As government officials, we sought diligently to protect our country, even while maintaining an immigration system free from intentional discrimination, that applies no religious tests, and that measures individuals by their merits, not stereotypes of their countries or groups. Blanket bans of certain countries or classes of people are beneath the dignity of the nation and Constitution that we each took oaths to protect. Rebranding a proposal first advertised as a "Muslim Ban" as "Protecting the Nation from Foreign Terrorist Entry into the United States" does not disguise the Order's discriminatory intent, or make it necessary, effective, or faithful to America's Constitution, laws, or values.

Declaration of Madeleine K. Albright, Avril D. Haines, Michael V. Hayden, John F. Kerry, John E. Mclaughlin, Lisa O. Monaco, Michael J. Morell, Janet A. Napolitano, Leon E. Panetta, Susan E. Rice.

CONCLUSION

The individual tangible and dignitary harm that is being suffered by residents whose national origin is from the countries subject to the Executive Order and whose religion is targeted is irreparable, in violation of the INA and the Constitution. The Executive Order is not even rationally related to its stated goal of protecting national security. The harms that would be

[3] Attorney General Jeff Sessions made a statement expressing this defective logic in defense of the new Executive Order: "We also know that people seeking to support or commit terrorist attacks here will try to enter through our refugee program. In fact, today more than 300 people who came here as refugees are under FBI investigation for potential terrorism-related activities." Found at https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-revised-executive-order-protecting-nation. The statement does not provide any information about the national origin or religion of these 300 individuals or whether there is any conclusive evidence that any of them are engaged in terrorist activities.

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suffered if the previous injunction is not applied to this new iteration of the same enjoined actions are severe, and the need for continuing injunctive relief is urgent.

DATED this 15th day of March, 2017.

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s/Dmitri Iglitzin
Dmitri Iglitzin, WSBA No. 17673
s/Jennifer L. Robbins
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EXHIBIT B

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 17-35105

STATE OF WASHINGTON, et al. Plaintiffs-Appellees, vs. DONALD J. TRUMP, President of the United States, et al., Defendants-Appellants.	**JOINT DECLARATION OF MADELEINE K. ALBRIGHT, AVRIL D. HAINES MICHAEL V. HAYDEN JOHN F. KERRY JOHN E. McLAUGHLIN LISA O. MONACO MICHAEL J. MORELL JANET A. NAPOLITANO LEON E. PANETTA SUSAN E. RICE**

We, Madeleine K. Albright, Avril D. Haines, Michael V. Hayden, John F. Kerry, John E. McLaughlin, Lisa O. Monaco, Michael J. Morell, Janet A. Napolitano, Leon E. Panetta, and Susan E. Rice declare as follows:

1. We are former national security, foreign policy, and intelligence officials in the United States Government:

   a. Madeleine K. Albright served as Secretary of State from 1997 to 2001. A refugee and naturalized American citizen, she served as U.S. Permanent Representative to the United Nations from 1993 to 1997 and has been a member of the Central Intelligence Agency External Advisory Board since 2009 and the Defense Policy Board since 2011, in which capacities she has received assessments of threats facing the United States.

   b. Avril D. Haines served as Deputy Director of the Central Intelligence Agency from 2013 to 2015, and as Deputy National Security Advisor from 2015 to January 20, 2017.

   c. Michael V. Hayden served as Director of the National Security Agency from 1999 to 2005, and Director of the Central Intelligence Agency from 2006 to 2009.

   d. John F. Kerry served as Secretary of State from 2013 to January 20, 2017.

e. John E. McLaughlin served as Deputy Director of the Central Intelligence Agency from 2000-2004 and Acting Director of CIA in 2004. His duties included briefing President-elect Bill Clinton and President George W. Bush.
f. Lisa O. Monaco served as Assistant to the President for Homeland Security and Counterterrorism and Deputy National Security Advisor from 2013 to January 20, 2017.
g. Michael J. Morell served as Acting Director of the Central Intelligence Agency in 2011 and from 2012 to 2013, Deputy Director from 2010 to 2013, and as a career official of the CIA from 1980. His duties included briefing President George W. Bush on September 11, 2001, and briefing President Barack Obama regarding the May 2011 raid on Osama bin Laden.
h. Janet A. Napolitano served as Secretary of Homeland Security from 2009 to 2013.
i. Leon E. Panetta served as Director of the Central Intelligence Agency from 2009-11 and as Secretary of Defense from 2011-13.
j. Susan E. Rice served as U.S. Permanent Representative to the United Nations from 2009-13 and as National Security Advisor from 2013 to January 20, 2017.

2. We have collectively devoted decades to combatting the various terrorist threats that the United States faces in a dynamic and dangerous world. We have all held the highest security clearances. A number of us have worked at senior levels in administrations of both political parties. Four of us (Haines, Kerry, Monaco and Rice) were current on active intelligence regarding all credible terrorist threat streams directed against the U.S. as recently as one week before the issuance of the Jan. 27, 2017 Executive Order on "Protecting the Nation from Foreign Terrorist Entry into the United States" ("Order").

3. We all agree that the United States faces real threats from terrorist networks and must take all prudent and effective steps to combat them, including the appropriate vetting of travelers to the United States. We all are nevertheless unaware of any specific threat that would justify the travel ban established by the Executive Order issued on January 27, 2017. We view the Order as one that ultimately undermines the national security of the United States, rather than making us safer. In our professional opinion, this Order cannot be justified on national security or foreign policy grounds. It does not perform its declared task of "protecting the nation from foreign terrorist entry into the United States." To the contrary, the Order disrupts thousands of lives, including those of refugees and visa holders all previously vetted by standing procedures that the Administration has not shown to be inadequate. It could do long-term damage to our national security and foreign policy interests, endangering U.S. troops in the field and disrupting counterterrorism and national security partnerships. It will aid ISIL's propaganda effort and serve its recruitment message by feeding into the narrative that the United States is at war with Islam. It will hinder relationships with the very communities that law enforcement professionals need to address the threat. It will have a damaging humanitarian and economic impact on the lives and jobs of American citizens and residents. And apart from all of these concerns, the Order offends our nation's laws and values.

4. There is no national security purpose for a total bar on entry for aliens from the seven named countries. Since September 11, 2001, not a single terrorist attack in the United States has been perpetrated by aliens from the countries named in the Order. Very few attacks on U.S. soil since September 11, 2001 have been traced to foreign nationals at all. The overwhelming majority of attacks have been committed by U.S. citizens. The Administration has identified no information or basis for believing there is now a heightened or particularized future threat from the seven named countries. Nor is there any rational basis for exempting from the ban particular religious minorities (e.g., Christians), suggesting that the real target of the ban remains one religious group (Muslims). In short, the Administration offers no reason why it abruptly shifted to group-based bans when we have a tested individualized vetting system developed and implemented by national security professionals across the government to guard the homeland, which is continually re-evaluated to ensure that it is effective.

5. In our professional opinion, the Order will harm the interests of the United States in many respects:

a. The Order will endanger U.S. troops in the field. Every day, American soldiers work and fight alongside allies in some of the named countries who put their lives on the line to protect Americans. For example, allies who would be barred by the Order work alongside our men and women in Iraq fighting against ISIL. To the extent that the Order bans travel by individuals cooperating against ISIL, we risk placing our military efforts at risk by sending an insulting message to those citizens and all Muslims.

b. The Order will disrupt key counterterrorism, foreign policy, and national security partnerships that are critical to our obtaining the necessary information sharing and collaboration in intelligence, law enforcement, military, and diplomatic channels to address the threat posed by terrorist groups such as ISIL. The international criticism of the Order has been intense, and it has alienated U.S. allies. It will strain our relationships with partner countries in Europe and the Middle East, on whom we rely for vital counterterrorism cooperation, undermining years of effort to bring them closer. By alienating these partners, we could lose access to the intelligence and resources necessary to fight the root causes of terror or disrupt attacks launched from abroad, before an attack occurs within our borders.

c. The Order will endanger intelligence sources in the field. For current information, our intelligence officers may rely on human sources in some of the countries listed. The Order breaches faith with those very sources, who have risked much or all to keep Americans safe – and whom our officers had promised always to protect with the full might of our government and our people.

d. Left in place, the Executive Order will likely feed the recruitment narrative of ISIL and other extremists that portray the United States as at war with Islam. As government officials, we took every step we could to counter violent extremism. Because of the Order's disparate impact against Muslim travelers and immigrants, it feeds ISIL's narrative and sends the wrong message to the Muslim community here at home and all over the world: that

the U.S. government is at war with them based on their religion. The Order may even endanger Christian communities, by handing ISIL a recruiting tool and propaganda victory that spreads their message that the United States is engaged in a religious war.

e. The Order will disrupt ongoing law enforcement efforts. By alienating Muslim-American communities in the United States, it will harm our efforts to enlist their aid in identifying radicalized individuals who might launch attacks of the kind recently seen in San Bernardino and Orlando.

f. The Order will have a devastating humanitarian impact. When the Order issued, those disrupted included women and children who had been victimized by actual terrorists. Tens of thousands of travelers today face deep uncertainty about whether they may travel to or from the United States: for medical treatment, study or scholarly exchange, funerals or other pressing family reasons. While the Order allows for the Secretaries of State and Homeland Security to agree to admit travelers from these countries on a case-by-case basis, in our experience it would be unrealistic for these overburdened agencies to apply such procedures to every one of the thousands of affected individuals with urgent and compelling needs to travel.

g. The Order will cause economic damage to American citizens and residents. The Order will affect many foreign travelers, particularly students, who annually inject hundreds of billions into the U.S. economy, supporting well over a million U.S. jobs. Since the Order issued, affected companies have noted its adverse impacts on many strategic economic sectors, including defense, technology, medicine, culture and others.

6. As a national security measure, the Order is unnecessary. National security-based immigration restrictions have consistently been tailored to respond to: (1) specific, credible threats based on individualized information, (2) the best available intelligence and (3) thorough interagency legal and policy review. This Order rests not on such tailored grounds, but rather, on (1) general bans (2) not supported by any new intelligence that the Administration has claimed, or of which we are aware, and (3) not vetted through careful interagency legal and policy review. Since the 9/11 attacks, the United States has developed a rigorous system of security vetting, leveraging the full capabilities of the law enforcement and intelligence communities. This vetting is applied to travelers not once, but multiple times. Refugees receive the most thorough vetting of any traveler to the United States, taking on the average more than a year. Successive administrations have continually worked to improve this vetting through robust information-sharing and data integration to identify potential terrorists without resorting to a blanket ban on all aliens and refugees. Because various threat streams are constantly mutating, as government officials, we sought continually to improve that vetting, as was done in response to particular threats identified by U.S. intelligence in 2011 and 2015. Placing additional restrictions on individuals from certain countries in the visa waiver program –as has been done on occasion in the past – merely allows for more individualized vettings before individuals with particular passports are permitted to travel to the United States.

7. In our professional opinion, the Order was ill-conceived, poorly implemented and ill-explained. The "considered judgment" of the President in the prior cases where courts have

deferred was based upon administrative records showing that the President's decision rested on cleared views from expert agencies with broad experience on the matters presented to him. Here, there is little evidence that the Order underwent a thorough interagency legal and policy processes designed to address current terrorist threats, which would ordinarily include a review by the career professionals charged with implementing and carrying out the Order, an interagency legal review, and a careful policy analysis by Deputies and Principals (at the cabinet level) before policy recommendations are submitted to the President. We know of no interagency process underway before January 20, 2017 to change current vetting procedures, and the repeated need for the Administration to clarify confusion after the Order issued suggest that that Order received little, if any advance scrutiny by the Departments of State, Justice, Homeland Security or the Intelligence Community. Nor have we seen any evidence that the Order resulted from experienced intelligence and security professionals recommending changes in response to identified threats.

8. The Order is of unprecedented scope. We know of no case where a President has invoked his statutory authority to suspend admission for such a broad class of people. Even after 9/11, the U.S. Government did not invoke the provisions of law cited by the Administration to broadly bar entrants based on nationality, national origin, or religious affiliation. In past cases, suspensions were limited to particular individuals or subclasses of nationals who posed a specific, articulable threat based on their known actions and affiliations. In adopting this Order, the Administration alleges no specific derogatory factual information about any particular recipient of a visa or green card or any vetting step omitted by current procedures.

9. Maintaining the district court's temporary restraining order while the underlying legal issues are being adjudicated would not jeopardize national security. It would simply preserve the status quo ante, still requiring that individuals be subjected to all the rigorous legal vetting processes that are currently in place. Reinstating the Executive Order would wreak havoc on innocent lives and deeply held American values. Ours is a nation of immigrants, committed to the faith that we are all equal under the law and abhor discrimination, whether based on race, religion, sex, or national origin. As government officials, we sought diligently to protect our country, even while maintaining an immigration system free from intentional discrimination, that applies no religious tests, and that measures individuals by their merits, not stereotypes of their countries or groups. Blanket bans of certain countries or classes of people are beneath the dignity of the nation and Constitution that we each took oaths to protect. Rebranding a proposal first advertised as a "Muslim Ban" as "Protecting the Nation from Foreign Terrorist Entry into the United States" does not disguise the Order's discriminatory intent, or make it necessary, effective, or faithful to America's Constitution, laws, or values.

10. For all of the foregoing reasons, in our professional opinion, the January 27 Executive Order does not further – but instead harms – sound U.S. national security and foreign policy.

Respectfully submitted,

s/MADELEINE K. ALBRIGHT*
s/AVRIL D. HAINES
s/MICHAEL V. HAYDEN
s/JOHN F. KERRY
s/JOHN E. McLAUGHLIN
s/LISA O. MONACO
s/MICHAEL J. MORELL
s/JANET A. NAPOLITANO
s/LEON E. PANETTA
s/SUSAN E. RICE

*All original signatures are on file with Harold Hongju Koh, Rule of Law Clinic, Yale Law School, New Haven, CT. 06520-8215 203-432-4932

We declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. [Individual signature pages follow]

EXECUTED this 5th day of February, 2017

Madeleine Albright

MADELEINE K. ALBRIGHT

EXECUTED this 5th day of February, 2017

AVRIL D. HAINES

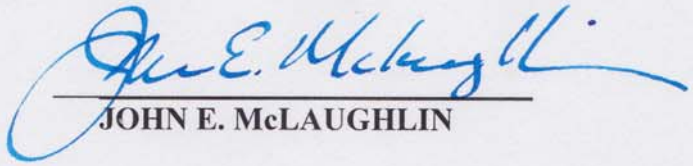
EXECUTED this 5th day of February, 2017

MICHAEL V. HAYDEN

EXECUTED this 5th day of February, 2017

JOHN F. KERRY

EXECUTED this 5th day of February, 2017.



JOHN E. McLAUGHLIN

EXECUTED this 5th day of February, 2017

LISA O. MONACO

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MICHAEL J. MORRELL

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/s/
JANET A. NAPOLITANO

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LEON E. PANETTA

EXECUTED this 5th day of February, 2017

/s/
SUSAN E. RICE