

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

INTERNATIONAL REFUGEE ASSISTANCE PROJECT, et al.,)	Appeal from the United States District Court for the District of Maryland
<i>Plaintiffs-Appellees,</i>)	
<i>v.</i>)	No. 8:17-cv-00361-TDC
DONALD J. TRUMP, et al.,)	The Honorable Theodore D. Chuang, Judge Presiding
<i>Defendants-Appellants.</i>)	

MOTION FOR LEAVE TO FILE BRIEF OF CHICAGO, LOS ANGELES, NEW YORK, PHILADELPHIA, AND OTHER MAJOR CITIES AND COUNTIES AS *AMICI CURIAE* IN SUPPORT OF PLAINTIFFS-APPELLEES' OPPOSITION TO MOTION OF DEFENDANTS-APPELLANTS FOR A STAY PENDING APPEAL

Chicago, Los Angeles, New York, Philadelphia, and other major U.S. cities and counties respectfully submit this motion for leave to file a brief *amicus curiae* in support of plaintiffs' opposition to the motion to stay the preliminary injunction.

1. *Amici curiae* include some of the largest cities and counties in the United States. The population of Chicago, Los Angeles, New

York City, and Philadelphia alone is well over 16.6 million.¹ Well over five million residents of these cities are immigrants, from more than 150 countries.² These cities account for almost one-fifth of the country's gross domestic product.³ They also operate or are served by large international airports. More than 400 international flights arrive daily in Chicago and Los Angeles alone, bringing more than 60,000 passengers.⁴

2. On January 27, 2017, President Trump issued Executive Order 13769. The ensuing chaos at U.S. airports was immediate and widespread.⁵ In litigation initiated across the country, several courts

¹ U.S. Census Bureau, 2011-2015 American Community Survey 5-Year Estimates.

² *Id.*

³ <https://www.theatlantic.com/business/archive/2015/07/us-cities-immigrants-economy/398987/> (New York, Los Angeles, Houston, and Chicago are 1/5 GDP).

⁴ [http://www.flychicago.com/SiteCollectionDocuments/OHare/AboutUs/Facts and Figures/Air Traffic Data/1216 ORD SUMMARY.pdf](http://www.flychicago.com/SiteCollectionDocuments/OHare/AboutUs/Facts%20and%20Figures/Air%20Traffic%20Data/1216%20ORD%20SUMMARY.pdf) (Chicago); LAX officials.

⁵ United States Senators John McCain and Lindsey Graham issued a statement two days after the Executive Order was issued complaining about the “confusion at our airports” caused by the order and expressing concern that it was implemented “with little to no consultation with the Departments of State, Defense, Justice, and Homeland Security.” (cont.)

promptly found a likelihood of success on a variety of constitutional challenges to the order. *E.g.*, *Darweesh v. Trump*, 2017 WL 388504, *1 (E.D.N.Y. Jan. 28, 2017) (due process and equal protection claims); *Louhghalam v. Trump*, 2017 WL 386550, *1 (D. Mass. Jan. 29, 2017) (same); *Vayeghan v. Kelly*, 2017 WL 396531, *1 (C.D. Cal. Jan. 29, 2017) (Establishment Clause, Immigration and Nationality Act, equal protection claims); *Mohammed v. United States*, 2017 WL 438750, *1 (C.D. Cal. Jan. 31, 2017) (finding likelihood of success on the merits). Lawsuits brought in Washington and Virginia ultimately led district courts in those States to issue preliminary injunctions. *Washington v. Trump*, 2017 WL 462040, **2-3 (W.D. Wa. Feb. 3, 2017); *Aziz v. Trump*, 2017 WL 580855, **7-9 (E.D. Va. Feb. 13, 2017).

3. The federal government appealed the injunction in *Washington* to the Ninth Circuit and sought a stay of the injunction pending appeal, which the Ninth Circuit denied, finding a likelihood of success on plaintiffs' Due Process Clause claim. *Washington v. Trump*, 847 F.3d 1151 (9th Cir. 2017). After the Ninth Circuit denied the stay motion, the federal government, rather than continue to litigate the

(. . . cont.) <https://www.mccain.senate.gov/public/index.cfm/press-releases?ID=587F2A2D-8A47-48F7-9045-CF30F0A77889>.

validity of the original order, announced its intention to issue a revised executive order. On March 6, 2017, President Trump issued Executive Order 13780 (“Executive Order” or “Order”). This superficially revised version was enjoined by two courts, including the court below, before its effective date of March 16, 2017. *Hawaii v. Trump*, 2017 WL 1011673 (D. Haw. Mar. 15, 2017); *Hawaii v. Trump*, 2017 WL 1167383 (D. Haw. Mar. 29, 2017); *International Refugee Assistance Project v. Trump*, 2017 WL 1018235 (D. Md. Mar. 16, 2017). Thus, the status quo since January 28, 2017 has been that the Order’s immigration and travel restrictions based on religion and national origin have not been in place.

4. *Amici* urge the court to deny the motion to stay the preliminary injunction pending appeal. The Executive Order is unconstitutional and misguided, and will cause irreparable harm to the *amici* and other cities and counties across the country, as we describe in the proposed *amicus* brief submitted with this motion, and set forth briefly below.

5. Like the States, cities and counties have a substantial interest in the safety and welfare of their residents. Indeed, local governments often carry the primary police power responsibilities. In

particular, *amici* have decades of experience policing diverse communities, and the federal government itself relies on local eyes and ears for its own national security efforts. In *amici*'s experience, and the federal government agrees, these community policing efforts require the cooperation of all residents.⁶ Yet ostracized, disaffected, and scared residents are reluctant to report crimes or suspicious behavior. The Executive Order thus undermines the very purpose it claims to serve.

6. Beyond that, the Executive Order's message that citizens of majority-Muslim countries threaten national security conveys that members of those communities, and other immigrant communities, are to be distrusted and feared. Thus, targeting Muslims makes these immigrant residents more vulnerable to victimization, and adds to the burden of local governments to provide protection. At the extreme, this climate gives rise to hate crimes. Since the presidential election, our country has seen a dramatic increase in hate crimes – up two to three times in Chicago, Los Angeles, New York, and Philadelphia, and indeed

⁶ *E.g.*, *Community Policing Defined*, DOJ, Office of Community Oriented Policing Services (rev. 2014), <https://ric-zai-inc.com/Publications/cops-p157-pub.pdf>.

nationwide.⁷ These adverse effects on police power functions will fall disproportionately on local governments with large populations, including *amici*.

7. The Order also directly affects *amici*, who have workers, students, tourists, and money at stake in this litigation. To take one chilling statistic, New York City now estimates 300,000 fewer tourists this year as a result of the Executive Order.⁸ In fact, travel is off nationwide.⁹ The local economies of Chicago, Los Angeles, New York, and Philadelphia bring in upwards of \$82 billion from tourism each year. In short, the Order's discrimination based on religion and national origin will significantly and irreparably undermine the safety, economic well-being, and social cohesion in our communities and across the United States.

⁷ *Update: 1,094 Bias-Related Incidents in the Month Following the Election*, <https://www.splcenter.org/hatewatch/2016/12/16/update-1094-bias-related-incidents-month-following-election>.

⁸ Patrick McGeehan, *New York Expects Fewer Foreign Tourists, Saying Trump Is to Blame*, https://www.nytimes.com/2017/02/28/nyregion/new-york-foreign-tourists-trump-policies.html?_r=0.

⁹ Shivani Vora, *After Travel Ban, Interest in Trips to U.S. Declines*, <https://www.nytimes.com/2017/02/20/travel/after-travel-ban-declining-interest-trips-to-united-states.html>.

8. By contrast, the federal government, while rushing to impose the first Executive Order, repeatedly delayed issuance of the second, and then did not promptly move this court for a stay pending appeal. Moreover, the Order does not serve national security. That purpose is pretextual, and the Order's classifications are overinclusive and underinclusive for any national security purpose. The balance of harms tips decidedly against a stay.

9. *Amici* are confident that this court will proceed as expeditiously as possible to decide the merits of this case. In the interim, the injunction entered by the district court should remain in effect. On-again, off-again immigration and travel restrictions pose many of the same harms as ultimately upholding the Order, and do so now, some on a permanent basis, regardless of the ultimate result.

10. The parties have given their consent to this motion for leave to file a brief *amicus curiae*.¹⁰

¹⁰ Pursuant to Fed. R. App. 29(a)(4)(E), *amici* state that no party's counsel authored any part of the proposed brief; no party or party's counsel contributed money toward preparing or submitting this brief; and no person other than *amici* or its counsel contributed money toward preparing or submitting the brief.

WHEREFORE, *amici* respectfully request that this court grant them leave to file their proposed *amicus* brief.

Respectfully submitted,

s/Benna Ruth Solomon

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CERTIFICATE OF SERVICE

I hereby certify that on March 31, 2017, I electronically filed the foregoing Motion for Leave to File Brief of Chicago, Los Angeles, New York, Philadelphia, and Other Major Cities and Counties as *Amici Curiae* in Support of Plaintiffs-Appellees' Opposition to Motion of Defendants-Appellants for a Stay Pending Appeal with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

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