

No. 17-1351

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

INTERNATIONAL REFUGEE ASSISTANCE PROJECT, et al.,

Plaintiffs-Appellees,

v.

DONALD J. TRUMP, President of the United States, et al.,

Defendants-Appellants.

On Appeal from the U.S. District Court
For the District of Maryland, Southern Division
8:17-cv-00361-TDC

**MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF OF FORMER
NATIONAL SECURITY OFFICIALS IN SUPPORT OF PLAINTIFFS-
APPELLEES AND AGAINST A STAY PENDING APPEAL**

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Pursuant to Federal Rule of Appellate Procedure 29(a), the proposed amici, a group of former national security officials identified below, hereby submit this Motion for Leave to File the accompanying *amicus curiae* brief in support of Plaintiffs–Appellees and affirmance.

IDENTITY AND INTEREST OF AMICI

The proposed *amici*—identified individually in the attached addendum—are former national security, foreign policy, intelligence, and other public officials who have worked on pressing national-security matters in the highest levels of U.S. government. A number of them have worked at senior levels in administrations of both political parties. They have collectively devoted decades to combatting the various terrorist threats that the United States faces in an increasingly dangerous and dynamic world. They have held the highest security clearances. A significant number were current on active intelligence regarding credible terrorist threat streams directed against the United States as recently as one week before the issuance of the original January 27, 2017, Executive Order on “Protecting the Nation from Foreign Terrorist Entry into the United States” (“January 27 Order”), and weeks before the new March 6, 2017, Executive Order bearing the same title (“March 6 Order”).

The proposed amici have an interest in ensuring that the United States protects its borders and citizens without abandoning its values or undermining its

foreign-policy and national-security interests. All agree that the United States faces real threats from terrorist networks and must take prudent and effective steps to combat these threats, including the appropriate vetting of travelers to the United States. Amici nevertheless do not believe that risk merits the blanket and counterproductive bans on entry into the United States established by the Orders, either in its original form or as revised.

THE PROPOSED AMICUS BRIEF WILL ASSIST THE COURT

The proposed amicus brief would provide helpful analysis in this case because the proposed amici possess significant foreign-policy and national-security experience, relevant to the critical issue of whether the Orders can be justified on national-security or foreign-policy grounds or will instead harm our national-security and foreign-policy interests. The proposed amici are in a unique position to weigh in on these issues given their experience working on national-security and foreign-policy matters at high levels of government and their familiarity with national-security concerns, having received intelligence briefing as recently as one week before the January 27 Order went into effect.

The proposed amicus brief raises similar concerns and arguments as those expressed by some of the amici in a joint declaration filed in support of the State of Washington's challenge to the January 27 Order. *See* 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, *State of Washington v. Trump*, No. 17-35105 (9th Cir. Feb. 6, 2017). Most of the proposed amici also filed an amicus brief in support of petitioners challenging the January 27 Order in the Eastern District of New York, expressing their view that the January 27 Order “cannot be justified on national security or foreign policy grounds” and “would undermine the security of the United States.” *See* Amicus Brief of Former National Security Officials, *Darweesh v. Trump*, No. 17-CV-480 (CBA) (E.D.N.Y. Feb. 16, 2017) (ECF No. 137).

Amici have reached the same conclusion about the March 6 Order, which presents the same core problems as its predecessor. Accordingly, amici have filed amicus briefs in support of challenges to the March 6 Order in the District of Maryland and the District of Columbia. *See* Brief of Former National Security Officials as Amici Curiae in Support of Plaintiffs, *Int’l Refugee Assistance Project v. Trump*, No. 8:17-cv-00361-TDC (D. Md. Mar. 13, 2017) (ECF No. 123-1); Brief of Former National Security Officials as Amici Curiae in Support of Plaintiffs, *PARS Equality Center v. Trump*, No. 17-255-TSC (D.D.C. Mar. 27, 2017) (ECF No. 40-1). They seek leave to present these concerns to this Court, as well.

CONCLUSION

For the reasons stated above, the proposed amici respectfully request that this Court grant them leave to file the attached *amicus* brief.

Dated March 31, 2017

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ADDENDUM: LIST OF PROPOSED *AMICI*

1. 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. She has also been a member of the Central Intelligence Agency External Advisory Board since 2009 and of the Defense Policy Board since 2011, in which capacities she has received assessments of threats facing the United States.

2. John R. Allen served as Special Presidential Envoy for the Global Coalition to Counter ISIL from 2014 to 2015. Previously, he served as Commander of the International Security Assistance Force and U.S. Forces Afghanistan.

3. Jeremy Bash served as Chief of Staff at the U.S. Department of Defense from 2011 to 2013, and as Chief of Staff at the Central Intelligence Agency from 2009 to 2011.

4. Rand Beers served as Deputy Homeland Security Advisor to the President of the United States from 2014 to 2015.

5. Daniel Benjamin served as Ambassador-at-Large for Counterterrorism at the U.S. State Department from 2009 to 2012.

6. Antony Blinken served as Deputy Secretary of State from 2015 to January 20, 2017. He also served as Deputy National Security Advisor to the President of the United States from 2013 to 2015.

7. R. Nicholas Burns served as Under Secretary of State for Political Affairs from 2005 to 2008. He previously served as U.S. Ambassador to NATO and as U.S. Ambassador to Greece.

8. William J. Burns served as Deputy Secretary of State from 2011 to 2014. He previously served as Under Secretary of State for Political Affairs from 2008 to 2011, as U.S. Ambassador to Russia from 2005 to 2008, as Assistant Secretary of State for Near Eastern Affairs from 2001 to 2005, and as U.S. Ambassador to Jordan from 1998 to 2001.

9. James Clapper served as U.S. Director of National Intelligence from 2010 to January 20, 2017.

10. David S. Cohen served as Under Secretary of the Treasury for Terrorism and Financial Intelligence from 2011 to 2015 and as Deputy Director of the Central Intelligence Agency from 2015 to January 20, 2017.

11. Eliot A. Cohen served as Counselor of the U.S. Department of State from 2007 to 2009.

12. Ryan Crocker served as U.S. Ambassador to Afghanistan from 2011 to 2012, U.S. Ambassador to Iraq from 2007 to 2009, U.S. Ambassador to Pakistan from 2004 to 2007, U.S. Ambassador to Syria from 1998 to 2001, U.S. Ambassador to Kuwait from 1994 to 1997, and U.S. Ambassador to Lebanon from 1990 to 1993.

13. Daniel Feldman served as U.S. Special Representative for Afghanistan and Pakistan from 2014 to 2015, Deputy U.S. Special Representative for Afghanistan and Pakistan from 2009 to 2014, and previously Director for Multilateral and Humanitarian Affairs at the National Security Council.

14. Jonathan Finer served as Chief of Staff to the Secretary of State from 2015 until January 20, 2017, and Director of the Policy Planning Staff at the U.S. State Department from 2016 until January 20, 2017.

15. Michèle Flournoy served as Under Secretary of Defense for Policy from 2009 to 2013.

16. Robert S. Ford served as U.S. Ambassador to Syria from 2011 to 2014, as Deputy Ambassador to Iraq from 2009 to 2010, and as U.S. Ambassador to Algeria from 2006 to 2008.

17. Suzy George served as Deputy Assistant to the President and Chief of Staff and Executive Secretary to the National Security Council from 2014 to 2017.

18. Phil Gordon served as Special Assistant to the President and White House Coordinator for the Middle East, North Africa and the Gulf from 2013 to 2015, and Assistant Secretary of State for European and Eurasian Affairs from 2009 to 2013.

19. Avril D. Haines served as Deputy National Security Advisor to the President of the United States from 2015 to January 20, 2017. From 2013 to 2015, she served as Deputy Director of the Central Intelligence Agency.

20. General (ret.) Michael V. Hayden, USAF, served as Director of the Central Intelligence Agency from 2006 to 2009. From 1995 to 2005, he served as Director of the National Security Agency.

21. Christopher R. Hill served as Assistant Secretary of State for East Asian and Pacific Affairs from 2005 to 2009. He also served as U.S. Ambassador to Macedonia, Poland, the Republic of Korea, and Iraq.

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

23. Prem Kumar served as Senior Director for the Middle East and North Africa on the National Security Council staff of the White House from 2013 to 2015.

24. Marcel Lettre served as Under Secretary of Defense for Intelligence from 2015 to 2017.

25. Sen. Richard Lugar served as U.S. Senator from Indiana from 1977 to 2013, and as Chairman of the Senate Committee on Foreign Relations from 1985 to 1987 and 2003 to 2007, and as ranking member of the Senate Committee on Foreign Relations from 2007 to 2013.

26. John E. McLaughlin served as Deputy Director of the Central Intelligence Agency from 2000 to 2004 and as Acting Director in 2004. His duties included briefing President-elect Bill Clinton and President George W. Bush.

27. 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.

28. Janet A. Napolitano served as Secretary of Homeland Security from 2009 to 2013.

29. James C. O'Brien served as Special Presidential Envoy for Hostage Affairs from 2015 to January 20, 2017. He served in the State Department from

1989 to 2001, including as Principal Deputy Director of Policy Planning and as Special Presidential Envoy for the Balkans.

30. Matthew G. Olsen served as Director of the National Counterterrorism Center from 2011 to 2014.

31. Leon E. Panetta served as Secretary of Defense from 2011 to 2013. From 2009 to 2011, he served as Director of the Central Intelligence Agency.

32. Jeffrey Prescott served as Special Assistant to the President and Senior Director for Iran, Iraq, Syria and the Gulf States from 2015 to 2017.

33. Samantha J. Power served as U.S. Permanent Representative to the United Nations from 2013 to January 20, 2017. From 2009 to 2013, she served as Senior Director for Multilateral and Human Rights on the National Security Council.

34. Susan E. Rice served as U.S. Permanent Representative to the United Nations from 2009 to 2013 and as National Security Advisor from 2013 to January 20, 2017.

35. Anne C. Richard served as Assistant Secretary of State for Population, Refugees and Migration from 2012 to January 20, 2017.

36. Eric P. Schwartz served as Assistant Secretary of State for Population, Refugees and Migration from 2009 to 2011. From 1993 to 2001, he was responsible for refugee and humanitarian issues on the National Security Council, ultimately serving as Special Assistant to the President for National Security Affairs and Senior Director for Multilateral and Humanitarian Affairs.

37. Wendy R. Sherman served as Under Secretary of State for Political Affairs from 2011 to 2015.

38. Vikram Singh served as Deputy Special Representative for Afghanistan and Pakistan from 2010 to 2011 and as Deputy Assistant Secretary of Defense for Southeast Asia from 2012 to 2014.

39. James B. Steinberg served as Deputy National Security Adviser from 1996 to 2000 and as Deputy Secretary of State from 2009 to 2011.

40. Jake Sullivan served as National Security Adviser to the Vice President from 2013 to 2014. From 2011 to 2013, he served as Director of the Policy Planning Staff at the U.S. State Department.

41. William Wechsler served as Deputy Assistant Secretary for Special Operations and Combating Terrorism at the U.S. Department of Defense from 2012 to 2015.

42. Samuel M. Witten served as Principal Deputy Assistant Secretary of State for Population, Refugees, and Migration from 2007 to 2010. From 2001 to 2007, he served as Deputy Legal Adviser at the State Department.

CERTIFICATE OF SERVICE

I hereby certify that on March 31, 2017, I electronically filed the foregoing with the Clerk of the court for the United States Court of Appeals for the Ninth Circuit using the appellate CM/ECF system.

I certify that I am a registered CM/ECF user and that all parties have registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated March 31, 2017

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