

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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INTERNATIONAL REFUGEE ASSISTANCE PROJECT, *et al.*

*Plaintiffs-Appellees,*

v.

DONALD J. TRUMP, *et al.*,

*Defendants-Appellants.*

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On Motion for a Stay Pending Appeal of a Preliminary Injunction Issued  
by the United States District Court for the District of Maryland  
Case No. 8:17-cv-00361-TDC, Hon. Theodore D. Chuang

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**MOTION FOR LEAVE TO FILE BRIEF OF AMERICANS UNITED FOR  
SEPARATION OF CHURCH AND STATE, BEND THE ARC,  
AND THE SOUTHERN POVERTY LAW CENTER AS *AMICI CURIAE*  
SUPPORTING APPELLEES AND DENIAL OF A STAY**

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## INTRODUCTION

Currently before the Court is Defendants' motion for a stay of the preliminary injunction issued by the United States District Court for the District of Maryland (Chuang, J.) on March 16, 2017, halting enforcement of President Trump's latest Executive Order banning entry to the United States by refugees and by immigrants from predominantly Muslim countries. *See* Exec. Order No. 13,780, 82 Fed. Reg. 13,209 (Mar. 6, 2017). Americans United for Separation of Church and State, Bend the Arc, and the Southern Poverty Law Center respectfully request leave to file the accompanying proposed *amicus* brief in support of Plaintiffs and against issuance of the requested stay.

### IDENTITY AND INTEREST OF THE *AMICI CURIAE*

a. Americans United for Separation of Church and State is a national, nonsectarian public-interest organization that represents more than 125,000 members and supporters across the country. Its mission is to advance the free-exercise rights of individuals and religious communities to worship as they see fit and to preserve the separation of church and state as a vital component of democratic government. Americans United has long defended the fundamental rights of religious minorities in the United States by bringing and participating in legal challenges to governmental action that singles out particular religions for favor or disfavor. *See, e.g., Ziglar v.*

*Abbasi*, 2016 WL 7473962 (U.S. 2016) (supporting Muslim petitioners who had overstayed their visas and were detained and tortured after the terror attacks of September 11, 2001, before being released as innocent of any connection to terrorism); *Hassan v. City of New York*, 2014 WL 3572027 (3d Cir. 2015) (supporting challenge to New York City Police Department's surveillance of Muslim communities); *Awad v. Ziriax*, 2011 WL 2118216 (10th Cir. 2012) (supporting challenge to Oklahoma law that singled out Islam for official disfavor).

b. Bend the Arc is the nation's leading progressive Jewish voice empowering Jewish Americans to be advocates for the nation's most vulnerable. Bend the Arc mobilizes Jewish Americans beyond religious and institutional boundaries to create justice and opportunity for all, through bold leadership development, innovative civic engagement, and robust progressive advocacy.

c. The Southern Poverty Law Center has provided *pro bono* civil-rights representation to low-income persons in the Southeast since 1971, with particular focus on seeking justice for the most vulnerable people in society. SPLC has litigated numerous cases to enforce the civil rights of immigrants and refugees, to ensure that they are treated with dignity and fairness. SPLC monitors and exposes extremists who attack or malign groups of people based on their immutable characteristics. SPLC is

dedicated to reducing prejudice and improving intergroup relations. SPLC has a strong interest in opposing governmental action premised on unlawful discrimination that undermines the promise of civil rights for all.

### **REASONS WHY THE MOTION SHOULD BE GRANTED**

1. The issues in this case have important ramifications for persons living across the United States and around the world. If the Executive Order is allowed to go into effect, family members who currently find themselves living in different countries will be estranged. Students and professors in the United States will be prevented from traveling abroad for research and academic conferences. And people fleeing violence in war-torn countries will be trapped in life-threatening circumstances. Religion (albeit couched in the language of national origin) will determine whether potentially hundreds of thousands of people have access to the opportunities of life and travel within the United States.

2. What is more, the Muslims targeted by the Executive Order will not be the only people affected by the order's implementation. The seismic shift in this Nation's treatment of a religious minority will be felt by families, neighborhoods, houses of worship, local businesses, and other institutions. All will suffer the loss of valued employees, customers, relatives, and members of the community.

3. The hardships in this country and around the world that will be caused by official discrimination against a disfavored religious group highlight the importance of correctly analyzing and deciding questions of religious-freedom rights—legal issues that *amici* are uniquely positioned to assist this Court in assessing. The proposed *amicus* brief explains why the Establishment Clause of the First Amendment to the U.S. Constitution bars enforcement of the challenged Executive Order, and hence why Plaintiffs are likely to succeed on the merits and why the preliminary injunction should remain in effect. As the proposed brief explains, the government is forbidden to endorse or disfavor one religion as compared with others. Yet that is precisely what the Executive Order does.

4. *Amici* Americans United and SPLC filed briefs addressing these Establishment Clause issues in the challenges to the precursor Executive Order on immigration brought in the Western District of Washington (Brief of *Amicus Curiae* Americans United for Separation of Church and State, *Washington v. Trump*, No. 2:17-cv-141, 2017 WL 462040 (W.D. Wash. Feb. 3, 2017)) and appealed to the Ninth Circuit (Brief of *Amici Curiae* Americans United for Separation of Church and State and Southern Poverty Law Center, *Washington v. Trump*, No. 17-35105, 847 F.3d 1151 (9th Cir. 2017)); in the challenge brought in the Eastern District of Virginia (Brief of *Amici Curiae* Americans United for Separation of Church and State

and Southern Poverty Law Center, *Aziz v. Trump*, No. 1:17-cv-116, 2017 WL 580855 (E.D. Va. Feb. 13, 2017)); and in the challenge brought in the U.S. District Court for the District of Columbia (Brief of *Amici Curiae* Americans United for Separation of Church and State and Southern Poverty Law Center, *Pars Equality Ctr. v. Trump*, No. 1:17-cv-255 (D.D.C. Mar. 1, 2017)). And since issuance of the replacement Executive Order that is the subject of the current suit, *amici* filed a brief addressing Establishment Clause issues in a challenge to this new governmental action in the District of Hawaii. Brief of *Amici Curiae* Americans United for Separation of Church and State and Southern Poverty Law Center, *Hawai'i v. Trump*, No. 17-cv-00050, 2017 WL 1011673 (D. Haw. Mar. 15, 2017).

5. The parties have consented to this motion and to the filing of the accompanying *amicus* brief.

6. *Amici* waive hearing and oral argument on this motion.

### CONCLUSION

The Court should grant the request to file the proposed *amicus* brief and order the Clerk to accept the accompanying brief for filing.

Respectfully submitted,

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Date: March 31, 2017

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## **CERTIFICATE OF SERVICE**

I certify that on March 31, 2017, the foregoing motion and accompanying proposed brief were filed using the Court's CM/ECF system. All participants in the case are registered CM/ECF users and will be served electronically via that system.

/s/ Richard B. Katskee  
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