

No. 17-1351

**IN THE U.S. COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

INTERNATIONAL REFUGEE ASSISTANCE PROJECT, a project of the Urban Justice Center, Inc., on behalf of itself; HIAS, INC., on behalf of itself and its clients; MIDDLE EAST STUDIES ASSOCIATION OF NORTH AMERICA, INC., on behalf of itself and its members; MUHAMMED METEAB; PAUL HARRISON; IBRAHIM AHMED MOHOMED; JOHN DOES #1 & 3; JANE DOE #2,
Plaintiffs – Appellees,

v.

DONALD J. TRUMP, in his official capacity as President of the U.S.; DEPARTMENT OF HOMELAND SECURITY; DEPARTMENT OF STATE; OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE; JOHN F. KELLY, in his official capacity as Secretary of Homeland Security; REX W. TILLERSON, in his official capacity as Secretary of State; DANIEL R. COATS, in his official capacity as Director of National Intelligence,
Defendants – Appellants.

On Appeal from the U.S. District Court
for the District of Maryland (8:17-cv-00361-TDC)

**MOTION FOR LEAVE TO FILE AMICUS BRIEF OF
THE AMERICAN-ARAB ANTI-DISCRIMINATION COMMITTEE
IN OPPOSITION TO THE APPELLANTS
MOTION TO STAY PENDING EXPEDITED TRIAL**

YOLANDA C. RONDON , ESQ.
STAFF ATTORNEY
AMERICAN-ARAB
ANTI-DISCRIMINATION COMMITTEE
1705 DeSales Street NW, Suite 500
Washington, DC 20036
Telephone: (202) 244-2990
Facsimile: (202) 333-6470
Email: yrondon@adc.org
Counsel of Record

INTRODUCTION

Pursuant to Rule 29(b) of the Federal Rules of Appellate Procedure, the American-Arab Anti-Discrimination Committee requests leave to file the accompanying *amicus curiae* brief in support of Appellee International Refugee Assistance Program. ADC, *amici curiae*, received consent of all parties prior to filing the Motion for Leave to File and the amicus brief. *Amici curiae* also seek leave to file *amicus curiae* brief in *International Refugee Assistance Program v. Trump*, and with this motion respectfully request that leave be granted.

IDENTITY AND INTEREST OF *AMICUS CURIAE*

As set forth in the *amicus curiae* brief, the American-Arab Anti-Discrimination Committee (“ADC”) is a nonprofit grassroots civil rights organization that seeks to preserve and defend the rights of those whose Constitutional and federal rights are violated. Founded in 1980 by U.S. Senator James Abourezk, ADC is non-sectarian and non-partisan, with members from all 50 states and chapters nationwide. ADC has protected the Arab-American and Arab immigrant community against discrimination, racism, and stereotyping. ADC vigorously advocates on behalf of immigrant rights and civil rights for all.

ADC’s interest in this Case arises from the infringement on the Appellees Constitutional rights by the Appellant, included but not limited to fundamental rights to Due Process and Equal Protection under the Fourteenth Amendment, and

religious freedom, motivated by anti-Arab and/or anti-Muslim animus. ADC worked with thousands of individuals from across the world directly impacted by the Executive Order travel bans. The rights of ADC's constituents will be fundamentally affected by the Court's determination on the Appellants' Motion to Stay the Temporary Restraining Order ("TRO").

**ADC'S BRIEF WILL ASSIST THE COURT
AND IS RELEVANT TO THE DISPOSITION OF THE CASE**

Executive Order 13780 ("EO") imposes substantial, irreparable harm on the Plaintiffs and similarly situated individuals, the U.S., and the public, that outweighs a motion for stay. The nationwide Temporary Restraining Order ("TRO") is proper because Plaintiffs are likely to prevail on the merits that the EO is unconstitutional and removal of the TRO will cause substantial harm.

The purpose of this *Amicus* is to articulate the substantial harm that will be caused by the removal of the TRO and impact of the EO on families, refugees, students and professionals. The *amicus* describes a few accounts from nationals of the six designated countries subject to the EO.¹ ADC also offers this *amicus* brief to explain how the case-by-case waivers and exemptions provided under the EO is insufficient and/or inadequate to prevent substantial harm from lifting of the TRO. This *amicus* brief demonstrates the need for this Court to keep the TRO and the

¹ ADC AND PENN STATE LAW, SUMMARY OF THE EXECUTIVE ORDER, REFUGEE/MUSLIM BAN 2.0 (2017), https://pennstatelaw.psu.edu/sites/default/files/MuslimBan2%200ADCPSU_Final_0.pdf. ADC documented intakes conducted by ADC Attorneys, volunteer attorneys, and volunteers supervised by attorneys from January 27, 2017 through March 16, 2017.

impact on individuals solely based on their national origin and religion. Both of these issues are relevant and central to the disposition of this case.

ADC's brief will help the Court by providing unique information or perspective that can help the court. ADC as a membership based national organization with chapters' nationwide, its members and the community it serves will experience harm depending on the Court's decision. ADC offers this brief to share its experience and knowledge, and to ensure that the Court is able to consider the potential ramifications of its decision beyond the parties directly involved and nationwide. Furthermore, ADC's brief will help the Court by assisting in a case of general public interest.

CONCLUSION

For the reasons stated herein, *amici* respectfully request that the Motion for Leave to File the Attached Amicus Brief be granted.

Date: March 31, 2017

/s/ Yolanda C. Rondon

YOLANDA C. RONDON
Staff Attorney
AMERICAN-ARAB
ANTI-DISCRIMINATION
COMMITTEE

Attorney for *Amici Curiae*

CERTIFICATE OF COMPLIANCE

I, Yolanda C. Rondon, counsel for *amici* herein, certify that the *Amicus* **brief in Support of the Appellees by the American-Arab Anti-Discrimination Committee**, uses a proportionally spaced Times New Roman typeface of 14 points or more and text is comprised of 600 words.

Date: March 31, 2017

/s/ Yolanda C. Rondon

YOLANDA C. RONDON
Staff Attorney
AMERICAN-ARAB
ANTI-DISCRIMINATION
COMMITTEE

Attorney for *Amici Curiae*

CERTIFICATE OF SERVICE

I, Yolanda C. Rondon, hereby certify that I electronically filed the following amicus brief with the Clerk of the Court for the U.S. Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system on March 31, 2017.

AMICUS BRIEF OF THE AMERICAN-ARAB ANTI-DISCRIMINATION COMMITTEE IN SUPPORT OF THE APPELLEES TO DENY APPELLANTS MOTION TO STAY TEMPORARY RESTRAINING ORDER.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Executed March 31, 2017, at Washington, District of Columbia.

/s/ Yolanda C. Rondon

YOLANDA C. RONDON
Staff Attorney
AMERICAN-ARAB
ANTI- DISCRIMINATION
COMMITTEE

Attorney for Amici Curiae

No. 17-1351

**IN THE U.S. COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

INTERNATIONAL REFUGEE ASSISTANCE PROJECT, a project of the Urban Justice Center, Inc., on behalf of itself; HIAS, INC., on behalf of itself and its clients; MIDDLE EAST STUDIES ASSOCIATION OF NORTH AMERICA, INC., on behalf of itself and its members; MUHAMMED METEAB; PAUL HARRISON; IBRAHIM AHMED MOHOMED; JOHN DOES #1 & 3; JANE DOE #2,
Plaintiffs – Appellees,

v.

DONALD J. TRUMP, in his official capacity as President of the U.S.; DEPARTMENT OF HOMELAND SECURITY; DEPARTMENT OF STATE; OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE; JOHN F. KELLY, in his official capacity as Secretary of Homeland Security; REX W. TILLERSON, in his official capacity as Secretary of State; DANIEL R. COATS, in his official capacity as Director of National Intelligence,
Defendants – Appellants.

On Appeal from the U.S. District Court
for the District of Maryland (8:17-cv-00361-TDC)

**BRIEF IN SUPPORT OF APPELLEES BY AMICI CURIAE
THE AMERICAN-ARAB ANTI-DISCRIMINATION COMMITTEE
TO DENY THE APPELLANTS
MOTION TO STAY PENDING EXPEDITED TRIAL**

YOLANDA C. RONDON , ESQ.
STAFF ATTORNEY
AMERICAN-ARAB
ANTI-DISCRIMINATION COMMITTEE
1705 DeSales Street NW, Suite 500
Washington, DC 20036
Telephone: (202) 244-2990
Facsimile: (202) 333-6470
Email: yrondon@adc.org
Counsel of Record

CORPORATE DISCLOSURE STATEMENT

The Amicus does not have a parent corporation. No publicly held company owns more than 10% of stock in the Amicus.

TABLE OF CONTENTS

	Page
CORPORATE DISCLOSURE STATEMENT.....	2
TABLE OF AUTHORITIES	4
STATEMENT, IDENTITY AND INTEREST OF AMICI CURIAE	6
ARGUMENT	8
I. REMOVAL OF THE TEMPORARY RESTRAINING ORDER WILL HAVE A SUBSTANTIAL IMPACT ON FAMILIES AND REFUGEES	8
II. REMOVAL OF THE TEMPORARY RESTRAINING ORDER WILL HAVE A SUBSTANTIAL IMPACT ON STUDENTS AND PROFESSIONALS	12
III. THE UNCERTAINTY OF THE CASE BY CASE WAIVERS AND EXEMPTIONS	15
CONCLUSION	18
CERTIFICATE OF COMPLIANCE	19
CERTIFICATE OF SERVICE	20

TABLE OF AUTHORITIES

<u>Federal Legal Authorities</u>	Page(s)
 Cases:	
<i>Chiramonte v. INS</i> , 626 F. 2d 1093, 1101 (2d Cir. 1980).....	16
<i>Flores v. INS</i> , 122 F.3d (9th Cir. 1997).....	16
<i>Int’l Refugee Assistance Project v. Trump</i> , No. 17-1351 (4th Cir. filed Mar. 24, 2017)	15
<i>Tizhe v. U.S. INS</i> , 883 F. 2d 70, n. 15 (4th Cir. 1989).....	16
 Regulations:	
Exec. Order No. 13,780 (Mar. 6, 2017), 82 Fed. Reg. 13, 209 (Mar. 9, 2017)	17
 <u>Periodicals</u>	
Jennifer Adaeze, <i>Trump Immigration Order Could Stop Medical Careers Before they Begin</i> , STAT, Jan. 29, 2017	12
Shashank Bengali, Nabih Bulos & Ramin Mostaghim, <i>Families hoping to make the U.S. their home scramble to rearrange their lives</i> , LA TIMES, Jan. 27, 2017.....	12
Collin Binkley, <i>Iranians, Engines of U.S. University Research, Wait in Limbo</i> , U.S. NEWS, Mar. 29, 2017	12, 13
Emily Dreyfuss, <i>Trump’s New Travel Ban Still Sabotages Science and Tech</i> , WIRED, (Mar. 6, 2017)	13
Felice J. Freyer, <i>Doctors from banned countries serve millions of Americans, analysis finds</i> , THE BOSTON GLOBE, (Mar. 6, 2017)	13

Periodicals

Page(s)

Skye Gould & Abby Jackson, *Trump temporarily banned immigration from 7 countries — here's how many students from each attend college in the US*, BUSINESS INSIDER, (Feb. 6, 2017) 13

Erol Kekic, *Homeland Security Chief John Kelly Says Waiting 120 Days Won't Hurt Refugees. He's Wrong*, TIME, (Feb. 10, 2017) 11

Yeganeh Torbati, *Homeland Security Department suspends refugee resettlement interviews*, REUTERS, (Jan. 26, 2017) 11

Other References

Legal Policy:

ADC AND PENN STATE LAW, SUMMARY OF THE EXECUTIVE ORDER, REFUGEE/MUSLIM BAN 2.0 (2017) 7

REFUGEE RIGHTS DATA PROJECT, LIFE IN LIMBO 11

REFUGEE RIGHTS DATA PROJECT, UNSAFE BORDERLANDS 11

SHOBA S. WADHIA, PENN STATE LAW, UNTANGLING THE WAIVER SCHEME IN PROTECTING THE NATION FROM FOREIGN TERRORIST ENTRY INTO THE UNITED STATES (2017) 16

Administrative:

U.S. Dep't. of Homeland Security, Q&A: Protecting the Nation From Foreign Terrorist Entry To The United States 15

U.S. Citizenship & Immigration Services, Policy Manual, Vol. 9, Part. B, Ch. 2 (current as Jan. 5, 2017) 16

STATEMENT, IDENTITY AND INTEREST OF *AMICUS CURIAE*¹

The American-Arab Anti-Discrimination Committee (“ADC”) is a nonprofit grassroots civil rights organization that seeks to preserve and defend the rights of those whose Constitutional and federal rights are violated. Founded in 1980 by U.S. Senator James Abourezk, ADC is non-sectarian and non-partisan, with members from all fifty states and chapters nationwide. ADC protects the Arab-American and Arab immigrant community against discrimination, racism, and stereotyping. ADC vigorously advocates on behalf of immigrant rights and civil rights for all.

ADC’s interest in this Case arises from the infringement on the Appellees Constitutional rights by the Appellant, included but not limited to fundamental rights to Due Process and Equal Protection under the Fourteenth Amendment, and religious freedom, motivated by anti-Arab and/or anti-Muslim animus. ADC worked with thousands of individuals from across the world directly impacted by the Executive Order travel bans. The rights of ADC’s constituents will be fundamentally affected by the Court’s determination on the Appellants’ Motion to Stay the Temporary Restraining Order (“TRO”).

¹ The parties have consented to the filing of this brief pursuant to Rule 29(a)(2) and amici curiae file this brief pursuant to that authority. No counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than the amici curiae or their counsel made a monetary contribution to its preparation or submission of this brief.

Executive Order 13780 (“EO”) imposes substantial, irreparable harm on the Appellees and similarly situated individuals, the U.S., and the public, that outweighs a motion for stay. The nationwide injunction is proper because Appellees are likely to prevail on the merits that the EO is unconstitutional.

The EO alters the lives of thousands of individuals and continues to disrupt the legal order and protections of these individuals. The EO has an adverse impact on families, students, and poor nationals from the designated countries. A majority of those impacted have invested months to years of their life and money that they cannot get back. A majority have used their limited resources to apply for a visa to come to the U.S., only to be denied solely based on their national origin and/or religion.

The purpose of this *Amicus* is to articulate the substantial harm that will be caused by the removal of the TRO and impact of the EO on families, refugees, students and professionals. This *amicus* describes a few accounts from individuals who were affected by the EO.² These individuals’ lives hang in the balance and immediate future will be determined by the Court’s decision.

² ADC AND PENN STATE LAW, SUMMARY OF THE EXECUTIVE ORDER, REFUGEE/MUSLIM BAN 2.0 (2017), https://pennstatelaw.psu.edu/sites/default/files/MuslimBan2%20ADCPSU_Final_0.pdf. ADC documented intakes conducted by ADC Attorneys, volunteer attorneys, and volunteers supervised by attorneys from January 27, 2017 through March 16, 2017.

ARGUMENT

I. REMOVAL OF THE TEMPORARY RESTRAINING ORDER WILL HAVE A SUBSTANTIAL IMPACT ON FAMILIES AND REFUGEES.

Mothers and fathers, daughters and sons will be directly impacted and continue to suffer if the Court grants Appellant's Motion for Stay and allows the EO to go into effect. K.S. is a legal permanent resident, but his wife is not. His wife is Iranian. K.S. has applied for green card for her, but processing can take up to five years. A practical aspect and reality of the immigration system, is that spouses of green card holders can only see their husband or wife and their children, in six-month increments under a B-2 tourist visa. K.S.'s wife came to see him in November 2016, but her six month allotment and visa expired in March 2017. K.S.'s wife requested a visa extension but was denied. Under the EO, K.S.'s application for a B-2 visa and/or V-visa will probably be denied because his wife is Iranian. K.S. life is in limbo, he does not know when he will see his wife again.

On January 30, 2017, S.K. was denied entry into the U.S. even though she had a valid K-1 visa because she is a national of Sudan. Not only was S.K. denied entry, S.K. was interrogated and sequestered for hours by Customs and Border Patrol ("CBP") at Dulles Airport based solely on her national origin. CBP stamped "Cancel" on S.K.'s visa and deported her to Ethiopia, where her passport was

confiscated. She was held at the Ethiopian airport until she could come up with the money to pay for the plane ticket for her own removal. S.K. was coming to the U.S. to marry her fiancé O.N. whom lives in Colorado. They had saved up thousands of dollars for them to be able to afford the visa application costs and a plane ticket. Per the Administration's directive, reinstating all cancelled visas, S.K. attempted to travel on her K-1 visa. However, she was not allowed to purchase a ticket or board a plane. S.K. attempted to have her K-1 visa reissued by the consulate and/or receive a waiver, but was informed that she would have to reapply for the K-1 visa, submit the fees and go through the process again. Under the EO, S.K.'s K-1 visa application will be denied because she is Sudanese.

S.A. is a legal permanent resident living in New York. S.A. is a national of Yemen. Her family is currently living in Egypt. Based on their national origin as Yemeni, her families' visa interviews were cancelled because the EO prohibits visa issuance to Yemeni nationals outside the U.S. Their visa applications are effectively denied in actual practice under the EO, because they are denied the required visa interview for an indefinite period, which they are otherwise qualify but for their identity. The delay of a few months now can add months to years for processing their actual visa, costing them significant harm, both psychologically and financially due to extensive family separation.

E.M is a U.S. citizen living in the District of Columbia. Her fiancé is Syrian. His K-1 visa interview scheduled for February 2017 at the U.S. consulate in Turkey was cancelled. Under the EO, a K-1 visa will not be issued to E.M.'s fiancé and she will not be able to marry the man that she loves. A.S. is in a similar situation, a Syrian national, whose interview for a green card at the consulate in Turkey was cancelled. The interview is required for the i551 issuance and the i551 has to be stamped for the visa to actually be executed. Thus, A.S. is also subject to the EO and will be denied a visa.

The EO's institution of a 120-day ban on the entry of refugees, which can be extended, unequivocally subjects persons to immediate direct harm, if the TRO were removed. As declared by the U.N. High Commissioner for Refugees, we are living during a period which is the world's largest international refugee and humanitarian crisis.³ To shut down refugee admission to the U.S. for any period of time will inevitably cause suffering.

Within hours of the EO signed on January 27, 2017 ("First EO"), the Department of Homeland Security suspended refugee resettlement interviews

³ As of 2016 there are nearly 60 million displaced people in the world, 20 million of whom are registered refugees and have fled their countries. Out of the 20 million refugees, there are nearly 5 million Syrian refugees. Almost 1 million are Somalia refugees. There are over 500,000 Sudanese refugees, and nearly 500,000 Iraqi refugees. *See* UNHCR, Figures at a Glance, Global Trends 2015, Statistical Yearbook, <http://www.unhcr.org/en-us/figures-at-a-glance.html>.

abroad.⁴ Since each part of the refugee screening process has narrow validity period, refugees only have about a two-month travel window during which all their security checks are completed. Thus, all refugees approved when the suspension begins will see at least one of their checks expire. During the time that it takes to repeat that check and reprocess an interview date, another check could expire, creating a domino effect of expiring validity periods.⁵ The EO's 120-day refugee ban places these same individuals, who are fleeing persecution and violence based on their identity, religion and national origin, in danger. Refugees are one of the most vulnerable populations to violence, abuse, rape, kidnapping, sex and human trafficking.⁶ Many of them are forced back to the country that persecuted them, while they wait for resettlement. This is contrary to the purpose of *non-refoulement*.

K.N. is a legal permanent resident, who was granted asylum. K.N. is also a mother of two children, who she filed I-730 Refugee/Asylee Relative Petition over two years ago. In December 2014, the petitions were approved and submitted to the U.S. Embassy in Yemen. Their applications were lost and processing did not begin until October 2016. In November 2016, K.N.'s children completed their

⁴ Yeganeh Torbati, *Homeland Security Department suspends refugee resettlement interviews*, REUTERS, Jan. 26, 2017, <http://www.businessinsider.com/homeland-security-department-suspends-refugee-resettlement-interviews-2017-1>.

⁵ Erol Kekic, *Homeland Security Chief John Kelly Says Waiting 120 Days Won't Hurt Refugees. He's Wrong*, TIME, Feb. 10, 2017, <http://time.com/4666828/refugees-john-kelly-president-trump/>.

⁶ See REFUGEE RIGHTS DATA PROJECT, LIFE IN LIMBO, http://refugeerights.org.uk/wp-content/uploads/2017/03/RRDP_LifeInLimbo.pdf; REFUGEE RIGHTS DATA PROJECT, UNSAFE BORDERLANDS, http://refugeerights.org.uk/wp-content/uploads/2016/06/RRDP_UnsafeBorderlands.pdf.
BRIEF OF AMICI CURIAE

interviews in Djibouti, but their applications are still in administrative processing. Her children have not been issued a visa. If the TRO is lifted, K.N.'s children will probably be denied a visa because they are Yemeni. K.N. has not seen her children in seven years, and her children are alone in Djibouti without their mother and no family in a foreign country. The psychological impact and risk of physical harm to K.N.'s children is unfathomable.

II. REMOVAL OF THE TEMPORARY RESTRAINING ORDER ON THE EXECUTIVE ORDER WILL HAVE A SUBSTANTIAL IMPACT ON STUDENTS AND PROFESSIONALS.

Individuals from the six countries who are currently in the U.S. on student and work visas face an articulable uncertainty. Students, research scholars, and experts in vital fields are subject to the EO, and represent one of the largest populations directly and immediately impacted without the TRO.⁷ Students accepted into universities will have their acceptances revoked and their visas not issued.⁸ Students on F-1 visas that expire before the end of the EO's suspension might not be able to renew or extend their visa for studies. They risk being denied

⁷ Jennifer Adaeze, *Trump Immigration Order Could Stop Medical Careers Before they Begin*, STAT, Jan. 29, 2017, <https://www.statnews.com/2017/01/29/trump-immigration-medical-careers/>.

⁸ "At a major teaching hospital in Ohio, one official said he had sent instructions to administrators telling them to cancel offers of residency to medical students from some countries. 'We are literally going to look at 'Country of origin' and remove the applicant based on [that].'" Shashank Bengali, Nabih Bulos and Ramin Mostaghim, Families hoping to make the U.S. their home scramble to rearrange their lives, LA TIMES, Jan. 27, 2017, http://www.latimes.com/world/la-fg-refugees-order-reaction-20170127-story.html?utm_source=dlvr.it&utm_medium=twitter; see also Collin Binkley, *Iranians, Engines of U.S. University Research*, Wait in Limbo, U.S. NEWS, Mar. 29, 2017, <https://apnews.com/ecc587ee721c4f73814660d1a269a4f6/Iranians,-engines-of-US-university-research,-wait-in-limbo>.

re-entry into the U.S. from a visit home. Thousands of students would not be subject to disparate treatment but for their nationality.⁹ Universities also face economic harm and logistical hardship due to the travel ban because they depend on access to boundary-less talent, intelligence, and research.¹⁰

Skilled workers on various types of visas and companies will be harmed. Companies have expressed the irreparable harm the EO will cause on the science and technology sector and U.S. consumers.¹¹ Engineers and scientists who contribute to research and support the U.S. position as the leader in the information and tech industry are impacted by the ban. Doctors and neurologists who save lives and contribute to our medical system are impacted by the ban. “The U.S. physician workforce includes more than 7,000 doctors who attended medical school in Iran, Libya, Somalia, Sudan, Syria, and Yemen” are subject to the ban.¹² Their investment into their education, career, and livelihood will be lost because of their country of national origin.

⁹ “If the ban stays in place, these students could be impacted. Some experts warn that the effect on foreign enrollment in US schools could be far greater than just adjusting for the seven banned countries.” Skye Gould & Abby Jackson, *Trump temporarily banned immigration from 7 countries — here's how many students from each attend college in the US*, BUSINESS INSIDER, Feb. 6, 2017, <http://www.businessinsider.com/trump-travel-ban-foreign-students-2017-2>.

¹⁰ See Binkley *supra* note 7.

¹¹ Emily Dreyfuss, *Trump's New Travel Ban Still Sabotages Science and Tech*, WIRED Mar. 6, 2017, <https://www.wired.com/2017/03/trumps-new-travel-ban-still-sabotages-science-tech/>.

¹² Felice J. Freyer, *Doctors from banned countries serve millions of Americans, analysis finds*, THE BOSTON GLOBE Mar. 6, 2017, <https://www.bostonglobe.com/metro/2017/03/06/doctors-from-banned-countries-serve-millions-americans-analysis-finds/wqvN01IEORXh6ZduHydQrL/story.html>.

In December 2016, M.S. was accepted into the University of Pittsburgh and is supposed to begin classes for the 2017 summer semester on May 8, 2017. M.S. is a national of Iran. In December 2016, M.S. applied to change her status from B-2 prospective student visitor visa to an F-1 student visa. As of March 2017, M.S. has yet to receive a decision on her F-1 visa application. If the Court fails to keep the TRO in place, M.S.'s application for her F-1 visa may automatically be denied because she is Iranian.

In July 2016, Virginia Commonwealth University accepted S.M. as a J-1 research scholar to continue research on credit risk assessment using data mining techniques with the School of Business. S.M. is a software engineer, programmer and analyst. S.M. is a national of Iran. On January 20, 2017, S.M. received her J-1 visa. S.M. booked a plane ticket to depart Iran to the U.S. for January 29, 2017. The airline refused to issue S.M.'s boarding pass and her ticket was cancelled due to the First EO. S.M. was prohibited from purchasing a ticket and boarding a plane. S.M. was scheduled to begin her research program at the university on January 30, 2017. However, S.M.'s DS-2019 Certificate of Eligibility, which must be presented upon entry with the J-1 visa and allows a visiting scholar to actually enter the U.S. for a limited period, expired on February 3, 2017. S.M. was unable to board a plane or enter the U.S. by February 3, 2017 due to the First EO.

On February 13, 2017, the university informed S.M. not to travel to the university and that they could not renew or issue another DS-2019. S.M. is in Iran and her J-1 visa will expire on April 20, 2017. The university is looking into options to have S.M. complete her research as a J-1 visiting scholar with another professor for the summer 2017. However, if the TRO is removed, the EO would prohibit the reinstatement and issuance of a J-1 visa to S.M. because she is Iranian.

III. THE UNCERTAINTY OF THE CASE BY CASE WAIVERS AND EXEMPTIONS HAS A SUBSTANTIAL IMPACT.

The Appellants' Motion for Stay asserts "the [EO] includes a non-exhaustive list of examples where waivers may be appropriate."¹³ The EO lists case-by-case circumstances and examples that may be considered for a waiver, such as the applicant's significant contacts, close family members, and other limited instances. However, these examples are merely illustrations and do not guarantee visa issuance, as waivers are discretionary. This means that two individuals with similarly relevant facts may achieve different results. Furthermore, the language is vague and there is no sufficient guidance or regulations that expand on how these waivers will be implemented or processed.¹⁴ There is no guidance as to a specific

¹³ *Int'l Refugee Assistance Project v. Trump*, No. 17-1351, Motion for Stay, at 10–11 (4th Cir. filed Mar. 24, 2017).

¹⁴ DHS Q&A on the EO merely provides that waivers will be adjudicated by the Department of State with the visa application, but none of the details and processing procedures that are necessary. *See* U.S. Dep't. of Homeland Security, Q&A: Protecting the Nation From Foreign Terrorist Entry To The United States, Mar. 6, 2017, <https://www.dhs.gov/news/2017/03/06/qa-protecting-nation-foreign-terrorist-entry-united-states>.

application or designated form for an affirmative request of the waiver, evidence required, and other important clarifications.¹⁵

There are serious concerns of the waiver scheme being used as a pretext to still deny visas to these nationals, by requiring a burden that cannot be met, and with indefinite processing times. This effectively amounts to a denial of a visa because the applicants are not authorized to travel. Under the EO waiver, visa applicants must show that their entry is in the national interest, does not pose a national security threat, and that denial would impose “undue hardship.” “Undue hardship” is not defined in the immigration statute or the regulations. Under current immigration law, the burdens of “extreme hardship” “exceptional hardship,” and “exceptional and extremely unusual hardship” for certain waivers and applications for relief impose an unduly high standard. Many cases have found that hardship from family separation, relocation, and lost educational opportunities do not satisfy these burdens.¹⁶ Thus, majority of these applicants who are subject to the EO will not be granted a waiver.

¹⁵ See SHOBA S. WADHIA, PENN STATE LAW, UNTANGLING THE WAIVER SCHEME IN PROTECTING THE NATION FROM FOREIGN TERRORIST ENTRY INTO THE UNITED STATES (2017), <https://pennstatelaw.psu.edu/sites/default/files/WaiverDocFinal%203.28.17.pdf>.

¹⁶ U.S. Citizenship & Immigration Services, Policy Manual, Vol. 9, Part. B, Ch. 2, <https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume9-PartB-Chapter2.html> (current as Jan. 5, 2017); see also *Flores v. INS*, 122 F.3d (9th Cir. 1997); see also *Tizhe v. U.S. INS*, 883 F. 2d 70, n. 15 (4th Cir. 1989), citing *Chiramonte v. INS*, 626 F. 2d 1093, 1101 (2d Cir. 1980).

Section (c)(i) of the EO provides that nationals may be eligible for a waiver to resume a “continuous period of work, study, or other long-term activity.”¹⁷ However, this section does not provide clarity for the numerous researchers, professors, engineers, and other professionals who are outside of the country and not sufficiently assured of their ability to travel or to return to the U.S. They would not be subject to these special requirements and burdensome treatment, but for their nationality from one of the Arab & Muslim-Majority countries.

The EO Section (c)(ii) and (c)(iii) waivers apply to individuals with “significant contacts” or “close family members,” respectively.¹⁸ The phrase “significant contacts” is vague and does not reassure individuals with valid visas or those with pending visa applications. Moreover, the term “close family members” only applies to children, spouses, and parents, but does not apply to individuals with strong familial ties to other individuals in the U.S., such as grandparents, fiancés, or other relatives. Individuals with strong ties to the U.S. have issues traveling under the Second EO.

¹⁷ Exec. Order No. 13,780 (Mar. 6, 2017), 82 Fed. Reg. 13,209 (Mar. 9, 2017).

¹⁸ *Id.*

CONCLUSION

For the reasons stated herein, *amici* respectfully request the Court to find in favor of the Appellees and deny Appellants' Motion to Stay.

Dated: March 31, 2017

Respectfully submitted,

/s/ Yolanda C. Rondon

YOLANDA C. RONDON
STAFF ATTORNEY
AMERICAN-ARAB
ANTI-DISCRIMINATION
COMMITTEE

ATTORNEY FOR AMICI CURIAE

CERTIFICATE OF COMPLIANCE

I, Yolanda C. Rondon, counsel for *amici* herein, certify that the ***Amicus brief in Support of the Appellees by the American-Arab Anti-Discrimination Committee***, uses a proportionally spaced Times New Roman typeface of 14 points or more and text is comprised of 2,599 words.

Date: March 31, 2017

/s/ Yolanda C. Rondon

YOLANDA C. RONDON
Staff Attorney
AMERICAN-ARAB
ANTI-DISCRIMINATION
COMMITTEE

Attorney for Amici Curiae

CERTIFICATE OF SERVICE

I, Yolanda C. Rondon, hereby certify that I electronically filed the following amicus brief with the Clerk of the Court for the U.S. Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system on March 31, 2017.

AMICUS BRIEF OF THE AMERICAN-ARAB ANTI-DISCRIMINATION COMMITTEE IN SUPPORT OF THE APPELLEES TO DENY APPELLANTS MOTION TO STAY TEMPORARY RESTRAINING ORDER.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Executed March 31, 2017, at Washington, District of Columbia.

/s/ Yolanda C. Rondon

YOLANDA C. RONDON
Staff Attorney
AMERICAN-ARAB
ANTI-DISCRIMINATION
COMMITTEE

Attorney for Amici Curiae

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Effective 12/01/2016

No. 17-1351Caption: International Refugee Assistance Program v. Trump

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT

Type-Volume Limit, Typeface Requirements, and Type-Style Requirements

Type-Volume Limit for Briefs: Appellant's Opening Brief, Appellee's Response Brief, and Appellant's Response/Reply Brief may not exceed 13,000 words or 1,300 lines. Appellee's Opening/Response Brief may not exceed 15,300 words or 1,500 lines. A Reply or Amicus Brief may not exceed 6,500 words or 650 lines. Amicus Brief in support of an Opening/Response Brief may not exceed 7,650 words. Amicus Brief filed during consideration of petition for rehearing may not exceed 2,600 words. Counsel may rely on the word or line count of the word processing program used to prepare the document. The word-processing program must be set to include headings, footnotes, and quotes in the count. Line count is used only with monospaced type. See Fed. R. App. P. 28.1(e), 29(a)(5), 32(a)(7)(B) & 32(f).

Type-Volume Limit for Other Documents if Produced Using a Computer: Petition for permission to appeal and a motion or response thereto may not exceed 5,200 words. Reply to a motion may not exceed 2,600 words. Petition for writ of mandamus or prohibition or other extraordinary writ may not exceed 7,800 words. Petition for rehearing or rehearing en banc may not exceed 3,900 words. Fed. R. App. P. 5(c)(1), 21(d), 27(d)(2), 35(b)(2) & 40(b)(1).

Typeface and Type Style Requirements: A proportionally spaced typeface (such as Times New Roman) must include serifs and must be 14-point or larger. A monospaced typeface (such as Courier New) must be 12-point or larger (at least 10½ characters per inch). Fed. R. App. P. 32(a)(5), 32(a)(6).

This brief or other document complies with type-volume limits because, excluding the parts of the document exempted by Fed. R. App. P. 32(f) (cover page, disclosure statement, table of contents, table of citations, statement regarding oral argument, signature block, certificates of counsel, addendum, attachments):

- ☒ this brief or other document contains 2,599 [state number of] words
- ☐ this brief uses monospaced type and contains _____ [state number of] lines

This brief or other document complies with the typeface and type style requirements because:

- ☒ this brief or other document has been prepared in a proportionally spaced typeface using Microsoft Word 2010 [identify word processing program] in 14 font Times New Roman [identify font size and type style]; or
- ☐ this brief or other document has been prepared in a monospaced typeface using _____ [identify word processing program] in _____ [identify font size and type style].

(s)

Party Name

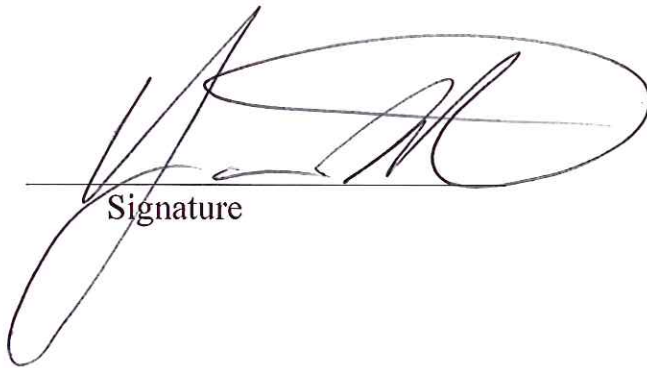
American-Arab Anti-Discrimination Committee

Dated:

3/31/2017

CERTIFICATE OF SERVICE

I certify that on March 31, 2017 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:



Signature

3/31/2017
Date