No. 17-1351

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

DONALD J. TRUMP, *et al.*

Defendants-Appellants,

v.

INTERNATIONAL REFUGEE ASSISTANCE PROJECT, *et al.*

Plaintiffs-Appellees.

On Appeal from the United States District Court
for the District of Maryland
The Honorable Theodore D. Chuang, United States District Judge
Case No. 8:17-cv-00361-TDC

BRIEF OF *AMICI CURIAE* MEDICAL INSTITUTIONS, ADVOCACY ORGANIZATIONS, AND INDIVIDUAL PHYSICIANS IN SUPPORT OF APPELLEES

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, counsel for *Amici Curiae* the American Academy of Pediatrics, the Center for Health Progress, the Greater New York Hospital Association, Lucile Packard Children's Hospital, the NYC Refugee and Asylee Coalition, Stanford University, Stanford Health Care, New York City Health + Hospital Corporation, certifies that *Amici*, respectively, are not publicly held corporations, do not have a parent corporation, and that no publicly held corporation owns 10 percent or more of *Amici*'s respective stock, if any. Further, counsel for *Amicus Curiae*, Yale New Haven Hospital ("YNHH") certifies that YNHH is not a publicly held corporation, and that its parent is Yale New Haven Health Services Corporation, which is not a publicly held corporation, and that no publicly held corporation owns 10 percent or more of the stock of YNHH or its parent.

Dated: April 24, 2017

By: /s/ Manvin S. Mayell
Manvin S. Mayell
Attorney for *Amici Curiae*

INTERESTS OF THE *AMICI*

Amici are medical institutions, organizations, advocacy groups, and individual physicians throughout the United States that have an interest in providing optimal healthcare services to patients and in participating in cross-border collaboration to advance medical science. The Executive Order at issue in this case is detrimental to the care of patients in the United States as well as the advancement of medical science. *Amici* highly value the contributions of foreign-born healthcare providers and believe that they are a critical pillar of the American healthcare infrastructure. *Amici* are concerned about the Executive Order's impact on the recruitment of foreign-born healthcare providers to fill critical staffing shortages, and about the effect of the Executive Order on the ability of medical scientists to meet and exchange information. A list of *Amici* is set forth in Exhibit A.[1]

SUMMARY OF ARGUMENT

America proudly and properly describes itself as "a nation of immigrants." *Foley v. Connelie*, 435 U.S. 291, 294 (1978). In 2010, 12.9% of the population was foreign-born and one out of every four Americans had at least one parent born

[1] *Amici* have obtained consent from the parties to file this *amicus* brief and hereby certify that no party's counsel authored the brief in whole or in part, no party or party's counsel contributed money intended to fund preparation or submission of this brief, and no person other than *Amici* and their counsel contributed money intended to fund preparation or submission of the brief.

outside the United States.[2] The national immigrant character is reflected in the American medical community: about 28% of physicians, 40-50% of medical researchers, and 15% of registered nurses in America were born in a foreign country.[3] As one example of their contributions to American healthcare, foreign-born doctors disproportionately serve in small towns and rural areas that suffer from a shortage of medical personnel.[4]

Contrary to the immigrant traditions and ideals of the United States, the President's revised Executive Order of March 6, 2017 (the "Revised Executive Order" or "Revised EO") continues to ban nationals of several predominantly Muslim countries from entry into the United States, much like the President's now-rescinded Executive Order of January 27, 2017 (the "First Executive Order" or "First EO"). Among the many parties caught in this ban are American medical institutions, physicians and other medical professionals from those countries, and the patients they serve.

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[2] Brief of Technology Companies and Other Businesses as *Amici Curiae* In Support of Appellees, *Washington v. Trump*, 17-35105 (9th Cir., February 5, 2017) (citing sources).

[3] *See* Marcia D. Hohn et al., *Immigrants in Health Care: Keeping Americans Healthy Through Care and Innovation*, George Mason Univ. Inst. for Immigration Research, 2-5 (June 2016), http://s3.amazonaws.com/chssweb/documents/22231/original/health_care_report_FINAL_20160629.pdf?1467209316.

[4] *See* Anupam B. Jena, *Trump's Immigration Order Could Make It Harder To Find A Psychiatrist or Pediatrician*, FiveThirtyEight (Feb. 3, 2017), http://fivethirtyeight.com/features/trumps-immigration-order-could-make-it-harder-to-find-a-psychiatrist-or-pediatrician.

Amici include medical institutions, organizations and individual physicians that serve patients, train medical personnel and conduct important medical research. Together the *Amici* treat thousands of patients, often with personnel who are foreign nationals, including many from the countries covered by the Executive Order. Although some of the concerns *Amici* had about the First EO have been ameliorated by the terms of the Revised EO (such as the exception from the ban as to lawful permanent residents and existing visa holders), *Amici* remain concerned about the Revised EO's impact on the American healthcare system, and specifically:

- Its continuing impact on the recruitment of foreign personnel to fill critical shortages of trained medical staff in the United States;
- the uncertainty it creates about whether foreign medical school graduates who have just been accepted into hospital residency and fellowship programs from the affected countries through the National Residency Matching Program will be able to obtain visas necessary for them to begin providing care to American patients; and
- its continued interference with collaborative scientific and medical research in the United States as scientists from the affected countries are barred from attending conferences in the United States and other

scientists from around the world boycott United States conferences while the travel ban persists.

If, as has been suggested by key administration officials and contemplated in both the First and Revised Orders, the ban is extended to other countries,[5] then the harm to the American healthcare infrastructure and the medical needs of patients inside the United States could be exponentially magnified.

For these reasons, the American Medical Association expressed concern that the Revised EO preserves the harm of the First EO by continuing "uncertainty in the application process for physician training programs," leaving foreign physicians in "limbo," and continuing "to affect the exchange of medical knowledge."[6] The American Hospital Association similarly stated that "we remain concerned by the new executive order's implications on hospitals, health systems, medical professionals and patients," particularly as to international medical school graduates working in teaching hospitals.[7]

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[5] *See Face the Nation Transcript January 29, 2017: Priebus, McCain, Ellison*, Face the Nation (Jan. 29, 2017), http://www.cbsnews.com/news/face-the-nation-transcript-january-29-2017-priebus-mccain-ellison/ ("Now, you can point to other countries that have similar problems, like Pakistan and others. Perhaps we need to take it further.").

[6] Kevin B. O'Reilly, *Revised travel ban may leave residency applicants in limbo*, American Medical Association (Mar. 14, 2017), https://wire.ama-assn.org/ama-news/revised-travel-ban-may-leave-residency-applicants-limbo.

[7] *White House issues revised travel order*, American Hospital Association (Mar. 6, 2017), http://news.aha.org/article/170306-white-house-issues-revised-travel-order.

Amici respectfully urge the Court, as it weighs the public interest in the injunction issued below, to consider the damage that will be done by the Revised Executive Order to patient care, medical education, and medical science in the United States. *See Park Irmat Drug Corp. v Optum Rx, Inc.*, 152 F. Supp. 3d 127, 142 n.10 (S.D.N.Y. 2016) (noting that the public interest in "uninterrupted and safe medical care" is a valid consideration in ruling on a motion for a preliminary injunction).

CASE BACKGROUND

I. The Executive Orders Barring Entry Into the United States

On January 27, 2017, President Trump signed an Executive Order titled "Protecting the Nation from Foreign Terrorist Entry into the United States." Among other things, the Executive Order suspended for 90 days immigrant and nonimmigrant entry of aliens from countries referred to in Section 217(a)(12) of the Immigrant and Nationality Act (INA), 8 U.S.C. 1187(a)(12)—namely, "aliens from" Iraq, Iran, Libya, Somalia, Sudan, Syria, and Yemen.

In the days after it was announced, the Order and the lack of clarity surrounding its implementation caused widespread confusion.[8] As the Ninth

[8] *See* Laura King et al., *Confusion reigns at U.S. airports as protests of Trump executive order enter second day*, L.A. Times (Jan. 29, 2017), http://www.latimes.com/nation/la-na-pol-trump-immigration-vetting-20170129-story.html; Miriam Jordan et al., *Donald Trump's Immigration Order Sparks Confusion, Despair at Airports*, Wall St. J. (Jan. 29, 2017), https://www.wsj.com/articles/donald-trumps-immigration-order-sparks-confusion-despair-at-airports-1485709114.

Circuit put it, "[i]t was reported that thousands of visas were immediately canceled, hundreds of travelers with such visas were prevented from boarding airplanes bound for the United States or denied entry on arrival, and some travelers were detained."[9] On February 3, 2017, a federal judge in the Western District of Washington issued a nationwide temporary restraining order prohibiting enforcement of the First EO. On February 9, 2017, a three-judge panel in the Ninth Circuit unanimously upheld the Washington district court's decision, declining to issue a stay of the injunction.

In response, President Trump issued the Revised Executive Order on March 6, 2017. Section 2(c) maintains the 90-day suspension of entry for immigrant and nonimmigrant aliens from six of the seven countries named in the First EO: Iran, Libya, Somalia, Sudan, Syria, and Yemen. The Revised Order also bars all refugees from entering the United States for 120 days, with the option to extend that bar if administration officials determine it would be unsafe to resume admitting refugees. In short, "[t]he heart of the sweeping [original] executive

[9] *Washington v. Trump*, No. 17-35105, 2017 WL 526497, at *2 (9th Cir. Feb. 9, 2017).

action is still intact,"[10] as Administration officials have stated that the "basic policies" and "principles" of the First EO animate the Revised EO.[11]

The Revised Order leaves open the possibility of suspending immigration from additional countries that do not comply with the requirements detailed in Section 2. Section 2(a) dictates that the Secretary of Homeland Security conduct a worldwide review to determine whether the United States should require any foreign countries to provide additional information for those countries' nationals to be granted a "visa, admission, or other benefit under the INA," and, if so, what additional information shall be necessary. If any countries are unable or unwilling to provide the additional information requested by the United States, those countries may be added to the current list of six from which immigration has been suspended.

Section 3(c) of the Revised EO provides that certain government officials may grant waivers to foreign nationals due to "undue hardship," including those who stand to suffer harm to their "significant business or professional obligations" in the United States. But the Revised Order sets out no process for how those waivers can be obtained, how long it will take to adjudicate waiver applications, or

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[10] *See* Glenn Thrush, *Trump's New Travel Ban Blocks Migrants From Six Nations, Sparing Iraq*, N.Y. Times (Mar. 6, 2017), https://www.nytimes.com/2017/03/06/us/politics/travel-ban-muslim-trump.html.

[11] *Int'l Refugee Assistance Project v. Trump*, No. CV TDC-17-0361, 2017 WL 1018235, at *4 (D. Md. Mar. 16, 2017).

whether those provisions apply to doctors or other necessary healthcare workers seeking visas.

II. Procedural History

Plaintiffs in this case initially filed a constitutional challenge against the First EO. After the Revised EO was issued, plaintiffs amended their complaint to challenge the new ban. The district court held a hearing and issued its findings of fact and conclusions of law on March 16, 2017, preliminarily enjoining section 2(c) of the Revised EO.[12] The district court found that plaintiffs had established a likelihood of success in showing that the ban was motivated by an animus towards Muslims, and had shown a likelihood of irreparable harm, that the balance of equities tip in their favor, and that the public interest favored an injunction of section 2(c) of the Revised EO. This appeal followed.

ARGUMENT

The Revised Executive Order Harms Medical Institutions and Healthcare in America

I. The Vital Role That Immigrant Doctors, Medical Researchers and Healthcare Workers Perform in the American Healthcare System

A. Immigrant Physicians, Researchers and Healthcare Workers are Crucial to the Healthcare of Millions of Americans

Foreign-born healthcare providers ("HCPs") form a critical pillar of the American healthcare infrastructure. An estimated 28 percent of physicians in the

[12] *Int'l Refugee Assistance Project v. Trump*, No. CV TDC-17-0361, 2017 WL 1018235, at *18 (D. Md. Mar. 16, 2017).

United States are immigrants.[13] Approximately 15 percent of registered nurses,[14] and 20.9 percent of direct care workers are foreign-born.[15] And those numbers are growing because U.S.-born HCPs alone cannot meet the medical needs of Americans. For example, the number of foreign-born direct care workers, which include home health aides and personal care assistants, nearly doubled between 2001 and 2009, from 375,820 to 676,200.[16]

Foreign-born HCPs will be even more indispensable in the coming years. A February 28, 2017 study by the Association of American Medical Colleges ("AAMC"), an organization that includes all accredited medical schools and major teaching hospitals in the United States, estimates a current shortfall of between approximately 13,000 and 25,000 physicians in the United States and projects a total physician shortfall of between 40,800 and 104,900 physicians by 2030.[17]

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[13] *See* Marcia D. Hohn et al., *Immigrants in Health Care: Keeping Americans Healthy Through Care and Innovation*, George Mason University Institute for Immigration Research, at 2-5 (June 2016), http://s3.amazonaws.com/chssweb/documents/22231/original/health_care_report_FINAL_20160629.pdf?1467209316.

[14] *Id.*

[15] Peggy G. Chen et al., *Policy Solutions to Address the Foreign-Educated and Foreign-Born Health Care Workforce in the United States*, Health Affairs (2013), http://content.healthaffairs.org/content/32/11/1906.

[16] *Id.*

[17] Tim Dall et al., *The Complexities of Physician Supply and Demand: Projections from 2015 to 2030: 2017 Update*, Association of American Medical Colleges (Feb. 28, 2017), https://aamc-black.global.ssl.fastly.net/production/media/filer_public/a5/c3/a5c3d565-14ec-48fb-974b-99fafaeecb00/aamc_projections_update_2017.pdf.

Similar shortfalls exist for direct care workers and registered nurses because the number and proportion of older adults in the United States has grown at a rate the Center for Disease Control and Prevention ("CDC") has called "unprecedented in our nation's history."[18] Meeting the medical needs of an aging population will require five million direct care workers by 2030, a 48 percent increase from 2010 levels. In 2008, the United States faced a shortage of over 135,000 registered nurses.[19] By 2025, the shortfall of registered nurses is projected to be around 260,000, "more than twice as large as any nurse shortage experienced since the introduction of Medicare and Medicaid in the mid-1960s."[20]

The gap between Americans' medical needs and the supply of healthcare professionals would be dramatically worse without the admission to the United States of foreign-born HCPs. In 2016 alone, 7,460 non-U.S. citizen students/graduates of international medical schools applied to be matched to a U.S. residency or other training program, accounting for 21 percent of the total number

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[18] Center for Disease Control and Prevention, *The State of Aging & Health in America 2013*, Atlanta, GA: Center for Disease Control and Prevention, United States Department of Health and Human Services (2013), https://www.cdc.gov/aging/pdf/State-Aging-Health-in-America-2013.pdf.

[19] *Nursing Shortage*, American Association of Colleges of Nursing (Apr. 24, 2014), http://www.aacn.nche.edu/media-relations/fact-sheets/nursing-shortage.

[20] Peter I. Buerhaus et al., *The Recent Surge in Nurse Employment: Causes and Implications*, Health Affairs (June 12, 2009), http://content.healthaffairs.org/content/28/4/w657.full.

of applicants.[21] Moreover, as noted above, the percentage of foreign-born direct care workers has increased dramatically in recent years.

HCPs from the six banned countries play a vital role in meeting the increasing American healthcare demands. According to a study by doctors and economists at Harvard Medical School, approximately 7,000 physicians in the U.S. trained in the six countries targeted by the Revised EO.[22] It has been reported that 1,800 doctors from these countries are in residency programs in the U.S.[23] And according to the Educational Commission for Foreign Medical Graduates ("ECFMG"), an organization that certifies the qualifications of foreign medical graduates, about 850 nationals of the six countries applied to residency programs in the U.S. this year.[24]

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[21] *Results and Data, 2016 Main Residency Match*, National Residency Matching Program (2016), http://www.nrmp.org/wp-content/uploads/2016/04/Main-Match-Results-and-Data-2016.pdf.

[22] Anna Maria Barry-Jester, *Trump's New Travel Ban Could Affect Doctors, Especially in the Rust Belt and Appalachia*, FiveThirtyEight (Mar. 6, 2017), https://fivethirtyeight.com/features/trumps-new-travel-ban-could-affect-doctors-especially-in-the-rust-belt-and-appalachia/.

[23] Elena Gordon, *Travel Ban Adds Stress To 'Match Week' For Some Doctors*, National Public Radio (Mar. 16, 2017), http://www.npr.org/sections/health-shots/2017/03/16/520137303/travel-ban-adds-stress-to-match-week-for-some-doctors.

[24] Ken Terry, *New Trump Travel Ban Still Affects Foreign Medical Residents*, Medscape (Mar. 9, 2017), http://www.medscape.com/viewarticle/877053.

B. Immigrant Doctors and Healthcare Workers Are Especially Concentrated In Medically Underserved Areas Such as Poor and Rural Communities

Foreign-born HCPs provide a disproportionate amount of medical care in the regions of the country that encompass "medically underserved areas" ("MUAs"), "medically underserved populations" ("MUPs") or Health Professional Shortage Areas ("HPSAs"). The federal government tracks access to medical care around the country, and it designates MUAs and MUPs based on the local ratio between the population and the number of healthcare providers, the percentage of the population either below the poverty level or above the age of 65, and the infant mortality rate.[25] The government also designates HPSAs, which demarcate areas that lack adequate support for healthcare.[26]

MUAs, MUPs, and HPSAs exist in every single state, but they are particularly prevalent in poorer and more rural areas.[27] A 2016 AAMC study found that it would take 53,000 to 96,000 additional physicians spread throughout

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[25] *Medically Underserved Areas and Populations (MUA/Ps)*, Health Resources and Services Administration (Oct. 2016), https://bhw.hrsa.gov/shortage-designation/muap.

[26] *Health Professional Shortage Areas (HPSAs)*, Health Resources and Services Administration (Oct. 2016), https://bhw.hrsa.gov/shortage-designation/hpsas.

[27] For a map of MUAs showing how widespread MUAs are over the geography of various states *see Quick Maps – Medically Underserved Areas/Populations (MUA/P)*, Health Resources and Services Administration, https://datawarehouse.hrsa.gov/Tools/MapToolQuick.aspx?mapName=MUA (last visited Apr. 18, 2017). *See also,* Donald G. McNeil Jr., *Trump's Travel Ban, Aimed at Terrorists, Has Blocked Doctors*, N.Y. Times (Feb. 6, 2017), https://www.nytimes.com/2017/02/06/health/trump-travel-ban-doctors.html (noting doctor shortages in parts of Brooklyn and the Bronx).

those underserved areas to raise the level of care available there to the same level available in the rest of the United States.[28]

Recognizing the critical role of foreign-born physicians in meeting the health needs in MUAs, MUPs, and HPSAs, the federal government provides incentives for foreign-born physicians to work in these areas. For example, physicians who pursue medical education in the United States on a J-1 visa (discussed in more detail *infra* Section II-A) typically must leave the country for at least two years after completing their education programs. That requirement can be waived, however, under the Conrad 30 Waiver Program, which is for J-1 visa holders who provide three years of care or more in MUAs, MUPs or HPSAs "to address[] the shortage of qualified doctors in medically underserved areas."[29] As a result, as the AAMC states, the U.S. relies on foreign medical graduates "for a significant portion of patient care, including in medically underserved communities."[30] Indeed, according to a recent Harvard University study, doctors

[28] *New Research Confirms Looming Physician Shortage*, Association of American Medical Colleges (Apr. 5, 2016), https://www.aamc.org/newsroom/newsreleases/458074/2016_workforce_projections_04052016.html.

[29] *Conrad 30 Waiver Program, U.S.*, Citizenship and Immigration Services (May 5, 2014), https://www.uscis.gov/working-united-states/students-and-exchange-visitors/conrad-30-waiver-program.

[30] *AAMC Statement on President Trump's Revised Executive Order on Immigration*, Association of American Medical Colleges (Mar. 6, 2017), https://news.aamc.org/press-releases/article/immigration_order_03062017/. .

from the six targeted countries "are concentrated in Rust Belt states and Appalachia," accounting for "more than 14 million patient visits a year."[31]

II. The Revised Executive Order Interferes With Patient Care and Medical Science in the United States

A. The Revised Executive Order Makes It Harder to Recruit or Retain Foreign Medical Personnel, Who Already Face Rigorous Scrutiny Before Entering the United States

Even before the Executive Orders took effect, foreign-born HCPs had to overcome significant obstacles to work in the United States. Beyond the personal challenges of leaving behind families and friends, they also had to meet a variety of government and institutional requirements. For example, the ECFMG certification required of foreign HCPs aspiring for an American residency is "rigorous," according to the AAMC, and includes checks on English language proficiency, medical education credentials and clinical skills.[32] In addition, foreign-born HCPs must obtain H-1B or J-1 visas, each with stringent requirements, including security screening procedures.

[31] Anna Maria Barry-Jester, *Trump's New Travel Ban Could Affect Doctors, Especially in the Rust Belt and Appalachia*, FiveThirtyEight (Mar. 6, 2017), https://fivethirtyeight.com/features/trumps-new-travel-ban-could-affect-doctors-especially-in-the-rust-belt-and-appalachia/.

[32] *AAMC Statement on President Trump's Revised Executive Order on Immigration*, Association of American Medical Colleges (Mar. 6, 2017), https://news.aamc.org/press-releases/article/immigration_order_03062017/. *See Requirements for Certification*, Educational Commission for Foreign Medical Graduates (Sep. 7, 2016), http://www.ecfmg.org/certification/requirements-for-certification.html.

Thousands of foreign-born HCPs work in the United States under H-1B visas,[33] which are available only to professionals engaged in a "specialty occupation."[34] To obtain an H-1B visa, an applicant must have a job offer from a United States employer that has received Department of Labor certification. For doctors, this often requires gaining acceptance to a residency or other training program at a medical institution—a competitive process in which the institutions vet the validity of their applicants' medical degrees and assess their qualifications (including their test scores). Applicants are then further screened by both the Department of State and Customs and Border Protection, including through an in-person interview at a United States embassy or consulate.[35]

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[33] *See Characteristics of H1B Specialty Occupation Workers*, United States Citizenship and Immigration Services, at 20 (June 26, 2013), https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/H-1B/h1b-fy-12-characteristics.pdf (showing that there were over 10,000 approved H-1B petitions for medical personnel in 2011 and nearly 7,000 in 2012).

[34] The visa permits its holder to remain in the United States for three years, although for some visa-holders, that period can be extended for up to three more years. *See H-1B Specialty Occupations, DOD Cooperative Research and Development Project Workers, and Fashion Models*, United States Citizenship and Immigration Services (Mar. 16, 2016), https://www.uscis.gov/working-united-states/temporary-workers/h-1b-specialty-occupations-dod-cooperative-research-and-development-project-workers-and-fashion-models. *See also Understanding H-1B Requirements*, United States Citizenship and Immigration Services, https://www.uscis.gov/eir/visa-guide/h-1b-specialty-occupation/understanding-h-1b-requirements (laying out the requirements for obtaining an H-1B visa).

[35] *H-1B Specialty Occupations, DOD Cooperative Research and Development Project Workers, and Fashion Models*, United States Citizenship and Immigration Services (Mar. 16, 2016), https://www.uscis.gov/working-united-states/temporary-workers/h-1b-specialty-occupations-dod-cooperative-research-and-development-project-workers-and-fashion-models. *See also Visa Appointment & Processing Wait Times*, United States Department of State (Feb. 16, 2017), https://travel.state.gov/content/visas/en/general/wait-times.html/.

Other foreign nationals enter the United States under the J-1 visa program, which covers thousands of foreign medical personnel.[36] A category of J-1 visas is reserved specifically for foreign physicians who come to the United States for graduate medical education or training at accredited American medical institutions.[37] Beyond government scrutiny, participants in the J-1 Alien Physician program must also be admitted to a U.S. residency program, pass certain medical board exams, and prove their competency in oral and written English.

In short, doctors and medical professionals entering the country have been thoroughly vetted under existing procedures. Government screening alone is extensive. As ten former high-ranking officials recently explained in a declaration submitted to the Ninth Circuit, "the United States has developed a rigorous system of security vetting, leveraging the full capabilities of the law enforcement and intelligence communities.[38]

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[36] *See, e.g.*, Ahmad Masri and Mourad H. Senussi, *Trump's Executive Order on Immigration – Detrimental Effects on Medical Training and Health Care*, New England J. Med. (Feb. 1, 2017), http://www.nejm.org/doi/full/10.1056/NEJMp1701251#t=article (noting that, in 2014-2015, there were over 9,000 physicians on J-1 visas representing nearly 130 countries, and finding that nearly 2,000 hailed from Muslim-majority countries).

[37] *See J-1 Visa Exchange Visitor Program: Physician Program*, United States Department of State, https://j1visa.state.gov/programs/physician. The length of stay permitted by a J-1 visa may depend on the length of the holder's educational or training program (last visited Apr. 18, 2017).

[38] Joint Declaration of Madeline 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 at ¶6, *Washington v. Trump*, No. 17-35105, 2017 WL 526497 (9th Cir. Feb. 6, 2017), ECF No. 28-2, https://equity.ucla.edu/wp-content/uploads/2017/02/Declaration-of-National-Security-Officials.pdf. *See also, Aziz v. Trump*, No. 1:17-CV-116, 2017 WL

Unless enjoined, the Revised EO may bar or effectively discourage thousands of foreign HCPs who would otherwise seek to provide much-needed care in the United States. Although the Revised Order contemplates several circumstances in which a national of one of the six targeted countries might be admitted to the United States in spite of the ban, those "waiver" provisions are merely recommendations. They are not binding.[39] Moreover, nothing in the Order sets out how a banned foreign national is to apply for such a waiver, nor does it provide any timeline for the granting of waivers or provide for further recourse if a waiver is denied. Without explicit waivers for healthcare personnel, the U.S.'s ability to continue selecting the "pick of the crop" of foreign medical graduates will be diminished if foreign doctors believe that they are not welcome or that the ban may later be extended to their countries, according to the president of the AAMC.[40] The president of the ECFMG similarly worries about a "chilling effect" arising from the Revised EO that could diminish enthusiasm and foreign applications in future years.[41]

580855, at *8 (Feb. 13, 2017) ("[T]he allegations [in this case] involve persons who have passed through extensive vetting requirements and been granted visas.").

[39] The Revised Order notes that "case-by-case waivers *could* be appropriate" in a variety of circumstances, including for a "the foreign national [who] seeks to enter the United States for significant business or professional obligations . . ." (REO Section 3(c), emphasis added).

[40] Ken Terry, *New Trump Travel Ban Still Affects Foreign Medical Residents*, Medscape (Mar. 9, 2017), http://www.medscape.com/viewarticle/877053.

[41] *Id.*

The harm caused by the Revised Order to the recruiting of medical personnel is already playing out through the National Resident Matching Program ("NRMP"), also known as the "Match." The Match uses a mathematical algorithm to place medical-school graduates, including citizen and non-citizen graduates of foreign medical schools, in residency and fellowship positions, most often in teaching hospitals. Of the 850 Match applicants from the six banned countries, about half are expected to be offered admission to an American residency program and will need visas.[42] But because of the Revised EO, those accepted residents are, per the president of the AMA, "in limbo," and "without an explicit waiver . . . [they] will be unable to provide care in the U.S. when training programs begin on July 1."[43] As the president of the ECFMG stated, the "timing and uncertainty of the executive order could not have come at a worse time." This is particularly so for smaller residency programs, which face a "big gamble" because they "can't afford to lose 10 or 25% of [their] class" to visa issues.[44] As the director of a small

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[42] Ken Terry, *New Trump Travel Ban Still Affects Foreign Medical Residents*, Medscape (Mar. 9, 2017), http://www.medscape.com/viewarticle/877053.

[43] Kevin B. O'Reilly, *Revised travel ban may leave residency applicants in limbo*, American Medical Association (Mar. 14, 2017), https://wire.ama-assn.org/ama-news/revised-travel-ban-may-leave-residency-applicants-limbo.

[44] Elena Gordon, *Travel Ban Adds Stress To 'Match Week' For Some Doctors*, National Public Radio (Mar. 16, 2017), http://www.npr.org/sections/health-shots/2017/03/16/520137303/travel-ban-adds-stress-to-match-week-for-some-doctors.

program in Philadelphia lamented, "It's unfortunate. Many work their tails off to get to the U.S. We might be losing a lot of talent."[45]

B. The Revised Executive Order Jeopardizes the Ability of Doctors and Researchers To Collaborate With Their Counterparts Abroad

The Revised Executive Order also threatens to curb essential collaboration among medical professionals, including researchers. Every year, tens of thousands of medical professionals from over one hundred countries come to the United States to participate in conferences, deliver patient care, conduct research, participate in medical education and engage in scientific discourse.[46] Such exchanges and meetings advance the state of patient care in the United States and the rest of the world.

The suggested waiver considerations in the Revised EO do not explicitly address attendance of scientific and medical conferences. Thus, scientists and doctors from the countries targeted in the Revised Order face significant uncertainty about whether they will be able to enter the United States for purposes of attending conferences, giving lectures and generally participating in collaborative enterprises that advance the state of medical knowledge. Moreover, other scientists not subject to the ban have vowed not to come to the U.S. for

[45] *Id.*

[46] *CMSS Position on International Collaboration in Medicine*, Council of Medical Specialty Societies (Feb. 3, 2017), https://cmss.org/new/cmss-position-on-international-collaboration-in-medicine/.

scientific meetings. Since the bans were announced, over 6,300 scientists, including medical professionals, signed a petition to boycott conferences hosted in the United States.[47] After the First EO was announced, organizations such as the Genetics Society of America ("GSA") received cancellations from colleagues born in Muslim-majority countries and others who decided not to travel here for conferences.[48] The International Society for Autism Research announced that it would "think carefully about whether to host future international meetings for autism research in the United States." These concerns persist under the Revised EO, which continues to ban scientists and medical researchers from the affected countries whose views and experiences would be valuable at U.S.-based scientific conferences. As the president of the AMA notes, "the revised executive order will continue to affect the exchange of medical knowledge between the U.S. and the six impacted countries by barring foreign experts from traveling to medical and scientific conferences in the U.S."[49]

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[47] Ivan Oransky and Adam Marcus, *Scientists protest immigration ban with boycotts of journals, conferences*, Stat (Feb. 1, 2017), https://www.statnews.com/2017/02/01/scientists-protest-immigration-ban/. Link to the petition is available at https://docs.google.com/forms/d/e/1FAIpQLSeNN_2HHREt1h-dm_CgWpFHw8NDPGLCkOwB4lLRFtKFJqI25w/viewform.

[48] *Statement from GSA's Executive Committee on the U.S. President's Executive Order on Immigration*, Genetics Society of America (Feb. 3, 2017), https://genestogenomes.org/statement-from-gsas-executive-committee-on-the-u-s-presidents-executive-order-on-immigration/.

[49] Kevin B. O'Reilly, *Revised travel ban may leave residency applicants in limbo*, American Medical Association (Mar. 14, 2017), https://wire.ama-assn.org/ama-news/revised-travel-ban-may-leave-residency-applicants-limbo.

CONCLUSION

Amici urge the Court to consider the harms arising from the Revised Executive Order described above, which include undermining the provision of healthcare to Americans and the international collaboration necessary to advance scientific research. The district court's injunction protects the public interest from these harms, including by addressing immediate concerns about the issuance of visas for those accepted into the residency Match program. For these and other foregoing reasons, the Court should find that an injunction of the Revised Executive Order would benefit the public interest and, on the collective submissions of the appellees and aligned *amici*, uphold the lower court's grant of injunctive relief.

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Counsel for *amici curiae* certifies that this brief contains 4,717 words, based on the "Word Count" feature of Microsoft Word. Pursuant to Federal Rule of Appellate Procedure 32(f), this word count does not include the words contained in the Corporate Disclosure Statement, Table of Contents, Table of Authorities and Certificates of Counsel. Counsel also certifies that this document has been prepared in a proportionally spaced typeface using 14-point Times New Roman in Microsoft Word.

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CERTIFICATE OF SERVICE

Counsel for *amici curiae* certifies that on April 24, 2017, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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<u>EXHIBIT A</u>

LIST OF *AMICI CURIAE*

ORGANIZATIONS

The American Academy of Pediatrics is an organization of 66,000 pediatricians committed to the optimal physical, mental, and social health and well-being for all infants, children, adolescents, and young adults.

Center for Health Progress is a non-profit organization that creates opportunities and eliminates barriers to health equity for Coloradans. Center for Health Progress works in collaboration with health care providers, policy and decision makers, industry experts, advocates, and individuals in communities across Colorado and at the state Capitol to drive change in health care for all Coloradans.

The Greater New York Hospital Association is a Section 501(c)(6) organization that represents the interests of over 160 hospitals and health systems located throughout New York State, New Jersey, Connecticut, Pennsylvania, and Rhode Island. All of GNYHA's members are either not-for-profit, charitable organizations or publicly-sponsored institutions that provide services that range from state-of-the art, acute tertiary services to basic primary care needed by their surrounding communities. GNYHA members and their related medical schools also provide extensive medical education and training and undertake cutting-edge medical research that benefits patients all over the world. GNYHA's core mission is helping its members deliver the finest patient care in the most cost effective way.

Lucile Packard Children's Hospital is a children's hospital which is part of the Stanford University system.

New York City Health and Hospitals Corporation (d/b/a NYC Health+Hospitals) is the largest public health care system in the nation, which consists of 11 hospitals, trauma centers, neighborhood health centers, nursing homes, and post-acute care centers. New York City Health + Hospitals health system provides essential services to more than one million New Yorkers every year in more than 70 locations across the city's five boroughs.

The NYC Refugee and Asylee Health Coalition is a group of committed clinicians (and associated organizations), refugee resettlement agencies in NYC, as well as state agencies who have a collective interest in providing quality health care to refugees, asylees and victims of human trafficking.

Stanford Health Care is an academic health system and part of Stanford Medicine, which includes the Stanford University School of Medicine and Lucile Packard Children's Hospital Stanford. Stanford Health Care seeks to provide patients with the very best in diagnosis and treatment, with outstanding quality, compassion and coordination.

Stanford University is one of the world's leading research and teaching institutions and welcomes and embraces students and scholars from around the world who contribute immeasurably to its mission of education and discovery.

Yale New Haven Hospital provides comprehensive, multidisciplinary, family-focused care in more than 100 medical specialty areas. Yale New Haven Hospital regularly

ranks among the best hospitals in the U.S., and in conjunction with Yale School of Medicine and Yale Cancer Center, is nationally recognized for its commitment to teaching and clinical research. In addition to providing quality medical care to patients and families, Yale New Haven Hospital is the second largest employer in the New Haven area with more than 12,000 employees.

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