The Honorable James L. Robart

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JEWISH FAMILY SERVICE OF SEATTLE, *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as President of the United States, *et al.*,

Defendants.

No. 2:17-CV-01707-JLR

MOTION TO FILE BRIEF OF AMICI MUSLIM ADVOCATES AND THE MACARTHUR JUSTICE CENTER IN SUPPORT OF PRELIMINARY INJUNCTION

Noted for Consideration: Dec. 4, 2017

Muslim Advocates and the Roderick & Solange MacArthur Justice Center ("MJC") respectfully move for leave to file the accompanying amicus brief in support of Plaintiffs' motion for a preliminary injunction. The parties have consented to the filing of the associated amicus brief.

INTEREST OF AMICI

Muslim Advocates is a national legal advocacy and educational organization formed in 2005 that works on the frontlines of civil rights to guarantee freedom and justice for Americans of all faiths. The issues at stake in this case directly relate to Muslim Advocates' work fighting institutional discrimination against the American Muslim community.

The MacArthur Justice Center is a not-for-profit organization founded by the family of J. Roderick MacArthur to advocate for human rights and social justice through litigation. MJC

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has represented clients facing myriad human rights and civil rights injustices, including issues of discrimination, the unlawful detention of foreign nationals, and the rights of marginalized groups in the American justice system. MJC has an interest in the rule of law and the independence of the judiciary in determining whether government officials have acted with discriminatory animus against an unpopular minority group.

Amici submit this brief to document the long history of religious animus that led to the order under consideration by the Court. This includes the President's extensive record of hostility against people of the Muslim faith, his open desire to curtail their rights, and his specific, sustained promise to inhibit their entry to the U.S.—including specifically by prohibiting the entry of Muslim refugees. It also describes express anti-Muslim terminology used in the predecessor Executive Orders that created the basis for the present order. MJC's prior briefing was relied upon by the U.S. District Court for the District of Hawaii in enjoining Executive Order 13780, *see Hawai'i v. Trump*, 241 F. Supp. 3d 1119, 1137 n.14 (D. Haw. 2017), and by parties in the various proceedings challenging the President's orders.

ARGUMENT

The Court has broad discretion to permit a non-party to participate in an action as amicus curiae. *See, e.g., Gerritson v. de la Madrid Hurtado*, 819 F.2d 1511, 1514 n.3 (9th Cir. 1987); *Skokomish Indian Tribe v. Goldmark*, No. 13-cv-5071-JLR, 2013 WL 5720053, at *1 (W.D. Wash. Oct. 21, 2013) ("The court has 'broad discretion' to appoint amicus curiae.") (citing *Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982)); *Nat. Res. Def. Council v. Evans*, 243 F. Supp. 2d 1046, 1047 (N.D. Cal. 2003) (amici "may file briefs and may possibly participate in oral argument" in district court actions). Indeed, "[d]istrict courts frequently welcome amicus briefs from non-parties concerning legal issues that have potential ramifications beyond the parties directly involved or if the amicus has 'unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.'" *Sonoma Falls Dev., LLC v. Nev. Gold & Casinos, Inc.*, 272 F. Supp. 2d 919, 925 (N.D. Cal. 2003) (quoting *Cobell v. Norton*, 246 F. Supp. 2d 59, 62 (D.D.C. 2003) (citation

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omitted)). No special qualifications are required; "an individual seeking to appear as amicus must merely make a showing that his participation is useful to or otherwise desirable to the court." *In re Roxford Foods Litig.*, 790 F. Supp. 987, 997 (E.D. Cal. 1991).

Because Amici have special interest and expertise in anti-Muslim animus—both historically and with regard to the present administration—their participation as amici curiae is appropriate in this matter in which the Court will consider issues of particular public interest. *See Liberty Res., Inc. v. Phila. Hous. Auth.*, 395 F. Supp. 2d 206, 209 (E.D. Pa. 2005). ("Courts have found the participation of an amicus especially proper . . . where an issue of general public interest is at stake."). This is because the primary role of an amicus is "to assist the Court in reaching the right decision in a case affected with the interest of the general public." *Russell v. Bd. of Plumbing Examiners of Cty. of Westchester*, 74 F. Supp. 2d 349, 351 (S.D.N.Y. 1999).

Amici accordingly request leave to file the accompanying brief as *amici curiae* in support of Plaintiffs' motion for preliminary injunction.

DATED this 4th day of December, 2017.

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CERTIFICATE OF SERVICE

I hereby certify that on December 4, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to those attorneys of record registered on the CM/ECF system. All other parties (if any) shall be served in accordance with the Federal Rules of Civil Procedure

Dated this 4th date of December, 2017.

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Defendants.

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BRIEF OF AMICI CURIAE MUSLIM ADVOCATES AND THE RODERICK & SOLANGE MACARTHUR JUSTICE CENTER IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Civil Local Rule 7.1, *amici curiae* Muslim Advocates and the Roderick and Solange MacArthur Justice Center state that they are not-for-profit organizations with no parents, subsidiaries, or affiliates, and that no publicly-held corporation owns 10 percent or more of their stock.

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INTEREST OF AMICI CURIAE

The issue in this case is whether the Trump Administration's recent changes to the U.S. Refugee Admissions Program ("USRAP") are premised on impermissible and unlawful anti-Muslim animus. Amici Muslim Advocates and the MacArthur Justice Center ("MJC") submit this brief in support of Plaintiffs' Motion for a Preliminary Injunction.

Muslim Advocates, a national legal advocacy and educational organization formed in 2005, works on the frontlines of civil rights to guarantee freedom and justice for Americans of all faiths. The issues at stake in this case directly relate to Muslim Advocates' work fighting institutional discrimination against the American Muslim community, and its extensive work assisting individuals who are impacted by the travel and refugee bans.

The MacArthur Justice Center is a not-for-profit organization founded by the family of J. Roderick MacArthur to advocate for human rights and social justice through litigation. MJC has represented clients facing myriad human rights and civil rights injustices, including issues of discrimination, the unlawful detention of foreign nationals, and the rights of marginalized groups in the American justice system. MJC has an interest in the rule of law and the independence of the judiciary in determining whether government officials have acted with discriminatory animus against an unpopular minority group.

INTRODUCTION

The executive order at issue in this litigation ("Refugee Ban 3.0" or the "Ban")[1] is motivated by unconstitutional animus against Muslims seeking to enter the United States as refugees. This case, like the travel and refugee ban cases that preceded it, presents the rare instance where a state actor explicitly announces his discriminatory motive for an action. The President has not only made clear his intent to use the Office of the President and Executive Branch federal agencies to discriminate against Muslims and to favor Christians, but in repeated statements before and after taking office, he has specifically indicated his animus

[1] The Refugee Ban 3.0 is Executive Order No. 13,815, and its accompanying memorandum, with the addendum, are attached as exhibits A and B to the Declaration of David Burman in Support of Plaintiffs' Motion for Preliminary Injunction ("Burman Decl."), respectively.

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toward Muslims, and also his specific intent to prevent Muslims from entering the United States in part by implementing a ban on refugee admissions.

Within a week of taking office, the President initiated the first of several unilateral executive orders intended to implement his campaign promise of banning Muslims from entering the country. Far from ever retracting his discriminatory intent, his Administration has embraced it: Asked recently whether "the President think[s] that Muslims are a threat to the United States?" his Deputy Press Secretary explained, "*the President has addressed these issues with the travel order that he issued earlier this year and the companion proclamation*."[2] And the President himself has repeatedly derided his own Department of Justice for drafting orders that are too "politically correct"—i.e., that fail to expressly acknowledge the religious animus that he has unabashedly communicated.

In fact, the predecessor executive orders that called for the interagency review culminating in Refugee Ban 3.0, "EO-1"[3] and "EO-2,"[4] contained anti-Muslim and pro-Christian bias on their face, referring to "honor killings" (a term with a long history as a Muslim slur) and prioritizing the applications of Christian refugees.

Understood in context as a fulfillment of the President's stated intentions and previous travel bans, Refugee Ban 3.0 is plainly the President's implementation of his long-promised discriminatory ban. The effect of the Ban would be to suspend refugee applications from the countries that send the vast majority of Muslim refugees to the United States and shift priority to countries with refugees that are mostly Christian. Even more tellingly, the Ban's suspension of applications from children and spouses of refugees who have already been resettled to the United States would cut off family reunion for a record number of Muslim refugees. The Ban thus threatens to actualize the President's signature pledge to prevent Muslims from entering the country, and this Court should not allow it to move forward.

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[2] The White House, *Press Gaggle by Principal Deputy Press Secretary Raj Shah en route St. Louis, MO* (Nov. 29, 2017) (emphasis added), https://www.whitehouse.gov/the-press-office/2017/11/29/press-gaggle-principal-deputy-press-secretary-raj-shah-en-route-st-louis (last visited Dec. 4, 2017).

[3] Exec. Order No. 13,769, 82 Fed. Reg. 8,977 (Feb. 1, 2017).

[4] Exec. Order No. 13,780, 82 Fed. Reg. 13,209 (Mar. 9, 2017).

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ARGUMENT

I. PREVENTING THE ENTRY OF MUSLIM REFUGEES IS AN INTEGRAL PART OF THE PRESIDENT'S LONGSTANDING AND EXPRESS PLEDGE TO BAN MUSLIMS.

The President's latest plan to ban refugees is a realization of his repeated pledge to use the Office of the President and Executive Branch federal agencies to both discriminate against people who choose to practice Islam and to favor those who choose to adhere to Christianity—a discriminatory intent he has reaffirmed both before and after taking office. The ban arises in the context of the President's broader attacks on Islam as a "problem" and his affirmative dissemination of false propaganda to vilify people of the Muslim faith (including Muslim migrants in particular).

A. The President Pledged To Favor Christians And Made Affirmative Efforts To Vilify Muslims.

As Plaintiffs note in their complaint and motion for preliminary injunction, within a week of taking office, the President issued EO-1, the first predecessor to Refugee Ban 3.0; that same day, he also appeared on television to make clear that the order was adopted for the purpose of prioritizing Christians.[5] Expressly drawing a comparison between Muslim and Christian refugees, he explained that he viewed Christians as a "priority" and he was "going to help" them.[6] Days later, he again singled out his intent to help "Christians in the Middle-East."[7] On the day the President issued Refugee Ban 3.0—which, as set out below, effectively converts the temporary ban on refugees into an indefinite one that disproportionately affects Muslim refugees—his Vice President made similar remarks. In a speech to "In Defense of Christians"

[5] (Cmpl. ¶¶ 3, 67; Pl. Motion at 4-5.)

[6] David Brody, *Brody File Exclusive: President Trump Says Persecuted Christians Will Be Given Priority As Refugees*, CBN News (Jan. 27, 2017), http://www1.cbn.com/thebrodyfile/archive/2017/01/27/brody-file-exclusive-president-trump-says-persecuted-christians-will-be-given-priority-as-refugees (last visited Dec. 4, 2017).

[7] Donald J. Trump, Twitter (Jan. 29, 2017), https://twitter.com/realDonaldTrump/status/825721153142521858 (last visited Dec. 4, 2017).

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and in reference specifically to Christian refugees in the Middle East, the Vice President stated: "Help is on the way."[8]

Refugee Ban 3.0 must be understood in the context of the President's longstanding vilification of Muslims. The President has for years referred to Muslims in the United States as a "problem." As early as April 2011, Mr. Trump expressed his view that there "absolutely" was "a Muslim problem" in the United States.[9] He claimed that the Koran itself was the source of the problem, claiming that it "teaches some very negative vibe" and "tremendous hatred."[10] He has repeatedly echoed this view that there is a "massive Muslim problem" in the U.S. and abroad.[11] At an event in 2015, for instance, the President agreed with an audience member's comment that "We have a problem in this country. It's called Muslims."[12] And several times throughout 2015 and 2016, he declined to accept that a distinction could be drawn between radical Islam and Islam itself. Asked to clarify: "Is it really a Muslim problem, or is it a radical Islamist problem?" He responded: "Maybe it's a Muslim problem, maybe it's not"[13] and claimed "[i]t's very hard to define."[14] Mr. Trump has repeatedly expressed the view that "Islam hates us" and that Muslims have "tremendous hatred" and "unbelievable hatred."[15] Given the opportunity to clarify whether his statement that "Islam hates us" referred to all 1.6 billion

[8] The White House, *Remarks by the Vice President at In Defense of Christians Solidarity Dinner* (Oct. 25, 2017), https://www.whitehouse.gov/the-press-office/2017/10/25/remarks-vice-president-defense-christians-solidarity-dinner (last visited Dec. 4, 2017). While the order did not appear in the Federal Register until later, it had been announced by the time of Pence's remarks.

[9] David Brody, *Brody File Exclusive: Donald Trump Says Something in Koran Teaches a 'Very Negative Vibe,'* CBN News (Apr. 12, 2011), http://www1.cbn.com/thebrodyfile/archive/2011/04/12/brody-file-exclusive-donald-trump-says-something-in-koran-teaches (last visited Dec. 4, 2017).

[10] *Id.*

[11] Donald J. Trump, Twitter (Dec. 10, 2015), https://twitter.com/realDonaldTrump/status/674934005725331456 (last visited Dec. 4, 2017); Donald J. Trump, Twitter (Dec. 10, 2015), https://twitter.com/realDonaldTrump/status/674936832010887168 (last visited Dec. 4, 2017); Donald J. Trump, Twitter (Dec. 10, 2015), https://twitter.com/realDonaldTrump/status/675123192864899072 (last visited Dec. 4, 2017).

[12] Jonathan Merritt, *Trump's Proposals Could Backfire on Christians*, The Atlantic (Nov. 24, 2015), https://www.theatlantic.com/politics/archive/2015/11/donald-trump-muslims-christians/417255/ (last visited Dec. 4, 2017); Theodore Schleifer, *Trump doesn't challenge anti-Muslim questioner at event*, CNN (Sept. 18, 2015), http://www.cnn.com/2015/09/17/politics/donald-trump-obama-muslim-new-hampshire/ (last visited Dec. 4, 2017).

[13] CNN Interview of Donald Trump, YouTube (Feb. 4, 2016), https://www.youtube.com/watch?v=uW9UlMqJtro (minutes 18:42 to 18:46) (last visited Dec. 4, 2017).

[14] *Id.*

[15] Theodore Schleifer, *Donald Trump: 'I think Islam hates us'*, CNN (Mar. 10, 2016), http://www.cnn.com/2016/03/09/politics/donald-trump-islam-hates-us/ (last visited Dec. 4, 2017).

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Muslims in the world during one of the presidential debates, he responded: "I mean a lot of them. I mean a lot of them. . . . [T]here's tremendous hatred. And I will stick with exactly what I said."[16]

The President's attack on Muslims has also included the affirmative dissemination of group slander. Most recently, on November 29, 2017, the President promoted three unverified videos published by a British anti-Muslim group depicting violent acts by purportedly Muslim people—at least one of whom it turns out, is not Muslim—with titles intended to provoke anti-Muslim bias. The videos were entitled "Muslim migrant beats up Dutch boy on crutches!,"[17] "Muslim Destroys a Statue of Virgin Mary!,"[18] and "Islamist mob pushes teenage boy off roof and beats him to death!"[19]

The President's dissemination of these videos in manifest disregard of their effect or their veracity is but the latest in an unbroken string of anti-Muslim statements and acts while in office. On August 17, 2017, the President promoted his false story that terrorism could be eradicated if suspected terrorists were subject to mass execution with bullets dripped in pigs' blood. Given that this substance viewed as highly offensive by practicing Muslims, the President was implying that "terrorist" is synonymous with "Muslim": "Study what General Pershing of the United States did to terrorists when caught. There was no more Radical Islamic Terror for 35 years!"[20] The statement referred to the following false story, which he recounted on numerous occasions while campaigning:

> So General Pershing, . . . they catch 50 terrorists in the Philippines . . . And as you know, swine, pig, . . . a big problem for them, big problem. He took two pigs, they chopped them open. Took the bullets that were going to go and shoot these men. Took the bullets, the 50 bullets, dropped them in the pigs, swished

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[16] *Transcript of Republican Debate in Miami*, CNN (Mar. 15, 2016), http://www.cnn.com/2016/03/10/politics/republican-debate-transcript-full-text/ (last visited Dec. 4, 2017).
[17] Jayda Fransen, Twitter (Nov. 28, 2017), https://twitter.com/JaydaBF/status/935609305574903812 (last visited Dec. 4, 2017).
[18] Jayda Fransen, Twitter (Nov. 29, 2017), https://twitter.com/JaydaBF/status/935805606447013888 (last visited Dec. 4, 2017).
[19] Jayda Fransen, Twitter (Nov. 29, 2017), https://twitter.com/JaydaBF/status/935775552102981633 (last visited Dec. 4, 2017).
[20] Donald J. Trump, Twitter (Aug. 17, 2017), https://twitter.com/realDonaldTrump/status/898254409511129088 (last visited Dec. 4, 2017).

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> them around, so there was blood all over those bullets . . . They put the bullets into the rifles. And they shot 49 men . . . I'm just saying, if we're going to win, we're going to win or let's not play the game and let's not be a country any more. They put the bullets in the rifles and they shot 49 of the 50 men. Dead. Boom. So it was a pig-infested bullet in each one. . . . For 28 years, there was no terrorism. . . . We have to do what we have to do. We have to clean it out.[21]

The President has also spread the false story that thousands of Muslims cheered on rooftops during the September 11, 2011 attacks, claiming: "I watched when the World Trade Center came tumbling down. And I watched in Jersey City, New Jersey, where thousands and thousands of people were cheering as that building was coming down. Thousands of people were cheering."[22] In the face of numerous authorities and articles debunking his claim,[23] the President repeated the lie on several occasions.[24]

Significantly, the President's affirmative efforts to vilify Muslims have often focused specifically on Muslim refugees by equating them with terrorists. He has thus equated being a Syrian refugee with being a terrorist: "[W]e cannot allow people to come into the country who want to destroy us, we cannot do it. We can't allow the Syrians. We can't allow the migration of the Syrians into the country."[25] Mr. Trump has also stoked fear of Islam on the basis that his

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[21] *FULL Speech: Donald Trump rally in Dayton, OH 3-12-2016*, YouTube (Mar. 12, 2016), https://www.youtube.com/watch?v=-9KOAHf4GCw (minutes 43:30 to 43:48) (last visited Dec. 4, 2017); *see also* Lydia Wheeler, *Trump resurrects story of Muslims shot with pig's blood-dipped bullets*, The Hill (Mar. 12, 2016), http://thehill.com/blogs/blog-briefing-room/news-campaigns/272780-trump-resurrects-story-of-muslims-shot-with-pigs (last visited Dec. 4, 2017); David Mikkelson, *Pershing the Thought*, Snopes (Apr. 28, 2016), http://www.snopes.com/rumors/pershing.asp (debunking Mr. Trump's story about General Pershing) (last visited Dec. 4, 2017).

[22] Glenn Kessler, *Trump's outrageous claim that 'thousands' of New Jersey Muslims celebrated the 9/11 attacks*, Wash. Post (Nov. 22, 2015), https://www.washingtonpost.com/news/fact-checker/wp/2015/11/22/donald-trumps-outrageous-claim-that-thousands-of-new-jersey-muslims-celebrated-the-911-attacks/ (last visited Dec. 4, 2017).

[23] *See, e.g.*, Lauren Carroll, *Fact Checking Trump's claim that thousands in New Jersey cheered when World Trade Center tumbled*, Politifact (Nov. 22, 2015), http://www.politifact.com/truth-o-meter/statements/2015/nov/22/donaldtrump/fact-checking-trumps-claim-thousands-new-jersey-ch/ (last visited Dec. 4, 2017).

[24] Kessler, *supra*, note 22; AP Archive, Trump Defends 9/11 Celebrations with Article (Nov. 24, 2015), http://www.aparchive.com/metadata/US-OH-Trump-CR-/cadcfee1334d2a1fea065ba383ef6f8e (last visited Dec. 4, 2017); Donald J. Trump, Twitter (Nov. 25, 2015), https://twitter.com/realDonaldTrump/status/669682774673137665 (last visited Dec. 4, 2017).

[25] *FULL Speech: Donald Trump rally in Dayton, OH 3-12-2016*, YouTube (Mar. 12, 2016), https://www.youtube.com/watch?v=-9KOAHf4GCw (minutes 42:45 to 46:45) (last visited Dec. 4, 2017).

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election opponent would "let the Muslims flow in"[26] and stoked fear that "[r]efugees are trying to take over our children" by telling them "how wonderful Islam is."[27]

B. The President Has Expressly Stated His Intent To Curtail The Rights Of Muslims, Including By Restricting Their Entry To The United States.

The President has also made clear his express intent to curtail the rights of Muslims in various ways—including most notably to restrict their entry into the United States and to do so in part by banning refugees.

Indeed, the signature promise of his campaign has always been that he would restrict the entry of Muslims into the United States. He has further prioritized a ban on prohibiting the entry of Muslim refugees. From the early days of his Presidential campaign, Mr. Trump promised that, if elected, he would "be looking at" getting "rid of" Muslims.[28] On December 7, 2015, Mr. Trump announced on his website: "Donald J. Trump is calling for a total and complete shutdown of Muslims entering the United States."[29] The same day that Mr. Trump issued this announcement, he also disseminated it to his millions of Twitter followers with the title "Statement on Preventing Muslim Immigration"[30] and, further equating Muslims with hatred and terror, he tweeted, "Just put out a very important policy statement on the extraordinary influx of hatred & danger coming into our country."[31] At a rally the same day, Mr. Trump claimed numerous times that "[w]e have no choice" but to implement "a total and complete shutdown of Muslims."[32] Asked how border officials would ideally implement his

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[26] Donald J. Trump, Twitter (Mar. 22, 2016), https://twitter.com/realDonaldTrump/status/712473816614772736 (last visited Dec. 4, 2017).

[27] *Donald Trump Remarks in Manchester, New Hampshire*, C-SPAN (Jun. 13, 2016), https://www.c-span.org/video/?410976-1/donald-trump-delivers-remarks-national-security-threats (minutes 20:05 to 20:30) (last visited Dec. 4, 2017).

[28] *See* Schleifer, *supra* note 12.

[29] Press Release, Trump-Pence, *Donald J. Trump Statement on Preventing Muslim Immigration* (Dec. 7, 2015), https://web.archive.org/web/20170508054010/https://www.donaldjtrump.com/press-releases/donald-j.-trump-statement-on-preventing-muslim-immigration (Internet Archive record on May 8, 2017) (last visited Dec. 4, 2017).

[30] Donald J. Trump, Twitter (Dec. 7, 2015), https://twitter.com/realDonaldTrump/status/673993417429524480 (last visited Dec. 4, 2017).

[31] Donald J. Trump, Twitter (Dec. 7, 2015), https://twitter.com/realdonaldtrump/status/673982228163072000 (last visited Dec. 4, 2017).

[32] *Donald J. Trump is Calling for a Total and Complete Shutdown of Muslims Entering the United States Until Our Country's Representatives Can Figure Out What the Hell is Going On!*, YouTube (Dec. 8, 2015), https://www.youtube.com/watch?v=LRxozK6Bpvk (minutes 0:00 to 0:36) (last visited Dec. 4, 2017).

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plan, Mr. Trump explained: "They would say, 'are you Muslim?'" and that "if they said yes, they would not be allowed in the country."[33] His complete equation of terrorism with a faith of 1.6 billion people, including approximately 3.3 million American citizens, is clear.

The President has also advocated for a registry of all Muslims in America in the teeth of direct comparisons to the Nazis' registration of Jewish people. On November 20, 2015, for instance, Mr. Trump stated that he would "certainly implement" a database tracking Muslims in the United States.[34] Asked whether he would favor making Muslims legally obligated to register into the database, Mr. Trump responded, "They have to be—they have to be."[35] Again, given the opportunity to clarify whether he was "ruling out a database on all Muslims?", Mr. Trump doubled down, stating "No not at all."[36] And, perhaps most appallingly, when asked how registering Muslims would be different from the Nazis' registration of Jewish people, he expressed indifference, saying four times: "You tell me."[37]

The President even went so far as to expressly justify his intent to restrict the flow of Muslims by reference to executive orders targeting Japanese Americans during World War II, saying: "Take a look at Presidential proclamations back a long time ago . . . what [President Roosevelt] was doing with Germans, Italians, and Japanese because he had to do it."[38] When asked whether he was given "any pause at all" by being compared to Hitler, Mr. Trump responded "No,"[39] and justified banning Muslims based on President Roosevelt's treatment of

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[33] *Donald Trump On Muslim Travel Ban, Obama And 2016*, YouTube (Dec. 8, 2015), https://www.youtube.com/watch?v=5I3E3-U-1jc (minutes 14:58 to 15:14) (last visited Dec. 4, 2017); *Hardball with Chris Matthews Transcript 12/8/15*, MSNBC (Dec. 8, 2015), http://www.msnbc.com/transcripts/hardball/2015-12-08 (last visited Dec. 4, 2017).

[34] Vaughn Hillyard, *Donald Trump's Plan for a Muslim Database Draws Comparison to Nazi Germany*, NBC News (Nov. 20, 2015), http://www.nbcnews.com/politics/2016-election/trump-says-he-would-certainly-implement-muslim-database-n466716 (last visited Dec. 4, 2017).

[35] *Id.*

[36] *See* Lauren Carroll, *In Context: Donald Trump's comments on a database of American Muslims*, Politifact (Nov. 24, 2015), http://www.politifact.com/truth-o-meter/article/2015/nov/24/donald-trumps-comments-database-american-muslims/ (last visited Dec. 4, 2017).

[37] *See* Hillyard, *supra* note 34.

[38] *Donald Trump On Muslim Travel Ban, Obama And 2016*, YouTube (Dec. 8, 2015), https://www.youtube.com/watch?v=5I3E3-U-1jc (minutes 00:46 to 01:03) (last visited Dec. 4, 2017).

[39] Miriam Hernandez, *Trump Cites History to Defend Muslim Immigration Ban*, ABC 7 (Dec. 9, 2015), http://abc7.com/politics/trump-cites-history-to-defend-muslim-immigration-ban/1116396/ (Dec. 4, 2017).

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Japanese Americans.[40] Two days later, Mr. Trump defended his position by tweeting a link to an article stating that Islam is a "very evil and wicked religion," a "false religion," advocating that Muslims should be banned, and making further analogy to the treatment of Japanese during World War II.[41]

As part of advocating a ban on entry of nationals from predominately Muslim countries, the President consistently embraced a ban on refugees, and Syrian refugees in particular, describing the latter as "one of the great Trojan horses" and saying that "[w]e cannot let them into this country, period."[42] On numerous occasions, he urged that refugees should be banned because "[t]hey may be from Syria, they may be ISIS" and stoked fear that "[t]his is a migration, they have no anything, but they have cellphones — with ISIS flags on them and worse."[43] He claimed that the United States had accepted "tens of thousands of Syrian refugees . . . who are definitely in many cases ISIS aligned."[44]

C. The President Has Reaffirmed His Discriminatory Intent On Numerous Occasions Since Taking Office.

Mr. Trump has never backed down from his hateful statements and pledges since assuming the Office of the President; in fact, he has repeatedly reaffirmed them. As discussed above, *as President*, Mr. Trump has expressly stated that he would implement policy to favor Christian refugees; affirmatively shared propaganda videos depicting purported violence by Muslims without regard to their authenticity or their defamatory consequences for innocent Muslims; and promoted propaganda such as his false story of a mass execution of terrorists

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[40] *Id.*

[41] Donald J. Trump, Twitter (Dec. 10, 2015), https://twitter.com/realDonaldTrump/status/675034063447662592 (last visited Dec. 4, 2017); *see also* Sarah Larimer, *Why Franklin Graham says Donald Trump is right about stopping Muslim immigration*, Wash. Post (Dec. 10, 2015), https://www.washingtonpost.com/news/acts-of-faith/wp/2015/12/10/why-franklin-graham-says-donald-trump-is-right-about-stopping-muslim-immigration/ (last visited Dec. 4, 2017).

[42] Tal Kopan, *Donald Trump: Syrian refugees a 'Trojan horse'*, CNN (Nov. 16, 2015), http://www.cnn.com/2015/11/16/politics/donald-trump-syrian-refugees/index.html (last visited Dec. 4, 2017).

[43] Ben Kamisar, *Trump to Syrian refugee children: 'You can't come here'*, The Hill (Feb. 8, 2016), http://thehill.com/blogs/ballot-box/gop-primaries/268614-trump-to-syrian-refugee-children-you-cant-come-here (last visited Dec. 4, 2017).

[44] *Trump: Taking in Syrian Refugees 'Great Trojan Horse'*, MSNBC (Oct. 19, 2016) http://www.msnbc.com/msnbc-quick-cuts/watch/trump-taking-in-syrian-refugees-great-trojan-horse-789644867592 (last visited Dec. 4, 2017).

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using weapons dipped in pigs' blood. Continuing his discriminatory rhetoric specific to Muslim migrants, the President has also repeated his oft-expressed view that "[t]he assimilation [of Muslims in the U.S.] has been very, very hard. It's been a very, very difficult process."[45]

Senior members of the Trump Administration have expressly acknowledged that his executive orders, including the present one, are motivated by negative stereotypes caricaturing all Muslims as terrorists. Following the issuance of Refugee Ban 3.0, the President's Deputy Press Secretary was recently, squarely asked: "Does the President think that Muslims are a threat to the United States?" Acknowledging the basis for the Refugee Ban in religious stereotype, he responded, "*[T]he President has addressed these issues with the travel order that he issued earlier this year and the companion proclamation*."[46]

The President himself has made this discriminatory intent just as clear. After courts enjoined EO-1, which included provisions limiting refugee admission and banning refugees from certain countries, the President expressly complained that the refugees being admitted to the United States as a result included a large percentage of Muslims, tweeting: "72% of refugees admitted into U.S. (2/3-2/11) during COURT BREAKDOWN are from 7 countries: SYRIA, IRAQ, SOMALIA, IRAN, SUDAN, LIBYA & YEMEN."[47] Following his issuance of EO-2—and in the direct lead up to the present order—the President repeatedly derided his own Department of Justice for taking an approach that was too "politically correct."[48] The only plausible interpretation of that criticism is that the President understands his executive orders as "politically incorrect," i.e., based on an anti-Muslim presumption. He has also stated his view

[45] Chris Cillizza, *Donald Trump's explanation of his wire-tapping tweets will shock and amaze you*, Wash. Post (Mar. 16, 2017), https://www.washingtonpost.com/news/the-fix/wp/2017/03/16/donald-trump-explained-twitter-the-universe-and-everything-to-tucker-carlson/ (last visited Dec. 4, 2017).

[46] The White House, *Press Gaggle by Principal Deputy Press Secretary Raj Shah en route St. Louis, MO* (November 29, 2017) (emphasis added), https://www.whitehouse.gov/the-press-office/2017/11/29/press-gaggle-principal-deputy-press-secretary-raj-shah-en-route-st-louis (last visited Dec. 4, 2017).

[47] Donald J. Trump, Twitter (Feb. 12, 2017), https://twitter.com/realDonaldTrump/status/830747067379232769 (last visited Dec. 4, 2017).

[48] Donald J. Trump, Twitter (June 5, 2017), https://twitter.com/realDonaldTrump/status/871899511525961728 (last visited Dec. 4, 2017).

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that "The travel ban into the United States should be far larger, tougher and more specific."[49] This is precisely what he has done with Refugee Ban 3.0, which makes the ban on refugees indefinite and has an especially drastic impact on Muslim refugees.

II. THE PREDECESSOR ORDERS THAT PRECEDED AND GAVE RISE TO REFUGEE BAN 3.0 WERE MOTIVATED ON THEIR FACE BY ANTI-MUSLIM ANIMUS.

Refugee Ban 3.0 is a continuation and expansion of the temporary refugee suspensions in EO-1 and EO-2. Both of those predecessors contained on their face evidence of anti-Muslim animus. EO-1 prioritized the processing of refugee applications from religious minorities, a provision that, by the President's own admission, was designed to benefit Christian refugees from Muslim-majority countries. And both EO-1 and EO-2 made explicit reference to "honor killings," an attempt to communicate anti-Muslim animus that is wholly unrelated to national security. Refugee Ban 3.0 flows directly from these openly discriminatory orders, and is motivated by the same anti-Muslim animus that animated its predecessors.

A. The Refugee Ban Provision Of EO-1 Included A Priority Designed To Benefit Christian Refugees In Muslim-Majority Nations At The Expense Of Muslim Refugees.

EO-1 explicitly required that refugee admissions be "prioritize[d]" if the refugee made a claim "on the basis of religious-based persecution."[50] However, this priority was only available if "the religion of the individual is a minority religion in the individual's country of nationality."[51] As the President explained in public statements made the day he signed EO-1, this provision was designed to favor Christians, and to allow Christians from Muslim-majority countries the ability to continue coming to the United States as refugees.[52] Further, EO-2 eliminated the explicit reference to religious minorities but continued to operate as a ban on

[49] Donald J. Trump, Twitter (Sept. 15, 2017), https://twitter.com/realDonaldTrump/status/908645126146265090 (last visited Dec. 4, 2017).
[50] 82 F.R. 8977 § 5(b) (Jan. 27, 2017).
[51] *Id*.
[52] *See* Part I.A., *supra*

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Muslims, changing the religious composition of refugees entering the United States—from 50% Muslim and 41% Christian to 57% Christian and 31% Muslim.[53]

B. Both EO-1 And EO-2 Refer To "Honor Killings"—A Term Used Commonly And Almost Exclusively To Denigrate Muslims.

In addition to the specific exception designed to disfavor Muslim refugees, the texts of both EO-1 and EO-2 contain on their face language that reveals an invidious anti-Muslim intent and is otherwise inexplicable. Both invoke, as justification, the practice of "honor killings"—the homicide of a family member, typically female, due to the perpetrator's belief that the victim has shamed the family, usually by violating a religious tenet. Yet the idea of an "honor killing" is wholly unrelated to the problem of international terrorism. Instead, it is deployed in current political discourse as a coded message to invoke and reinforce animus against Muslims by painting them as violent and uncivilized. Expressions of concern about "honor killings" are hence not neutral references to all gender-based violence: they are a means of affirming and propagating anti-Muslim stereotypes upon which the President and his surrogates have relied to justify banning the entry of Muslims in the United States.

In EO-1, the term "honor killings" appears in the very first section as part of the motivation for the order to prohibit "those who engage in acts of bigotry or hatred . . . including 'honor' killings" from entering the United States. EO-1 § 1. EO-1 further required that the Secretary of Homeland Security collect data on "'honor killings' in the United States by foreign nationals." *Id*. § 10(iii). EO-2 reiterated this command. EO-2 § 11(a)(iii) (requiring that the Secretary of Homeland Security "collect and make publicly available . . . information regarding the number and types of acts of *gender-based violence against women, including so- called 'honor killings,'* in the United States by foreign nationals") (emphasis added).

These references are inexplicable given the putative purpose of the two orders. There is no known association between the incidence of "honor killings" and the likelihood that a

[53] (Cmpl. ¶ 89.)

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government of one of the covered nations will supply information requested by U.S. immigration authorities.

There is no correlation between Islam and intrafamilial violence against women.[54] While regional rates vary, the incidence of intrafamilial violence exceeds 19 percent everywhere in the world except East Asia.[55] To the extent the term "honor killings" isolate a specific subcategory of domestic violence, "[h]onor crimes are committed worldwide and . . . cu[t] across cultures and religions."[56] Nor do Muslims condone such violence more often than non-Muslims.[57] To the contrary, Muslim religious leaders have repeatedly and forcefully condemned violence against women.[58]

Despite all this, the term "honor killing" is used in current political discourse almost exclusively to refer to Muslims, and thereby to promote that Muslims are distinctively violent and uncivilized. There is a "constant association" of honor killings stories with "the Middle East and South Asia, or immigrant communities originating in these regions, [which] has given them a special association with Islam."[59]

Individuals and groups with anti-Muslim biases commonly invoke so-called "honor crimes" as a phenomenon that supposedly "divides civilized societies from uncivilized

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[54] K.M. Devries et al., *The Global Prevalence of Intimate Partner Violence Against Women*, 340 Science 1527, 1527 (2013) (estimating that 30 percent of women "aged 15 and over have experienced, during their lifetime, physical and/or sexual intimate partner violence").

[55] *Id.* at 1528.

[56] Brittany E. Hayes et al., *An Exploratory Study of Honor Crimes in the United States*, 31 J. Fam. Violence 303, 304 (2016); Aisha Gill, *Honor Killings and the Quest for Justice in Black and Minority Ethnic Communities in the United Kingdom*, 20 Crim. Just. Pol'y Rev. 475, 480 (2009) ("Honor killings cut across ethnic, class, and religious lines [and are committed] not only by Muslims but also by Druze, Christians, and occasionally Jews.").

[57] *The Gallup Coexist Index 2009: A Global Study of Interfaith Relations* 34 (2009), https://ec.europa.eu/migrant-integration/librarydoc/the-gallup-coexist-index-2009-a-global-study-of-interfaith-relations (last visited Dec. 4, 2017).

[58] *See, e.g.*, Paola Loriggio, *Shafia Murders: Imams Issue Fatwa Against Honour Killings, Domestic Violence*, Huffington Post (Feb. 4, 2012), http://www.huffingtonpost.ca/2012/02/04/honour-killi%20ng-imams-fatwa-against_n_1254697.html (last visited Dec. 4, 2017) (Rather than condoning gender- based violence, "Islam and Islamic law . . . [over time] are coming to be invoked more and more *against* honor crimes."); Lila Abu-Lughod, DO MUSLIM WOMEN NEED SAVING? 139 (2013); Gill, *supra*, at 480 ("[B]oth Sharia law (Islamic law) and customary law alike have strict guidelines forbidding [honor killings].").

[59] Abu-Lughod, *supra* fn. 58, at 114; *accord* Sherene Razack, CASTING OUT: THE EVICTION OF MUSLIMS FROM WESTERN LAW AND POLITICS 128 (2008) (explaining how the same crime is labeled a crime of "passion" or of "honor" depending on the religious identity of the perpetrator in a way that "reifies Muslims as stuck in premodernity"); Inderpal Grewal, *Outsourcing Patriarchy: Feminist Encounters, Transnational Mediations and the Crime of 'Honour Killings,'* 15 Int'l Feminist J. Pol. 1, 5 (2013).

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societies,"[60] notwithstanding the pervasive occurrence of intrafamilial violence against women across cultures.[61] Anti-Muslim organizations and websites commonly depict Muslims as "inherently violent" and prone to "rape, sexual abuse against children, violent acts caused by a *culture of honour*, violence within arranged marriages, threats against public individuals and physical violence against non-Muslims."[62]

Coded stereotypes like these have frequently been used against disfavored minorities in U.S. politics. For example, Jim Crow was defended by "coded" appeals to white supremacy framed in terms of "African-Americans' illegitimate sexual relations and proclivity to crime."[63] Coded invocations of racial fears are still employed in political debate.[64] The use of "subtle" allusions to negative stereotypes has been shown to reap political rewards because dog whistles "activate racial attitudes" while maintaining a measure of deniability.[65] That is precisely the function the reference to "honor killings" in EO-1 and EO-2 plays.

In sum, neither EO-1's nor EO-2's reference to "honor killings" can be written off as neutral nor superfluous. Instead, they are invocations of common negative stereotypes used to malign Muslims as violent and uncivilized—precisely the same negative, hateful, and false stereotypes that President Trump has conjured before and after inauguration. Such references undermine the purported justifications for those orders, and Refugee Ban 3.0 that followed and rendered these measures into permanent law, and show all to reflect impermissible animus against Muslims.

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[60] *Id.* at 115.
[61] Devries, *supra*, at 1528
[62] Mattias Ekman, *Online Islamophobia and the Politics of Fear: Manufacturing the Green Scare*, 38 Ethnic & Racial Stud. 1986, 1995 (2015) (emphasis added).
[63] Tali Mendelberg, THE RACE CARD: CAMPAIGN STRATEGY, IMPLICIT MESSAGING, AND THE NORM OF EQUALITY 94-95 (2001).
[64] Jon Hurwitz & Mark Peffley, *Playing the Race Card in the Post–Willie Horton Era: The Impact of Racialized Code Words on Support for Punitive Crime Policy*, 69 Pub. Opinion Q. 99 (2005) (demonstrating the racially loaded effect of crime-related language).
[65] Nicholas A. Valentino et al. *Cues That Matter: How Political Ads Prime Racial Attitudes During Campaigns*, 96 Am. Pol. Sci. Rev. 75, 75–76 (2002).

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III. REFUGEE BAN 3.0 IS A DIRECT CONTINUATION OF EO-1 AND EO-2 AND IS MOTIVATED BY THE SAME ANTI-MUSLIM ANIMUS.

Refugee Ban 3.0, like its precursors, discriminates against Muslim refugees. Refugee Ban 3.0 was enacted the day after the refugee ban provision of EO-2 expired and is clearly intended to continue the policies that EO-1 and EO-2 originally put in place.[66] It consists of two main provisions: first, a provision that suspends refugee admissions from eleven countries, the overwhelming majority of which are Muslim; and second, a provision that suspends the "follow-to-join" process permitting a spouse or child to be reunited with a refugee already admitted to the United States, which in operation today tends largely to be used by Muslim refugees. Each of these steps furthers the stated anti-Muslim policies of the Trump administration and reflects the discriminatory animus evidenced in EO-1 and EO-2.

Refugee Ban 3.0 suspends refugee admissions from eleven countries that comprise the majority of the Muslim refugees entering the United States. As the Complaint alleges, the eleven countries affected by the suspension include nine countries with a population that is over 85% Muslim (Egypt, Iran, Iraq, Libya, Mali, Somalia, Sudan, Syria, and Yemen), and two other countries (North Korea and South Sudan).[67] In the last two fiscal years, the nine Muslim-majority countries accounted for 80% of the Muslim immigrants to the United States,[68] and over 80% of the refugees resettled from those countries have been Muslim.[69] By contrast, the refugees admitted from countries *not* targeted by Refugee Ban 3.0 are 70% Christian and only 16% Muslim.[70] The suspension thus operates to shift the composition of refugees admitted to the United States from mostly Muslim to mostly Christian, nearly as efficiently as possible, by using countries as a proxy for religion.

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[66] (Cmpl. ¶ 94); section I(C) *supra*.
[67] (Cmpl. ¶ 103-104.) Many of these countries have been repeatedly targeted by the previous Executive Orders; for example, six of these Muslim-majority countries were included in the travel bans of both EO-1 and EO-2 (Syria, Sudan, Iran, Libya, Somalia, and Yemen). (Cmpl. ¶ 79); EO-2 § 2(c).
[68] (Cmpl. ¶ 106)
[69] (Cmpl. ¶ 105)
[70] (Cmpl. ¶ 111); (Declaration of Casey Smith in Support of Plaintiff's Motion for Preliminary Injunction ("Smith Decl."), Dkt. No. 44, ¶ 19).

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Refugee Ban 3.0 also indefinitely suspends the "follow-to-join" process, whereby the spouse or child of a refugee accepted into the United States is permitted to join them. Memo at 3. Although this suspension applies worldwide, it has a disproportionate effect on Muslim refugees: Follow-to-join is generally available only to family members of refugees admitted within the last two years.[71] Over the last two fiscal years, most refugees admitted to the United States have been Muslim.[72] Even prior to the recent increase in the number of Muslim refugees admitted to the United States, Iraq and Somalia—two predominantly Muslim countries targeted by the refugee and travel bans—were the nationalities most represented in the follow-to-join process. Memo Addendum at 1.

Understood in context, therefore, Refugee Ban 3.0 is plainly the President's implementation of a longstanding pledge to prevent the entry of Muslims to the U.S.—including specifically by restricting the flow of Muslim refugees—on the basis of an invidious and false belief that equates Islam and violence. It plainly embodies the same anti-Muslim animus that was expressly indicated in the predecessor orders that gave rise to Refugee Ban 3.0 in the first place. This Court should not allow it to be implemented.

CONCLUSION

For the foregoing reasons, amici urge this Court to grant Plaintiffs' motion for a Preliminary Injunction.

[71] 8 C.F.R. § 207.7(d).
[72] (Smith Decl. ¶ 21.)

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CERTIFICATE OF SERVICE

I hereby certify that on December 4, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to those attorneys of record registered on the CM/ECF system. All other parties (if any) shall be served in accordance with the Federal Rules of Civil Procedure

Dated this 4th date of December, 2017.

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