

17-1351

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IN THE

**United States Court of Appeals**

**FOR THE FOURTH CIRCUIT**

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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 United States; 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.*

*(Caption continued on inside cover)*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

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**MOTION OF THE CATO INSTITUTE FOR LEAVE  
TO FILE BRIEF AS *AMICUS CURIAE* IN SUPPORT  
OF PLAINTIFFS-APPELLEES AND AFFIRMANCE**

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STATE OF TEXAS; STATE OF ALABAMA; STATE OF ARIZONA; STATE OF ARKANSAS;  
STATE OF FLORIDA; STATE OF KANSAS; STATE OF LOUISIANA; STATE OF MONTANA;  
STATE OF OKLAHOMA; STATE OF SOUTH CAROLINA; STATE OF SOUTH DAKOTA;  
STATE OF WEST VIRGINIA; PHIL BRYANT, Governor of the State of Mississippi;  
AMERICAN CENTER FOR LAW AND JUSTICE; SOUTHERN LEGAL FOUNDATION, INC.;  
AMERICAN CIVIL RIGHTS UNION; IMMIGRATION REFORM LAW INSTITUTE; U.S.  
JUSTICE FOUNDATION; CITIZENS UNITED; CITIZENS UNITED FOUNDATION; ENGLISH  
FIRST FOUNDATION; ENGLISH FIRST; PUBLIC ADVOCATE OF THE UNITED STATES;  
GUN OWNERS FOUNDATION; GUN OWNERS OF AMERICA; CONSERVATIVE LEGAL  
DEFENSE AND EDUCATION FUND; U.S. BORDER CONTROL FOUNDATION; POLICY  
ANALYSIS CENTER; VICTOR WILLIAMS,

*Amici Supporting Appellants,*

INTERFAITH COALITION; COLLEGES AND UNIVERSITIES; T.A.; COMMONWEALTH  
OF VIRGINIA; STATE OF MARYLAND; STATE OF CALIFORNIA; STATE OF CONNECTICUT;  
STATE OF DELAWARE; STATE OF ILLINOIS; STATE OF IOWA; STATE OF MAINE;  
STATE OF MASSACHUSETTS; STATE OF NEW MEXICO; STATE OF NEW YORK; STATE  
OF NORTH CAROLINA; STATE OF OREGON; STATE OF RHODE ISLAND; STATE OF  
VERMONT; STATE OF WASHINGTON; DISTRICT OF COLUMBIA; CITY OF CHICAGO;  
CITY OF LOS ANGELES; CITY OF NEW YORK; CITY OF PHILADELPHIA; CITY OF  
AUSTIN; JAMES A. DIOSSA, the Mayor of Central Falls, Rhode Island; CITY OF  
GARY; CITY OF IOWA CITY; SVANTE L. MYRICK, the Mayor of Ithaca; CITY OF  
JERSEY CITY; CITY OF MADISON; CITY OF MINNEAPOLIS; MONTGOMERY COUNTY;  
CITY OF OAKLAND; CITY OF PITTSBURGH; WILLIAM PEDUTO, the Mayor of  
Pittsburgh; CITY OF PORTLAND; CITY OF PROVIDENCE; JORGE O. ELORZA, the  
Mayor of Providence; CITY OF ST. LOUIS; CITY OF SAINT PAUL; CITY OF SAN  
FRANCISCO; COUNTY OF SAN FRANCISCO; CITY OF SAN JOSE; SANTA CLARA  
COUNTY; CITY OF SANTA MONICA; CITY OF SEATTLE; VILLAGE OF SKOKIE; CITY  
OF SOUTH BEND; CITY OF TUCSON; CITY OF WEST HOLLYWOOD; FORMER  
NATIONAL SECURITY OFFICIALS; AMERICANS UNITED FOR SEPARATION OF CHURCH  
AND STATE; BEND THE ARC; SOUTHERN POVERTY LAW CENTER; AMERICAN-ARAB  
ANTI-DISCRIMINATION COMMITTEE; NEW YORK UNIVERSITY; RODERICK &  
SOLANGE MACARTHUR JUSTICE CENTER; UNIVERSITY PROFESSORS AND HIGHER  
EDUCATION ASSOCIATIONS; INTERNATIONAL LAW SCHOLARS; NONGOVERNMENTAL  
ORGANIZATIONS,

*Amici Supporting Appellees.*

## **MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE***

Pursuant to Fed. R. App. P. 29(a)(3), the Cato Institute (*Cato*) moves for leave to file an *amicus curiae* brief supporting Plaintiffs-Appellees and affirmance. All parties consent to the filing of the proposed brief, which accompanies this motion.

1. The Cato Institute (*Cato*) is a nonpartisan public policy research foundation dedicated to advancing the principles of individual liberty, free markets, and limited government. The Cato Institute believes that those values depend on holding government to rigorous standards of evidence and justification for its actions. Toward those ends, Cato conducts conferences, publishes books and studies, and issues the annual *Cato Supreme Court Review*.

2. Cato and its scholars have significant experience studying immigration law and policy in the United States. Cato therefore believes that it can assist the Court by providing evidence relevant to Executive Order 13780, 82 Fed. Reg. 13,209 (Mar. 6, 2017) (*Order*). In particular, Cato believes that its research is relevant to the Court's consideration of the "Suspension of Entry for Nationals of Countries of Particular Concern" (section 2(c)) (*Entry Ban*).

3. The Entry Ban excludes from the United States persons who are nationals of six Muslim-majority countries: Iran, Syria, Somalia, Sudan, Libya, and Yemen. The government justifies this measure by claiming that nationals from

these countries pose a heightened threat of terrorism and that it needs time to identify information necessary to process visa applications. Real-world evidence presented in Cato's brief supports neither the government's stated justifications for the Order, nor the government's claim that enjoining the Order will harm the public interest.

4. Cato's brief further explains how the Entry Ban's actual operation undermines the claim that it is merely a ban on entry pursuant to the President's authority under 8 U.S.C. § 1182(f). Careful examination reveals that the Order is in fact a prohibition on the issuance of visas and is therefore subject to the prohibition on discrimination in the issuance of visas on the basis of nationality.

### **CONCLUSION**

For the foregoing reasons, the Cato Institute respectfully requests that the Court grant it leave to file the attached *amicus curiae* brief supporting Plaintiffs-Appellees and affirmance.

Dated: April 19, 2017  
Washington, DC

Respectfully submitted:

/s/ Peter Jaffe

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## CERTIFICATE OF COMPLIANCE

This motion complies with the type-volume limitation under Fed. R. App. P. 27(d)(2) because, excluding items exempted under Fed. R. App. P. 32(f), it contains 359 words.

This motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it uses a proportionally spaced Times New Roman typeface in 14-point size.

Dated: April 19, 2017

/s/ Peter Jaffe

Peter Jaffe  
Freshfields Bruckhaus Deringer US LLP

*Attorney for Amicus Curiae*

## CERTIFICATE OF SERVICE

I, Peter Jaffe, hereby certify that I electronically filed the foregoing motion 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 April 19, 2017.

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 April 19, 2017,  
at Washington, District of Columbia.

/s/ Peter Jaffe

Peter Jaffe  
Freshfields Bruckhaus Deringer US LLP

*Attorney for Amicus Curiae*