No. 17-1351

United States Court of Appeals for the Fourth Circuit

International Refugee Assistance Project, ET AL.,
Plaintiffs-Appellees,

v.

Donald J. Trump, ET AL.,
Defendants-Appellants.

Appeal from the United States District Court for the District of Maryland, (Chuang, T.)
Case No. 8:17-cv-00361

AMICUS CURIAE BRIEF OF THE IMMIGRATION REFORM LAW INSTITUTE IN SUPPORT OF DEFENDANTS-APPELLANTS AND REVERSAL

Christopher J. Hajec
Michael M. Hethmon
Elizabeth A. Hohenstein
Mark S. Venezia
IMMIGRATION REFORM LAW INSTITUTE
25 Massachusetts Ave., NW, Suite 335
Washington, DC 20001
Phone: (202) 232-5590
chajec@irli.org
mhethmon@irli.org
ehohenstein@irli.org
mvenezia@irli.org

Attorneys for Amicus Curiae

CORPORATE DISCLOSURE STATEMENT

Amicus curiae the Immigration Reform Law Institute (IRLI) is a 501(c)(3) not for profit charitable organization incorporated in the District of Columbia. IRLI has no parent corporation. It does not issue stock.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Constitutional Provisions

Other Authorities

INTEREST OF *AMICUS CURIAE*

The Immigration Reform Law Institute ("IRLI") is a non-profit 501(c)(3) public interest law firm dedicated to litigating immigration-related cases on behalf of, and in the interests of, United States citizens and lawful permanent residents, and also to assisting courts in understanding and accurately applying federal immigration law. IRLI has litigated or filed *amicus curiae* briefs in a wide variety of cases, including *Wash. All. of Tech. Workers v. U.S. Dep't of Homeland Sec.*, 74 F. Supp. 3d 247 (D.D.C. 2014); *Save Jobs USA v. U.S. Dep't of Homeland Sec.*, No. 16-5287 (D.C. Cir., filed Sept. 28, 2016); and *Matter of Silva-Trevino*, 26 I. & N. Dec. 99 (B.I.A. 2016); *Matter of C-T-L-*, 25 I. & N. Dec. 341 (B.I.A. 2010).

IRLI submits this *amicus curiae* brief to assist this Court in understanding the unfortunate legal consequences of the injunction entered by the court below, and also how the comprehensive statutory scheme that comprises federal immigration law fully supports the president's instant exercise of authority.

All of the parties have stated in writing that they consent to the filing of this *amicus curiae* brief.

RULE 29(a)(4)(E) STATEMENT

No counsel for a party authored this brief in whole or in part and no person or entity, other than *amicus curiae*, its members, or its counsel, has contributed money that was intended to fund preparing or submitting the brief.

ARGUMENT

In finding that plaintiffs-appellees ("plaintiffs") were likely to succeed in their lawsuit, the U.S. District Court for the District of Maryland ("the District Court") first found that some of the individual U.S. plaintiffs had standing to seek an injunction of President Trump's travel order issued on March 6, 2017 ("the Order"). The District Court found standing because these plaintiffs claimed both that the Order's allegedly anti-Muslim character caused them psychological injury and that their close foreign-national relatives would be barred from the country by the terms of the Order. District Court's Memorandum Opinion, Doc. No. 149 below ("Mem. Op."), at 17-18. The District Court then relied on President Trump's statements as a candidate for president in finding that the Order was impermissibly motivated by what the court deemed his anti-Muslim animus. Mem. Op. at 26-33. On the basis of this supposed motivation, the District Court concluded that the Order likely violated the Establishment Clause, and issued a nationwide preliminary injunction against key provisions of it. Mem. Op. at 37-38, 42.

In so holding, the District Court defied a large body of Supreme Court precedents establishing that, in First Amendment challenges, courts should give no more than limited scrutiny to presidential directives in the area of war, foreign relations, and the admission of aliens. The District Court's reasoning, moreover, entails a train of striking absurdities that unmistakably shows the wisdom of these same precedents.

The District Court also held that aspects of the Order probably violated the Immigration and Nationality Act ("INA"). Mem. Op. at 24. In doing so, the District Court betrayed its flawed understanding of how the provisions of that comprehensive statutory scheme were designed to work together.

I. THE DISTRICT COURT FLOUTED CLEARLY-APPLICABLE PRECEDENT IN REACHING ITS ESTABLISHMENT CLAUSE HOLDING.

The Constitution should not be interpreted to imperil the safety of the United States, or its people, from foreign threats. *See, e.g., Kennedy v. Mendoza-Martinez,* 372 U.S. 144, 160 (1963) ("[W]hile the Constitution protects against invasions of individual rights, it is not a suicide pact."). Also, the United States has a right inherent in its sovereignty to defend itself from foreign dangers by controlling the admission of aliens. *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 542-43 (1950) ("The exclusion of aliens is a fundamental act of sovereignty . . . . inherent in [both Congress and] the executive department of the

sovereign"). Accordingly, the ability of private litigants to challenge presidential exercises of alien-admission powers, even on grounds of individual rights protected in the Constitution, is sharply limited. *Harisiades v. Shaughnessy*, 342 U.S. 580, 588-89 (1952) ("[A]ny policy toward aliens is vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations, the war power, and the maintenance of a republican form of government. Such matters are so exclusively entrusted to the political branches of government as to be largely immune from judicial inquiry or interference."). Thus, even if exercises of these powers were not non-justiciable political acts, they could receive no higher level of scrutiny from a court than a form of rational-basis review. *See, e.g., Kleindienst v. Mandel*, 408 U.S. 753, 769-70 (1972) ("We hold that when the Executive exercises th[e] power [to exclude aliens] negatively on the basis of a facially legitimate and bona fide reason, the courts will neither look behind the exercise of that discretion, nor test it by balancing its justification against the First Amendment interests of those who seek personal communication with the applicant."). In applying (indeed, misapplying) a much higher level of scrutiny to the Order, the District Court made a drastic error of law and woefully abused its discretion.

The District Court did not even attempt to distinguish *Mandel* on the (unconvincing) ground that it concerned only the Free Speech Clause, as opposed

to the Establishment Clause, of the First Amendment. (Had it done so, it would have been hard-pressed to explain why the claimed loss of rights under the latter clause triggers a higher level of scrutiny than the claimed loss of rights under the former, despite the equal prominence given to the two provisions textually.) Instead, the District Court held, implausibly, that *Mandel* does not apply to protect the president's discretion when he exercises it most fully, that is, when he issues "sweeping" policies, but only when he acts through lesser officials making individualized determinations. Mem. Op. at 37. As the government shows in its opening brief, this interpretation of *Mandel* is foreclosed by later Supreme Court precedent, Government's Opening Brief, Doc. 36, at 39 (citing *Fiallo v. Bell*, 430 U.S. 787, 794-95 (1977) (applying *Mandel* to uphold an immigration statute passed by Congress)), and also precedent of this Court, *id.* (citing *Johnson v. Whitehead*, 647 F.3d 120, 127 (4th Cir. 2011) (same)).

Certainly, nothing forced the District Court to strain to distinguish *Mandel*. And had the District Court adequately considered the inherent right to sovereignty of the United States, and the separation of powers found in the structure of the Constitution, it would have found every reason to apply the *Mandel* line of cases straightforwardly – and so (as will be seen) avoid many unfortunate results.

II. THE DISTRICT COURT'S REASONING LEADS TO MANY ABSURD CONSEQUENCES.

The District Court's analysis has innumerable absurd consequences that show, without question, both how faulty that analysis is and the wisdom of the contrary case law that the District Court brushed aside. A few of the more notable absurdities the District Court committed itself to are drawn out as follows:

1. *Private litigants could enjoin President Trump's war against the Islamic State.*

If its own statements are any indication, the Islamic State, also known as ISIS ("the Islamic State of Iraq and Syria") or ISIL ("the Islamic State of Iraq and the Levant"), is as much a religious group as a military force or aspiring state. It has declared its leader a caliph, that is, "a successor of Muhammad as . . . . spiritual head of Islam," Merriam-Webster Online Dictionary, *available at* https://www.merriam-webster.com/dictionary/caliph, and is dedicated to the forcible conversion of nonbelievers to its distinctive religious faith. *E.g.,* Adam Withnall, *Iraq Crisis: Isis Declares its Territories a New Islamic State with "Restoration of Caliphate" in Middle East,* Independent, June 39, 2014, *available at* http://www.independent.co.uk/news/world/middle-east/isis-declares-new-islamic-state-in-middle-east-with-abu-bakr-al-baghdadi-as-emir-removing-iraq-and-9571374.html (reporting on this declaration); Wikipedia, *The Islamic State of Iraq and the Levant, available at* https://en.wikipedia.org/wiki/Islamic_State_of_

Iraq_and_the_Levant ("As caliph, [the leader of ISIL] demands the allegiance of all devout Muslims worldwide . . . . ISIL has detailed its goals in its *Dabiq* magazine, saying it will continue to seize land and take over the entire Earth until its: '[b]lessed flag . . . . covers all eastern and western extents of the Earth, filling the world with the truth and justice of Islam'").

Many authorities within mainstream Islam have rejected the religious teachings of the Islamic State. *Id.* But even if this group is, properly speaking, not Islamic, and its distinctive beliefs are (at best) a heretical deviation from true Islam, plainly it still is a religious group with a religious leader, and easily qualifies as a religion under the broad definition used for First Amendment purposes. *See, e.g.*, Black's Law Dictionary 1293-94 (7th ed. 1999) ("In construing the protections under the Establishment Clause and the Free Exercise Clause, courts have construed the term *religion* quite broadly to include a wide variety of theistic and nontheistic beliefs.").

Nevertheless, President Trump has vowed not only to attack the Islamic State, but to eradicate it. President Donald Trump, Remarks in Joint Address to Congress (Feb. 28, 2017), *available at* https://www.whitehouse.gov/the-press-office/2017/02/28/remarks-president-trump-joint-address-congress ("As promised, I directed the Department of Defense to develop a plan to demolish and destroy ISIS . . . . We will work . . . . to extinguish this vile enemy from our planet.").

Islamic (in the true sense) or not, persons who bear allegiance to the caliph of the Islamic State may be residing in this country as citizens or lawful permanent residents. Once President Trump's order to the Department of Defense is complied with, and the president further orders the Department to implement its plan to destroy the Islamic State, these coreligionists of the Islamic State might have close family members placed in immediate peril by the latter order. They also might well feel psychologically damaged by it. If the District Court's reasoning were correct, these circumstances would be enough for them to have standing to challenge that order in court, under the Establishment Clause.

Worse, if the District Court were correct, they would probably win their case. If the Order in this case probably violated the Establishment Clause because Donald Trump, during the election campaign, called for a temporary pause in entry to the country by Muslims, as the District Court held, what would a like-minded court make of President Trump's vow, before a joint session of Congress, to "extinguish" the Islamic State "from our planet"? If calling for a temporary pause in Muslim entry reveals impermissible animus, surely declaring a war of extermination on a particular religious body does so even more. Yet no one believes that a federal district court has the power to enjoin our nation's military campaign against the Islamic State.

There is no helpful distinction for the District Court here between the president's war-making power and his power to regulate the admission of aliens. Both involve the safety of the nation and its people, and the power to fight our enemies abroad would mean little without the power to prevent them from entering the country. *See Harisiades*, 342 U.S. at 588–89 (1952) ("[A]ny policy toward aliens is vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations [and] the war power . . . .").[1] But even if the distinction could be made, it would not help the District Court; the proposition that the president could not block the admission of members of the Islamic State into the country without violating the Establishment Clause, in light of the animus revealed by his avowed intention to destroy that religious group, is an equally-absurd result of the District Court's reasoning.

In short, if the District Court's reasoning in this case were correct, private litigants could have standing to seek an injunction on President Trump's war on the Islamic State, and federal district courts, at their behest, would have to enjoin that

[1] Another seeming defense against this *reductio* – namely, that a court would never enjoin a war, because to do so would be giving aid and comfort to the enemy in time of war, and thus, by definition, be treason, U.S. Const. art. III, § 3, cl. 1 – only begs the question. A court as averse as the District Court to accepting that presidential determinations in this area are unreviewable could easily conclude that treason cannot lie if the underlying war is unconstitutional, as, of course, it would be if it violated the Establishment Clause.

war. Since there is no such standing and no such necessity (at least in combination), the District Court's reasoning was drastically incorrect.

2. The District Court's reasoning pits the First Amendment against itself.

Free discussion of governmental affairs and the free exchange of ideas during a political campaign are the heart of America's democracy. *Brown v. Hartlage*, 456 U.S. 48, 52-53 (1985). "Freedom of speech reaches its high-water mark in the context of political expression." *Republican Party of Minn. v. Kelly*, 247 F.3d 854, 863 (8th Cir. 2001) *rev'd on other grounds* 536 U.S. 765 (2002). The Free Speech Clause protects not just political speech by private citizens but such speech by political candidates running for public office. *Id.* at 53.

> The candidate, no less than any other person, has a First Amendment right to engage in the discussion of public issues and vigorously and tirelessly to advocate his own election and the election of other candidates. Indeed, it is of particular importance that candidates have the unfettered opportunity to make their views known so that the electorate may intelligently evaluate the candidates' personal qualities and their positions on vital public issues before choosing among them on election day. Mr. Justice Brandeis' observation that in our country "public discussion is a political duty," *Whitney v. California*, 274 U.S. 357, 375, 47 S.Ct. 641, 648, 71 L.Ed. 1095 (1927) (concurring opinion), applies with special force to candidates for public office.

Buckley v. Valeo, 424 U.S. 1, 52–53 (1976). *See also Snyder v. Phelps*, 562 U.S. 443, 451-52 (2011) ("Speech on matters of public concern is at the heart of the First Amendment's protection. The First Amendment reflects a profound national commitment to the principle that debate on public issues should be uninhibited,

robust, and wide-open. That is because speech concerning public affairs is more than self-expression; it is the essence of self-government. Accordingly, speech on public issues occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection.") (internal citations and quotation marks omitted).

In relying on the campaign statements of President Trump while a candidate, the District Court thus set the Establishment Clause against the Free Speech Clause in its most vital application. Yet both provisions are at the same level in the text of the First Amendment. *See also, e.g., Am. Civil Liberties Union of Ill. v. City of St. Charles*, 794 F.2d 265, 274 (7th Cir. 1986) (recognizing that both stand on equal ground). The chilling effect of such judicial inquiry into campaign statements can easily be imagined; for example, candidates who oppose abortion, or support the State of Israel, might avoid saying that their religion motivates their position, thus depriving the voters of potentially important information. Given the equal primacy of the Free Speech Clause (and also the Free Exercise Clause), it is absurdly contrary to democratic freedom that candidates for president (or other offices) must watch their step from now on when commenting on policy issues, including national security, for fear that courts will enjoin their actions if they are elected. Yet this chilling effect on core political speech is a clear consequence of the District Court's holding.

3. The District Court's reasoning implies that what is constitutional for one president is unconstitutional for another.

The District Court held that President Trump's Order probably violated the Establishment Clause because statements by him revealed an impermissible anti-Muslim motivation. It follows that had the exact same Order, with exactly the same stated purpose, been issued by President Obama, it would not have violated the Establishment Clause (assuming that President Obama had made no statements the court could construe as revealing animus toward the Muslim religion). This is an absurd result, if only because a president might have a clear duty to protect the country against a pressing foreign threat, and whether that duty could be performed should not depend on whether the nation had, or did not have, a president who might feel illicit racial or religious animus against that threat, and enjoy his duty too much. *See, e.g.*, *Nixon v. Fitzgerald*, 457 U.S. 731, 745 (1982) ("'In exercising the functions of his office, the head of an Executive Department, keeping within the limits of his authority, should not be under an apprehension that the motives that control his official conduct may, at any time, become the subject of inquiry . . . . It would seriously cripple the proper and effective administration of public affairs as entrusted to the executive branch of the government, if he were subjected to any such restraint.'") (quoting *Spalding v. Vilas*, 161 U.S. 483, 498 (1896)); *Chang v. United States*, 859 F.2d 893, 896 n.3 (Fed. Cir. 1988) (refusing to examine the president's motives for declaring a national emergency during the

Libyan crisis); *but see Korematsu v. United States*, 323 U.S. 214, 223 (1944) (stating in dicta that the internment of an American citizen of Japanese descent during World War II would have been unconstitutional if motivated by racial prejudice).

This result of the District Court's holding is also dangerous, for it gives the impression, at least, that courts are taking political sides. Diminishing the power of a particular president, as opposed to others, because of his statements in the political arena seems perilously close to diminishing his power because of his politics – with which an onlooker could easily assume the court simply disagrees. Even the appearance of such political partisanship in judging should be avoided in our democracy; the Constitution gives the federal courts the power to decide "Cases" and "Controversies," and no other power, U.S. Const., art. III, § 2 – certainly not political power. *See, e.g.*, Robert J. Pushaw, Jr., *Justiciability and Separation of Powers: A Neo-Federalist Approach*, 81 Cornell L. Rev. 393, 455 (1996) (surveying cases and commenting that, for the modern Supreme Court, "[j]udicial restraint preserves separation of powers by avoiding interference with the democratic political branches, which alone must determine nearly all public law matters.") (footnotes omitted).

4. *The District Court's reasoning would put the United States at the mercy of foreign threats.*

The following absurdity is wholly hypothetical, but nonetheless devastating to the District Court's reasoning. Imagine a religion that, as a fundamental tenet, demanded the sacrifice of children to "the gods" on a regular basis. Suppose this religion, called Molochism[2], had followers around the world numbering in the billions, but as yet few in the United States. Even though the members of this religion in the U.S. would be (constitutionally) hampered in its exercise by neutral, generally-applicable laws against murder, they could still advance their religion, and eventually all of its practices, through the courts and through our immigration system – that is, if the tenor of the District Court's reasoning became generally accepted, and domestic civil rights law applied to all immigration restrictions challenged by suitably-affected U.S. plaintiffs. Specifically, if Congress passed a law barring immigration by, say, those who believe they have an obligation to take innocent human life, it is likely that some members of Congress who voted for this ban would have made clear, if only in campaign statements, that it was aimed at Molochians. If U.S.-citizen Molochians (at least those trying to get Molochian relatives into the country) felt psychologically damaged by this law (as well they

[2] After an ancient fire god to whom children were sacrificed. Merriam-Webster Online Dictionary, *available at* https://www.merriam-webster.com/dictionary/Moloch.

might), they would have standing to sue, under the District Court's reasoning. And under that same reasoning, the ban on such immigration would violate the Establishment Clause because it was improperly motivated by anti-Molochian animus.

After the ban on immigration by those who believe they have an obligation to take innocent human life was, accordingly, permanently enjoined, let us suppose that the pace of continued Molochian immigration was very rapid, so rapid that a political uproar resulted, complete with anti-Molochian statements by leading politicians promising to stem the tide. At that point, a court of the District Court's stripe might well conclude that *any* step with the predictable result of lowering Molochian immigration – even bringing *all* immigration to a near-standstill – would only be a transparent pretext for a measure that really pertained to an anti-Molochian establishment of religion. Thus, by court order, actual or merely threatened, the door to heavy overall immigration would remain open, and Molochians could continue to come in. Over time, let us suppose, American Molochians would become so numerous that any ban on their immigration would become politically difficult, even if the courts would uphold one. Still later, suppose that Molochians became politically dominant, in part through sheer force of numbers, and were able to adjust U.S. laws to allow their full religious practices, including the long-deferred one of the sacrifice of children to the gods.

Of course, it is to be hoped that no series of events as dire and extravagant as this – the transformation of the United States into a country of legalized child sacrifice – would ever take place. Still, that the United States and its people should be without power to defend themselves against that disaster because of the Establishment Clause is absurd in the highest degree. As a matter of pure logic, such gross absurdity is fatal to the District Court's reasoning.

III. THE DISTRICT COURT'S HOLDING BETRAYS A LACK OF UNDERSTANDING OF HOW THE PROVISIONS OF THE IMMIGRATION AND NATIONALITY ACT WORK TOGETHER.

The District Court correctly found that plaintiffs failed to show they were likely to succeed on their claims that the Order violated the INA's nondiscrimination bar in 8 U.S.C. § 1152(a) when it barred entry by, and restricted the issuance of non-immigrant visas to, citizens of six listed countries. The District Court also correctly found that the INA's antiterrorist inadmissibility provisions at 8 U.S.C. § 1182(a)(3)(B) controlled over the more general suspension of entry provisions of 1182(f). Mem. Op. at 24-25.

But the District Court seriously erred in finding that success on the merits was likely on plaintiffs' claim that the Order's termination of *immigrant* visas held by nationals of the six listed countries under the presidential § 1182(f) "suspension of entry" authority violated the § 1152(a) nondiscrimination bar. *Id.* at 25. The Order expressly invokes "8 U.S.C. § 1101 et seq." – meaning the *entire* INA – as

authority. The District Court erred by selectively ignoring this comprehensive statute, thus violating its acknowledged duty to give effect to "all parts of a statute, if at all possible." Mem. Op. at 24 (citations omitted).

First, plaintiffs' allegations that the Order conflicts with the INA were only brought as non-justiciable APA claims. *See* First Amended Complaint, Third, Fifth and Sixth Claims for Relief, Doc. 93 below, ¶¶ 226-231, 235-244. The District Court erred by failing to acknowledge that the subject matter of the Order is textually exempt from APA claims. 5 U.S.C. § 553(a)(1) (providing that the APA does not apply to "a military or foreign affairs function of the United States"). Also, revocation of immigrant visas is entirely committed to the discretion of the Secretary of State. 8 U.S.C. § 1201(i) (providing the Secretary of State with authority to revoke any visa or entry document "at any time, in his discretion"). Indeed, discretionary revocation of visas issued to a class of aliens requires no "reason for revoking, ... no notice to the alien, no opportunity to respond, nor any procedure for revocation." Charles Gordon, et al., *Immigration Law & Procedure*, § 12.06[b] (Apr. 2016); *see also Noh v. INS*, 248 F.3d 938, 941 (9th Cir. 2001). And when "statutes are drawn in such broad terms that in a given case there is no law to apply," or there is "no meaningful standard against which to judge the agency's exercise of discretion," review of agency action under the APA is unavailable. *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 410

(1971); 5 U.S.C. § 701(a)(2) (providing that "agency action" challengeable under the APA does not include agency action "committed to agency discretion by law").[3]

Even assuming, *arguendo,* that plaintiffs had APA standing, the District Court erred in ignoring the non-reviewability of the claims of discriminatory delay or termination of a beneficiary's immigrant visa petition under other statutes. Both the INA and the Homeland Security Act strip the District Court of jurisdiction to review by any means (including habeas corpus) the revocation of visas held by arriving or admitted aliens. 8 U.S.C. § 1201(i)[4]; *see also* 6 U.S.C. §§ 236(b)(1) (granting authority to the Secretary of Homeland Security to "refuse visas," though not to alter or reverse a consular refusal of a visa), 236(c)(1) (granting authority to the Secretary of State to "direct a consular officer to refuse a visa" if deemed "necessary or advisable in the foreign policy or security interests of the United States"), 236(f) (providing no private right of action to challenge a decision "to grant or deny a visa"). The INA grants the Secretary of Homeland Security sweeping discretionary power to revoke "any petition approved under section

[3] Another district court in this Circuit has since held more broadly that issuance of the Order was a non-reviewable action under the APA. *Sarsour v. Trump*, No. 1:17-cv-00120-AJT/IDD, at 16-17 (E.D. Va., Mar. 24, 2017).

[4] The sole statutory exception in § 1201(1), review of visa revocations occurring "in the context of a removal proceeding if such revocation provides the sole ground for removal under section 237(a)(1)(B)," is inapplicable. No named plaintiff is in removal proceedings.

204." 8 U.S.C. § 1155. A "petition" is an immigrant visa application that is already approved. Revocation is permissible "at any time, for what he deems good and sufficient cause" and is retroactive "as of the date of approval." *Id.*

As for the District Court's finding that the president's proclamation and executive order powers under 8 U.S.C. §§ 1182(f) and 1185(a)(1) extend to non-immigrant visa revocation but *not* immigrant visa revocation, *see* Mem. Op. at 23-24, it was a particularly arbitrary statutory construction, given the clear delegation of practically unlimited retroactive discretionary visa revocation power by Congress to both the Secretaries of State *and* Homeland Security. In § 1182(f), the president's power to "impose [by proclamation] on the entry of aliens any restrictions he may deem to be appropriate" is distinct and in addition to his power to "suspend the entry of all . . . . or any class of aliens as immigrants or non-immigrants." Unlike the suspension of entry power, the § 1182(f) power to restrict by proclamation extends on its face to "*any* restrictions," as determined by unrestrained executive discretion. In making its highly artificial distinction between restrictions on visa issuance for non-immigrants and for immigrants, the District Court failed in its duty to construe the language of § 1182(f) in harmony with the wording and design of the INA as a whole, including directly-relevant provisions such as 8 U.S.C. §§ 1201(i) and 1155. *See, e.g., K-Mart Corp. v. Cartier*, 486 U.S. 281 (1988).

CONCLUSION

For the foregoing reasons, the District Court's order should be reversed.

DATED: March 31, 2017.

Respectfully submitted,

/s/ Christopher J. Hajec
Christopher J. Hajec
Michael M. Hethmon
Elizabeth A. Hohenstein
Mark S. Venezia
IMMIGRATION REFORM LAW INSTITUTE
25 Massachusetts Ave., NW, Suite 335
Washington, DC 20001
Telephone: (202) 232-5590
Fax: (202) 464-3590
chajec@irli.org
mhethmon@irli.org
ehohenstein@irli.org
mvenezia@irli.org

Attorneys for *Amicus Curiae*

CERTIFICATE OF COMPLIANCE

I certify that pursuant to Federal Rules of Appellate Procedure 29, 32(a)(5), and 32(a)(7), the foregoing *amicus curiae* brief is proportionally spaced, has a typeface of 14 point Times New Roman, and contains 4,556 words, excluding those sections identified in Fed, R. App. P. 32(a)(7)(B)(iii).

/s/ Christopher J. Hajec
Christopher J. Hajec
Attorney for *Amicus Curiae*

CERTIFICATE OF SERVICE

I certify that on March 31, 2017, the foregoing *amicus curiae* brief was served on all parties or their counsel of record through the CM/ECF system.

/s/ Christopher J. Hajec
Christopher J. Hajec
Attorney for *Amicus Curiae*