

Nos. 17-2231 (L); 17-2232, 17-2233, 17-2240 (Consolidated)

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**In the United States Court of Appeals for the Fourth Circuit**

INTERNATIONAL REFUGEE ASSISTANCE PROJECT, A PROJECT OF THE URBAN JUSTICE CENTER, INC., ON BEHALF OF ITSELF AND ITS CLIENTS; HIAS, INC., ON BEHALF OF ITSELF AND ITS CLIENTS; JOHN DOES #1 & 3; JANE DOE #2; MIDDLE EAST STUDIES ASS'N OF NORTH AMERICA, INC., ON BEHALF OF ITSELF AND ITS MEMBERS; MUHAMMED METEAB; PAUL HARRISON; IBRAHIM AHMED MOHOMED; ARAB AMERICAN ASS'N OF NEW YORK, ON BEHALF OF ITSELF AND ITS CLIENTS,  
 Plaintiffs-Appellees,

and

ALLAN HAKKY; SAMANEH TAKALOO,  
 Plaintiffs,

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES; U.S. DEP'T OF HOMELAND SECURITY; U.S. DEP'T OF STATE; OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE, ELAINE C. DUKE, IN HER OFFICIAL CAPACITY AS ACTING SECRETARY OF HOMELAND SECURITY; REX TILLERSON, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE; DANIEL R. COATS, IN HIS OFFICIAL CAPACITY AS DIRECTOR OF NATIONAL INTELLIGENCE,  
 Defendants-Appellants (*cont'd*)

On Appeal from the United States District Court for the District of Maryland  
**MOTION FOR LEAVE TO FILE BRIEF FOR THE STATES OF TEXAS, ALABAMA, ARIZONA, ARKANSAS, FLORIDA, LOUISIANA, OHIO, OKLAHOMA, SOUTH CAROLINA, AND WEST VIRGINIA AMICI CURIAE IN SUPPORT OF A STAY PENDING APPEAL**

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No. 17-2232

IRANIAN ALLIANCES ACROSS BORDERS; JANE DOE #1; JANE DOE #2;  
JANE DOE #3; JANE DOE #4; JANE DOE #5; JANE DOE #6,  
Plaintiffs-Appellees,

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES; ELAINE C. DUKE, IN HER OFFICIAL CAPACITY AS ACTING SECRETARY OF HOMELAND SECURITY; KEVIN K. MCALEENAN, IN HIS OFFICIAL CAPACITY AS ACTING COMMISSIONER OF U.S. CUSTOMS AND BORDER PROTECTION; JAMES MCCAMENT, IN HIS OFFICIAL CAPACITY AS ACTING DIRECTOR OF U.S. CITIZENSHIP AND IMMIGRATION SERVICES; REX TILLERSON; JEFFERSON B. SESSIONS III, IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL OF THE UNITED STATES,  
Defendants-Appellants

On Appeal from the United States District Court for the District of Maryland

No. 17-2233

EBLAL ZAKZOK; SUMAYA HAMADMAD; FAHED MUQBIL; JOHN DOE #1;  
JOHN DOE #2; JOHN DOE #3,  
Plaintiffs-Appellees,

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES; U.S. DEP'T OF HOMELAND SECURITY; U.S. DEP'T OF STATE; ELAINE C. DUKE, IN HER OFFICIAL CAPACITY AS ACTING SECRETARY OF HOMELAND SECURITY; REX TILLERSON, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE,  
Defendants-Appellants (*cont'd*)

On Appeal from the United States District Court for the District of Maryland

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No. 17-2240

INTERNATIONAL REFUGEE ASSISTANCE PROJECT, A PROJECT OF THE URBAN JUSTICE CENTER, INC., ON BEHALF OF ITSELF AND ITS CLIENTS; HIAS, INC., ON BEHALF OF ITSELF AND ITS CLIENTS; JOHN DOES #1 & 3; JANE DOE #2; MIDDLE EAST STUDIES ASS'N OF NORTH AMERICA, INC., ON BEHALF OF ITSELF AND ITS MEMBERS; MUHAMMED METEAB; ARAB AMERICAN ASS'N OF NEW YORK, ON BEHALF OF ITSELF AND ITS CLIENTS,

Plaintiffs-Appellants,

and

PAUL HARRISON; IBRAHIM AHMED MOHOMED; ALLAN HAKKY;  
SAMANEH TAKALOO,

Plaintiffs,

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES; U.S. DEP'T OF HOMELAND SECURITY; DEP'T OF STATE; OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE, ELAINE C. DUKE, IN HER OFFICIAL CAPACITY AS ACTING SECRETARY OF HOMELAND SECURITY; REX TILLERSON, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE; DANIEL R. COATS, IN HIS OFFICIAL CAPACITY AS DIRECTOR OF NATIONAL INTELLIGENCE,

Defendants-Appellees.

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On Appeal from the United States District Court for the District of Maryland

## MOTION FOR LEAVE TO FILE BRIEF

Amici curiae the States of Texas, Alabama, Arizona, Arkansas, Florida, Louisiana, Ohio, Oklahoma, South Carolina, and West Virginia respectfully move for leave to file a brief as amici curiae in support of the motion for a stay pending appeal. Appellants/cross-appellees consent to the proposed amicus brief, which accompanies this motion and a Certificate of Compliance with Type-Volume Limit. The International Refugee Assistance Project appellees/cross-appellants take no position. The Iranian Alliances Across Borders and Zakzok appellees also take no position.

1. On September 24, 2017, the President issued a Proclamation—“Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or Other Public Safety Threats,” 82 Fed. Reg. 45,161 (Sept. 27, 2017)—after a global review by the Department of Homeland Security and the Department of State of countries’ information-sharing practices and risk factors and recommendation that the President restrict entry of certain nationals of eight countries that have inadequate practices or otherwise present heightened risks. The Proclamation imposes country-specific restrictions that President decided would most effectively “encourage cooperation” in information sharing and “protect the United States until such time as improvements occur.” *Id.* at 45,164. On October 17, 2017, the district court enjoined the Proclamation in part on the basis that plaintiffs were likely to prevail on their statutory and Establishment Clause claims.

2. Federal Rule of Appellate Procedure 29 permits a State to file an amicus brief without the parties' consent or leave of court "during a court's initial consideration of a case on the merits." Fed. R. App. P. 29(a)(1), (2). That rule appears not to govern here both because the case is before the Court in a stay posture.

3. Amici respectfully move for any necessary leave to file an amicus brief at this stage, in support of the motion to stay pending appeal being considered by the Court. The attached proposed brief includes material that is "desirable" and "relevant to the disposition of the case." *Id.* 29(a)(3). The amicus brief provides an overview of the federal immigration laws against which plaintiffs' statutory and constitutional claims should be evaluated; explains that the Proclamation reflects a policy decision delegated to the Executive Branch expressly by Congress, and was issued after multiple federal officials drew public attention to serious flaws in the preexisting vetting scheme for aliens residing abroad who wish to enter this country; and draws the Court's attention to authorities relevant to the extension of constitutional rights that plaintiffs advocate here.

4. This is a case of national interest with important and far-reaching foreign-affairs and national-security implications. Every State has a substantial interest in the health and welfare of their citizens, but the States and their elected officials must rely on the federal Executive to determine when the entry of aliens should be suspended for public-safety reasons under a regime crafted by the States' elected representatives in Congress. *See generally Arizona v. United States*, 132 S. Ct. 2492, 2507 (2012). Amici thus share a substantial interest in the federal government having the latitude to make policy judgments reserved to it by statute, and inherent in this country's

nature as a sovereign, regarding the terms and conditions for whether aliens may enter the country.

5. Amici have also endeavored to assist the Court in resolving the weighty issues in this case in as few words as possible. The attached brief would comply with the type-volume limitation for an amicus brief on the merits because it uses fewer than half of the 13,000 words that are allotted for an appellants' opening brief during the Court's initial consideration of the case on the merits. *See* Fed. R. App. P. 29(a)(1), (5), 32(a)(7)(B)(i).

## CONCLUSION

Amici respectfully request leave to file the attached brief as amici curiae supporting a stay pending appeal.

Respectfully submitted.

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s/ Scott A. Keller  
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## **CERTIFICATE OF CONFERENCE**

This motion has been conferenced with counsel for the parties, and appellants/cross-appellees consent to the filing of the proposed amicus brief for which leave to file is requested herein. The International Refugee Assistance Project appellees/cross-appellants take no position. The Iranian Alliances Across Borders and Zakzok appellees also take no position.

s/ Scott A. Keller  
SCOTT A. KELLER

## **CERTIFICATE OF SERVICE**

I hereby certify that on September 24, 2017, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

s/ Scott A. Keller  
SCOTT A. KELLER