

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

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

INTERNATIONAL REFUGEE ASSISTANCE PROJECT, et al.

Plaintiffs-Appellees/Cross-Appellants,

v.

DONALD J. TRUMP, et al.

Defendants-Appellants.

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

United States District Judge Theodore D. Chuang
Nos. 8:17-cv-00361-TDC, 8:17-cv-02921-TDC, 1:17-cv-02969-TDC

**MOTION FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE*
T.A., A U.S. CITIZEN OF YEMENI DESCENT, IN SUPPORT OF
PLAINTIFFS-APPELLEES/CROSS-APPELLANTS**

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November 9, 2017

No. 17-2231(L)
On Cross-Appeal from the United States District Court for the District of
Maryland, Southern Division
(8:17-cv-00361-TDC)

No. 17-2232
(8:17-cv-02921-TDC)

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, in his official capacity as Secretary of State;
JEFFERSON B. SESSIONS III, in his official capacity as Attorney General of the
United States,
Defendants-Appellants.

No. 17-2233
(1:17-cv-02969-TDC)

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

MOTION FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE* T.A., A U.S. CITIZEN OF YEMENI DESCENT, IN SUPPORT OF PLAINTIFFS-APPELLEES/CROSS-APPELLANTS

1. *Amicus* T.A.¹ respectfully moves for leave to file an *amicus curiae* brief in support of Plaintiffs-Appellees/Cross-Appellants that demonstrates a narrow, textualist basis for enjoining the travel bans in the September 24, 2017 Presidential Proclamation, “Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats.” 82 FR 45161 (Sept. 24, 2017) (“EO-3”). *Amicus* states as follows:
2. In the EO-2 appeal, this Court granted leave to T.A. to file an *amicus* brief.
3. T.A. is a Muslim and United States citizen who was raised in Yemen. T.A.’s father and many members of T.A.’s extended family hold Yemeni passports and reside abroad. They are barred from entering the United States under the Amended Order. T.A. has a direct interest in the outcome of this case.

¹ This motion and brief use initials, rather than T.A.’s full name, to reduce the risk of potential reprisals to T.A. or his family members. *Doe v. Pub. Citizen*, 749 F.3d 246, 273 (4th Cir. 2014) (use of pseudonym may be appropriate, even for a party, when “identification poses a risk of retaliatory physical or mental harm to the requesting party or even more critically, to innocent non-parties”) (quoting *James v. Jacobson*, 6 F.3d 233, 238 (4th Cir. 1993)).

4. T.A. is concerned about the real-life implications of EO-3. T.A. is fundamentally concerned with the interference in family relations that will result from enforcement of EO-3, as well as its limitations on immigration and non-immigrant travel.
5. The proposed *amicus* brief, attached hereto as Appendix A, is helpful to the Court because it focuses on two issues that previously have not been the focus of the parties. *First*, unlike EO-2's bans, EO-3's bans are of unlimited duration—they have neither a time limit nor a link to a finite event. The unlimited duration contradicts the words “suspend,” “period,” and “necessary” in 8 U.S.C. § 1182(f), would render other provisions of the Immigration and Naturalization Act practical nullities, and contravenes fundamental norms of separation of powers. The unlimited duration of EO-3's bans thus provides an additional, narrow, and textualist basis for enjoining those bans.
6. *Second*, the cross-appeal is correct. In accord with the texts of the pertinent statutory provisions and the Establishment Clause, the preliminary injunction should enjoin all applications of EO-3's illegal travel bans, including applications to persons who lack a prior U.S. relationship. There are no longer any countering equities to be balanced. This is because the Trump Administration's extreme vetting—*without* any travel ban—

dramatically reduced the risks of inadequate information *before* EO-3 was issued. Before EO-3, what President Trump calls this Administration’s “extreme vetting” had reduced visas from the designated countries 55% while all EO-2 bans were completely enjoined. Tellingly, the Government cannot and does not claim that, during the 100 days when *all* EO-2 travel bans were fully enjoined, this Administration was forced to admit *with inadequate information* even one person with no prior U.S. relationship from the designated countries.

CONCLUSION

Amicus respectfully requests that this Court grant leave to file the *amicus curiae* brief attached hereto.

Dated:
November 9, 2017

Respectfully submitted,

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Effective 12/01/2016

17-2231 (L), 17-2232

17-2233, 17-2240

No. (Consolidated) Caption: Int'l Refugee Assistance Project, et al. v. Trump, et al.

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(s) Richard D. Bernstein

Party Name Amicus Curiae T.A.

Dated: 11/9/2017

CERTIFICATE OF SERVICE

I certify that on November 9, 2017 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

/s/ Richard D. Bernstein

Signature

11/09/2017

Date