No. 17-35105

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

STATE OF WASHINGTON, et al.,

Plaintiffs-Appellees,

v.

DONALD TRUMP, President of the United States, et al.,

Defendant-Appellants.

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

BRIEF OF THE STATES OF PENNSYLVANIA, MASSACHUSETTS, NEW YORK, CALIFORNIA, CONNECTICUT, DELAWARE, ILLINOIS, IOWA, MAINE, MARYLAND, NEW HAMPSHIRE, NEW MEXICO, NORTH CAROLINA, OREGON, RHODE ISLAND, VERMONT, AND VIRGINIA, AND THE DISTRICT OF COLUMBIA AS *AMICI CURIAE* STATES IN SUPPORT OF PLAINTIFFS-APPELLEES

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INTERESTS OF *AMICI*

Amici States Pennsylvania, Massachusetts, and New York, together with California, Connecticut, Delaware, Iowa, Illinois, Maine, Maryland, New Hampshire, New Mexico, North Carolina, Oregon, Rhode Island, Vermont, and Virginia, and the District of Columbia, submit this brief as *amici curiae* in support of appellees the States of Washington and Minnesota. The Executive Order at issue in this suit bars entry into the United States of nationals of seven majority-Muslim countries, including those who hold valid U.S. visas for work, study, and travel. It hinders the free exchange of information, ideas, and talent between the affected countries and the States, including at the States' many educational institutions; harms the States' life sciences, technology, health care, finance, and other industries, as well as innumerable small businesses throughout the States; and inflicts economic harm on the States through diminished tax revenues and other means.

Although the residents, institutions, industries, and economies of the *amici* States differ, all stand to face the concrete, immediate, and irreparable harms caused by the Executive Order. Indeed, several *amici* have filed or intervened or sought to intervene in parallel lawsuits raising similar claims. Those lawsuits may well be affected by the decision in this case.

ARGUMENT

I. Washington, Minnesota, and Other States Have Standing to Challenge the Executive Order Because of the Harm It Inflicts on the States Themselves.

The Executive Order is inflicting actual, concrete, and particularized injuries to the States' proprietary, sovereign, and quasi-sovereign interests. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992); *Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 601-08 (1982).[1] These injuries[2] include harm to state colleges and universities, medical institutions, tax revenues; States' interests in seeing the Establishment Clause upheld within our jurisdictions; and States' interests in ensuring the health, welfare, and civil rights of our residents.[3]

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[1] *See also Massachusetts v. EPA*, 549 U.S. 497, 518-20 (2007) (recognizing that a state's "stake in protecting its quasi-sovereign interests" entitles it to "special solicitude" in a standing analysis); *United States v. Students Challenging Regulatory Agency Procedures*, 412 U.S. 669, 689 n.14 (1973) (emphasizing that the standing inquiry focuses on the *fact* of an injury, not its magnitude).

[2] All of the *amici* States support the legal arguments put forward in this brief, although some of the facts alleged do not apply uniformly to them. For example, the State of Delaware does not have a state medical hospital and is still in the process of attempting to verify some of the other specified harms incurred by other *amici* states.

[3] Moreover, because many of these harms are caused directly by the Executive Order's effect on nonimmigrant visa-holders, these injuries are not ameliorated by the federal government's current position that long-term permanent residents are unaffected by the Executive Order (notwithstanding the plain language in Section 3(c) of the order).

A. Disruption and Additional Costs at State Colleges and Universities.

The Executive Order has inflicted and continues to inflict harm on state colleges and universities across the country, including in the *amici* States, which rely on faculty and students from across the world.

First, the Executive Order has disrupted our state educational institutions' ability to meet their staffing needs. The Order is already preventing and dissuading scholars from coming to our institutions—including scholars who had already committed to filling positions. The University of Massachusetts has more than 120 employees who are affected by the Executive Order; the City University of New York has 46 such employees; and the University of Maryland, College Park, has about 350 such members of its community. While there is no absolute right to the maintenance or continuation of a visa, our state educational institutions rely on predictability in the visa system. Moreover, foreign-born faculty who are here on visas typically have specialized expertise that cannot easily be replaced. Colleges and universities are already forming task forces and making contingency plans to fill these particular voids in their faculty rosters. These efforts represent a considerable expenditure of scarce resources and may not be successful.

Contrary to the federal government's suggestion, these expenditures are compelled by the Executive Order, and are not merely elective or speculative. The *amici* States are aware of numerous staffing-related harms to specific programs in

our state institutions. These include foreign scholars from the affected countries holding duly-issued, otherwise-valid J-1 visas who have abandoned their plans to come to the United States and teach because of the Executive Order. In some such cases, the scholars were expected to teach during the spring semester of 2017, leaving holes in faculty rosters that our institutions must immediately fill.

Additional immediate disruption to staffing has occurred in the context of medical residency staffing. State medical schools participate in the "match" program for purposes of placing residents in their various university hospital programs. These medical residents perform crucial services at our hospitals, including, in many cases, providing medical care for underserved residents. The state institutions' decisions on ranking these future residents are due on February 22; the computerized "match" occurs on March 17; and matched residents are expected to begin work on July 1. Many programs regularly match medical residents from the seven affected countries and, prior to the Executive Order, medical schools like the University of Massachusetts Medical School were already actively considering and had interviewed specific applicants from the affected countries. These programs must

forgo ranking applicants from the affected countries or risk having insufficient medical residents to meet staffing needs.[4]

Second, the Executive Order creates uncertainty and will impose additional costs related to nonimmigrant faculty and other employees who are already present in the United States. Because of the "at least" 90-day freeze on processing of visa applications under section 3(c) of the Executive Order, state institutions face the imminent prospect of paying an additional $1,225 fee per visa for "Premium Processing Service" to expedite the approval of certain eligible visas.[5]

Third, the Executive Order has disrupted the process of admitting students for enrollment and imminently threatens the loss of hundreds of millions of tuition dollars. State colleges and universities across the country enroll thousands of students from the affected countries. The City University of New York has more than 800 affected undergraduate students; the University of California's ten

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[4] If a program "matches" with an applicant who is then unable to come into the country, the program is left with an open slot. The only way to fill the slot is to seek a waiver from the National Resident Matching Program. Such a waiver puts a medical school in the difficult position of trying to hire a resident from the pool of applicants who did not match anywhere else, and the school may be unable to find a resident at all. These problems are described in detail in *Louhghalam v. Trump*, Declaration of Michael F. Collins, MD, No. 17-cv-10154-NMG, Dkt. No. 52-2, at 2 (D. Mass. Feb. 2, 2017).

[5] Information regarding U.S. Citizenship and Immigration Services' expediting service, including the fee, is available at https://www.uscis.gov/i-907.

campuses have almost 500 affected graduate students and 40 affected undergraduates; the State University of New York has 320 affected undergraduates; the University of Massachusetts has 300 affected graduate and undergraduate students; the California State University System has more than 1,300 students from the affected countries with immigrant status and more than 250 students on student visas; and there are more than 350 affected students at Virginia's public institutions, including Virginia Commonwealth University, Virginia Tech, George Mason University, the University of Virginia, and William & Mary. The University of Illinois has over 300 enrolled students from the affected countries and has already admitted 20 students for Fall 2017 from the affected countries. Other public institutions like the Pennsylvania State University, Texas A&M University, the University of Central Florida, the University of Houston System, the University of Texas at Arlington, and Arizona State University each have hundreds of affected students.[6]

The Executive Order has already disrupted the on-going admissions process for the 2017-2018 school year. The *amici* States' colleges and universities have already extended some offers of admission to students from the affected countries

[6] Abby Jackson, *The 10 U.S. Colleges That Stand to Lose the Most from Trump's Immigration Ban*, Business Insider (Feb. 1, 2017), https://amp.businessinsider.com/colleges-potentially-most-affected-trump-immigration-ban-2017-2.

who may now be unable to attend, and anticipate that—but for the Executive Order—they would admit many more over the coming months. Already, the *amici* States are aware of students from the affected countries who have had to abandon plans to enroll in their programs due to the Executive Order and students who have withdrawn applications. As a result, these public institutions must now alter their admissions processes because admitted students may not be able to accept or attend, depriving these schools of tuition dollars. While public colleges and universities are always subject to federal immigration law and policy, the Executive Order has injured them unexpectedly, by up-ending with no advance notice the established framework around which these institutions have designed their enrollment processes.

Finally, the President's Order has in many cases eliminated the ability of faculty and students from the affected countries with nonimmigrant visas to travel. The *amici* States are aware of specific examples where that inability to travel is harming our institutions' core missions of education and scholarship. These include graduate and undergraduate students who traveled to see families abroad over winter break and became trapped abroad; admitted students and recent faculty hires who cannot now reach the United States; and faculty and doctoral students who are in the United States but unable to travel abroad for fieldwork or conferences because they will not be able to reenter. In some cases, such travel is necessary to complete a

dissertation or remain on the tenure track. Even if reentry ultimately may become possible for foreign faculty and students who leave the country, the *amici* States are concerned that the Executive Order's suspension of the Visa Interview Waiver Program will greatly prolong visa approval wait times, making travel more difficult and unpredictable. *See* Executive Order, Sec. 8.

B. Disruption to State Medical Institutions

The Executive Order has also inflicted or imminently threatens to inflict similar injuries on state medical institutions and the provision of medical care within the *amici* States—including at institutions serving some of our neediest populations. In addition to disrupting the matching process by which our state medical schools staff hospitals through medical residents, the Executive Order also has affected medical residents who are already here and serving our patient populations as they train in multi-year programs. If such residents are unable to renew or extend their nonimmigrant visas, state medical schools will be unable to continue to employ them; the schools will be left with unfilled positions in their years-long programs for training physicians; and staffing gaps will open up at hospitals. Moreover, if the residents are unable to complete their medical residencies, they will not be able to become licensed physicians to serve the public. The University of Massachusetts Medical School, for example, is particularly known for its primary care program—at a time when primary care physicians are in short supply in many areas across the

country—and currently has six medical residents from the affected countries under employment contracts.

Public medical institutions, including medical schools and public hospitals, also employ individuals from the affected countries in many other positions, including as fully trained physicians, research faculty, and post-doctoral researchers. For example, 307 licensed healthcare professionals in Pennsylvania have trained in one of the affected countries. The *amici* States are aware of employment offers from public entities that have already been extended to and accepted by individuals from the affected countries, who are now waiting for visas to be approved and uncertain if and when they will be able to begin their employment. And the *amici* States have current employees, located in the United States, who, for the time being, cannot renew or extend their visas or statuses. Hospitals and medical schools will suffer decreased staffing as a result. Although the federal government dismisses such eventualities as speculative, they are not. Patients at our medical facilities cannot wait for care, and those facilities must immediately adapt to these changed circumstances—and spend precious time and resources to do so.

C. Diminished Tax Revenues from Students, Tourists, and Business Visitors

The Executive Order is also immediately causing the *amici* States to lose tax revenue—and poses a grave, long-term threat to internationally-linked industries that, in many cases, are the lifeblood of our economies. Such economic injuries, even

by themselves, give rise to Article III standing. *See, e.g.*, *City of Sausalito v. O'Neill*, 386 F.3d 1186, 1199 (9th Cir. 2004).

Every foreign student, tourist, and business visitor to the *amici* States contributes to our respective economies—through tuition and room and board payments to state schools as well as through sales tax receipts from our hotel, retailers, and other businesses. The Executive Order abruptly halted the entry of such consumers from seven countries—and their tax revenue. As described above, the *amici* States are aware of specific individuals—scholars, students, and others—whose trips were abruptly cancelled. If the Order is not enjoined during the pendency of this litigation, it will cost the States weeks or months of additional tax revenues from such visitors, even if Washington and Minnesota ultimately prevail. Indeed, even assuming the Executive Order continues to be enjoined, it has already created economic damage that cannot be undone.

The collective amounts at issue are immense, even just with respect to student tax dollars. In New York, in 2015, there were almost 1,000 nationals from the affected countries studying on temporary visas, who collectively contributed $30.4 million to the State's economy, including direct payments for tuition and fees and living expenses.[7] This figure does not include indirect economic benefits, such as

[7] *See* http://www.iie.org/Research-and-Publications/Open-Doors/Data/Economic-Impact-of-International-Students.

the contributions of international students and scholars to innovation in academic and medical research. In 2014-15, more than 50,000 foreign students contributed an estimated $1.5 billion to the economy of Illinois.[8] And these are not the only States affected. For example, in the 2014-2015 academic year, Iran sent 11,338 students to institutions across the United States, yielding an estimated economic impact of $323 million.[9] California universities and colleges host the largest number of students from the seven targeted countries. The overwhelming majority of them are from Iran, with 1,286 visas issued to students headed to California institutions in 2015.[10] The Executive Order abruptly prevented a large number of anticipated tourists and students from traveling to the States, directly and immediately decreasing the revenues flowing to state academic institutions and tax authorities.[11]

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[8] *See* Open Doors 2016 Fact Sheet: Illinois, Institute of International Education, http://bit.ly/2lfVfBr.

[9] Open Doors Data, Fact Sheets for Iran: 2015, at http://www.iie.org/Research-and-Publications/Open-Doors/Data/Fact-Sheets-by-Country/2015#.WJfgjGczWUk.

[10] *See* T. Watanabe and R. Xia, Trump Order Banning Entry from Seven Muslim-Majority Countries Roils California Campuses, Los Angeles Times (January 30, 2017).

[11] This case is thus unlike *Pennsylvania v. Kleppe,* 533 F.2d 668, 679-80 (1976) and *Iowa ex rel. Miller v. Block,* 771 F.2d 347, 353 (8th Cir. 1985)

The long-term harms to the *amici* States' tax revenue caused by the Executive Order from loss of tourism and business investment are certainly greater. Although our regional economies may vary, we all depend on remaining internationally competitive, attractive destinations for companies in the life sciences, technology, finance, health care, and other industries, and for tourists and entrepreneurs. In Illinois alone, for example, 22.1% of entrepreneurs are foreign-born, and immigrant- and refugee-owned businesses employ more than 281,000 people.[12] The Executive Order will create broad harm because it hampers the movement of people and ideas from the affected countries into our States.

D. Irreparable Harm from Establishment Clause Violations

The *amici* States have also suffered irreparable harm because the Executive Order violates the Establishment Clause of the First Amendment. Where an Establishment Clause violation is alleged, "infringement occurs the moment the government action takes place—without any corresponding individual conduct." *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 303 (D.C. Cir. 2006). This conclusion follows from "the inchoate, one-way nature of Establishment Clause violations, which inflict an 'erosion of religious liberties [that] cannot be deterred by awarding damages to the victims of such erosion[.]'" *Id.* (quoting *ACLU of Ill. v.*

[12] *See* The Contributions of New Americans in Illinois at 2, New American Economy (Aug. 2016), http://bit.ly/2kRVaro.

City of St. Charles, 794 F.2d 265, 275 (7th Cir. 1986)). Thus, "where a movant alleges a violation of the Establishment Clause, this is sufficient, without more, to satisfy the irreparable harm prong for purposes of the preliminary injunction determination." *Id.*[13]

E. Harm to Sovereign and Quasi-Sovereign Interests

In addition to the injuries that the Executive Order is inflicting on States' proprietary interests, the Executive Order also harms the amici States' well-established sovereign and quasi-sovereign interests. *See, e.g.*, *Snapp*, 458 U.S. at 602-608 (describing those interests). These harms further underscore the existence of State standing to sue the federal government to invalidate the Executive Order.

1. Enforcing Antidiscrimination Laws

As the United States Supreme Court has observed, States have a sovereign interest in "the exercise of sovereign power over individuals and entities within . . . [their] jurisdiction" that includes "the power to create and enforce a legal code, both civil and criminal." *Id.* at 601. States also possess a quasi-sovereign interest in protecting the civil rights of all residents within their jurisdiction. *Id.* at 609.

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[13] *See also ACLU v. McCreary Cnty*, 354 F.3d 438, 445 (6th Cir. 2003) (presuming irreparable harm where plaintiffs were likely to succeed on the merits of their Establishment Clause claim); *Parents' Ass'n of P.S. 16 v. Quinones*, 803 F.2d 1235, 1242 (2d Cir 1986) (same).

The Executive Order harms these sovereign and quasi-sovereign interests by preventing states from enforcing regimes of non-discrimination created by their state constitutions and laws. Residents and businesses in many of the amici States—and indeed many of the *amici* States themselves—are *prohibited by state law* from taking national origin and religion into account in determining to whom to extend employment and other opportunities.[14] Although the States, state residents and state businesses are always constrained in their employment decisions by validly-enacted federal immigration law, the Executive Order represents an act of unconstitutional discrimination. It is well recognized that States have standing to sue the federal government where a federal law or federal action with the force of law impairs their legitimate, sovereign interest in the continued enforceability of their own statutes.[15]

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[14] *See, e.g.*, Cal. Const. art. I, §§ 7-8; Cal. Gov't Code §§ 11135-11137; Conn. Gen. Stat. § 46a-60; 5 Maine Rev. Stat. Ann. §§ 784, 4551-4634 (2013). Mass. Gen. L. ch. 151B, §§ 1, 4; Mass. Gen. L. ch. 93, § 102; Md. Code Ann., State Gov't § 20-606; N.Y. Exec. Law §§ 291 (1)-(2); 296(1)a-e; 296(1-a) a-d; 296(2); 296(2-a); 296(3-b); 296(4); 296(5)(a)1-3,(b)1-2, (c)1-2,(d); 296(10)a; 296(13);296-c (2)a-c; 43 P.S. § 952(a); 43 P.S. § 952(b); 43 P.S. § 953; 43 P.S. § 955; Pa. Const. Art. I, § 1; Pa. Const. Art. I, § 3; Pa. Const. Art. I, § 26.

[15] *See, e.g.*, *Gonzales v. Oregon*, 546 U.S. 243, 273-75 (2006) (state challenge to federal rule that purported to bar dispensing of controlled substances in the face of state medical regime permitting such conduct); *Wyoming ex rel. Crank v. United States*, 539 F.3d 1236, 1239-40 (10th Cir. 2008) (state challenge to federal agency's assertion that the federal definition of a statutory term controlled the meaning of the same term in a state statute that defined the term differently).

2. Ensuring the Benefits of Existing Federal Laws and Regulations

A State has a legally cognizable "interest, independent of the benefits that might accrue to any particular individual, in assuring that the benefits of the federal system are not denied to its general population." *Snapp*, 458 U.S. at 608. Here, in direct violation of that interest, individuals arriving at the *amici* States from the seven designated countries have been denied a variety of rights and procedures established by federal statutes and regulations.

Individuals arriving at a port of entry in the United States are entitled to certain rights and procedures specified by the Immigration and Nationality Act (INA), 8 U.S.C. §§ 1101 *et seq*. Sections 1158 and 1225 of the INA entitle aliens present or arriving in the United States to apply for asylum. Section 1231 provides that an alien may not be removed to a country where his or her life or freedom would be threatened on certain specified grounds, and entitles an alien to attempt to make such a showing. *Id.* § 1231(b)(3). Federal regulations set out detailed procedures for effectuating these rights. For example, where an arriving alien subject to expedited removal "indicates an intention to apply for asylum, or expresses a fear of persecution or torture, or a fear of return to his or her country," the alien is entitled to a credible fear interview with an asylum officer and review by an immigration judge. *See* 8 C.F.R. § 235.3(b)(1)(i), (4); *see also id.* §§ 208.30(g), 208.30(g)(2).

3. Protecting Our Residents, Businesses, and Communities

The Executive Order also harms state interests far broader than the injuries to any single person who has been denied entry under the Executive Order. These interests include States' unique concern for their economies, academic institutions, and public health. *See, e.g.*, *Snapp,* 458 U.S. at 602 (noting States' independent interest "in the well-being of [their] populace").

The harm that the Executive Order threatens to non-state academic institutions and non-state providers of essential health-care services exacerbates the injuries that research and public health sectors already suffer from the Executive Order's effect on state institutions. *See supra* at 3-9. In addition, the Executive Order threatens key sectors of the States' economies, such as technology and finance, that rely heavily upon the talents and contributions of immigrants. *See* Br. for Tech. Cos. & Other Bus. as Amici Curiae Supporting Plaintiffs-Appellees at 8-21, *Washington v. Trump*, No. 17-35105 (9th Cir. Feb. 5, 2017), ECF No. 19-2.

II. The Emergency Motion for a Stay Should Be Denied Because Granting It Would Cause Further Chaos.

A stay is not a matter of right, but an "exercise of judicial discretion that is dependent upon the circumstances of the particular case." *Lair v. Bullock*, 697 F.3d 1200, 1203 (9th Cir. 2012) (citations and internal quotation marks omitted). In evaluating a stay motion, this Court's discretion is guided by a four factor analysis that asks (1) whether the applicant "is likely to succeed on the merits;" (2) "whether

the applicant will be irreparably injured absent a stay;" (3) whether issuance of the stay will "substantially injure" other interested parties; and (4) "where the public interest lies." *Id.* (quoting *Nken v. Holder*, 556 U.S. 418, 434 (2009).) The party requesting the stay "bears the burden of showing that the circumstances justify an exercise of this Court's discretion." *Lair*, 697 F.3d at 1203 (quoting *Nken*, 556 U.S. at 433-34) (brackets omitted).[16]

As the District Court concluded, Washington is likely to succeed on the merits of its challenge to the Executive Order. Indeed, in the ten days since the Executive Order was signed, district courts across the Nation have determined—both expressly and by implication—that claims like those advanced by Washington and Minnesota are likely to succeed on the merits.[17]

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[16] In the past, this Court has sometimes applied an alternative standard in the context of issuing stays, allowing the moving party to demonstrate that the case raised "'serious legal questions'" and that the balance of the hardships tipped "'sharply in its favor.'" *Golden Gate Restaurant Ass'n v. City and County of San Francisco*, 512 F.3d 1112, 1116 (9th Cir. 2008) (quoting *Lopez v. Heckler*, 713 F.3d 1432, 1435 (9th Cir. 1983). Since the Supreme Court's decision in *Nken*, this Court has indicated that this alternative approach remains available in the stay context. *See Leiva-Perez v. Holder*, 640 F.3d 962, 964-966 (9th Cir. 2011) (per curiam). Regardless of which approach this Court applies, the stay requested by the federal government in this case should be denied.

[17] *See, e.g., Darweesh v. Trump*, No. 17-cv-480, Dkt. No. 8 (E.D. N.Y. Jan. 28, 2017); *Vayeghan v. Kelly*, No. 17-cv-702, Dkt. No. 6 (C.D. Cal., Jan. 29, 2017); *Mohammed v. United States*, No. 17-cv-786 (C.D. Cal., Jan 31, 2017); *Arab-*

The States have already been harmed by this Executive Order and its shifting implementation by the federal government. *See* Emergency Mot. Ex. C at 4-5 (district court order); *see supra* Section I.A.-I.E. The Executive Order "unleashed global chaos" almost as soon as it was issued on January 27.[18] Customs and border control officials arrived at airports on January 28 without instructions on how to implement it.[19] The lack of advance warning led to "homeland security officials 'flying by the seat of their pants[]' to try to put policies in place."[20] Officials at different airports applied different policies.[21] Visitors to our country—and many lawful permanent residents as well—were detained for days at airports, often without

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American Civil Rights League v. Trump, No. 17-cv-10310, Dkt. No. 8 (E.D. Mich. Feb. 2, 2017); *Aziz v. Trump*, No. 17-cv-116, Dkt. No. 38 (E.D. Va. Feb. 3, 2017).

[18] M. Shear & R. Nixon, *How Trump's Rush to Enact an Immigration Ban Unleashed Global Chaos*, N.Y. Times (Jan. 29, 2017), *available at* https://www.nytimes.com/2017/01/29/us/politics/donald-trump-rush-immigration-order-chaos.html?_r=0 (last visited Feb. 5, 2017)

[19] *Id.*

[20] *Id.*

[21] *See, e.g.*, J. Allen & B. O'Brien, *How Trump's Abrupt Immigration Ban Sowed Confusion at Airports, Agencies*, Reuters (Jan. 29, 2017), *available at* www.reuters.com/article/us-usa-trump-immigration-confusion-idUSKBN15D07S (last visited Feb. 5, 2017) (while many visa-holders reported being "allowed into the country without a problem," some lawful permanent residents were "turned away").

access to counsel.[22] If this Court were to grant the stay that the federal government now seeks, it would only exacerbate that harm.

This uncertainty was compounded by the actions of officials at the highest levels of the federal government, who vacillated over how to interpret and apply the Executive Order. For example, the federal government changed its mind multiple times about whether the Executive Order applies to lawful permanent residents.[23] On February 1, the White House Counsel acknowledged "that there has been reasonable uncertainty about whether" the travel ban applies to lawful permanent residents of the United States, and "clarif[ied] that Sections 3(c) and 3(e) [of the Order] do not apply to such individuals."[24]

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[22] M. Shear et al., *Judge Blocks Trump Order on Refugees Amid Chaos and Outcry Worldwide*, N.Y. Times (Jan. 28, 2017), *available at* https://goo.gl/OrUJEr (last visited Feb. 5, 2017); A. Whiting, *Despite Court Order, US Officials Won't Allow Lawyers at Dulles to See Detainees*, Washingtonian (Jan. 29, 2017), *available at* https://www.washingtonian.com/2017/01/29/customs-and-border-protection-still-not-allowing-lawyers-to-see-detainees/ (last visited Feb. 5, 2017).

[23] *See, e.g.*, E. Perez, *Inside the Confusion of the Trump Executive Order and Travel Ban* (Jan. 30, 2017), *available at* http://www.cnn.com/2017/01/28/politics/donald-trump-travel-ban/index.html (last visited Feb. 5, 2017); Press Release, U.S. Department of Homeland Security, *Statement By Secretary John Kelly On The Entry Of Lawful Permanent Residents Into The United States* (Jan. 29, 2017), *available at* https://goo.gl/6krafi (last visited Feb. 5, 2017).

[24] *See* Memorandum to the Acting Secretary of State, the Acting Attorney General, and the Secretary of Homeland Security from Donald F. McGahn II (Feb.

The District Court's temporary restraining order returned the policies and procedures regarding travel to the United States to the status quo that existed before the Executive Order. Emergency Mot. Ex. C at 5-6 (district court order). As a result of the court's order, the Department of Homeland Security announced on February 4 that it "has suspended any and all actions implementing the affected sections of the Executive Order" and that "DHS personnel will resume inspection of travelers in accordance with standard policy and procedure."[25] In the aftermath of that announcement, international airlines announced that they would allow citizens of the affected nations onto flights bound for the United States.[26] News outlets are reporting that travelers from those countries have already boarded planes headed to the United States.[27]

1, 2017), *available at* www.politico.com/f/?id=00000159-fb28-da98-a77d-fb7dba170001 (last visited Feb. 5, 2017).

[25] Press Release, U.S. Department of Homeland Security, *DHS Statement on Compliance with Recent Court Order* (Feb. 4, 2017), *available at* https://www.dhs.gov/news/2017/02/04/dhs-statement-compliance-recent-court-order (last visited Feb. 5, 2017).

[26] A. Dewan, *Airlines Allow Passengers After Judge Blocks Travel Ban* (Feb. 4, 2017), *available at* http://www.cnn.com/2017/02/04/politics/airlines-airports-trump-travel-ban/index.html (last visited Feb. 5, 2017).

[27] *See* J. Kaleem, *Department of Homeland Security Halts Enforcement of Controversial Travel Ban*, Los Angeles Times (Feb. 4, 2017), *available at* http://www.latimes.com/politics/washington/la-na-essential-washington-updates-department-of-homeland-security-halts-1486224232-htmlstory.html

If this Court were to grant a stay, it would resurrect the chaos experienced in our airports beginning on the weekend of January 28 and 29, and cause harm to the States—including to state institutions such as public universities, to the businesses that sustain our economies, and to our residents. *See supra* Sections I & II. Travelers with valid visas to enter the United States, who boarded planes to our country in reliance on the order below and the guidance of the Department of Homeland Security, will be stopped, detained, and turned around yet again. That shift would exacerbate the confusion and uncertainty that has already harmed the *amici* States and the public at large. *See supra* Section I.D.[28]

Under these circumstances, the federal government cannot carry its burden of showing that a stay is warranted. The District Court's temporary restraining order merely preserves the status quo that existed before President Trump's Executive Order. In contrast to the abstract injuries that the federal government asserts it has suffered, a stay would lead to real and immediate hardships for the States, our

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[28] *See also* Pl.'s Emergency Mot. for TRO at 21-22, *Washington v. Trump*, No. 17-cv-00141 (W.D. Wash. Jan. 30, 2017), ECF No. 3; Br. for Am. Civil Liberties Union as Amici Curiae Supporting Pl. at 3-10, *Washington*, No. 17-cv-00141 (W.D. Wash. Feb. 2, 2017), ECF No. 26-1; Br. for Serv. Employees Int'l Union as Amici Curiae Supporting Pl. at 2-7, *Washington*, No. 17-cv-00141 (W.D. Wash. Feb. 2, 2017), ECF No. 42-2; Br. for Wash. State Labor Council as Amici Curiae Supporting Pl. at 8-11, *Washington*, No. 17-cv-00141 (W.D. Wash. Feb. 2, 2017), ECF No. 46-1; Decl. of Emily Chiang Supporting Pl.'s Emergency Mot. for TRO at 2-8, *Washington*, No. 17-cv-00141 (W.D. Wash. Jan. 30, 2017), ECF No. 3.

residents, businesses, and institutions. The interests of the public, the States, and the Nation would be best served by keeping the temporary restraining order in place—and avoiding further turmoil—pending a more thorough review by the Court.

CONCLUSION

For the foregoing reasons, this Court should affirm the Temporary Restraining Order and deny the Emergency Motion for Stay.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Genevieve C. Nadeau, hereby certify that a true copy of the above document, filed through the CM/ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants on this date.

Dated: February 7, 2017

/s/ Genevieve C. Nadeau
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