

CASE NO. 17-35105

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

STATE OF WASHINGTON, *et al.*,
Appellants

v.

DONALD J. TRUMP, PRESIDENT, *et al.*,
Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON,
CASE NO. 2:17-cv-00141-JLR

**MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF BY
FREEDOM WATCH, INC., IN EXCESS OF 4,200 WORDS
IN SUPPORT OF EN BANC REVIEW OF APPELLANT'S
EMERGENCY MOTION FOR STAY PENDING APPEAL**

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February 15, 2017

**MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF
IN EXCESS OF 4,200 WORDS**

Amicus Curiae Freedom Watch, Inc. (“Freedom Watch”) hereby moves this Court for leave to file its Amicus Curiae brief as currently written at the current length of 6,373 words -- including the Statement of Interest of Amicus Curiae -- notwithstanding the normally-governing rules for briefs on rehearing by *en banc* review.

Based on the clerk’s notification we now understand that an amicus brief submitted to support or oppose rehearing is limited to 15 pages or 4,200 words, pursuant to 9th Cir. R. 29-2(c)(2). The proposed brief is 6,373 words.

However, in this extraordinary case the Chief Judge of the U.S. Court of Appeals for the Ninth Circuit issued a Supplemental Briefing Order on February 10, 2017, ordering *inter alia* in relevant part:

The briefs should be filed on or before 11:00 a.m., Pacific time, on Thursday, February 16. ***The supplemental briefs shall be filed electronically and consist of no more than 14,000 words.*** See General Order 5.4(c)(3).

Id. (emphasis added).

Pursuant to Federal Rules of Appellate Procedure ("FRAP") Rule 29(a)(5) regarding contents and form and the maximum length:

(d) Length. Except by the court's permission, an amicus brief may be no more than one-half the maximum length authorized by these rules for a party's principal brief. If the court grants a party permission to file a longer brief, that extension does not affect the length of an amicus brief.

Following this rule of one-half the maximum length ordered by this Court's Chief Judge for a party's principal brief of 14,000 words, an amicus brief could be one-half of 14,000 words or 7,000 words. The brief filed by Freedom Watch is only 6,373 words.

Nevertheless, as advised by the clerk, FRAP Rule 29(a)(5)(d) by its express terms does not automatically adjust the maximum word length for an amicus curiae brief upon an enlargement of the word limits for a principal party's brief.

Yet FRAP Rule 29(a)(5)(d) does permit an enlargement of the word limits for an amicus curiae brief, stating that the subparagraph of the Rule applies "Except by the court's permission,"

Here, the controversy in this case turns largely on factual issues concerning the balance of the harm in evaluating a Temporary Restraining Order ("TRO") and/or injunction staying that TRO and the existence of a *bona fide* threat of terrorism, as well as factual claims that an Executive Order which entirely ignores aliens from 42 other Muslim-majority nations and applies only to

those from 7 out of the world's 49 Muslim-majority nations (sometimes counted as 51 or 52 total) is motivated by animus toward Muslims rather than by a determination of actual national security threats, and whether aliens cannot be meaningfully vetted from those 7 nations because of the lack of reliable records from the 7 "failed states" and terrorist sponsor Iran identified by President Barack Obama's administration.

Therefore, it is unusually challenging to cover the topics at issue without consuming 6,373 words. Also implicated are issues of standing, the non-justiciability political question doctrine, severability, the legal definition of irreparable harm and dismissal of the case under forum *non conveniens*.

Furthermore, while the unfolding filings are a fluid situation, it appears as Freedom Watch's impression that the amicus curiae briefs submitted have been overwhelmingly on one side, on the side of the Appellees, and only a few on the side of the Appellant. Therefore, it would seem to be of substantial benefit to the Court's consideration to ensure that all points of view are before this Court in the record and during its contemplation of these complex issues.

The Amicus Curiae's brief is filed concurrently herewith on February 14, 2017. Freedom Watch is a public interest group dedicated to preserving freedom, pursuing individual rights and civil liberties, preserving the rule of law and public confidence in the courts, and fighting for ethics in government and the

judicial system, as well as investigating and prosecuting government corruption and abuse. As part of its goal to remain constant to the principles of the Founding Fathers, Freedom Watch is dedicated to ensuring the rights of all citizens through action, frequently with legal cases and other means. As set forth in the accompanying brief, Freedom Watch's Amicus Brief would be useful given Freedom's Watch's experience in this arena, among other reasons.

Pursuant to Circuit Rule 29-3, Freedom Watch sought consent from Appellees and Appellant for the filing the Amicus Brief. All parties have consented. Thus, this Court is relieved of its duty to consider a motion pursuant to Circuit Advisory Committee Note to Rule 29-3. ("FRAP 29(a) permits the timely filing of an amicus curiae brief without leave of the Court if all parties consent to the filing of the brief; obtaining such consent thus relieves the Court of the need to consider a motion."). Freedom Watch now respectfully asks that leave be granted to file its brief of 6,373 words.

Dated: February 15, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing motion and proposed brief will be delivered electronically on February 15, 2017, to counsel for Plaintiffs and Defendants through the District's Electronic Case Filing system.

/s/ Larry Klayman, Esq.
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FREEDOM WATCH, INC.