

No. 17-35105

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

STATE OF WASHINGTON; STATE OF MINNESOTA,

Plaintiffs-Appellees,

v.

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

Defendants-Appellants.

On Appeal from the United States District Court
for the Western District of Washington
No. 2:17-cv-00141
The Honorable James L. Robart

**MOTION OF WASHINGTON STATE LABOR COUNCIL
FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE**

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CORPORATE DISCLOSURE STATEMENT

The Washington State Labor Council is a non-profit organization of 600 union locals and councils representing approximately 400,000 rank-and-file union members throughout the State of Washington. It has no parent corporation and there is no publicly held corporation that owns 10 percent or more of its stock, of which it has none.

I. INTRODUCTION & RELIEF REQUESTED

The Washington State Labor Council (“WSLC”) respectfully requests the Court grant it leave to file the 17-page amicus brief and supporting declarations attached hereto as **Exhibit A** in support of Plaintiffs’-Appellees’ (“State of Washington”) opposition to the emergency motion for a stay of the temporary restraining order (“TRO”) issued February 3, 2017, by the U.S. District Court for the Western District of Washington (Robart, J.). That TRO enjoins enforcement of certain unlawful and unconstitutional provisions of Executive Order No. 13,769, 82 Fed. Reg. 8977 (Jan. 27, 2017), which discriminatorily bans all refugees from entering the country for 120 days, bans all refugees from Syria indefinitely, and bans immigrants and non-immigrants from seven majority-Muslim countries from entering the U.S. for 90 days. The proposed amicus brief provides additional authority and evidence why the State of Washington is likely to prevail on the merits of its claim and how the Executive Order causes irreparable harm, including to members of labor unions living and working in Washington State.

II. IDENTITY AND INTEREST OF AMICUS CURIAE

The WSLC is a state-wide labor council comprised of more than 600 local unions, and it represents more than 450,000 rank-and-file union members working in Washington State. Declaration of Jeff Johnson (“Johnson Dec.”), ¶ 2 (filed with the district court below; copy attached hereto in Exhibit A for the Court’s

convenience). The WSLC is widely considered to be the “voice of labor” in Washington State. *Id.* WSLC has a strong interest in advocating for the liberty interests of Washington State workers. *Id.*

The WSLC provides many services to its affiliated unions. Johnson Dec., ¶ 3. The Council has a focus on legislative advocacy, political action, communication through its website “The Stand,” supporting affiliated unions’ organizing drives by rallying community leaders and elected officials, and programs that provide affiliate and direct worker assistance like dislocated worker assistance, increasing student awareness about apprenticeship programs within community and technical colleges, Project Help, education and training for union members, and assistance for unions with contract and economic research. *Id.*

On January 30, 2017, the President of WSLC issued the following statement regarding President Donald Trump’s Executive Order that bans all refugees from entering the country for 120 days, bans all refugees from Syria indefinitely, and bans immigrants and non-immigrants from seven majority-Muslim countries from entering the U.S. for 90 days:

President Trump’s Executive Order on Friday de facto banning Muslims from certain Middle Eastern countries from entering/re-entering the country for 90 days went beyond the pale of common decency, human dignity, and further fans the flames of racism, xenophobia, and anti-Islamism that he thoughtlessly spewed during his campaign. Legal permanent residents, green card holders and vetted refugees from certain Muslim countries — only countries where the Trump Corporation has no business dealings — were

detained at airports, refused entry, and in some cases, sent back to the country they had just arrived from. This reckless action further contributes to the rising attacks on Muslims and others in America. The Southern Poverty Law Center reports a dramatic rise in hate incidents over the past two years, now at 260,000 hate incidents a year. This hateful and shameful Executive Order was met by thousands protesting at airports across the country as well as an emergency stay against the Executive Order by a federal judge.

As union members and as a labor movement we stand with immigrants and refugees. We cannot and will not allow the president to pick us off one group at a time. Another leader did this in the 1930s and 1940s with horrific consequences.

America was built by immigrants and refugees and they will continue to play a part in the values upon which we define America.

Johnson Dec., ¶ 4.

Among WSLC's affiliated unions, unions who have signed a Solidarity Charter with the WSLC and other labor allies are unions whose members are directly impacted by the Executive Order, because they are immigrants or non-immigrant temporary workers from one of the seven banned countries whose ability to travel into and out of the United States is prohibited outright or whose inability to re-enter the United States after traveling will put their livelihoods in jeopardy. Johnson Dec., ¶ 5. Members are also affected because the ability of their families to travel into the United States is prohibited temporarily or indefinitely, disrupting the members' family ties, personal freedoms and economic security. Id.

Moreover, as a representative of working people, WSLC is keenly aware that the United States has a lamentable history of wrongfully using the nation's immigration laws against labor, for political purposes. Perhaps most famously, from February 1917 to November 1919, during the notorious "Palmer Raids," federal agents working at the direction of Attorney General A. Mitchell Palmer deported more than 500 foreign citizens, including a number of prominent leftist leaders, for reasons that are now generally understood to have been overtly political, i.e., to eliminate (through deportation) the representatives and leaders of movements intended to improve the lives and working conditions of blue-collar workers. See generally *The Palmer Raids* (Labor Research Association 1948) (Robert W. Dunn, ed.).

III. ARGUMENT

WSLC seeks leave to file a 17-page amicus brief in opposition to President Donald Trump et al.'s emergency Motion Under Circuit Rule 27-3 For Emergency Stay Pending Appeal ("Emergency Motion"), because of the actual and potential impact of the Executive Order on the members of unions in Washington State across a wide range of industries, and the irreparable harm that will be suffered by those workers if the Executive Order does not continue to be enjoined. The foregoing facts establish the interest of the labor community in the outcome of this proceeding. WSLC's brief offers additional examples of irreparable harm to

individuals working and residing in Washington, further establishing that the elements for continued temporary injunctive relief are met. See Exhibit A (Declarations of Jeff Johnson, David Parsons and Matt Haney). WSLC's brief also offers information about the intent of Congress to eliminate prejudice and discrimination in national immigration policy which supports, but does not duplicate, the arguments made by the States of Washington and Minnesota in support of their request for a temporary restraining order and their opposition, in this Court, to the request for a stay of the restraining order.

All parties to this litigation have, via e-mail, consented to the filing of this amicus brief, although Defendants-Appellants stated an expectation that filing would occur by the deadline for the State of Washington's Response Brief, e.g., before 1:00 a.m. February 6, 2017. Neither the Federal Rules of Appellate Procedure nor the Ninth Circuit Rules expressly authorize the filing of an amicus curiae brief in connection with a motion for a stay, even when the parties have consented, or provide for the length of such a brief. C.f., Fed. R. App. P. 29(a)(5) (except with the Court's permission, an amicus brief may be no more than one-half the maximum length authorized for a party's principal brief); Circuit Rule 27-1(1)(d) (except with the Court's permission, a motion or response to a motion may not exceed 20 pages).

This case involves a number of constitutional and statutory questions involving the protection of individuals and groups from invidious discrimination based on nationality, national origin and religion – discrimination which is purportedly but falsely justified on the grounds of national security interests. The case also arises procedurally from a request for, and grant of, a nation-wide TRO affecting the operations of numerous governmental agencies around the country and the irreparable harm that has been caused by the Executive Order and would again be caused if the Court were to grant Defendants’-Appellants’ request for a stay pending appeal. For all of these reasons, a 20-page brief is justified, and WSLC thus respectfully requests that the Court grant WSLC leave to file the attached brief and declarations in support thereof.

IV. CONCLUSION

For the foregoing reasons, the Court should grant WSLC leave to file the 17-page amicus brief and declarations attached hereto as **Exhibit A**.

RESPECTFULLY SUBMITTED this 6th day of February, 2017.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on February 6, 2017.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

DATED this 6th day of February, 2017, in Seattle, Washington.

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Exhibit A