State of Washington, et al v. Donald J. Trump, et al Doc. 84

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.

BRIEF OF AMICUS CURIAE FREEDOM WATCH, INC., IN SUPPORT OF APPELLANTS-DEFENDANTS ON EMERGENCY MOTION FOR STAY PENDING APPEAL

ORAL ARGUMENT REQUESTED

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FRAP RULE 26.1 AND FRAP 29(a)(4)(E)) DISCLOSURE STATEMENT

Freedom Watch, Inc. is a 501(c)(3) not-for-profit organization, with no parent corporation and no publicly traded stock.

In compliance with under FRAP 29(a)(4)(E), the Freedom Watch, Inc. further states that this brief was authored by counsel for Freedom Watch, without the involvement of counsel for any party in this matter. No party or counsel for such party contributed money that was intended to fund preparing or submitting this brief. No person other than the Amicus or its counsel contributed money that was intended to fund preparing or submitting this brief.

Dated: February 6, 2017

/s/ Larry Klayman
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STATEMENT OF INTEREST OF AMICUS CURIAE

Amicus Curaie Freedom Watch, Inc. hereby respectfully submits this brief to assist the Court and the ends of justice pursuant to the Federal Rules of Appellate Procedure ("FRAP") Rule 29. Counsel for the Appellants and Appellees have given their consent to this filing and therefore pursuant to FRAP Rule 29 and Circuit Rule 29, on the direction of said rules, a separate motion for leave to file this brief is not required.

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.

Previously, Freedom Watch filed an Amicus Curiae brief before the U.S. Supreme Court in a related case, *Arizona v. United States,* 567 U.S. __, 132 S.Ct. 2492 (2012) which addressed some of the legal issues and considerations implicated here. Similarly, Freedom Watch filed Amicus Curiae briefs before the U.S. Supreme Court and the U.S. District Court for the Southern District of Texas in *Texas v. United States*, 787 F.3d 733 (5th Cir. 2015), and brought a parallel

case *Arpaio v. Obama* , in a petition before the U.S. Supreme Court as Case No. 15-643, including a petition for writ of certiorari in the U.S. Supreme Court concerning somewhat similar issues regarding President Barack Obama's authority to disregard federal law on immigration by Executive Order.

With the majority of the country's citizens demanding the integrity of the rule of law, enforcement of our nation's immigration laws, protection of the country's borders, and defense of their families, communities, and nation against terrorist threats, Freedom Watch is required to speak on behalf of those unable to do so. As such, consistent with its mission, Freedom Watch seeks to provide the means and mechanism to protect American citizens' rights in this matter of great public interest and to uphold our constitutional system of separation of powers and the rule of law.

I. SUMMARY OF ARGUMENT

Before the Court is an emergency motion by the Appellants, Defendants below, for a stay of a Temporary Restraining Order pending a full appeal and resolution of the case below. Here, *Amicus Curiae* Freedom Watch respectfully offers its analysis for the benefit of this Court on that decision immediately before the Court concerning a stay. As other aspects of the case come before the Court, it is likely that the *Amicus Curiae* may also have additional observations to offer at a later time as the case progresses.

On January 27, 2017, President Donald Trump issued an Executive Order **"Protecting the Nation from Foreign Terrorist Entry into the United States,"** attached hereto as Exhibit A. The Executive Order is clearly, unambiguously, and explicitly aimed at the U.S. Government improving its methods for investigating, screening, and filtering ("vetting") entrants into the United States to do a better job of protecting the people Washington state, Minnesota and the rest of the nation against the risk of terrorist attacks. It is dramatically false to misrepresent the Executive Order. Its focus is to improve discrimination between terrorists, terrorist support networks, and terrorist sympathizers as opposed to others who present no danger to the country, based exclusively upon demonstrated empirical risks of actual terrorism.

The President of the United States, as constitutional head of the nation's international relations and foreign policy, and as Commander in Chief, entered a formal finding that -- in direct opposition to the arguments of the Appellees -- the status quo of complacency and lax border enforcement presents a clear and present danger to the national security of the United States. In the language of the governing statute, President Trump entered a finding that entry from seven failed or dangerous states "would be detrimental to the interests of the United States."

In fact, because the issue is the risk of terrorism, not religion, the Muslim nation of Kuwait has also implemented a travel ban from five (5) of the same seven (7) countries covered by the Executive Order.[1] A Muslim country has banned travel from five of the same Muslim countries. But the Appellees seek to obscure this reality that national security, not religion, is at stake.

The three crucial questions on the issue of a stay are that (1) the TRO makes no attempt to demonstrate a likelihood of success on the merits by the Plaintiffs-Appellees, who cannot succeed on the merits under the prevailing law, and (2) the persons -- who are strangers to the case, for whom the Appellees purport to speak -- cannot show irreparable damage *where each is eligible for an individual waiver*

[1] "After Trump, Now Kuwait Bans 5 Muslim-Majority Countries, Including Pakistan," NDTV, February 2, 2017, accessible at: http://www.ndtv.com/world-news/kuwait-bans-5-muslim-majority-countries-including-pakistan-1655311

and the Executive Order creates only a 90 day pause in entry from the world's seven most dangerous countries, and (3) the Appellees lack standing.

II. ARGUMENT

A. APPELLEE STATES WILL FAIL ON THE MERITS

The Temporary Restraining Order ("TRO") in the U.S. District Court for the Western District of Washington ("District Court") is fatally flawed because it does not even attempt to show that the Plaintiff State have any chance of succeeding in their lawsuit in the end. This is a central requirement.

To obtain a temporary restraining order, the Appellees must have established (1) a likelihood of success on the merits; (2) that irreparable harm is likely in the absence of preliminary relief; (3) that the balance of equities tips in the movant's favor; and 4) that an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20, 129 S. Ct. 365, 172 L. Ed. 2d 249 (2008); Fed. R. Civ. P. 65(b)(1); *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n. 7 (9th Cir. 2001).

Here, of course, the Appellants seek a stay of a stay (TRO). However, if the February 3, 2017, TRO is fatally flawed, which it is, then the moving Appellants here are entitled to a stay from the Ninth Circuit of the defective TRO. That is, the Appellants will prevail on the merits of challenging the TRO if it is deficient.

B. PRESIDENT'S POWER TO REGULATE ENTRY INTO THE UNITED STATES IS CLEAR AND ALMOST UNLIMITED

Congressional legislation confirms the President's authority in 8 U.S. Code § 1182(f), which is Section 212(f) of the Immigration and Naturalization Act:

> (f) Whenever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate.

However, even without the benefit of legislation, the President has inherent constitutional authority over foreign policy. *See, e.g., Zivotofsky v. Kerry*, 576 U.S. ___, 135 S. Ct. 2076, 2083-84 (2015). Of course that power is at its zenith when Congress by statute has agreed by legislation, as here. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U. S. 579 (1952). *see also, e.g., Harisiades v. Shaughnessy*, 342 U.S. 580, 588 (1952)) (recognizing that control over immigration is an integral part of Article II authorities "in regard to the conduct of foreign relations [and] the war power").

C. EXECUTIVE ORDER TARGETS "FAILED STATES" PLUS TERRORIST SPONSOR, HOSTILE IRAN, NOT RELIGION

The Appellees misrepresent this case as being about religion, and even if it were this is irrelevant, as there is not right for foreign aliens of any race, religion,

ethnicity, national origin or sexual preference to enter the United States, if he or she is not a citizen or permanent resident. And, that bogus argument cannot survive the clear text of the Executive Order. The Executive Order targets terrorism. This is not a case about religion at all.

The Executive Order explicitly, clearly, and unambiguously covers only those countries identified, during the Obama Administration, pursuant to 8 U.S.C. § 1187(a)(12), as being the seven most dangerous countries in the world for their risk of terrorists infiltrating the United States.

Specifically invoking 8 U.S. Code § 1182, President Trump ordered in the Executive Order, attached (emphasis added):

> I hereby proclaim that the immigrant and nonimmigrant entry into the United States of aliens ***from countries referred to in section 217(a)(12) of the INA, 8 U.S.C. 1187(a)(12)***, would be detrimental to the interests of the United States, and I hereby suspend entry into the United States, as immigrants and nonimmigrants, of such persons for 90 days from the date of this order (excluding those foreign nationals traveling on diplomatic visas, North Atlantic Treaty Organization visas, C-2 visas for travel to the United Nations, and G-1, G-2, G-3, and G-4 visas).

These are so-called "failed states" from whom reliable records cannot be obtained to sufficiently vet against the risk of terrorism. The seven (7) countries are selected not because they are Muslim, but because those countries are in chaos (or in the case of Iran implacably hostile and a state sponsor of terrorism), such

that documents and records related to a person seeking entry into the United States cannot be trusted. Records about potential entrants necessary to investigate and screen entrants for national security purposes are either non-existent or incomplete or worse commonly forged or falsified due to rampant corruption of officials, poverty-stricken bureaucrats, threats of violence or intimidation against bureaucrats, or terrorist infiltration of governments.[2]

It is beyond reasonable question, that the defining characteristic is the unreliability of records from these seven (7) countries. This is underscored by the temporary 90 day time limit on the Executive Order (in relevant portions).

The Executive Order ignores 42 other Muslim-majority countries. Thus, the fiction of the Appellees that the Executive Order targets religion is untenable and absurd. If the Executive Order constituted discrimination against religion, (a) it would not be limited to only 90 days, and (b) it would not be limited only to those seven countries from whom records necessary for vetting cannot be trusted. The Appellees would have us believe that the Trump Administration seeks to discriminate against Muslims -- *but only for 90 days* -- and then only from the world's seven most dangerous countries in terms of terrorism.

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2 Chuck Ross, " FBI Director Admits US Can't Vet All Syrian Refugees For Terror Ties [VIDEO]," The Daily Caller, accessible at: http://dailycaller.com/2015/10/21/fbi-director-admits-us-cant-vet-all-syrian-refugees-for-terror-ties-video/; Jerry Markon, "Senior Obama officials have warned of challenges in screening refugees from Syria," The Washington Post, November 17, 2015, accessible at: https://www.washingtonpost.com/news/federal-eye/wp/2015/11/17/senior-obama-officials-have-warned-of-challenges-in-screening-refugees-from-syria/?utm_term=.bc0746040762

The law upon which the Executive Order depends to identify the seven countries, federal law codified as 8 U.S.C. 1187(a)(12) is designed to allow a waiver of inadmissible aliens under 8 U.S. Code § 1182(f), as follows.

The Executive Order tracks with the following countries, rather than identifying any countries itself, as specified in the statute.

> (12) Not present in Iraq, Syria, or any other country or area of concern
> (A) In general
> Except as provided in subparagraphs (B) and (C)—
> (i) the alien has not been present, at any time on or after March 1, 2011—
> (I) in Iraq or Syria;
> (II) in a country that is designated by the Secretary of State under section 4605(j) of title 50 (as continued in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.)), section 2780 of title 22, section 2371 of title 22, or any other provision of law, as a country, the government of which has repeatedly provided support of acts of international terrorism; or
> (III) in any other country or area of concern designated by the Secretary of Homeland Security under subparagraph (D); and
> (ii) regardless of whether the alien is a national of a program country, the alien is not a national of—
> (I) Iraq or Syria;
> (II) a country that is designated, at the time the alien applies for admission, by the Secretary of State under section 4605(j) of title 50 (as continued in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.)), section 2780 of title 22, section 2371 of title 22, or any other provision of law, as a country, the government of which has repeatedly provided support of acts of international terrorism; or

> (III) any other country that is designated, at the time the alien applies for admission, by the Secretary of Homeland Security under subparagraph (D).

Thus, the argument is simply unavailable to the Appellees that the Executive Order discriminates against a religion, even were this relevant, which is clearly is not! It targets countries identified by the Obama Administration under federal law as being dangerous sources of terrorism.

D. APPELLEES MISREPRESENT 8 U.S.C. § 1152(a)(1)(A))

Yet the Appellee states seek to avoid the clear power of the President by claiming limitation under 8 U.S.C. § 1152. However, that statute clearly related to the annual numerical quotas for *immigrant* -- non-visitor -- visas from various countries. It clearly has nothing to do with limiting the President's power.

The Appellees hang their entire case on seeking to undercut 8 U.S.C. § 1182(f) with a misrepresentation of 8 U.S.C. § 1152(a)(1)(A)).

Clearly, 8 U.S.C. § 1152(a)(1)(A) has nothing to do with limiting the President's power under 8 U.S.C. § 1182(f) and directly under the U.S. Constitution. 8 U.S.C. § 1152 concerns numerical limits on visas. By contrast 8 U.S.C. § 1182(f) is directly relevant, addressing "inadmissible aliens." The context in which the subparagraphs appear, as well as their substance, makes clear that there is no limitation on the President's 8 U.S.C. § 1182(f) power.

It would lead to an absurd result to interpret 8 U.S.C. § 1152(a)(1)(A) as

prohibiting the President from basing his actions under 8 U.S.C. § 1182(f) on national origin, for example. The President could not carry out his duties as the head of the nation's foreign policy and international relations if he were disabled from considering the country from which potential visitors or immigrants originate from in carrying out his constitutional foreign policy decisions. Such an interpretation -- that a person's country cannot be considered -- would effectively invalidate the President's role in conducting foreign policy. It would be absurd to conduct foreign policy and international relations while being blinded to the countries from which visitors and immigrants come.

> **8 U.S.C. § 1152 : US Code - Section 1152: Numerical limitations on individual foreign states**
>
> (a) Per country level
> (1) Nondiscrimination
>
> **(A) Except as specifically provided in paragraph (2) and in sections 1101(a)(27), 1151(b)(2)(A)(i), and 1153 of this title, no person shall receive any preference or priority or be discriminated against in the issuance of an immigrant visa because of the person's race, sex, nationality, place of birth, or place of residence.**
> **(B) Nothing in this paragraph shall be construed to limit the authority of the Secretary of State to determine the procedures for the processing of immigrant visa applications or the locations where such applications will be processed.**
>
> (2) Per country levels for family-sponsored and employment-based immigrants
>
> Subject to paragraphs (3), (4), and (5), the total number of immigrant visas made available to natives of any single foreign state

or dependent area under subsections (a) and (b) of section 1153 of this title in any fiscal year may not exceed 7 percent (in the case of a single foreign state) or 2 percent (in the case of a dependent area) of the total number of such visas made available under such subsections in that fiscal year.

(3) Exception if additional visas available

If because of the application of paragraph (2) with respect to one or more foreign states or dependent areas, the total number of visas available under both subsections (a) and (b) of section 1153 of this title for a calendar quarter exceeds the number of qualified immigrants who otherwise may be issued such a visa, paragraph (2) shall not apply to visas made available to such states or areas during the remainder of such calendar quarter.

(4) Special rules for spouses and children of lawful permanent resident aliens

(A) 75 percent of 2nd preference set-aside for spouses and children not subject to per country limitation

(i) In general Of the visa numbers made available under section 1153(a) of this title to immigrants described in section 1153(a)(2)(A) of this title in any fiscal year, 75 percent of the 2-A floor (as defined in clause (ii)) shall be issued without regard to the numerical limitation under paragraph (2).

(ii) "2-A floor" defined In this paragraph, the term "2-A floor" means, for a fiscal year, 77 percent of the total number of visas made available under section 1153(a) of this title to immigrants described in section 1153(a)(2) of this title in the fiscal year.

Id. (Emphasis added).

E. STRAW-MAN ARGUMENT OF RELIGIOUS DISCRIMINATION

The Plaintiff states, Appellees here, have invented a straw man case. This is not merely a straw-man argument. This entire case is based upon fictions. Having spun these fictions, the Plaintiff-Appellee states cling desperately to the falsehood

at the core of their case, and strive mightily to distract from the fatal errors in their entire case.

It is surprising -- after reading the emotional hyperbole of the Appellees and Plaintiff states, Amici, and others -- to actually read the operative Executive Order. After reading the pleadings of the Appellees one would imagine a completely different document than the one actually before the Court: (See Exhibit A.)

1) Nowhere does the Executive Order mention Muslims or Islam.
2) Nowhere does the Executive Order mention Christians.
3) Nowhere does the Executive Order mention Jews.
4) Nowhere does the Executive Order mention religion at all.
5) In fact, nowhere does the Executive Order mention any particular country, nor specify any of the seven (7) countries affected.

The clear and present danger to the national security of refugees and travel from hostile Iran as a sponsor of terrorism and six failed states is designated by Congressional statute now codified at 8 U.S.C. § 1187(a)(12) and President Obama's Secretary of State John Kerry. This Court is faced not only with a Presidential finding that travel to the United States from these seven (7) nations presents an unacceptable risk to the people of the United States -- including those in Washington state and Minnesota -- but a Congressional statute agreeing that Iraq and Syria, and the other five designated by Obama's Secretary of State Kerry

present an unacceptable risk to the nation.

The Appellees bring their case by asserting fictions that the Executive Order targets Muslims, even though of the world's 49 Muslim-majority countries,[3] the Executive Order bans entry only from seven (7). However, the defining characteristic by which those seven were selected is the inability for the U.S. Government to effectively investigate ("vet") people from those countries due to the near total collapse of those countries as so-called "failed states" and hostile sponsor of terrorism Iran.

In fact, the Executive Order does not even mention the countries affected, but refers instead to the countries designated by the Obama Administration pursuant to 8 U.S.C. § 1187(a)(12) as countries of concern. Because of the chaos created in those countries after the so-called "Arab Spring," and the hostility of Iran, records are either unavailable or easily forged by money-strapped or corrupt officials.[4]

In other words, ***a terrorist could present himself at the U.S. border posing as a Hasidic Jew under a false name,*** and the records from those seven countries are too deficient to confirm the entrant's true identity. It is the nature of the

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[3] "Muslim-Majority Countries Comprising the Islamic World," Center for the Education of Women, University of Michigan, accessible at: http://www.cew.umich.edu/muslim_majority ; The Pew Research Center identifies 49 countries: "The Future of the Global Muslim Population: Muslim-Majority Countries," Pew Research Center, January 27, 2011, accessible at: http://www.pewforum.org/2011/01/27/future-of-the-global-muslim-population-muslim-majority/

[4] See Footnote 2.

countries, not the religion of entrants that drives the Executive Order.

Another fiction of the Appellees' case is the suggestion that the Executive Order is a ban on entrants when in fact potential entrants can receive waivers on a case-by-case basis and apparently 100% of all affected travels have in fact received waivers allowing them to enter notwithstanding the Executive Order.[5] Furthermore, the Executive Order limits entry only during a modest 90 day period while vetting methods are improved.

F. IRREPARABLE HARM SUPPORTS THE EXECUTIVE ORDER, NOT THE APPELLEES

The Appellees cannot show irreparable harm or even any legally-cognizable harm, including because the Executive Order and surrounding law allows each potential visitor, entrant, or immigrant to obtain an individual, case-by-case waiver. There cannot be harm to a potential entrant from the Executive Order when he or she can be granted entrance under a waiver. Indeed, news reports indicate that 100% of all persons who were initially detained upon arriving at U.S. airports under the Executive Order have been cleared to enter the United States and released into the interior of the country. That is, not a single person was denied entry pursuant to the waiver authority. This is fatal to the Appellees' case.

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[5] "Travelers Detained Due To Trump Travel Ban Released, Attorneys Say," January 28, 2017, CBS News Chicago Channel 2, accessible at: http://chicago.cbslocal.com/2017/01/28/travelers-detained-due-to-trump-travel-ban-released-attorneys-say/

The harm that can be identified might be purely financial as a result of delay. By definition, financial costs are not irreparable. While out of pocket expenses due to delay may be inconvenient, they cannot constitute "irreparable harm" for a TRO.

On the other side of the equation, there is irreparable harm to the national security of the United States. Appellees argue that the status quo before the Executive order cannot represent irreparable harm. But that is exactly the Presidential Finding in the Executive Order and the considered judgment of the U.S. Department of State and of the U.S. Congress. It is precisely the finding that the status quo of lax foreign policy, lax enforcement and a careless lack of concern for the safety of the American people has spawned death, violence, and destruction on U.S. soil in recent years.

Actual recent terrorist attacks in San Bernadino, California,[6] Boston, Massachusetts,[7] Orlando, Florida, and Garland, Texas, [8] and Ft. Lauderdale International Airport in addition to earlier incidents such as the first and second terrorist attacks at the World Trade Center on February 26, 1993 and September,

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6 Michael S. Schmidt and Richard Perez-Pena, "F.B.I. Treating San Bernardino Attack as Terrorism Case," New York Times, December 4, 2015, accessible at: https://www.nytimes.com/2015/12/05/us/tashfeen-malik-islamic-state.html

7 "Russia warned U.S. about Boston Marathon bomb suspect Tsarnaev: report," Reuters, March 25, 2014, accessible at: http://www.reuters.com/article/us-usa-explosions-boston-congress-idUSBREA2P02Q20140326

8 Jim Sciutto, Pamela Brown, Paul Cruic, "ISIS claims responsibility for Texas shooting but offers no proof," CNN, May 5, 2015, accessible at: http://www.cnn.com/2015/05/05/us/garland-texas-prophet-mohammed-contest-shooting/; Jim Sciutto, Pamela Brown, Paul Cruic, CNN, May 5, 2015, accessible at: http://www.cnn.com/2015/05/05/politics/texas-attack-terror-tweets/index.html

11, 2001.

The Executive Order clearly, unambiguously, and explicitly "... suspends entry into the United States, as immigrants and nonimmigrants, of such persons ***for 90 days***..." *Id.* (emphasis added). The 90 day suspension is clearly, unambiguously, and explicitly temporary for the purpose of the U.S. Government investigating and developing improved scrutiny, review, and filtering of dangerous applicants. The focus is on improving national security -- not on any religion.

The 90 day suspension is clearly, unambiguously, and explicitly limited to only seven (7) countries identified by President Barack Obama as so-called "failed states" or technically "countries of concern." While conspicuously taking no action concerning the other 42 nations out of the world's 49 Muslim-majority countries, the Executive Order focuses exclusively on actual danger to the country.

Thus, the danger to the national security clearly outweighs temporary delays in travel by persons affected who come from the world's seven most dangerous countries in terms of terrorist activity directed against the United States.

G. ENJOINING THE EXECUTIVE ORDER IS MISTAKEN

There are many different kinds of executive orders. This Executive Order is exercising the President's delegated authority under 8 U.S.C. § 1182(f). Therefore, the District Court is attempting to enjoin the Congressional statute. The President's role in proclaiming a suspension under 8 U.S.C. § 1182(f) is a statutory

role. Thus, it is ineffectual for the District Court to enjoin the Executive Order when the President is exercising his statutory role under 8 U.S.C. § 1182(f). The Appellees are actually attacking the statute.

H. LACK OF STANDING

The TRO must also be vacated because the Appellees lack standing. It is undisputed that the Appellees claim for standing grounds routinely rejected by the courts, at least when a legal challenge is in support of the rule of law and enforcement of immigration laws. The Appellees clearly ground their claim of standing exclusively upon the supposed -- highly speculative -- claims of others.

I. FORUM NON CONVENIENS AND JUDGE SHOPPING

It is clear that the Appellees, Plaintiff states below, engaged in prohibited forum-shopping. The Defendants, Appellants here, are all in the District of Columbia. All of the evidence and witnesses are in the District of Columbia or overseas, including the visa processing of potential entrants by the U.S. Department of State. All of the events at issue occurred or are occurring in the District of Columbia.

Venue is governed by 28 U.S. Code § 1391, which requires that:

> (a)Applicability of Section—Except as otherwise provided by law—
> (1) this section shall govern the venue of all civil actions brought in district courts of the United States; and

(2) the proper venue for a civil action shall be determined without regard to whether the action is local or transitory in nature.

(b)Venue in General—A civil action may be brought in—

(1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located;

(2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; or

(3) if there is no district in which an action may otherwise be brought as provided in this section, any judicial district in which any defendant is subject to the court's personal jurisdiction with respect to such action.

* * *

(e) Actions Where Defendant Is Officer or Employee of the United States—

(1) In general.—

A civil action in which a defendant is an officer or employee of the United States or any agency thereof acting in his official capacity or under color of legal authority, or an agency of the United States, or the United States, may, except as otherwise provided by law, be brought in any judicial district in which (A) a defendant in the action resides, (B) a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (C) the plaintiff resides if no real property is involved in the action. Additional persons may be joined as parties to any such action in accordance with the Federal Rules of Civil Procedure and with such other venue requirements as would be applicable if the United States or one of its officers, employees, or agencies were not a party.

The Court should transfer the case to the U.S. District Court for the District

of Columbia under the doctrine of forum non conveniens. *Piper Aircraft Co. v. Reyno*, 454 U.S. 235 (1981)

III. REQUEST FOR ORAL ARGUMENT

The *Amicus Curiae* requests oral argument at hearing consisting of 10 minutes to address these important issues. While Appellees have consented to this instant filing, Appellees do not consent to *Amicus Curiae*'s request for oral argument. However, this Court should exercise its discretion and grant *Amicus Curiae*'s request for 10 minutes of oral argument. As set forth in this brief, there are pressing and important national issues at stake here. *Amicus Curiae*, with its extensive experience in this arena, will be able to provide this Court with important perspective, through oral argument, to assist this Court in rendering its decision. *Amicus Curiae*'s request for 10 minutes is short, and will not unduly burden this Court or the parties involved, and will be of great utility to this Court.

IV. CONCLUSION AND REQUEST FOR ORAL ARGUMENT

The Appellees, Plaintiff States, have set up a constitutional crisis, crippling the President of the United States as Commander in Chief and head of international relations, from carrying out his Constitutional duties under Article II. The U.S. Constitution was developed and ratified largely due to our Founders' realization that in international relations and national defense a single national leader must be free to act for the nation. This is obviously true for the presidency.

Emergency treatment and prompt action on these matters is appropriate. Increasingly-frequent terrorist attacks have been occurring on U.S. soil in response to the spread of radical Islamic terrorism and the rise of the Islamic State of Iraq and Syria (ISIS) styling itself as the re-establishment of an Islamic Caliphate dedicated, in the minds of ISIS, to conquer the entire Earth without exception.

The people who live and work in this circuit, no less than any other large U.S. city as an inviting "soft target," primarily Jews and Christians, are in imminent danger of sworn enemies of the United States of America, enemies who believe in their own minds -- however much we might view things differently ourselves -- that their eternal destiny is contingent upon their murder of Americans to further their religious beliefs. In the case of Islam, this, according to the Quran, is the elimination of “infidels” in the name of Allah. The U.S. Government, of course, cares not why people want to kill us, only that they do. The question is not religion but threats to the nation.

Terrorist supporters and conspirators from the seven dangerous countries may not be the gunmen or bombers who end up in the news. They may also be the ones who train, assist, equip, and finance those who do. Thus, all need to be thoroughly vetted before they are permitted to gain entry into the United States. The president’s executive order merely places a temporary 90 day moratorium on immigration as the new administration develops a truly functional means of this

required vetting, in the interests of national security.

Finally, amicus curiae respectfully requests the opportunity to present 10 minutes of oral argument should this Court decide to hold a hearing. This request is in the public interest, for the reasons stated above, as the oral argument of the undersigned will represent the interests of the American citizenry and help this Court focus on and asking questions about the relevant arguments, which are in some instances unique and not identical with those of the parties herein.

Dated: February 6, 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 6, 2017, to counsel for Plaintiffs and Defendants through the District's Electronic Case Filing system.

/s/ Larry Klayman, Esq.
Larry Klayman, Esq.

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief is in Times New Roman in 14-point font size, and totals 5,172 words, in keeping with FRAP 29 and Circuit Rules.

/s/ Larry Klayman, Esq.
Larry Klayman, Esq.

CERTIFICATE OF FILING BY CONSENT

I hereby certify that counsel for the Appellees and Appellants have given their consent in writing (by email) to the filing of this Amicus Curiae brief.

/s/ Larry Klayman, Esq.
Larry Klayman, Esq.

EXHIBIT A

Briefing Room

Speeches & Remarks

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The White House

Office of the Press Secretary

For Immediate Release January 27, 2017

EXECUTIVE ORDER: PROTECTING THE NATION FROM FOREIGN TERRORIST ENTRY INTO THE UNITED STATES

EXECUTIVE ORDER

- - - - - - -

Protecting the Nation from Foreign Terrorist Entry into the United States

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq*., and section 301 of title 3, United States Code, and to

protect the American people from terrorist attacks by foreign nationals admitted to the United States, it is hereby ordered as follows:

Section 1. Purpose. The visa-issuance process plays a crucial role in detecting individuals with terrorist ties and stopping them from entering the United States. Perhaps in no instance was that more apparent than the terrorist attacks of September 11, 2001, when State Department policy prevented consular officers from properly scrutinizing the visa applications of several of the 19 foreign nationals who went on to murder nearly 3,000 Americans. And while the visa-issuance process was reviewed and amended after the September 11 attacks to better detect would-be terrorists from receiving visas, these measures did not stop attacks by foreign nationals who were admitted to the United States.

Numerous foreign-born individuals have been convicted or implicated in terrorism-related crimes since September 11, 2001, including foreign nationals who entered the United States after receiving visitor, student, or employment visas, or who entered through the United States refugee resettlement program. Deteriorating conditions in certain countries due to war, strife, disaster, and civil unrest increase the likelihood that terrorists will use any means possible to enter the United States. The United States must be vigilant during the visa-issuance process to ensure that those approved for admission do not intend to harm Americans and that they have no ties to terrorism.

In order to protect Americans, the United States must ensure that those admitted to this country do not bear hostile attitudes toward it and its founding principles. The United States cannot, and should not, admit those who do not support the Constitution, or those who would place violent ideologies over American law. In addition, the United States should not admit those who engage in acts of bigotry or hatred (including "honor" killings, other forms of violence against women, or the persecution of those who practice religions

different from their own) or those who would oppress Americans of any race, gender, or sexual orientation.

Sec. 2. Policy. It is the policy of the United States to protect its citizens from foreign nationals who intend to commit terrorist attacks in the United States; and to prevent the admission of foreign nationals who intend to exploit United States immigration laws for malevolent purposes.

Sec. 3. Suspension of Issuance of Visas and Other Immigration Benefits to Nationals of Countries of Particular Concern. (a) The Secretary of Homeland Security, in consultation with the Secretary of State and the Director of National Intelligence, shall immediately conduct a review to determine the information needed from any country to adjudicate any visa, admission, or other benefit under the INA (adjudications) in order to determine that the individual seeking the benefit is who the individual claims to be and is not a security or public-safety threat.

(b) The Secretary of Homeland Security, in consultation with the Secretary of State and the Director of National Intelligence, shall submit to the President a report on the results of the review described in subsection (a) of this section, including the Secretary of Homeland Security's determination of the information needed for adjudications and a list of countries that do not provide adequate information, within 30 days of the date of this order. The Secretary of Homeland Security shall provide a copy of the report to the Secretary of State and the Director of National Intelligence.

(c) To temporarily reduce investigative burdens on relevant agencies during the review period described in subsection (a) of this section, to ensure the proper review and maximum utilization of available resources for the screening of foreign nationals, and to ensure that adequate standards are established to prevent infiltration by foreign terrorists or criminals, pursuant to section 212(f)

of the INA, 8 U.S.C. 1182(f), I hereby proclaim that the immigrant and nonimmigrant entry into the United States of aliens from countries referred to in section 217(a)(12) of the INA, 8 U.S.C. 1187(a)(12), would be detrimental to the interests of the United States, and I hereby suspend entry into the United States, as immigrants and nonimmigrants, of such persons for 90 days from the date of this order (excluding those foreign nationals traveling on diplomatic visas, North Atlantic Treaty Organization visas, C-2 visas for travel to the United Nations, and G-1, G-2, G-3, and G-4 visas).

(d) Immediately upon receipt of the report described in subsection (b) of this section regarding the information needed for adjudications, the Secretary of State shall request all foreign governments that do not supply such information to start providing such information regarding their nationals within 60 days of notification.

(e) After the 60-day period described in subsection (d) of this section expires, the Secretary of Homeland Security, in consultation with the Secretary of State, shall submit to the President a list of countries recommended for inclusion on a Presidential proclamation that would prohibit the entry of foreign nationals (excluding those foreign nationals traveling on diplomatic visas, North Atlantic Treaty Organization visas, C-2 visas for travel to the United Nations, and G-1, G-2, G-3, and G-4 visas) from countries that do not provide the information requested pursuant to subsection (d) of this section until compliance occurs.

(f) At any point after submitting the list described in subsection (e) of this section, the Secretary of State or the Secretary of Homeland Security may submit to the President the names of any additional countries recommended for similar treatment.

(g) Notwithstanding a suspension pursuant to subsection (c) of this section or pursuant to a Presidential proclamation described in subsection (e) of this

section, the Secretaries of State and Homeland Security may, on a case-by-case basis, and when in the national interest, issue visas or other immigration benefits to nationals of countries for which visas and benefits are otherwise blocked.

(h) The Secretaries of State and Homeland Security shall submit to the President a joint report on the progress in implementing this order within 30 days of the date of this order, a second report within 60 days of the date of this order, a third report within 90 days of the date of this order, and a fourth report within 120 days of the date of this order.

Sec. 4. Implementing Uniform Screening Standards for All Immigration Programs. (a) The Secretary of State, the Secretary of Homeland Security, the Director of National Intelligence, and the Director of the Federal Bureau of Investigation shall implement a program, as part of the adjudication process for immigration benefits, to identify individuals seeking to enter the United States on a fraudulent basis with the intent to cause harm, or who are at risk of causing harm subsequent to their admission. This program will include the development of a uniform screening standard and procedure, such as in-person interviews; a database of identity documents proffered by applicants to ensure that duplicate documents are not used by multiple applicants; amended application forms that include questions aimed at identifying fraudulent answers and malicious intent; a mechanism to ensure that the applicant is who the applicant claims to be; a process to evaluate the applicant's likelihood of becoming a positively contributing member of society and the applicant's ability to make contributions to the national interest; and a mechanism to assess whether or not the applicant has the intent to commit criminal or terrorist acts after entering the United States.

(b) The Secretary of Homeland Security, in conjunction with the Secretary of State, the Director of National Intelligence, and the Director of the Federal

Bureau of Investigation, shall submit to the President an initial report on the progress of this directive within 60 days of the date of this order, a second report within 100 days of the date of this order, and a third report within 200 days of the date of this order.

Sec. 5. Realignment of the U.S. Refugee Admissions Program for Fiscal Year 2017. (a) The Secretary of State shall suspend the U.S. Refugee Admissions Program (USRAP) for 120 days. During the 120-day period, the Secretary of State, in conjunction with the Secretary of Homeland Security and in consultation with the Director of National Intelligence, shall review the USRAP application and adjudication process to determine what additional procedures should be taken to ensure that those approved for refugee admission do not pose a threat to the security and welfare of the United States, and shall implement such additional procedures. Refugee applicants who are already in the USRAP process may be admitted upon the initiation and completion of these revised procedures. Upon the date that is 120 days after the date of this order, the Secretary of State shall resume USRAP admissions only for nationals of countries for which the Secretary of State, the Secretary of Homeland Security, and the Director of National Intelligence have jointly determined that such additional procedures are adequate to ensure the security and welfare of the United States.

(b) Upon the resumption of USRAP admissions, the Secretary of State, in consultation with the Secretary of Homeland Security, is further directed to make changes, to the extent permitted by law, to prioritize refugee claims made by individuals on the basis of religious-based persecution, provided that the religion of the individual is a minority religion in the individual's country of nationality. Where necessary and appropriate, the Secretaries of State and Homeland Security shall recommend legislation to the President that would assist with such prioritization.

(c) Pursuant to section 212(f) of the INA, 8 U.S.C. 1182(f), I hereby proclaim that the entry of nationals of Syria as refugees is detrimental to the interests of the United States and thus suspend any such entry until such time as I have determined that sufficient changes have been made to the USRAP to ensure that admission of Syrian refugees is consistent with the national interest.

(d) Pursuant to section 212(f) of the INA, 8 U.S.C. 1182(f), I hereby proclaim that the entry of more than 50,000 refugees in fiscal year 2017 would be detrimental to the interests of the United States, and thus suspend any such entry until such time as I determine that additional admissions would be in the national interest.

(e) Notwithstanding the temporary suspension imposed pursuant to subsection (a) of this section, the Secretaries of State and Homeland Security may jointly determine to admit individuals to the United States as refugees on a case-by-case basis, in their discretion, but only so long as they determine that the admission of such individuals as refugees is in the national interest -- including when the person is a religious minority in his country of nationality facing religious persecution, when admitting the person would enable the United States to conform its conduct to a preexisting international agreement, or when the person is already in transit and denying admission would cause undue hardship -- and it would not pose a risk to the security or welfare of the United States.

(f) The Secretary of State shall submit to the President an initial report on the progress of the directive in subsection (b) of this section regarding prioritization of claims made by individuals on the basis of religious-based persecution within 100 days of the date of this order and shall submit a second report within 200 days of the date of this order.

(g) It is the policy of the executive branch that, to the extent permitted by

law and as practicable, State and local jurisdictions be granted a role in the process of determining the placement or settlement in their jurisdictions of aliens eligible to be admitted to the United States as refugees. To that end, the Secretary of Homeland Security shall examine existing law to determine the extent to which, consistent with applicable law, State and local jurisdictions may have greater involvement in the process of determining the placement or resettlement of refugees in their jurisdictions, and shall devise a proposal to lawfully promote such involvement.

Sec. 6. Rescission of Exercise of Authority Relating to the Terrorism Grounds of Inadmissibility. The Secretaries of State and Homeland Security shall, in consultation with the Attorney General, consider rescinding the exercises of authority in section 212 of the INA, 8 U.S.C. 1182, relating to the terrorism grounds of inadmissibility, as well as any related implementing memoranda.

Sec. 7. Expedited Completion of the Biometric Entry-Exit Tracking System. (a) The Secretary of Homeland Security shall expedite the completion and implementation of a biometric entry-exit tracking system for all travelers to the United States, as recommended by the National Commission on Terrorist Attacks Upon the United States.

(b) The Secretary of Homeland Security shall submit to the President periodic reports on the progress of the directive contained in subsection (a) of this section. The initial report shall be submitted within 100 days of the date of this order, a second report shall be submitted within 200 days of the date of this order, and a third report shall be submitted within 365 days of the date of this order. Further, the Secretary shall submit a report every 180 days thereafter until the system is fully deployed and operational.

Sec. 8. Visa Interview Security. (a) The Secretary of State shall immediately suspend the Visa Interview Waiver Program and ensure compliance with section

222 of the INA, 8 U.S.C. 1222, which requires that all individuals seeking a nonimmigrant visa undergo an in-person interview, subject to specific statutory exceptions.

(b) To the extent permitted by law and subject to the availability of appropriations, the Secretary of State shall immediately expand the Consular Fellows Program, including by substantially increasing the number of Fellows, lengthening or making permanent the period of service, and making language training at the Foreign Service Institute available to Fellows for assignment to posts outside of their area of core linguistic ability, to ensure that non-immigrant visa-interview wait times are not unduly affected.

Sec. 9. Visa Validity Reciprocity. The Secretary of State shall review all nonimmigrant visa reciprocity agreements to ensure that they are, with respect to each visa classification, truly reciprocal insofar as practicable with respect to validity period and fees, as required by sections 221(c) and 281 of the INA, 8 U.S.C. 1201(c) and 1351, and other treatment. If a country does not treat United States nationals seeking nonimmigrant visas in a reciprocal manner, the Secretary of State shall adjust the visa validity period, fee schedule, or other treatment to match the treatment of United States nationals by the foreign country, to the extent practicable.

Sec. 10. Transparency and Data Collection. (a) To be more transparent with the American people, and to more effectively implement policies and practices that serve the national interest, the Secretary of Homeland Security, in consultation with the Attorney General, shall, consistent with applicable law and national security, collect and make publicly available within 180 days, and every 180 days thereafter:

(i) information regarding the number of foreign nationals in the United States who have been charged with terrorism-related offenses while in the United

States; convicted of terrorism-related offenses while in the United States; or removed from the United States based on terrorism-related activity, affiliation, or material support to a terrorism-related organization, or any other national security reasons since the date of this order or the last reporting period, whichever is later;

(ii) information regarding the number of foreign nationals in the United States who have been radicalized after entry into the United States and engaged in terrorism-related acts, or who have provided material support to terrorism-related organizations in countries that pose a threat to the United States, since the date of this order or the last reporting period, whichever is later; and

(iii) information regarding the number and types of acts of gender-based violence against women, including honor killings, in the United States by foreign nationals, since the date of this order or the last reporting period, whichever is later; and

(iv) any other information relevant to public safety and security as determined by the Secretary of Homeland Security and the Attorney General, including information on the immigration status of foreign nationals charged with major offenses.

(b) The Secretary of State shall, within one year of the date of this order, provide a report on the estimated long-term costs of the USRAP at the Federal, State, and local levels.

Sec. 11. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP

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