

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAI'I

STATE OF HAWAI'I and ISMAIL	)	CIVIL NO. CV 17-00050 DKW-KSC
ELSHIKH,	)	
	)	MEMORANDUM IN SUPPORT OF
Plaintiffs,	)	MOTION
	)	
vs.	)	
	)	
DONALD J. TRUMP, in his official	)	
capacity as President of the United	)	
States; U.S. DEPARTMENT OF	)	
HOMELAND SECURITY; JOHN F.	)	
KELLY, in his official capacity as	)	
Secretary of Homeland Security; U.S.	)	
DEPARTMENT OF STATE; REX	)	
TILLERSON, in his official capacity as	)	
Secretary of State; and the UNITED	)	
STATES OF AMERICA,	)	
	)	
Defendants.	)	
_____	)	

MEMORANDUM IN SUPPORT OF MOTION

The Roderick and Solange MacArthur Justice Center respectfully requests leave to file a brief as *amicus curiae* in support of Plaintiffs' Motion for Temporary Restraining Order, filed March 8, 2017 [Dkt. No. 65]. The proposed amicus brief is attached as Exhibit "1" to the Declaration of David J. Minkin. Plaintiffs consent to the filing of the amicus brief; the Government takes no position on this motion. Minkin Declaration at ¶ 4. Further, this Court has broad discretion to grant this motion.

The MacArthur Justice Center is a not-for-profit organization founded in 1985 by the family of J. Roderick MacArthur to advocate for human rights and social justice through litigation. The MacArthur Justice Center has represented clients facing a myriad of human rights and civil rights injustices, including issues of discrimination, the unlawful detention of foreign nationals, and the rights of marginalized groups in the United States' justice system. The MacArthur Justice Center has an interest in the independent role of the judiciary in determining whether government officials have acted with discriminatory animus.

The MacArthur Justice Center seeks to submit its brief to inform the Court's analysis of animus, including through historic information that preceded the present action, and to contextualize this dispute in the history of judicial scrutiny of discriminatory government actions.

A district court has broad discretion to grant or refuse a prospective amicus participation. *Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982), *abrogated on other grounds*, *Sandin v. Conner*, 515 U.S. 472 (1995). In deciding whether to grant a motion for leave to file an amicus brief, a court should consider whether the brief "assist[s] in a case of general public interest," "supplement[s] the efforts of counsel," or "draw[s] the court's attention to law that escaped consideration." *Miller-Wohl Co. v. Comm'r of Labor & Indus. State of Mont.*, 694 F.2d 203, 204 (9th Cir. 1982). "An amicus brief should normally be allowed . . . when the

amicus has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.” *Cnty. Ass’n for Restoration of Env’t v. DeRuyter Bros. Dairy*, 54 F. Supp. 2d 974, 975 (E.D. Wash. 1999).

Based on the foregoing, the MacArthur Justice Center respectfully requests leave to file the amicus brief.

DATED: Honolulu, Hawai‘i, March 10, 2017.

/s/ David J. Minkin

DAVID J. MINKIN

LISA W. CATALDO

JESSICA M. WAN

AMIR H. ALI (*Pro Hac Vice* Pending)

Attorneys for RODERICK AND  
SOLANGE MACARTHUR JUSTICE  
CENTER