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**Pro hac vice application pending*

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TAHIRIH JUSTICE CENTER, and
HIAS

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI‘I**

STATE OF HAWAI‘I and ISMAIL
ELSHIKH,

Plaintiffs,

v.

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.

CV. NO. 1:17-cv-00050-DKW-KSC

**BRIEF OF AMICI CURIAE HUMAN
RIGHTS FIRST, KIND (KIDS IN
NEED OF DEFENSE), TAHIRIH
JUSTICE CENTER, AND HIAS IN
SUPPORT OF PLAINTIFFS’
MOTION FOR TEMPORARY
RESTRAINING ORDER**

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INTERESTS OF *AMICI CURIAE*

Human Rights First (formerly known as the Lawyers Committee for Human Rights) has worked since 1978 to promote fundamental human rights and to ensure protection of refugees' rights, including the right to seek and enjoy asylum. Human Rights First grounds its refugee protection work in the standards set forth in the 1951 Convention Relating to the Status of Refugees (the "Refugee Convention"), the 1967 Protocol Relating to the Status of Refugees (the "1967 Protocol"), the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, and other international human rights instruments, and advocates adherence to these standards in the policies, practices, and laws of the United States government. Human Rights First also operates one of the largest *pro bono* asylum representation programs in the country, providing legal representation without charge to hundreds of indigent asylum applicants each year. Human Rights First is committed to ensuring that all protections granted under the 1951 Refugee Convention and the 1967 Protocol remain available to refugees and asylum seekers in the United States.

Kids in Need of Defense (KIND) is a national non-profit organization that works to ensure that no child faces immigration court alone. KIND provides direct representation, as well as working in partnership with law firms, corporate legal departments, law schools, and bar associations that provide *pro bono* representation, to unaccompanied children in their removal proceedings. KIND advocates for

changes in law, policy, and practices to improve the protection of unaccompanied children in the United States. KIND staff and KIND pro bono attorneys seek to ensure that every child in removal proceedings receives the full measure of due process protections that the law affords. Accordingly, KIND respectfully joins this *amicus* brief, in the interest of improving consistency and even-handedness in the treatment of unaccompanied children who come before our immigration courts.

Tahirih Justice Center (“Tahirih”) is a national non-profit that has served courageous individuals fleeing violence since 1997. Through direct services, policy advocacy, and training and education, Tahirih protects immigrant women and girls and promotes a world where women and girls enjoy equality and live in safety and dignity. Tahirih serves immigrant women and girls who have rejected violence, but face incredible obstacles to justice, including language barriers, lack of resources, and a complex immigration system.

Founded in 1881, HIAS is the world’s oldest refugee resettlement agency, and the only Jewish refugee resettlement agency. HIAS assists those who are persecuted because of who they are, helping refugees find welcome, safety, and freedom around the world. While originally founded to protect Jewish people fleeing pogroms in Russia and Eastern Europe, today, most of the people HIAS serves are not Jewish. Since HIAS’s founding, it has helped more than 4.5 million refugees start new lives. In 2016, HIAS aided 350,000 refugees, many of them Muslim. HIAS is currently

one of nine federally designated organizations that resettle refugees, in collaboration with the Department of State and the Department of Health and Human Services. HIAS also provides legal services to immigrants seeking humanitarian protection, including asylum, in the United States. The Executive Order directly harms HIAS and its clients, and prevents HIAS from carrying out its mission to protect people fleeing persecution, and their families.

All *amici* have a direct interest in the outcome of this case.¹

¹ Plaintiffs have consented to the filing of this brief, and Defendants have taken no position. No party's counsel authored any part of this brief, and no party or person other than *amici*, their members, or their counsel made any monetary contribution intended to fund preparation or submission of this brief.

SUMMARY OF ARGUMENT

As President George Washington wrote to a religious minority community containing many immigrants in 1790, “the Government of the United States . . . gives to bigotry no sanction, to persecution no assistance.”² From as early as the arrival of the Pilgrims, this land has been a haven for immigrants, regardless of their faith and country of birth. Freedom of religion and freedom from the establishment of religion are, of course, enshrined in our First Amendment.

The President’s latest Executive Order, issued on March 6, 2017 and entitled “Protecting The Nation From Foreign Terrorist Entry Into The United States” (the “Executive Order”), hews away at these foundations of our nation, baselessly labelling more than one hundred and eighty million citizens of Iran, Sudan, Syria, Somalia, Libya, and Yemen as terrorist threats, and banning them from traveling here based solely on their national origin.³ That the targeted countries are all predominantly Muslim nations,⁴ and that the President repeatedly campaigned on a

² From George Washington to the Hebrew Congregation in Newport, Rhode Island, 18 August 1790, NATIONAL ARCHIVES, <https://founders.archives.gov/documents/Washington/05-06-02-0135>.

³ Country Comparison :: Population, U.S. CENTRAL INTELLIGENCE AGENCY WORLD FACTBOOK, <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2119rank.html> (citing country populations).

⁴ The six targeted countries are all at least 90% Muslim, and some are 99% Muslim. *Muslim Population by Country*, PEW RESEARCH CENTER (Jan. 27, 2011), <http://www.pewforum.org/2011/01/27/table-muslim-population-by-country>; *About Sudan*, United Nations Development Programme, <http://www.sd.undp.org/content/sudan/en/home/countryinfo.html>.

promise to ban the entry of Muslims, suggests that the Order was motivated at least in part by an unconstitutional disfavoring of Islam. This is not who we are as a country, and this is not allowed by our Constitution. The Executive Order also violates the Immigration and Nationality Act’s prohibition on discrimination on the basis of national origin, for the reasons set forth in Plaintiffs’ motion for a temporary restraining order.

Contrary to the Government’s arguments to other courts that the President’s exercise of powers concerning immigration and national security is “unreviewable,”⁵ and assertions by the President’s senior policy advisor that those powers “will not be questioned,”⁶ this Court is indeed empowered to review and determine the legality of the Executive Order. The President’s powers are derived from and circumscribed by the Constitution and delegated Congressional authority. Because we live in a nation “of laws and not men,” *Marbury v. Madison*, 5 U.S. 137, 163 (1803), it is the responsibility of federal courts to determine when that authority has been exceeded. Judicial review of executive action is part of the “fundamental structure of our

⁵ Emergency Mot. Under Cir. Rule 27-3 for Admin. Stay & Mot. for Stay Pending Appeal at 2, *Washington v. Trump*, 847 F.3d 1151 (9th Cir. Feb. 4, 2017) (No. 17-35105), ECF No. 14.

⁶ Aaron Blake, *Stephen Miller’s authoritarian declaration: Trump’s national security actions ‘will not be questioned,’* WASH. POST, Feb. 13, 2017, <https://www.washingtonpost.com/news/the-fix/wp/2017/02/13/stephen-millers-audacious-controversial-declaration-trumps-national-security-actions-will-not-be-questioned> (reporting televised public statements by President Trump’s senior policy adviser, Stephen Miller, regarding the Executive Order).

constitutional democracy,” *Washington v. Trump*, 847 F.3d 1151, 1161 (9th Cir. 2017) (per curiam), and now, more than ever, it is important to reaffirm this vital check and balance. This Court has the authority—and, in fact, the duty—to review the President’s Executive Order for compliance with the Constitution and federal law.

As organizations committed to serving and advocating on behalf of the nation’s immigrant communities, *amici* urge this Court to recognize the irreparable harm that those communities and others face under the Executive Order. Every U.S. resident who has family members in one of the targeted countries will be deprived of visits from those family members, as well as the ability to sponsor derivative immigrant visas. Our nation’s colleges and universities will be unable to admit students or recruit faculty from the targeted countries, hindering their ability to foster and maintain a rich, diverse, and inclusive educational environment. And employers in the public and private sectors will be unable to hire workers from the targeted countries, to the detriment of public institutions and businesses alike.

Aside from these concrete and tangible harms, the Executive Order works another less tangible but no less insidious harm: the marginalization of entire communities based on promulgation by Executive action of the false notion that nationals of the six targeted countries are “the ‘bad’”⁷ and must be excluded on a blanket basis in the purported interests of national security. The security rationale

⁷ See Donald J. Trump (@realDonaldTrump), Twitter (Jan. 30, 2017, 5:31 AM), <https://goo.gl/FAEDTd>.

advanced by the Government is paper-thin, is belied by the President’s own actions in delaying signing of the new Executive Order (reportedly for publicity reasons), and cannot mask the religious animus and discriminatory intent that motivated the first Executive Order and its replacement. The speculative harms advanced by the Government as the basis for the new Executive Order—which itself seeks to upend the *status quo*—are far outweighed by the immediate harms that would be caused by implementation of the Order. *Amici* accordingly urge this Court to enjoin implementation of the Executive Order until its legality and constitutionality can be resolved on the merits.

ARGUMENT

I. THE COURTS SERVE A CRITICAL ROLE IN REVIEWING EXECUTIVE ACTIONS

The judiciary’s foremost obligation in our democratic system is to act as a check on the unconstitutional excesses of the political branches. Far from commanding that presidential directives “will not be questioned,” more than two centuries of precedent instructs that “[i]t is emphatically the province *and duty* of the judicial department to say what the law is.” *Marbury v. Madison*, 5 U.S. 137, 177 (1803) (emphasis added). Decisions of the Supreme Court and of this Circuit emphasize that this judicial duty does not dissipate simply because the challenged actions relate to immigration or national security, or even where the legislative branch has delegated significant discretion to the executive. As the Ninth Circuit

held in rejecting the Government’s argument that the first Executive Order was “unreviewable,” a ruling that is binding here, “[t]here is no precedent to support this claimed unreviewability, which runs contrary to the fundamental structure of our constitutional democracy.” *Washington v. Trump*, 847 F.3d 1151, 1161 (9th Cir. 2017) (per curiam).

Executive action does not become immune from review where the President claims a national security rationale. “[I]t is error to suppose that every case or controversy which touches foreign relations lies beyond judicial cognizance.” *Baker v. Carr*, 369 U.S. 186, 211 (1962). The Supreme Court recently reaffirmed that resolving legal challenges to the constitutional authority of one of the three branches of our federal government “is a familiar judicial exercise,” which cannot be avoided “merely ‘because the issues have political implications.’” *Zivotofsky v. Clinton*, 566 U.S. 189, 196 (2012) (quoting *INS v. Chadha*, 462 U.S. 919, 943 (1983)); *see also Zemel v. Rusk*, 381 U.S. 1, 17 (1965) (denying that the President has “totally unrestricted freedom of choice” where a statute deals with foreign relations); *Aptheker v. Sec’y of State*, 378 U.S. 500 (1964) (upholding constitutional rights despite national security concerns); *Ex parte Mitsuye Endo*, 323 U.S. 283 (1944) (same).

While courts properly accord substantial deference to the political branches where matters of national security are concerned, *see, e.g., Holder v. Humanitarian*

Law Project, 561 U.S. 1, 33-34 (2010), there is no precedent to support the idea that courts must grant them complete deference, which would amount to an impermissible abdication of judicial authority. *Cf. Ex parte Quirin*, 317 U.S. 1, 19 (1942) (“[I]n time of war as well as in time of peace, [courts are] to preserve unimpaired the constitutional safeguards of civil liberty”); *Ex parte Milligan*, 71 U.S. 2, 120-21 (1866) (“The Constitution of the United States is a law for rulers and people, equally in war and in peace . . . under all circumstances.”). Indeed, this Circuit’s precedent is clear that “courts are not powerless to review the political branches’ actions” when those actions are premised on national security concerns. *Alperin v. Vatican Bank*, 410 F.3d 532, 559 n.17 (9th Cir. 2005). As the Supreme Court has noted, “[i]t would indeed be ironic if, in the name of national defense, we would sanction the subversion of one of those liberties . . . which makes the defense of the Nation worthwhile.” *United States v. Robel*, 389 U.S. 258, 264 (1967).

The judicial duty to review the constitutionality of the Executive’s actions similarly does not disappear because the policy under consideration deals with immigration. As the Supreme Court has held, even in the realm of immigration the President and Congress are “subject to important constitutional limitations.” *Zadvydas v. Davis*, 533 U.S. 678, 695 (2001); *see also Chadha*, 462 U.S. at 940-41 (courts can review “whether Congress has chosen a constitutionally permissible means of implementing” its power over the regulation of aliens); *Galvan v. Press*,

347 U.S. 522, 531 (1954) (“In the enforcement of [immigration] policies, the Executive Branch of the Government must respect the procedural safeguards of due process.”). The Ninth Circuit has squarely held that ““the judicial branch may examine whether the political branches have used a foreign policy crisis as an excuse for treating aliens arbitrarily.”” *Am.-Arab Anti-Discrimination Comm. v. Reno*, 70 F.3d 1045, 1056 (9th Cir. 1995) (quoting *Shahla v. INS*, 749 F.2d 561, 563 n.2 (9th Cir. 1984)); *see also Washington*, 847 F.3d at 1161.

Finally, even where, as here, Congress has delegated a measure of discretion to the President, that discretion is not unchecked. Congressional action is itself bounded by the requirements of the Constitution, and under no circumstance can the legislature write the executive a blank check to operate free of constitutional strictures. The Supreme Court has held that the political branches may not “switch the Constitution on or off at will.” *Boumediene v. Bush*, 553 U.S. 723, 765 (2008). Here, the President relies on 8 U.S.C. § 1182(f)⁸ as the legal basis for the Executive Order. But that statute’s grant of discretion to the President cannot plausibly be read to strip the courts of jurisdiction to review the President’s actions. The Supreme Court has required “‘clear and convincing’ evidence of congressional intent . . .

⁸ Section 1182(f) provides that “[w]henver 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.”

before a statute will be construed to restrict access to judicial review.” *Johnson v. Robison*, 415 U.S. 361, 373-74 (1974). As another district court recently held in a case concerning the first Executive Order, “[m]aximum power does not mean absolute power.” *Aziz v. Trump*, — F. Supp. 3d. —, 2017 WL 580855, at *6 (E.D. Va. Feb. 13, 2017) (granting preliminary injunction). Even where the President acts at the pinnacle of his power, courts still have a role to play in safeguarding individual rights. The Constitution “most assuredly envisions a role for all three branches when individual liberties are at stake.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 536 (2004) (plurality opinion).

Thus, as the Ninth Circuit and the Supreme Court have made crystal clear, this Court has the authority, and indeed the duty, to review the constitutionality and legality of Executive actions, including this Executive Order.

II. THE EXECUTIVE ORDER WILL CAUSE IRREPARABLE HARM

Amici seek to strengthen diversity and promote justice and equality.

Connected by our common humanity, *amici* believe that protection of the interests of individuals and organizations affected by the Executive Order reinforces the broader interests of American society. The individual and organizational harms faced by these groups are irreparable, weighing in favor of a temporary restraining order.

The harms caused by the deprivation of a constitutional right, no matter how brief the duration, are by their very nature irreparable. Unlike with merely pecuniary

harms, one who suffers a constitutional harm cannot be made whole by *post hoc* compensation. That is particularly true where, as here, the harm arises from a violation of the First Amendment’s Establishment Clause. As the Supreme Court has recognized, “[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion).⁹ Given the gravity of the harms to the constitutionally protected rights to be free of a government-established religion, to the equal protection of the law, to international travel, and to family integrity, there is no doubt that the Executive Order threatens irreparable harm to many individuals, families, and organizations.

U.S. citizens and lawful permanent residents (“LPRs”) with family members in the six targeted countries will suffer concrete harms to their recognized liberty interest in maintaining familial relationships. *See Moore v. City of E. Cleveland*, 431 U.S. 494 (1977). “[T]he Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation’s history and tradition.” *Id.* at 503; *see also Meyer v. Nebraska*, 262 U.S. 390 (1923). Yet under the Executive Order’s discriminatory nationality-based test, U.S. citizens and LPRs

⁹ While *Elrod* dealt with freedom of speech, the Ninth Circuit has recognized that this reasoning applies to other constitutional rights. *See Latta v. Otter*, 771 F.3d 496, 500 (9th Cir. 2014) (deprivation of right to marry constitutes an irreparable harm); *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (violations of Fourth and Fourteenth Amendments inflict irreparable harm).

will be unable to receive visits from loved ones who live in the banned countries or to sponsor family members from those countries for lawful permanent residence in the United States. The Executive Order will separate spouses and fiancés across continents,¹⁰ deprive family members of time with ill or elderly relatives,¹¹ and force overseas visa applicants to miss births, weddings, funerals, and other important family events. U.S. citizens and LPRs will be forced to choose between career obligations in the United States and family members in the banned countries.¹² By interfering with familial relations on the basis of national origin, the Executive Order violates the constitutional rights of these U.S. citizens and LPRs to the equal protection guarantee inherent in the Due Process Clause of the Fifth Amendment.

See Bolling v. Sharpe, 347 U.S. 497 (1954).¹³

¹⁰ *See, e.g.*, Ex. 1, Decl. of Omid Moghimi; Ex. 2, Decl. of Jane Doe #1. The declarations cited in and attached to this brief are from pleadings filed on February 8, 2017 by Plaintiffs in *Pars Equality Center v. Trump*, No. 17-cv-00255 (D. D.C.), in support of a challenge to the first Executive Order. The attached declarations describe the circumstances of individuals who remain affected by the revised Executive Order.

¹¹ *See, e.g.*, Ex. 3, Decl. of Shiva Hissong.

¹² *See, e.g.*, Ex. 1, Decl. of Omid Moghimi, ¶ 19.

¹³ The limited waiver provision in Section 3(c) of the Executive Order does not mitigate the harms suffered by those affected by the Order, who can have no reasonable expectation that they will be permitted to enter the United States under a discretionary exception that individual immigration officials may or may not authorize “on a case-by-case basis.” Exec. Order No. 13,209, 82 Fed. Reg. 13,209 (Mar. 9, 2017), *available at* <https://www.whitehouse.gov/the-press-office/2017/03/06/executive-order-protecting-nation-foreign-terrorist-entry-united-states>.

Moreover, immigrants and visitors from the targeted countries contribute to State and national life in numerous ways that will be stymied by the Executive Order. For instance, State and private colleges and universities recruit students, permanent faculty, and visiting faculty from the targeted countries. *See, e.g.*, Katyal Decl. Ex. D-1 (Supp. Decl. of Risa E. Dickson, University of Hawaii System) ¶¶ 6-8. The Executive Order will prevent visa applicants from the banned countries from studying or teaching at U.S. universities, irrevocably damaging their personal and professional lives and harming our educational institutions, not only in Hawaii, but throughout the country.¹⁴ By way of further example, recent research by economists affiliated with Harvard and MIT shows that, across the United States, “14 million doctors’ appointments are provided each year by physicians” from the six affected countries.¹⁵ Preventing doctors from these countries from coming to the United States, and making it harder for those already here to stay, such as by preventing their family members from visiting or joining them here, will adversely impact

¹⁴ For example, according to the Department of State, thousands of Iranian students study in the United States each year. *Study in the U.S.A.*, U.S. VIRTUAL EMBASSY IRAN, <https://ir.usembassy.gov/education-culture/study-usa/>.

¹⁵ THE IMMIGRANT DOCTORS PROJECT, <https://www.immigrantdoctors.org> (analyzing statistics from Doximity, an online networking site for doctors that assembled this data from a variety of sources, including the American Board of Medical Specialties, specialty societies, state licensing boards, and collaborating hospitals and medical schools).

medical institutions and curtail the medical care available to the citizens of this State and others.

Singling out and banning nationals from the six predominantly Muslim targeted countries, as the Executive Order does, causes further harm by stigmatizing not only immigrants and refugees, but also Muslim citizens of the United States. The repeated calls by the President and his advisors for a “total and complete shutdown of Muslims entering the United States”¹⁶ and for the implementation of a “Muslim ban”¹⁷ are the *raison d’etre* of this Executive Order. That the Government has dressed the revised Executive Order in new clothing after its first effort was enjoined by the Ninth Circuit does not diminish the significance of the President’s prior statements or their relevance to this Court’s inquiry as to whether the Order passes legal muster. As revealed by a senior policy advisor to the President, the revised Executive Order still has “the same basic policy outcome for the country.”¹⁸ Such declarations, and the Executive Order itself, have made immigrants and Muslim

¹⁶ Press Release, Donald J. Trump for President, Inc., Donald J. Trump Statement on Preventing Muslim Immigration (Dec. 7, 2015), *available at* <https://www.donaldjtrump.com/press-releases/donald-j.-trump-statement-on-preventing-muslim-immigration>.

¹⁷ Amy B. Wang, *Trump asked for a ‘Muslim ban,’ Giuliani says — and ordered a commission to do it ‘legally,’* WASH. POST, Jan. 29, 2017.

¹⁸ *Miller: New order will be responsive to the judicial ruling; Rep. Ron DeSantis: Congress has gotten off to a slow start* (Fox News television broadcast Feb. 21, 2017), *transcript available at* <http://www.foxnews.com/transcript/2017/02/21/miller-new-order-will-be-responsive-to-judicial-ruling-rep-ron-desantis/>.

citizens justifiably fearful. Against the backdrop of the recent rise in hate crimes against Muslims in the United States,¹⁹ the Executive Order amplifies the sense of persecution that citizens and immigrants of Muslim faith suffer.

Further, the Executive Order's suspension of the U.S. Refugee Admissions Program will have catastrophic consequences for innumerable individuals and families fleeing war, violence, and political or religious persecution. In the words of the United Nations High Commissioner for Refugees, the Executive Order will "compound the anguish" for people "who remain in urgent need of life-saving assistance and protection."²⁰ The suspension of the refugee program is also antithetical to the interests of States and organizations committed to resettling and assisting refugees, including one of the *amici* here, HIAS. The U.S. Government has tasked States and non-profit organizations with primary responsibility for

¹⁹ See, e.g., Matt Zapotosky, *Hate crimes against Muslims hit highest mark since 2001*, WASH. POST, Nov. 14, 2016.

²⁰ Press Release, UNHCR, *UNHCR underscores humanitarian imperative for refugees as new U.S. rules announced* (Mar. 6, 2017), <http://www.unhcr.org/en-us/news/press/2017/3/58bdd37e4/unhcr-underscores-humanitarian-imperative-refugees-new-rules-announced.html>. The refugee ban may also have ripple effects on the treatment of refugees globally. See, e.g., *Trump's refugee clampdown stops Iranian path through Austria*, FOX NEWS WORLD, Jan. 27, 2017, <http://www.foxnews.com/world/2017/01/27/trump-refugee-clampdown-stops-iranian-path-through-austria.html>.

administering the U.S. Refugee Resettlement Program.²¹ Aiding refugees is central to the culture, values, and mandates of these States and organizations, but the Executive Order will prevent them from fulfilling their missions to welcome refugees and serve refugee communities throughout the United States.

The Government will likely assert, as it has before, that the Executive Order addresses an urgent national security risk that represents a countervailing harm weighing against any injunction.²² Yet, in enjoining enforcement of the first Executive Order, the Ninth Circuit found that “[t]he Government . . . pointed to no evidence that any alien from any of the countries named in the Order has perpetrated a terrorist attack in the United States.” *Washington*, 847 F.3d at 1168. And in the month since, Defendants have assembled little evidence that the Executive Order would promote national security. Indeed, the Executive Order points to only a single instance in which a national of one of the six targeted countries was convicted of a terrorism-related crime: the conviction of a Somali native who had been brought to

²¹ U.S. ADMIN. FOR CHILDREN & FAMILIES, ANNUAL REPORT TO CONGRESS: OFFICE OF REFUGEE RESETTLEMENT FISCAL YEAR 2015 at 6, *available at* https://www.acf.hhs.gov/sites/default/files/orr/arc_15_final_508.pdf.

²² *See, e.g.*, Emergency Mot. Under Cir. Rule 27-3 for Admin. Stay & Mot. for Stay Pending Appeal at 20-21, *Washington v. Trump*, 847 F.3d 1151 (9th Cir. Feb. 4, 2017) (No. 17-35105), ECF No. 14.

the United States years before as a child refugee.²³ But the U.S. Attorney who prosecuted this individual said that “[h]is radicalization had precisely nothing to do with his refugee status,” as “[h]e was radicalized long after he became a United States citizen”; in fact, “[t]he assistance of the refugee community was crucial to th[e] investigation.”²⁴ That one incident is a facially insufficient basis on which to brand more than one hundred and eighty million citizens of the six targeted countries as terrorist threats and ban them from traveling to the United States.²⁵

CONCLUSION

For the foregoing reasons, as well as those set forth in the Memorandum in Support of Plaintiffs’ Motion for Temporary Restraining Order, *amici* respectfully

²³ Exec. Order No. 13,209, 82 Fed. Reg. 13,209 (Mar. 9, 2017), *available at* <https://www.whitehouse.gov/the-press-office/2017/03/06/executive-order-protecting-nation-foreign-terrorist-entry-united-states>.

²⁴ Colin Miner, *Trump Travel Ban Won’t Keep Us Safe, Says US Attorney Who Prosecuted Would-Be Bomber*, PATCH, Mar. 7, 2017, <http://patch.com/oregon/portland/trump-travel-ban-wont-keep-us-safe-says-us-attorney-who-prosecuted-would-be-bomber>.

²⁵ The Government’s assertions that the Executive Order is motivated by urgent national security interests, and the President’s claim that “many very bad and dangerous people” will “pour[] in” if there is any delay in implementation of a travel ban, are also belied by the weeks of delay in finalizing the new Executive Order, including a five-day delay immediately prior to the Order’s signing based on what was reported to be the President’s desire to enjoy favorable reviews of his February 28 speech to Congress. *See* Donald J. Trump (@realDonaldTrump), TWITTER (Feb. 4, 2017, 1:44 P.M.), <https://goo.gl/kPP3Om>; Laura Jarrett et al., *Trump delays new travel ban after well-reviewed speech*, CNN, Mar. 1, 2017, <http://www.cnn.com/2017/02/28/politics/trump-travel-ban-visa-holders/>.

support Plaintiffs' request that the Court grant a temporary restraining order enjoining implementation of the Executive Order on a nationwide basis.

Dated: Honolulu, Hawai'i,
March 10, 2017

Respectfully submitted,

By: /s/ Lisa Woods Munger
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**Pro hac vice application pending*

Attorneys for Amici Curiae Human Rights First, KIND (Kids in Need of Defense), Tahirih Justice Center, and HIAS

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

STATE OF HAWAI'I and ISMAIL
ELSHIKH,

Plaintiffs,

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.

CV. NO. 1:17-cv-00050 DKW-KJM

**DECLARATION OF LISA WOODS
MUNGER; EXHIBITS 1 - 3**

DECLARATION OF LISA WOODS MUNGER

I, LISA WOODS MUNGER, declare as follows:

1. I am an attorney with the law firm of Goodsill Anderson Quinn & Stifel LLP, duly licensed to practice law in the State of Hawai'i and in the United States District Court for the District of Hawai'i, representing *Amici Curiae* HUMAN RIGHTS FIRST, KIND (Kids in Need of Defense), TAHIRIH JUSTICE CENTER, and HIAS ("Amici") in *State of Hawaii and Ismail Elshikh v. Donald J. Trump, in his official capacity as President of the United States, et al.*, Civil No.

17-cv-00050 DKW-KJM. I make this declaration based upon information gained in that capacity and am competent to testify as to the matters herein.

2. All of the facts stated herein are true and correct and within my personal knowledge, except for matters stated to be true on information and belief, and as to those matters, I believe them to be true. If called and sworn I could and would testify to the truth thereof.

3. Attached hereto as Exhibit 1 is a true and correct copy of the Declaration of Omid Moghimi in Support of Plaintiffs' Motion for Preliminary Injunction filed on February 8, 2017, in the United States District Court for the District of Columbia in Civil No. 1:17-cv-00255 and styled as *Pars Equality Center, et al. v. Donald J. Trump, President of the United States, et al.*

4. Attached hereto as Exhibit 2 is a true and correct copy of the Declaration of Jane Doe #1 in Support of Plaintiffs' Motion for Preliminary Injunction filed on February 8, 2017, in the United States District Court for the District of Columbia in Civil No. 1:17-cv-00255 and styled as *Pars Equality Center, et al. v. Donald J. Trump, President of the United States, et al.*

5. Attached hereto as Exhibit 3 is a true and correct copy of the Declaration of Shiva Hissong in Support of Plaintiffs' Motion for Preliminary Injunction filed on February 8, 2017, in the United States District Court for the

District of Columbia in Civil No. 1:17-cv-00255 and styled as *Pars Equality Center, et al. v. Donald J. Trump, President of the United States, et al.*

I declare under penalty of law that the foregoing is true and correct.

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

/s/ Lisa Woods Munger

LISA WOODS MUNGER

Exhibit 1

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Pars Equality Center,)
Iranian American Bar Association,)
National Iranian American Council,)
Public Affairs Alliance of Iranian Americans,)
Inc. *et al*,)

Plaintiffs,)

v.)

Donald J. Trump, President of the United States,)
et al.)

Defendants.)

Civil Action No. _____

**DECLARATION OF OMID MOGHIMI IN SUPPORT OF
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

Pursuant to Title 28 U.S.C. Section 1746, I, Omid Moghimi, hereby declare and state as follows:

1. My name is Omid Moghimi. I am over the age of eighteen years, and I have personal knowledge of the facts set forth herein or believe them to be true based on my experience or upon information provided to me by others. If asked to do so, I could testify truthfully about the matters contained herein.

I. Background

2. I am 28-years-old and currently reside in Enfield, Massachusetts. I am currently employed as a first year resident at Dartmouth-Hitchcock Medical Center in the field of internal medicine. I earned my Medical Degree from Tufts University in Boston, Massachusetts.

3. I am a dual citizen of the United States and Iran. I was born in the United States and also hold Iranian citizenship.

4. My mother, father, and older brother are all United States citizens.

5. I married Dorsa Razi in July 2015. My wife is currently 21-years-old and living in Iran. She has completed two years of her undergraduate studies in mechanical engineering at Tehran University in Karaj, Iran.

6. My wife and I are both Muslim.

7. On or about August 3, 2015, I filled out a form "i-130" and petitioned for an IR1 visa for my wife. My wife dropped out of her undergraduate program in anticipation of moving to the United States.

8. The petition was approved by United States Citizenship and Immigration Service ("USCIS") on or about December 1, 2015 and was sent to the National Visa Center ("NVC") for further processing.

9. On or about January 13, 2016, I received an acknowledgment letter confirming that NVC had received my wife's petition from USCIS and requested we take some further action to prepare for the visa interview process.

10. On or about June 5, 2016, I received a correspondence from NVC acknowledging receipt of documents, however, due to a high volume of petitions being processed, we were advised that NVC required an additional 30 days to review the documents.

11. Forty-six days later, on or about July 21, 2016, I received an e-mail from NVC acknowledging that they have received all of the documentation required, and that my wife's petition had been placed in the queue to be scheduled for an interview with a consular officer who would adjudicate my wife's visa petition.

12. On or about December 29, 2016, I received an e-mail from NVC notifying my wife and I that a visa interview had been scheduled for at the U.S. Embassy or consulate in Abu Dhabi, UAE on February 2, 2017 at 8:00 a.m.

13. In reliance on the visa interview appointment, I purchased flights and made hotel reservations for my wife and mother-in-law to travel from Iran to Abu Dhabi. I paid approximately \$1,500.00 for the flight and hotel reservations. By all indications, my wife's visa would have been adjudicated and issued but for the January 27 Executive Order.

II. Harm Caused by the January 27, 2017 Executive Order:

14. On January 27, 2017, President Trump issued an Executive Order restricting the issuance of visa's to Iranian citizens, and preventing Iranian immigrants and nonimmigrants from entering the United States. Under the terms of the Executive Order, my wife would not be issued a visa and would be prevented from entering the United States.

15. On or about January 28, 2017, the day following the signing of the executive order, I received an email from "asknvc@state.gov" stating the following: "Due to unforeseen circumstances, your interview appointment has been canceled. We will reschedule your immigrant visa interview date and inform you of the new appointment date as soon as we are able. You do not need to take any action at this time. We apologize for any inconvenience this may have caused."

16. On or about January 29, 2017, I received another e-mail stating the following: "Per U.S. Presidential executive order, signed on January 27, 2017, visa issuance to aliens from the countries of Iraq, Iran, Libya, Somalia, Sudan, Syria and Yemen, has been suspended effective immediately until further notification. Your upcoming visa appointment was cancelled in compliance with these new directives. If you are a national or dual-national of one of these

countries, please do not attempt to schedule a visa appointment, pay visa fees at this time, or attend your previously scheduled visa appointment.”

17. To date, I have paid approximately \$500.00 in visa application fees for my wife.

18. As of the date of this affidavit, my wife and mother-in-law are in Abu Dhabi and will be flying back to Tehran, Iran on or about February 3, 2017.

19. I have received no guidance, information, clarity, instruction, or correspondence from the United States government concerning the enforcement of the January 27 Executive Order and/or whether the NVC will reschedule my wife’s visa appointment. I also have no information about whether my wife will be issued an IR1 visa or if she will be allowed to enter the United States. My wife and I are both greatly distressed about what will happen to our family because of the Executive Order. I am faced with a very difficult decision of continuing my residency and being separated from my wife, or withdrawing from my residency and flying to Iran to be with my wife.

20. As a direct result of the uncertainty caused by the EO, I have been extremely anxious, stressed, unable to sleep and eat, depressed, and nervous because I am unclear about whether I will continue to be separated from my wife.

21. I have been checking various internet websites and blogs every day since January 27, 2017 in an attempt to gather further information about the issuance of visas.

22. I am familiar with, have registered for, and participated in, various events and functions organized by the National Iranian American Council (“NIAC”) over the last five years.

23. I am afraid because I fear that the State Department, USCIS, the NCV, and/or the government agencies listed as Defendants will take retaliatory action against me or my wife for participating in this action.

I, Omid Moghimi, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 6 day of February, 2017, in Enfield, NH.

/s/ Omid Moghimi
Omid Moghimi

Exhibit 2

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Pars Equality Center,)
Iranian American Bar Association,)
National Iranian American Council,)
Public Affairs Alliance of Iranian Americans,)
Inc. *et al.*,)

Plaintiffs,)

v.)

Donald J. Trump, President of the United States,)
et al.)

Defendants.)

Civil Action No. _____

**DECLARATION OF JANE DOE #1 IN SUPPORT OF
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

Pursuant to Title 28 U.S.C. Section 1746, I, Jane Doe #1, hereby declare and state as follows:

1. My name is Jane Doe #1. I am over the age of eighteen years, and I have personal knowledge of the facts set forth herein or believe them to be true based on my experience or upon information provided to me by others. If asked to do so, I could testify truthfully about the matters contained herein.

I. Background:

2. I am 28-years-old and currently reside in San Diego, California. I am employed with the City of San Diego. I have my Master's Degree in city planning from San Diego State University.

3. I am a dual citizen of the United States and Iran.

4. I am a Muslim and adhere to the religion of Islam.

5. My family sold all of their belongings and assets in Iran and immigrated to the United States in 2001. I was 11-years-old at the time and moved with my mother, father, and sister.

6. It took approximately twelve (12) years for my family to be approved to become Green Card holders (legal permanent residents). My family has continued to live in the United States since 2001 and myself, my mother, my father, and my sister are all United States citizens.

7. Both of my parents are small business owners in the United States.

8. In 2013, I met my fiancé in San Diego while he was visiting the United States on a tourist visa. He is 29-years-old with a Master's Degree in engineering from Sharif University of Technology in Tehran, Iran.

9. After traveling to Iran several times to visit my fiancé, we got engaged to be married in October of 2015. Thereafter, we immediately engaged the services of a Los Angeles, California immigration attorney in December of 2015 to assist us with the visa process for my fiancé to move to the United States.

10. My fiancé's petition for K-1 visa was submitted in February 2016 and was approved by April of 2016. The case was created by May of 2016.

11. In October 2016, my fiancé and I traveled to Abu Dhabi for the immigrant visa interview. Thereafter, the visa was adjudicated and approved, and we were advised that "additional administrative processing" could take up to six months.

II. Harm Caused by the January 27, 2017 Executive Order:

12. I have personally checked the U.S. State Department website every day since October 2016 for status updates on my fiancé's visa. The last entry was updated on January 10, 2017 containing general information.

13. Subsequent to the approval in October of 2016, but prior to my fiancé's visa being adjudicated and issued, President Trump signed an Executive Order on January 27, 2017 immediately prohibiting the issuance of visas to Iranian citizens, and preventing the entry of Iranian citizens into the United States.

14. To date, I have paid approximately \$5,000.00 in travel expenses to Abu Dhabi for my fiancé's immigrant visa interview. I have also paid approximately \$3,500.00 in legal fees.

15. Prior to the January 27 Executive Order, my fiancé and I had been planning an extravagant wedding ceremony in the United States that was scheduled for 2018.

16. To date, I have spent hundreds of hours planning my wedding and I have executed contracts and paid \$2,500.00 as a down payment to secure a wedding venue. An additional \$2,500.00 payment will become due in May of 2017. As a result of the confusion and uncertainty surrounding my fiancé's visa under the terms of the January 27 Executive Order, I don't know if I should continue to make payments to the wedding venue and/or otherwise continue planning our wedding ceremony.

17. I have received no guidance, information, clarity, instruction, or correspondence from the United States government or my attorney concerning the issuance of visas and/or whether my fiancé's approved visa will be issued in course or whether it will not be issued under the terms of the January 27 Executive Order.

18. I have been checking various internet websites and blogs every day since January 27, 2017 in an attempt to gather further information about the issuance of visas.

19. As a direct result of the uncertainty caused by the EO, I have been extremely anxious, stressed, unable to sleep and eat, and nervous because I am unclear about whether I will be able to be reunited with my fiancé and get married.

20. I have joined this lawsuit as an anonymous Plaintiff because I am afraid that the State Department, USCIS, the NCV, and/or the government agencies listed as Defendants will take retaliatory action against me or my fiancé for participating in this action.

Exhibit 3

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Pars Equality Center,)
Iranian American Bar Association,)
National Iranian American Council,)
Public Affairs Alliance of Iranian Americans,)
Inc. *et al*,)

Plaintiffs,)

v.)

Donald J. Trump, President of the United States,)
et al.)

Defendants.)

Civil Action No. _____

**DECLARATION OF SHIVA HISSONG IN SUPPORT OF
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

Pursuant to Title 28 U.S.C. Section 1746, I, Shiva Hissong, hereby declare and state as follows:

1. My name is Shiva Hissong. I am over the age of eighteen years, and I have personal knowledge of the facts set forth herein or believe them to be true based on my experience or upon information provided to me by others. If asked to do so, I could testify truthfully about the matters contained herein.

I. Background:

2. I reside in Spokane, Washington. In November 2016 I received authorization to work in the United States but am currently a stay-at-home mother. My husband works as an architect in Spokane, and owns an architecture firm and an advertising agency.

3. I am a citizen of Iran and a Green Card holder (legal permanent resident) of the United States.

4. I am a Muslim and adhere to the religion of Islam.

5. I was a student in Italy from August 2012 until March 2016. I was there on a student visa and earned credits toward my Bachelor's Degree in fashion. While studying in Italy, I met my husband in Rome.

6. After my future husband and I got engaged, I applied for and received a K-1 visa.

7. I entered the United States on this K-1 visa on March 3, 2016.

8. My husband and I were married on April 17, 2016 and hosted a wedding ceremony on August 28, 2016 in Spokane, Washington.

9. My parents reside in Tehran, Iran. My father has been ill with Parkinson's disease for the past ten years, and his condition has significantly deteriorated in the last three to four years.

10. My parents were unable to obtain visas to attend my wedding due to a lack of visa appointments at the United States Embassies in the United Arab Emirates, Armenia, or Turkey.

11. Subsequently, my parents decided that they would try to visit the United States for the birth of their grandson.

12. In October 2016, my parents were able to get a visa appointment at the United States Embassy in Yerevan, Armenia. The interviewing officer informed my parents that they had to undergo an administrative interview that would take approximately three to six months.

13. My son was born on November 28, 2016. My parents were not present for his birth pending their visa applications and administrative process. They have not yet met my son.

14. In light of my father's illness and the extended application process for my parents to obtain a visa to visit the United States, my parents and I made plans to meet in Dubai, United Arab Emirates in March 2017 so that my parents could meet their grandson.

II. Harm Suffered Post January 27, 2017 Executive Order:

15. Prior to my parents completing an administrative interview for their visa applications, President Donald Trump signed an Executive Order on January 27, 2017 (EO) immediately prohibiting the issuance of visas to Iranian citizens, and preventing the entry of Iranian citizens into the United States.

16. Following the signing of the EO, my parents' visas applications are on hold or may have already been denied. The United States Embassy in Yerevan, Armenia has not, to the best of my knowledge, issued any electronic mail or guidelines to my parents with respect to their applications.

17. As a result of the confusion and uncertainty surrounding my parents' visa applications under the terms of the EO, I do not know if my parents will be able to visit the United States while my father is healthy enough to travel.

18. The morning after the EO was signed, the immigration attorney that I had retained advised me that I should not leave the United States due to the EO.

19. As a result of the EO, I became very concerned about my ability to exit and reenter the United States, and decided to cancel my family's visit to the United Arab Emirates in March 2017. My parents will not be able to meet their grandson as originally planned. Given my father's illness, I am concerned about whether he and my mother will ever be able to meet my son and I would not have canceled our visit but for the EO and the resulting confusion about whether or not legal permanent residents like myself will be allowed to travel to and from the United States.

20. In addition, prior to the signing of the EO, my husband and I had purchased plane tickets to visit Amsterdam, the Netherlands. Following the signing of the EO, I became

concerned about my ability to exit and reenter the United States and have subsequently decided not to visit the Netherlands as originally planned.

21. As a result of the confusion and uncertainty surrounding my legal resident privileges under the terms of the EO, I do not know if I will be able to travel outside the United States.

22. I have received no guidance, information, clarity, instruction, or correspondence from the United States government or my attorney concerning the issuance of visas and/or whether my parents' visas will be issued in course or whether it will not be issued under the terms of the January 27 Executive Order.

23. I have received no guidance, information, clarity, instruction, or correspondence from the United States government or my attorney concerning the status of my legal residency privileges under the terms of the January 27 Executive Order.

24. As a result of the confusion and uncertainty surrounding my parents' visa applications under the terms of the January 27 Executive Order, my family and myself have been greatly emotionally distressed about whether my son and/or I will be able to see my parents, especially given the severity of my father's illness.

I, Shiva Hissong, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 0th day of February, 2017, in ~~Spokane~~
WA



Shiva Hissong

CERTIFICATE OF WORD COUNT

Pursuant to Local Rule 7.5(e), I hereby certify that the foregoing Brief of *Amici Curiae* Human Rights First, KIND (Kids in Need of Defense), Tahirih Justice Center, and HIAS, in Support of Plaintiffs' Motion for Temporary Restraining Order, is in Times New Roman, 14-point font and contains 4,333 words, exclusive of case caption, table of contents, table of authorities, and identifications of counsel, as reported by the word processing system used to produce the document. This word count is in compliance with the limitation set forth in Local Rule 7.5(b).

Dated: Honolulu, Hawai'i,
March 10, 2017

/s/ Lisa Woods Munger
Lisa Woods Munger
(HI Bar No. 003858-0)
Attorney for *Amici Curiae*