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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

STATE OF HAWAII 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.

Case No. 1:17-CV-00050 DKW-KJM

**MOTION FOR LEAVE TO FILE
 BRIEF OF THE FRED T.
 KOREMATSU CENTER FOR
 LAW AND EQUALITY, JAY
 HIRABAYASHI, HOLLY YASUI,
 KAREN KOREMATSU, CIVIL
 RIGHTS ORGANIZATIONS, AND
 NATIONAL BAR ASSOCIATIONS
 OF COLOR, AS *AMICI CURIAE*
 IN SUPPORT OF PLAINTIFFS**

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The Fred T. Korematsu Center for Law and Equality, Jay Hirabayashi, Holly Yasui, Karen Korematsu, Civil Rights Organizations, and National Bar Associations of Color hereby submit this Motion for Leave to File a Brief as *Amici Curiae* in Support of Plaintiffs.

**INTEREST OF *AMICI CURIAE* AND REASONS WHY
THE MOTION SHOULD BE GRANTED**

Amicus curiae the Fred T. Korematsu Center for Law and Equality (“Korematsu Center”) is a non-profit organization based at the Seattle University School of Law. The Korematsu Center works to advance justice through research, advocacy, and education. Inspired by the legacy of Fred Korematsu, who defied military orders during World War II that ultimately led to the unlawful incarceration of 110,000 Japanese Americans, the Korematsu Center works to advance social justice for all. The Korematsu Center does not, in this brief or otherwise, represent the official views of Seattle University.

The Korematsu Center has a special interest in addressing government action targeted at classes of persons based on race, nationality, or religion. Drawing on its experience and expertise, the Korematsu Center seeks to ensure that courts understand the historical—and, at times, profoundly unjust—underpinnings of arguments asserted to support the exercise of such unchecked executive power.

Amici curiae Jay Hirabayashi, Holly Yasui, and Karen Korematsu are children of three Japanese Americans who challenged the government’s racial

curfew and detention programs in the United States Supreme Court during World War II: Gordon Hirabayashi (*see Hirabayashi v. United States*, 320 U.S. 81 (1943)); Minoru Yasui (*see Yasui v. United States*, 320 U.S. 115 (1943)); and Fred Korematsu (*see Korematsu v. United States*, 323 U.S. 214 (1944)). Their interest is in reminding this court of the legacy those judicial decisions had on their generation and will have on future generations, and the impact of judicial decisions that fail to protect men, women, and children belonging to disfavored groups in the name of national security. Guilt, loyalty, and threat are individual attributes. When these attributes are imputed to racial, religious, or national origin groups, courts play a crucial role in ensuring that there is a legitimate basis. Disaster has occurred when courts have refused to play this role.

During World War II, Gordon Hirabayashi, Minoru Yasui, and Fred Korematsu stood largely alone. Here, their children are gratified to have such a broad coalition standing with them, and together, standing with those communities and individuals most directly harmed by the Executive Order:

This Brief is also submitted by all members of *Amicus Curiae* Asian Americans Advancing Justice (“Advancing Justice”), the national affiliation of five nonprofit, nonpartisan civil rights organizations: Asian Americans Advancing Justice – AAJC, Asian Americans Advancing Justice – Asian Law Caucus, Asian Americans Advancing Justice – Atlanta, Asian Americans Advancing Justice –

Chicago, and Asian Americans Advancing Justice – Los Angeles. Members of Advancing Justice routinely file *amicus curiae* briefs in cases in the federal courts. Through direct services, impact litigation, policy advocacy, leadership development, and capacity building, the Advancing Justice affiliates advocate for marginalized members of the Asian American, Native Hawaiian, Pacific Islander and other underserved communities, including immigrant members of those communities.

Amicus curiae the Asian American Legal Defense and Education Fund (“AALDEF”), founded in 1974, is a national organization that protects and promotes the civil rights of Asian Americans. By combining litigation, advocacy, education, and organizing, AALDEF works with Asian American communities across the country to secure human rights for all. The President’s Executive Order, which would curtail the rights of immigrants to be free from discrimination because of their race, national origin, or religion, raises issues central to AALDEF’s mission. In 1982, AALDEF testified before the U.S. Commission on Wartime Relocation and Internment of Civilians, in support of reparations for Japanese Americans forcibly relocated and imprisoned in camps during World War II. After 9/11, AALDEF represented more than 800 individuals from Muslim-majority countries who were called in to report to immigration authorities under the Special Registration (“NSEERS”) program. AALDEF is currently providing

community education and legal counseling to Asian Americans affected by the challenged Executive Order.

Amicus curiae the Hispanic National Bar Association (“HNBA”) is comprised of thousands of Latino lawyers, law professors, law students, legal professionals, state and federal judges, legislators, and bar affiliates across the country. The HNBA supports Hispanic legal professionals and is committed to advocacy on issues of importance to the 53 million people of Hispanic heritage living in the United States. The HNBA regularly participates as *amicus curiae* in cases concerning immigration and the protection of refugees.

Amicus curiae the Japanese American Citizens League of Hawaii, Honolulu Chapter (“JACL Honolulu”) is a non-profit corporation under Section 501(c)(3) of the Internal Revenue Code based in Honolulu, Hawaii. JACL Honolulu draws upon Hawaii’s rich, multi-ethnic society and strong cultural values, with a particular focus on discrimination and intolerance towards all people victimized by injustice and prejudice. JACL Honolulu has supported redress for Japanese Americans interned unfairly under Executive Order 9066, in addition to working on and sponsoring annual events to commemorate and educate the public regarding the internment and Executive Order 9066 as well as the suffering and injustice that stemmed from these wrongful actions. The President’s new Executive Order concerning immigration and refugee admissions discriminates

based on race, national origin, or religion, and is reminiscent of Executive Order 9066 that paved the way for the mass incarceration of thousands of Japanese Americans. The history of Japanese Americans and Executive Order 9066 closely parallels current actions targeting Muslims under the President's new Executive Order. This injustice is one of the core reasons for the founding of the JACL Honolulu chapter.

Amicus curiae LatinoJustice PRLDEF, Inc. ("LatinoJustice") is a national not-for-profit civil rights legal defense fund that has defended the constitutional rights and equal protection of all Latinos under the law. LatinoJustice's continuing mission is to promote the civic participation of the greater pan-Latino community in the United States, to cultivate Latino community leaders, and to engage in and support law reform litigation across the country addressing criminal justice, education, employment, fair housing, immigrants' rights, language rights, redistricting, and voting rights. During its 45-year history, LatinoJustice has litigated numerous cases in both state and federal courts challenging multiple forms of racial discrimination by government actors including law enforcement practices that illegally target racial groups based upon their race, national origin and immigration status.

Amicus curiae the National Bar Association ("NBA") is the largest and oldest association of predominantly African-American attorneys and judges in

the United States. The NBA was founded in 1925 when there were only 1,000 African-American attorneys in the entire country and when other national bar associations, such as the American Bar Association, did not admit African-American attorneys. Throughout its history, the NBA consistently has advocated on behalf of African Americans and other minority populations regarding issues affecting the legal profession. The NBA represents approximately 66,000 lawyers, judges, law professors, and law students, and it has over eighty affiliate chapters throughout the world.

Amicus curiae the South Asian Bar Association of North America (“SABA”) is the umbrella organization for 26 regional bar associations in North America representing the interests of over 6,000 attorneys of South Asian descent. SABA provides a vital link for the South Asian community to the law and the legal system. Within the United States, SABA takes an active interest in the legal rights of South Asian and other minority communities. Members of SABA include immigration lawyers and others who represent persons that have been and will be affected by the Executive Order.

The court should use its discretion to grant this Motion, and permit the *Amici* to file their concurrently submitted Brief of *Amici Curiae* because they fulfill “the classic role of amicus curiae by assisting in a case of general public interest, supplementing the efforts of counsel, and drawing the court’s attention to

law that escaped consideration.” *Miller-Wohl Co. v. Comm’r of Labor & Indus.*, 694 F.2d 203, 204 (9th Cir. 1982); *see also Missouri v. Harris*, No. 2:14-CV-00341-KJM, 2014 WL 2987284, at *2 (E.D. Cal. July 1, 2014) (citing *Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982), *abrogated on other grounds by Sandin v. Conner*, 515 U.S. 472 (1995)) (discussing district courts’ “broad discretion regarding the appointment of amici”). A similar brief filed by *amicus curiae* The Korematsu Center was accepted by the Ninth Circuit in its review of Executive Order No. 13769, 82 Fed. Reg. 8977 (Jan. 27, 2017).

Plaintiffs’ Complaint concerns an American citizen whose wife is Syrian, and whose Syrian mother-in-law will be unable to obtain a visa to visit him in the United States as a result of Executive Order No. 13780, 82 Fed. Reg. 13209 (Mar. 6, 2017) (“Executive Order”). Compl. at 6, 25. The Complaint also asserts that the new Executive Order affects the interest of the Plaintiff State of Hawaii, which is home to a large body of foreign workers and students, and whose residents will be unable to receive family from the six affected countries. Compl. at 27. Plaintiffs seek a nationwide injunction against the implementation of Sections 2 and 6 of the Executive Order. Compl. at 37. *Amici* write to address the plenary power doctrine, upon which Defendants have relied in similar challenges to the prior Executive Order, as support for limiting the judicial branch’s authority to scrutinize the exercise of the President’s executive power in the realms of

immigration and national security. The proposed Brief of *Amici Curiae* seeks to demonstrate that the plenary power doctrine derived from decisions such as *Chae Chan Ping v. United States*, 130 U.S. 581 (1889) (the “*Chinese Exclusion Case*”) and its progeny, and is premised on outdated racist and nativist precepts that we now reject, as well as outdated understandings of sovereignty. *Amici* urge this court to consider the historical conditions under which the plenary power doctrine developed and the historical actions that the doctrine has been used to justify, which modern courts now recognize as anathema.

As the proposed Brief of *Amici Curiae* details, the influence of the plenary power doctrine has been steadily eroded. Separately, but equally significant, the proposed Brief of *Amici Curiae* reviews the historical threads of cases that abdicated judicial review of executive and legislative actions against entire races or nationalities and provided judicial sanction of discriminatory action taken against disfavored minorities.

CONCLUSION

For these reasons, the court should grant this Motion, and permit the Korematsu Center, Jay Hirabayashi, Holly Yasui, Karen Korematsu, Civil Rights Organizations, and National Bar Associations of Color to file their concurrently submitted Brief of *Amici Curiae*.

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

Respectfully submitted,

/s/ LOUISE K.Y. ING

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