

**UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND**

INTERNATIONAL REFUGEE
ASSISTANCE PROJECT, et al.,

Plaintiffs,

v.

DONALD TRUMP, et al.,

Defendants.

Civil Action No. TDC-17-00361

**MEMORANDUM OF LAW IN
SUPPORT OF MOTION OF
ANTI-DEFAMATION LEAGUE AND
JEWISH COUNCIL FOR PUBLIC
AFFAIRS FOR LEAVE TO FILE
AMICUS CURIAE BRIEF IN SUPPORT
OF PLAINTIFFS**

The Anti-Defamation League (“ADL”) and the Jewish Council for Public Affairs (“JCPA”) have a special interest in this litigation and can offer the Court their unique perspective and historical information on the consequences of United States actions that effectively single out and deny relief to immigrants and refugees belonging to select religious groups. The importance of learning from our own history cannot be overstated as the Court assesses the validity and impact of Executive Order 13,769 (“Executive Order”), signed on January 27, 2017, entitled “Protecting the Nation from Foreign Terrorist Entry into the United States.” 82 Fed. Reg. 8977 (Feb. 1, 2017). ADL and JCPA’s proposed amicus curiae brief provides detailed accounts of the admitted injustices of similarly misguided immigration policies and executive orders to provide critical context for the irreparable harm that has been and will be suffered by individuals subject to the Executive Order in the absence of injunctive relief.

INTEREST OF THE ANTI-DEFAMATION LEAGUE

ADL is a civil-rights and human-relations organization founded in 1913 to stop the defamation of Jewish people and to secure justice and fair treatment for all people. For more than one hundred years, ADL has dedicated itself to fighting prejudice and discrimination, including prejudice and discrimination against immigrants and religious minorities. Through its

twenty-six regional and satellite offices in the United States and international office in Israel, ADL provides information, programs, and services to fight anti-Semitism and all forms of bigotry, to defend democratic ideals, and to protect civil rights.

ADL is acutely familiar with the consequences of policies that refuse immigration avenues for refugees of a select nationality or religious group. ADL can provide this Court with historical support for the relief sought by the Plaintiffs, in an effort to prevent those subject to the Executive Order from immediate, irreparable harm that—as we have learned—cannot be undone by a formal apology years later. Because of its mission and decades of service, ADL can offer unique and important insights for the Court related to the effects of the Executive Order’s provisions limiting or barring entry into the United States of persons coming from seven majority-Muslim nations.

INTEREST OF THE JEWISH COUNCIL FOR PUBLIC AFFAIRS

JCPA is the coordinating body of 16 national Jewish organizations and 125 local Jewish federations and community relations councils. Founded in 1944, JCPA is dedicated to safeguarding the rights of Jews throughout the world; upholding the safety and security of the State of Israel; and protecting, preserving, and promoting a just, democratic, and pluralistic society.

JCPA recognizes and celebrates that the United States was founded by individuals seeking religious and political freedom and economic opportunity, and that our country is based upon the ethical imperative to “welcome the stranger.” JCPA advocates policies that seek to institute uniform, compassionate and humane protocols and criteria to process refugee and asylum claims. JCPA works to ensure that those fleeing persecution are protected, and that the United States is accessible and welcoming toward those who wish to come here to work and live.

Since 1990, JCPA has supported an open admissions policy that maintains the pluralistic character of American society and does not prefer one national group at the expense of another. JCPA opposes the use of rigid caps on entry to the United States. Because of its work and expertise in this field, JCPA offers unique and helpful information to the Court related to the harmful impact of the Executive Order on individuals fleeing persecution.

ARGUMENT

District courts have “inherent authority” to grant leave to file an amicus curiae brief. *Jin v. Ministry of State Sec.*, 557 F. Supp. 2d 131, 136 (D.D.C. 2008); *Stuart v. Huff*, 706 F.3d 345, 355 (4th Cir. 2013) (recognizing that interested persons can “make useful contributions to litigation” by “seeking leave to file amicus briefs [] in the district court”). That inherent authority derives from Federal Rule of Appellate Procedure 29 (“Rule 29”). *See Jin*, 557 F. Supp. 2d at 136; *Smith v. Chrysler Fin. Co. L.L.C.*, No. Civ. A. 00-6003, 2003 WL 328719, at *8 (D.N.J. Jan. 15, 2003) (“District courts have inherent authority to appoint or deny *amici* which is derived from Rule 29 of the Federal Rules of Appellate Procedure.”).

An amicus curiae “assist[s] the court in cases of general public interest by making suggestions to the court, by providing supplementary assistance to existing counsel, and by insuring a complete and plenary presentation of difficult issues so that the court may reach a proper decision.” *Newark Branch, NAACP v. Town of Harrison, N.J.*, 940 F.2d 792, 808 (3d Cir. 1991) (internal quotation omitted). This Court therefore has broad “discretion whether to grant” leave to a non-party to participate as an amicus curiae. *Am. Humanist Ass’n v. Maryland-Nat’l Capital Park & Planning Comm’n*, 303 F.R.D. 266, 269 (D. Md. 2014).

When exercising their discretion, district courts “often look for guidance to Rule 29,” because no rules expressly govern the filing of amicus briefs at the trial court level. *Washington*

Gas Light Co. v. Prince George's Cty. Council, No. CIV.A. DKC 08-0967, 2012 WL 832756, at *3 (D. Md. Mar. 9, 2012), *aff'd*, 711 F.3d 412 (4th Cir. 2013) (citations omitted). Rule 29 requires amici to state “the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case.” *Id.* (quoting Fed. R. App. P. 29(b)(2)); *Am. Humanist Ass'n*, 303 F.R.D. at 269 (same). Accordingly, trial courts assess whether the proposed amici “have a special interest in the subject matter of the suit.” *Bryant v. Better Bus. Bureau of Greater Maryland, Inc.*, 923 F. Supp. 720, 728 (D. Md. 1996) (citation omitted). The court should grant the motion if it “deems the [amici’s] proffered information timely and useful.” *Id.* (internal quotation omitted). For example, this court granted leave to a proposed amicus curiae who “demonstrated a special interest in the outcome of the suit and . . . provide[d] helpful information to the court regarding positions taken by the” parties. *Washington Gas Light Co.*, 2012 WL 832756, at *3. “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.” *Ryan v. CFTC*, 125 F.3d 1062, 1063 (7th Cir. 1997) (Posner, C.J., in chambers); *see also Peters v. Jenney*, 327 F.3d 307, 319 n.13 (4th Cir. 2003) (noting that amicus curiae brief was “helpful to the court”).

ADL and JCPA offer this Court “unique information and perspective” on the legal and practical consequences of the Executive Order. *See Ryan*, 125 F.3d at 1064. Since its founding more than one hundred years ago, ADL has been dedicated to securing justice and fair treatment for all, including for immigrants and refugees and those facing religious discrimination and bigotry. Similarly, JCPA has worked for more than seventy years to promote a just, democratic, and pluralistic society and to support refugees fleeing persecution. ADL and JCPA propose to offer historical context for the Executive Order to demonstrate the need for the injunctive relief

the Plaintiffs seek. Our country has been here before. We have on occasion lost sight of our Nation's ideals and legal moorings based on fear of the unknown, and we must not forget that history in evaluating our conduct as a Nation facing our fears today.

Federal courts addressing challenges to the Executive Order have liberally granted leave to file amicus curiae briefs in several district courts and in the Ninth Circuit. *E.g.*, Electronic Order, *Louhghalam v. Trump*, Case 1:17-cv-10154-NMG (D. Mass. Feb. 3, 2017) (ECF No. 67) (granting motion of Massachusetts colleges and universities to appear as amici curiae). Indeed, ADL sought and was granted leave to file an amicus curiae brief in the Eastern District of New York, Minute Order, *Darweesh v. Trump*, Case 1:17-cv-00480-CBA (E.D.N.Y. Feb. 3, 2017), and in the Eastern District of Virginia, Order, *Virginia v. Trump*, Case 1:17-cv-00116-LMB-TCB (E.D. Va. Feb. 8, 2017) (ECF No. 63), and has filed a consented-to amicus curiae brief in the Ninth Circuit, Amicus Curiae Brief of the Anti-Defamation League in Support of Plaintiffs-Appellees at 1 n.1, *Washington v. Trump*, Case 17-35105 (9th Cir. Feb. 6, 2017) (ECF No. 44).

Courts often grant leave for nonprofit organizations like ADL and JCPA to file amicus curiae briefs in cases related to their expertise. *See, e.g., Bryant*, 923 F. Supp. at 728 (granting motion for leave to file amici curiae brief of not-for-profit organizations that “represent large constituencies of individuals which have a vested interest in how the [challenged law is] construed and applied”); *Perry-Bey v. City of Norfolk, Va.*, 678 F. Supp. 2d 348, 357 (E.D. Va. 2009) (acknowledging grant of leave to NAACP to file amicus curiae brief in voting-rights case); *Ellsworth Assocs., Inc. v. United States*, 917 F. Supp. 841, 846 (D.D.C. 1996) (granting leave to two nonprofit organizations with “a special interest in th[e] litigation as well as a familiarity and knowledge of the issues raised therein that could aid in the resolution of th[e] case”).

CONCLUSION

ADL and JCPA have both a special interest in this litigation and familiarity and knowledge of the consequences of policies that effectively single out and refuse entry to immigrants and refugees of select religious groups. Accordingly, ADL and JCPA respectfully request leave of the Court to file their proposed amicus curiae brief addressing the history of this nation's treatment of refugees and that history's implications for the Court's adjudication of this case.

Dated: March 3, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 3, 2017, a copy of the foregoing was filed electronically through the CM/ECF, which will send a notice of filing to all parties.

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