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THE HONORABLE JAMES ROBERT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STATE OF WASHINGTON, et al.,

Plaintiffs,

v.

DONALD TRUMP, President of the
United States, et al.,

Defendants.

No. 2:17-cv-00141-JLR

**MOTION FOR LEAVE TO FILE
AMICUS CURIAE BRIEF OF
INTERNATIONAL LAW SCHOLARS
AND NONGOVERNMENTAL
ORGANIZATIONS IN SUPPORT OF
PLAINTIFFS' EMERGENCY MOTION
TO ENFORCE PRELIMINARY
INJUNCTION**

NOTE ON MOTION CALENDAR:
Monday, March 13, 2017

(Contingent on Court's ruling on accompanying
MOTION TO SHORTEN TIME)

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I. INTRODUCTION

Non-party international law scholars and nongovernmental organizations (“Proposed *Amici*”) hereby move for leave to file an *amicus curiae* brief in support of Plaintiffs’ Emergency Motion to Enforce Preliminary Injunction (Dkt. #119). Proposed *Amici* specialize in areas of international law involving the rights of aliens and refugees, and the obligations of the United States under various treaties and international covenants to which it has acceded, jurisprudence which the movants respectfully submit could assist the Court in assessing the legality of Executive Order 13780, “Protecting the Nation From Foreign Terrorist Entry Into the United States” (“EO”). The *amicus* brief that Proposed *Amici* request be considered is attached as Exhibit A.

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II. IDENTITY AND INTEREST OF PROPOSED *AMICI CURIAE*

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The seventy-eight international law scholars include practitioners and tenured faculty members at law schools in the United States who have devoted extensive efforts to the study and practice of international law. They research, teach, speak, and publish widely on international law issues, and they routinely advise and practice in matters addressing such issues before American courts. The nongovernmental organizations join the international law scholars as Proposed *Amici*. The nongovernmental organizations collectively are experts in civil rights law, immigration law, and international human rights law.

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As scholars and practitioners in the area, Proposed *Amici* have a strong interest in ensuring that the Court reaches a decision that conforms to the existing body of international law.

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III. ARGUMENT

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A. This Court Should Allow the Participation of Proposed *Amici Curiae*

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This Court has “broad discretion” to appoint *amicus curiae*. *Skokomish Indian Tribe v. Goldmark*, No. C13-5071JLR, 2013 WL 5720053, at *1 (W.D. Wash. Oct. 21, 2013) (Robart, J.). Submission of an *amicus* brief is valuable to the Court because it “suggests the interpretation

1 and status of the law, gives information concerning it, and advises the Court in order that justice
2 may be done” See *Cnty. Ass’n for Restoration of Env’t (CARE) v. DeRuyter Bros. Dairy*,
3 54 F. Supp. 2d 974, 975 (E.D. Wash. 1999). District courts normally allow *amicus* briefs when
4 the *amicus* has “unique information or perspective that can help the court beyond the help that
5 the lawyers for the parties are able to provide.” *Id.* *Amicus* participation is particularly
6 appropriate where, as here, the ramifications of the decision extend beyond the parties directly
7 involved. *Sierra Club v. BNSF Ry. Co.*, No. C13-967-JCC, 2016 U.S. Dist. LEXIS 124269, at
8 *5 (W.D. Wash. Sept. 13, 2016).

9 **B. The *Amicus* Brief Will Help the Court Assess the Legality of the Executive Order**
10 **Under Domestic and International Law**

11 Proposed *Amici* possess unique information and perspective that can help this Court
12 understand the impacts the EO will have on the United States’ international relations and its
13 ability to honor its international law obligations—ramifications that extend beyond the
14 individuals directly involved in this case.

15 The United States is party to several treaties and international covenants that address
16 issues that are immediately and urgently raised by the EO, including for example, provisions in
17 the Order making distinctions based on national origin. Proposed *Amici* respectfully submit that
18 the accompanying *amicus* brief, by describing the rights and obligations established by those
19 instruments, may assist the Court in assessing the legality of the EO under both international and
20 U.S. domestic law. Under the U.S. Constitution, of course, “all Treaties made . . . under the
21 Authority of the United States, shall be the supreme Law of the Land.” U.S. Const., Art. VI, cl.
22 2. Moreover, even if the international covenants identified in the *amicus* brief do not
23 independently or directly compel the Court to invalidate the EO, they should inform the Court’s
24 interpretation of governing statutes based on well-established canons of statutory construction.
25 The attached *amicus* brief may also illuminate the ways in which the international community
26 will assess the EO in light of customary international law, which will in turn affect how other

1 nations view and deal with the United States across a wide range of issues, including cooperation
2 on national security matters.

3 **C. The *Amicus* Brief is Timely, Filed in Support of Plaintiffs' Emergency Motion to**
4 **Enforce Preliminary Injunction**

5 The Federal Rules of Civil Procedure and this Court's local rules are silent with respect
6 to the filing of *amicus* briefs. For that reason, this Court has looked to the Federal Rules of
7 Appellate Procedure for guidance on procedural matters relating to such briefs. *See, e.g.,*
8 *Skokomish Indian Tribe*, 2013 WL 5720053, at *2 (adhering to the Federal Rules of Appellate
9 Procedure with respect to timing for filing an *amicus* brief because "there are no particular local
10 rules governing when an *amicus curiae* must file its brief"). The Rules advise that "[a]n *amicus*
11 *curiae* must file its brief, accompanied by a motion for filing when necessary, no later than 7
12 days after the principal brief of the party being supported is filed." Fed. R. App. P. 29(a)(6).
13 Proposed *Amici*'s brief supports Plaintiffs' Emergency Motion to Enforce Preliminary Injunction
14 (Dkt. #119), which was filed on March 13, 2017, and noted for consideration on March 14, 2017.
15 Accordingly, in filing this motion and the attached *amicus* brief on March 13, 2017, this
16 submission by Proposed *Amici* is timely.

17 **D. Plaintiffs Consent to the Filing of the *Amicus* Brief; Defendants Take No Position**

18 Proposed *Amici* have obtained Plaintiffs' consent to the filing of the attached *amicus*
19 brief. Counsel for Defendants have stated that they take no position with respect to the filing of
20 the *amicus* brief. Proposed *Amici* therefore submit this motion for leave to file their *amicus* brief
21 in satisfaction of the Federal Rules of Appellate Procedure. *See Correll v. United States*, Nos.
22 C07-460RSL, CR04-251-RSL, 2007 WL 4209424, at *2 n.2 (W.D. Wash. Nov. 26, 2007)
23 (concluding that proposed *amicus*' brief was not properly filed "because he failed to first seek
24 leave of court or to obtain the consent of all parties" as required by Federal Rule of Appellate
25 Procedure 29).
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IV. CONCLUSION

Proposed *Amici* respectfully request permission to file the attached *amicus curiae* brief in support of Plaintiffs.

RESPECTFULLY SUBMITTED this 13th day of March, 2017.

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on March 13, 2017, I electronically filed the foregoing with the Clerk
3 of the Court using the United States District Court ECF system, which will send notification of
4 such filing to all attorneys of record.

5
6 DATED: March 13, 2017

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