

## **EXHIBIT A**

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

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| STATE OF WASHINGTON et al.,  |  |
|  | No. 2:17-cv-00141-JLR  |
| Plaintiffs,  |  |
|  | <b>BRIEF OF <i>AMICUS CURIAE</i><br/>WASHINGTON STATE LABOR<br/>COUNCIL IN SUPPORT OF<br/>MOTION OF WASHINGTON<br/>AND MINNESOTA FOR<br/>ENFORCMENT OF<br/>PRELIMINARY INJUCTION</b> |
| v.   |  |
| DONALD TRUMP, in his official capacity as<br>President of the United States; U.S.<br>DEPARTMENT OF SECURITY; JOHN F.<br>KELLY, in his official capacity as Secretary of<br>the Department of Homeland Security; REX<br>W. TILLERSON, in his official capacity as<br>Secretary of State; and the UNITED STATES<br>OF AMERICA, |  |
| Defendants.  |  |

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WASHINGTON STATE LABOR  
COUNCIL IN SUPPORT OF  
MOTION OF WASHINGTON  
AND MINNESOTA FOR  
ENFORCMENT OF  
PRELIMINARY INJUCTION**

**I. INTRODUCTION**

One week after assuming office, President Donald Trump signed an Executive Order fulfilling his campaign promise to enact a “Muslim ban” and to subject immigrant applicants to “extreme vetting.” This Court enjoined enforcement of that Executive Order. Dkt. 52. President Trump has issued a replacement Executive Order that continues to ban new immigrants and non-immigrant visitors from six predominantly Muslim countries—Iran, Libya, Somalia, Sudan, Syria, and Yemen—for 90 days, and to stop entry of all refugees into the country for 120 days.

1 The WSLC submits this brief in support of the State of Washington and the State of  
2 Minnesota’s Emergency Motion to Enforce Preliminary Injunction, Dkt. 119, and to ensure that  
3 the unconstitutional, unlawful Executive Order does not again go into effect.

4 **II. IDENTITY AND INTEREST OF *AMICUS CURIAE***

5 The WSLC comprises more than 600 local unions and represents more than 450,000  
6 rank-and-file union members working in Washington State. It is widely considered to be the  
7 “voice of labor” in Washington State. WSLC has a strong interest in advocating for the liberty  
8 interests of Washington State workers. Johnson Dec. ¶ 2. The WSLC provides many services to  
9 its affiliated unions. The Council has a focus on legislative advocacy, political action,  
10 communication through its website “The Stand,” supporting affiliated unions’ organizing drives  
11 by rallying community leaders and elected officials, and programs that provide affiliate and  
12 direct worker assistance like dislocated worker assistance, increasing student awareness about  
13 apprenticeship programs within community and technical colleges, Project Help, education and  
14 training for union members, and assistance for unions with contract and economic research.  
15 Johnson Dec. ¶ 3.

16 Among WSLC’s affiliated unions, unions who have signed a Solidarity Charter with the  
17 WSLC, and other labor allies are unions whose members are directly impacted by the most  
18 recent Executive Order, because they are non-immigrant temporary workers from one of the six  
19 banned countries whose ability to travel into and out of the United States is prohibited outright or  
20 whose inability to re-enter the United States after traveling will put their livelihoods in jeopardy.  
21 Therefore, although the new Executive Order no longer covers Iraq or affects lawful permanent  
22 residents, its effect on members who are temporary or one-entry visa holders is just as harmful as  
23 the first Executive Order. Johnson Dec. ¶ 6. The new order will also continue the adverse effect  
24 on union members who wish to reunite with family members who are in the process of applying  
25 for visitor or student visas or residency status and will be delayed during the 90-day hiatus. *Id.*  
26 See also Declaration of Viral Shaw, Dkt. 118-26, ¶ 6. The members of unions affiliated or allied  
with WSLC affected by the ban include hospitality workers, retail employees, health-care

1 industry workers, laborers, factory workers, and state, county and municipal employees, among  
2 others. These union members are exceptionally diverse, comprised of an array of races,  
3 nationalities and religions. Many of these union members are immigrants from the six countries  
4 affected by the Executive Order or are non-immigrants whose heritage is from one or more of  
5 those six countries. Many of these members identify as Muslim and are American citizens,  
6 lawful permanent residents or lawful visitors. Johnson Dec. ¶ 6.

### 7 III. ARGUMENT & AUTHORITY

#### 8 **THE NEW EXECUTIVE ORDER VIOLATES THE ESTABLISHMENT CLAUSE OF 9 THE U.S. CONSTITUTION AND THE IMMIGRATION AND NATIONALITY ACT AND IRREPARABLY HARMS WORKERS AND THEIR FAMILIES.**

##### 10 **A. The Executive Order Unconstitutionally Discriminates Against Workers Of 11 Muslim Faith And Their Families, Denigrates Them Because Of Their Religion, 12 And Denies Them Equal Standing In Our Society. Absent Continuing Injunctive Relief That Irreparable Harm Will Continue.**

13 The Executive Order discriminates against persons from Iran, Syria, Libya, Somalia,  
14 Yemen, and Sudan through the flawed logic that because they are more likely than not to be  
15 Muslim, they are more likely to be terrorists. Because the order is motivated by animus to a  
16 particular religious group, Muslims, and expresses that animus in ways that cause irreparable  
17 harm, it is unconstitutional under the Establishment Clause and under the Equal Protection  
18 aspects of the Due Process Clause of the United States Constitution. This disparate treatment  
19 and denigration of Muslim workers and their families is exactly what the Establishment Clause  
20 forbids. *Bd. of Educ. of Kiryas Joel Vill. Sch. Dist. v. Grumet*, 512 U.S. 687, 728 (1994)  
21 (Kennedy, J., concurring) (“[T]he Establishment Clause forbids the government to use religion  
22 as a line drawing criterion. In this respect, the Establishment Clause mirrors the Equal Protection  
23 Clause. Just as the government may not segregate people on account of their race, so too it may  
24 not segregate on the basis of religion.”).

25 The Establishment Clause provides that “Congress shall make no law respecting an  
26 establishment of religion.” U.S. Const. amend. I. “The clearest command of the Establishment  
Clause is that one religious denomination cannot be officially preferred over another.” *Aziz v.*

1 *Trump*, 2017 WL 580855, at \*7 (E.D. Va. Feb. 13, 2017) (quoting *Larson v. Valente*, 456 U.S.  
2 228, 244, 102 S. Ct. 1673, 72 L. Ed. 2d 33 (1982)). Thus, “[i]f there is any fixed star in our  
3 constitutional constellation, it is that no official, high or petty, can prescribe what shall be  
4 orthodox in politics, nationalism, [or] religion ...” *Wallace v. Jaffree*, 472 U.S. 38, 52–55, 105 S.  
5 Ct. 2479, 2487–89, 86 L. Ed. 2d 29 (1985) (quoting *West Virginia Board of Education v.*  
6 *Barnette*, 319 U.S. 624, 642, 63 S. Ct. 1178, 1187, 87 L. Ed. 1628 (1943)). President Trump’s  
7 attempt to proscribe Islam dislodges this fixed star in our constitutional order and causes  
8 irreparable harm.

9 As Justice O’Connor explained in *Wallace v. Jaffree*, 472 U.S. 38, 69, 105 S. Ct. 2479,  
10 2496, 86 L. Ed. 2d 29 (1985) (O’Connor, J., concurring):

11 **[T]he religious liberty protected by the Establishment Clause is infringed when**  
12 **the government makes adherence to religion relevant to a person's standing in**  
13 **the political community.** Direct government action endorsing religion or a  
14 particular religious practice is invalid under this approach because it sends a message  
to nonadherents that they are outsiders, not full members of the political community,  
and an accompanying message to adherents that they are insiders, favored members  
of the political community.

15 *Id.*, at 688, 104 S. Ct., at 1367 (emphasis added)(internal quotation omitted). The WSLC  
16 observes that very affect among its union members:

17 The negative policies the United States government establishes concerning  
18 immigrants, non-immigrant visitors and refugees of certain national origins or  
19 religions reflects the attitudes the government has of its own citizens of those  
20 same national origins and religions – that they are less valued, less than equal.  
Such policies cause harm to our unions’ members that cannot be undone.

21 Johnson Dec. ¶ 6.

22 Of course, this unconstitutional message to our Muslim brothers and sisters that they are  
23 outsiders without standing in our community causes irreparable harm as a matter of law. *Aziz v.*  
24 *Trump*, 2017 WL 580855, at \*10 (E.D. Va. Feb. 13, 2017) (quoting *Newsom v. Albemarle Cnty.*  
25 *Sch. Bd.*, 354 F.3d 249, 261 (4th Cir. 2003) (citing *Elrod v. Burns*, 427 U.S. 347, 373, 96 S. Ct.  
26 2673, 49 L. Ed. 2d 547 (1976)).

1           **B. Absent Continuing Injunctive Relief, Workers In Washington And Their**  
2           **Families Will Suffer Irreparable Harm Because Their Government, In Clear**  
3           **Contravention Of The INA, Has Labeled Some Of Them As Being Less Valuable**  
4           **Than Others, And As Having No Rights.**

5           In discussing the Immigration Act of 1965, Secretary of State Dean Rusk similarly  
6           observed that immigration rules have significant domestic, as well as foreign, meaning:

7           [G]iven the fact that we are a country of many races and national origins, that  
8           those who built this country and developed it made decisions about opening our  
9           doors to the rest of the world; that anything which makes it appear that we,  
10          ourselves, are discriminating in principle about particular national origins,  
11          suggests that we think ... less well of our own citizens of those national origins,  
12          than of other citizens....<sup>1</sup>

13          Attorney General Katzenbach accurately assessed the damage done by discriminatory  
14          immigration rules the 1965 Act was meant to abolish:

15          I do not know how any American could fail to be offended by a system which  
16          presumes that some people are inferior to others solely because of their  
17          birthplace.... The harm it does to the United States and to its citizens is  
18          incalculable.

19          *Hearings on S. 500 Before the Subcomm. on Immigration and Naturalization of the Senate*  
20          *Comm. on the Judiciary, 89th Cong. 119 (1965) 9.*

21          Through the INA, the Congress abolished discrimination long codified in statutory  
22          national origin quotas which disfavored non-European immigrants:

23          Except as specifically provided in paragraph (2) and in sections 1101(a)(27),  
24          1151(b)(2)(A)(i), and 1153 of this title, no person shall receive any preference or  
25          priority or be discriminated against in the issuance of an immigrant visa because  
26          of the person's race, sex, nationality, place of birth, or place of residence.

8 U.S.C. § 1152 (enacted by Pub.L. No. 89-236, 79 Stat. 911 (1965)).

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<sup>1</sup> *Immigration: Hearings Before Subcomm. No. 1 of the Comm. on the Judiciary, House of Representatives, on H.R. 7700 and 55 Identical Bills, 88th Cong. 901-02 (1964), reprinted in 10A Oscar Trelles & James Bailey, Immigration and Nationality Acts: Legislative Histories and Related Documents, doc. 69A (1979) 390. See also id. at 410 (remarks of Attorney General Robert Kennedy) (noting that the bill “would remove from our law a discriminatory system of selecting immigrants that is a standing affront to millions of our citizens”).*

1 The quotas were introduced into law in 1921 and extended by the Immigration Act of  
2 1924, which required a study of the ethnic sources of America's white population from the  
3 origins of settlement; and quotas were derived from the percentages of the U.S. population that  
4 were derived from any particular nation. This had the effect of limiting immigration from Asia,  
5 and non-Protestant eastern and southern Europe. Pub.L. 67-5; 42 Stat. 5 (1921); Pub.L. 67-5; 42  
6 Stat. 5 (1924). The Immigration and Nationality Act of 1952, ch. 477, 66 Stat. 163, retained  
7 modified quotas that again reflected the existing demographic mix of U.S. inhabitants and had no  
8 purpose other than to maintain the existing ethnic and religious composition of the national  
9 population. See Mary Jane Lapointe, *Discrimination in Asylum Law: The Implications of Jean v.*  
10 *Nelson*, 62 Ind. L.J. 127, 149 (1986). That discriminatory purpose became the focal point of  
11 intense debate which fueled the impetus for the 1965 Act.

12 President Harry Truman opposed the discriminatory quota system, and when his veto of  
13 the 1952 act was overridden, he denounced the system as being contrary to American values  
14 because it "discriminates, deliberately and intentionally, against many of the peoples of the  
15 world." The President's Veto Message, June 25, 1952, reprinted in *The President's Comm'n on*  
16 *Imm. and Nat., Whom We Shall Welcome* 277. President Truman's Commission on Immigration  
17 and National Origin had found that "the major disruptive influence in our immigration law is the  
18 racism and national discrimination caused by the national origins system," and that the present  
19 system should be replaced with a "unified quota system, which would allocate visas without  
20 regard to national origin, race, creed, or color." *The President's Comm'n on Imm. and Nat.,*  
21 *Whom We Shall Welcome* 263 (submitted Jan. 1, 1953).

22 In 1958, then Senator John Kennedy published a broadside against the national origin  
23 quota system in which he criticized the system for having "strong overtures of an indefensible  
24 racial preference." John F. Kennedy, *A Nation of Immigrants* 77 (1964). As President, he  
25 introduced legislation to end the quota system, and President Lyndon Johnson strongly  
26 advocated for the bill, after President Kennedy's death. The INA was enacted in 1965 as one of  
three complimentary bills passed early in Johnson's presidency, the others being the Civil Rights

1 Act of 1964, Pub.L. No. 88-352, 78 Stat. 241 (1964), and the Voting Rights Act of 1965, Pub.L.  
2 No. 89-110, 79 Stat. 437 (1965).<sup>2</sup> See Roger Daniels, *Coming To America: A History of*  
3 *Immigration And Ethnicity In American Life* 338 (1990) (observing that the Civil Rights Act,  
4 Voting Rights Act and Immigration Act “represent a kind of high-water mark in a national  
5 consensus of egalitarianism”); Vernon M. Briggs, Jr., *Immigration Policy and the American*  
6 *Labor Force* 62 (1984) (“Just as overt racism could no longer be tolerated in the way citizens  
7 treated their fellow citizens, neither could it be sanctioned in the laws that governed the way in  
8 which noncitizens were considered for immigrant status.”).

9 In supporting passage of the INA, Senator Edward M. Kennedy argued that the national  
10 origins quota system was “contrary to our basic principles as a nation.” 111 Cong.Rec. 24, 225  
11 (1965). Senator Joseph Clark insisted that “the national origins quotas and the Asian-Pacific  
12 triangle provisions are irrational, arrogantly intolerant, and immoral” and that it was unjust that  
13 “[a] brilliant Korean or Indian scientist is turned away, while the northern European is accepted  
14 almost without question.” *Id.* at 24, 501. Representative Paul Krebs stated that immigration  
15 rules based on national origin were “repugnant to our national traditions” and that “we must  
16 learn to judge each individual by his own worth and by the value he can bring to our Nation.” *Id.*  
17 at 21, 778. Representative Dominick Daniels rejected the national origin quotas on the basis that  
18 “racism simply has no place in America in this day and age.” *Id.* at 21, 787. Other senators and  
19 officials condemned the national origins quota system as “un-American” and “totally alien to the  
20 spirit of the Constitution,” and praised the new bill for its recognition of individual rights.

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21 <sup>2</sup> Senator Hiram Fong described the purpose of the Act as “seeking an immigration policy reflecting America’s ideal  
22 of the equality of all men without regard to race, color, creed or national origin,” which he noted reflected the values  
23 of the Civil Rights Act:

24 Last year we enacted the historic Civil Rights Act of 1964, which was designed to wipe out the last  
25 vestiges of racial discrimination against our own citizens . . . . As we move to erase racial discrimination  
against our own citizens, we should also move to erase racial barriers against citizens of other lands in our  
immigration laws.

26 Hearings on S. 500 Before the Subcomm. on Imm. and Nat. of the Senate Comm. on the Judiciary, pt. 1, 89th Cong.,  
1st Sess. 44-45 (1965).

1 Hearings on S. 500 Before the Subcomm. on Imm. and Nat. of the Senate Comm. on the  
2 Judiciary, pt. 1, 89th Cong., 1st Sess. 11 (1965) (statement of Attorney General Katzenbach), 47  
3 (statement of Secretary of State Dean Rusk), 127 (statement of Senator Hugh Scott), 165  
4 (statement of Senator Paul Douglas) and 217 (statement of Senator Robert Kennedy); *see also*  
5 Hearings Before Subcomm. No. 1 of the House Comm. on the Judiciary, 88th Cong., 2d Sess.  
6 723 (1964), where the Secretary-Treasurer of the AFL-CIO, James B. Carey, quotes the AFL-  
7 CIO Declaration in support of the bill).

8 The INA repealed a system that, in the words of President Johnson, “violated the basic  
9 principle of American democracy—the principle that values and rewards each man on the basis  
10 of his merit . . . .” T. Aleinikoff & D. Martin, *Immigration Process and Policy* 55 (1985). In that  
11 regard, like Title VII of the Civil Rights Act of 1964, the INA’s “focus on the individual is  
12 unambiguous. It precludes treatment of individuals as simply components of a racial, religious,  
13 sexual, or national class.” *City of Los Angeles, Dep’t of Water & Power v. Manhart*, 435 U.S.  
14 702, 708, 98 S. Ct. 1370, 55 L. Ed. 2d 657 (1978). In enacting the INA, Congress intended to  
15 end discrimination based on national origin and religion and non-discrimination “requires ...  
16 focus on fairness to individuals rather than fairness to classes. Practices that classify employees  
17 in terms of religion, race, or sex tend to preserve traditional assumptions about groups rather than  
18 thoughtful scrutiny of individual.” *Manhart*, 435 U.S. at 709-10. The order works precisely as  
19 did the repealed quota system, by denying liberty to whole classes of people based on their  
20 national origin. The Executive Order thus directly contravenes the INA and the nation’s values,  
21 which mandate that each individual is evaluated on his or her own merit.

22 **C. The Executive Order Unlawfully Discriminates Against Classes of People**  
23 **Based Only On Their Membership In Groups The Federal Government**  
24 **Has Stigmatized Without Any Justification, Let Alone The Compelling**  
25 **Justification That Is Required For The Executive Order To Be Upheld.**

26 The Executive Order at issue here is blanket discrimination against classes of individuals  
based on their national origin and religion, classifications that are not consistent with American  
law or even rational, and are at the same time over- and under-inclusive, as the States of

1 Washington and Minnesota have pointed out. It denies people from the six excluded nations  
2 evaluation on individual merit and instead imposes what our Constitution and laws protect  
3 against: invidious discrimination based on particular characteristics. It denies U. S. resident  
4 family members of people from those six nations the normal act of family visits and reunification  
5 without any individualized evaluation of risk.

6 The invidious blanket assumption that United States residents from the six majority-  
7 Muslim countries or their family members and compatriots who may wish to join them here pose  
8 some sort of terror threat cannot possibly survive scrutiny. President Trump defends the  
9 Executive Order with rhetoric of national security without evidence to back up the rhetoric.<sup>3</sup>  
10 The WSLC joins in the following statement of former national security, foreign policy, and  
11 intelligence officials in the United States Government condemning the Executive Order as  
12 antithetical to American law and values:

13 As government officials, we sought diligently to protect our country, even while  
14 maintaining an immigration system free from intentional discrimination, that  
15 applies no religious tests, and that measures individuals by their merits, not  
16 stereotypes of their countries or groups. Blanket bans of certain countries or  
17 classes of people are beneath the dignity of the nation and Constitution that we  
18 each took oaths to protect. Rebranding a proposal first advertised as a “Muslim  
19 Ban” as “Protecting the Nation from Foreign Terrorist Entry into the United  
20 States” does not disguise the Order’s discriminatory intent, or make it necessary,  
21 effective, or faithful to America’s Constitution, laws, or values.

22 Declaration of Madeleine K. Albright, Avril D. Haines, Michael V. Hayden, John F. Kerry, John  
23 E. McLaughlin, Lisa O. Monaco, Michael J. Morell, Janet A. Napolitano, Leon E. Panetta, Susan  
24 E. Rice.

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25 <sup>3</sup> Attorney General Jeff Sessions made a statement expressing this defective logic in defense of the new Executive  
26 Order: “We also know that people seeking to support or commit terrorist attacks here will try to enter through our  
refugee program. In fact, today more than 300 people who came here as refugees are under FBI investigation for  
potential terrorism-related activities.” Found at <https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-revised-executive-order-protecting-nation>. The statement does not provide any information about  
the national origin or religion of these 300 individuals or whether there is any conclusive evidence that any of them  
are engaged in terrorist activities.

1 **CONCLUSION**

2 The individual tangible and dignitary harm that is being suffered by residents whose  
3 national origin is from the countries subject to the Executive Order and whose religion is  
4 targeted is irreparable, in violation of the INA and the Constitution. The Executive Order is not  
5 even rationally related to its stated goal of protecting national security. The harms that would be  
6 suffered if the previous injunction is not applied to this new iteration of the same enjoined  
7 actions are severe, and the need for continuing injunctive relief is urgent.  
8

9 DATED this 14<sup>th</sup> day of March, 2017.

10  
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