Docket No. 17-15589

IN THE
United States Court of Appeals
FOR THE
Ninth Circuit

STATE OF HAWAI'I AND ISMAIL ELSHIKH,

Plaintiffs-Appellees,

v.

DONALD TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES, *ET AL.*,

Defendants-Appellants.

On Appeal from the United States District Court for the District of Hawai'i
Civil Action No. 1:17-cv-00050-DKW-KJM
The Honorable Derrick K. Watson

BRIEF OF HUMAN RIGHTS FIRST, KIND (KIDS IN NEED OF DEFENSE), CITY BAR JUSTICE CENTER, COMMUNITY LEGAL SERVICES IN EAST PALO ALTO, CATHOLIC MIGRATION SERVICES, THE DOOR'S LEGAL SERVICES CENTER, SAFE PASSAGE PROJECT, AND SANCTUARY FOR FAMILIES AS *AMICI CURIAE* IN SUPPORT OF APPELLEES

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CORPORATE DISCLOSURE STATEMENT

I, Alan Turner, attorney for *amici curiae*, certify that *amici* are not-for-profit organizations. No *amicus* has a parent corporation, except The Door, which is a subsidiary of University Settlement Society of New York, Inc. No *amicus* issues stock, nor does there exist a publicly held corporation that owns 10% or more of the stock of any *amicus*.

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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.

The City Bar Justice Center is the non-profit, legal services arm of the New York City Bar Association. Its mission is to leverage the resources of the New York City legal community to increase access to justice. Each year, the City Bar Justice Center assists more than 20,000 low-income and vulnerable New Yorkers to access critically needed legal services and matches over 1,200 cases with *pro bono* attorneys. Through direct representation and *pro bono* legal programs, the City Bar Justice Center's Immigrant Justice Project annually helps hundreds of immigrants who are at their most vulnerable: asylum seekers fleeing persecution, survivors of violent crimes and trafficking, and others seeking humanitarian protection. Operating within the New York City metropolitan area, which has long served as a gateway to America, the City Bar Justice Center is committed to helping immigrants and their families find safety and live in dignity in the United States.

Community Legal Services in East Palo Alto ("CLSEPA") provides legal assistance to low-income individuals and families in East Palo Alto, California and the surrounding community. CLSEPA's practice areas include immigration, housing, and economic advancement. CLSEPA's mission is to provide transformative legal

services, policy advocacy, and impact litigation that enable diverse communities in East Palo Alto and beyond to achieve a secure and thriving future. CLSEPA provides legal assistance and advice to over 6,000 community members per year, and has assisted hundreds of people seeking asylum. Accordingly, CLSEPA understands all too well the effect the Executive Order at issue will have on the communities it serves.

Catholic Migration Services ("CMS") is a nonprofit legal services provider whose mission is to serve and empower low-income immigrants in Brooklyn and Queens, regardless of religion, ethnicity, or national origin. Since 1971, CMS has defended immigrants facing deportation and has assisted hundreds of immigrants seeking to apply for asylum and other forms of relief. CMS has also helped thousands of immigrants file applications on behalf of their family members. In 2006, CMS began providing housing, legal, and advocacy services to low-income immigrant tenants. In 2009, CMS created a workers' rights program to help immigrant workers recover unpaid wages, report unsafe and life-threatening working conditions, and fight discrimination in employment. CMS is committed to protecting the human and civil rights of all immigrants and joins this *amicus* brief to advocate for the family members and relatives of its clients.

The Door's Legal Services Center ("LSC") has provided legal representation and advice to at-risk youth, ages 12 – 24, for 25 years on matters including public

assistance, housing, foster care, education, family law, and immigration. In particular, LSC focuses on representing undocumented children and youth who have fled violence around the world to seek safety and opportunity in the United States. The LSC seeks to ensure that its clients remain safely in the United States, obtain lawful status, and make a successful transition to adulthood. Accordingly, the LSC respectfully joins this *amicus* brief, to protect its members' interest in a fair immigration system and a society that treats children and youth with dignity and respect, regardless of their religion or national origin.

Safe Passage Project is a small, highly-focused, nonprofit immigration legal services organization. Safe Passage Project provides free lawyers to refugee children classified as "unaccompanied minors" in the New York City area who face deportation back to life-threatening situations, despite their strong legal claim to stay in the U.S. Safe Passage Project currently represents 654 children in removal proceedings with 20 full-time staff including eleven staff attorneys and 420 *pro bono* attorneys. The organization was founded in 2006 as a volunteer project within New York Law School. In 2013, in response to the "surge" in Central American refugee children arriving in New York City, Safe Passage Project was incorporated as an independent nonprofit. Safe Passage Project uses a "hybrid" direct representation and *pro bono* representation model. Eighty percent of Safe Passage Project's 654 cases are handled by *pro bono* attorneys closely mentored during the full length of a

case by Safe Passage Project's expert staff attorneys. However, Safe Passage Project's staff attorneys retain the most complicated 20% of cases. Because the overwhelming majority of Safe Passage Project's clients are eligible for substantive immigration relief, the vast majority have resulted in a durable positive outcome – including legal permanent residency. Consistent with its mission, Safe Passage Project seeks to ensure that vulnerable children and their family members can continue to be resettled in the United States through the Central American Minors ("CAM") Program, which provides in-country refugee/parole processing for minors in El Salvador, Honduras, and Guatemala.

Sanctuary for Families ("Sanctuary") is New York State's largest dedicated service provider and advocate for survivors of domestic violence, human trafficking, and related forms of gender violence. Each year Sanctuary provides legal, clinical, shelter, and economic empowerment services to approximately 15,000 survivors and their children. Sanctuary's legal arm, The Center for Battered Women's Legal Services ("The Center"), specializes in providing legal assistance and direct representation to indigent victims, mostly in family law and humanitarian immigration matters such as asylum, Violence Against Women Act Self-Petitions, and petitions for U and T nonimmigrant status. Legal services at The Center are carried out by Center staff through direct representation, in collaboration with volunteers from the private bar, law schools, and New York City's public interest

community. In addition, The Center provides training on domestic violence and trafficking to community advocates, *pro bono* attorneys, law students, service providers, and the judiciary, and, in collaboration with a diverse range of local, national, international, private, and community organizations, plays a leading role in advocating for legislative and public policy changes that further the rights and protections afforded battered women and their children.

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

[1] All parties have consented to the filing of this brief. No party's counsel authored this brief in whole or in part, no party or party's counsel contributed money that was intended to fund preparing or submitting the brief, and no person—other than *amici* or their counsel—contributed money that was intended to fund preparing or submitting the brief. *See* Fed. R. App. P. 29(a)(4)(E).

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, the Quakers, the Baptists, and the Anabaptists, 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 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 labeling 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

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[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*

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-Appellees' brief below.

Contrary to the Government's arguments to this Court 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 of men," *Marbury v. Madison*, 5 U.S. 137, 163 (1803), it is the

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Sudan, United Nations Development Programme, http://www.sd.undp.org/content/sudan/en/home/countryinfo.html.

[5] Br. for Defendants-Appellants at 40, ECF No. 23 (asserting that the doctrine of consular nonreviewability should be extended to "decisions made by the President himself"); Mot. for Stay Pending Appeal at 15, ECF No. 22. *See also* 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 first Executive Order).

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 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. The District Court had the authority—and, in fact, the duty—to review the President's Executive Order for compliance with the Constitution and federal law, and in finding that Plaintiffs-Appellees had a strong likelihood of success on the merits of their Establishment Clause claim, the District Court did not abuse its discretion.

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 will 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 family members for 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 advanced by the Government is paper-thin, is belied by the President's own actions in delaying the signing of the new Executive Order (reportedly for publicity reasons), as well as delaying its implementation, and cannot mask the religious animus and discriminatory intent that motivated this Executive Order and its predecessor. 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 affirm the District Court's preliminary injunction, preventing implementation of the Executive Order until its legality and constitutionality can be resolved on the merits.

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

ARGUMENT

1. 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 any 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 this Court held in rejecting the Government's argument that the first Executive Order was "unreviewable," "[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).[8]

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

[8] The Government contends that this holding in *Washington* "is not at issue here," but then argues that the consular nonreviewability doctrine should be extended to "immigration-policy decisions made by the President himself." Br. for Defendants-Appellants at 40. As discussed below, there is no basis for such an extension of the doctrine.

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), complete deference would be 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."). Consistent with these Supreme Court decisions, this Circuit's precedent holds 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. 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.

In its opening brief, the Government seeks to rely upon the doctrine of consular nonreviewability, which accords deference to consular officers' decisions to issue or withhold issuance of visas to individual applicants.[9] As the Government itself acknowledges, the cases it cites concern the availability of judicial review of "the determination of the political branch of the Government to exclude a *given* alien." *Saavedra Bruno v. Albright*, 197 F.3d 1153, 1159 (D.C. Cir. 1999) (quoting *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 543 (1950)) (emphasis added).[10] In *Knauff*, the Attorney General possessed "confidential information" specific to the excluded alien. 338 U.S. at 544. Despite the Government's argument to the contrary, that doctrine relating to individual immigration claims provides no shelter from constitutional or statutory review of a generalized large-scale attempt to bar groups of immigrants and refugees based on religion and/or national origin. *Washington*, 847 F.3d at 1162 ("[T]he *Mandel* standard applies to lawsuits challenging an executive branch official's decision to issue or deny an *individual visa* based on the application of a congressionally enumerated standard to the *particular facts* presented by that visa application.") (emphasis added). Here, the Government does not claim to possess information justifying the exclusion of any given alien(s), but rather seeks to preclude all citizens from the six targeted countries from entering

[9] Br. for Defendants-Appellants at 32, ECF No. 23.

[10] Br. for Defendants-Appellants at 39.

the U.S. The consular nonreviewability doctrine does not mandate the kind of extreme deference that would block this Court's review of the Executive Order. *Id.* at 1162-63.

The Government provides no authority to the contrary. While it cites *Nixon v. Fitzgerald*, that case held only that a President has absolute immunity from a "merely private suit for damages based on a President's official acts." 457 U.S. 731, 754 (1982). The Government also cites Judge Bybee's dissent,[11] but not, for good reason, the one case on which that dissent relied, *Bustamante v. Mukasey*, 531 F.3d 1059, 1062 n.1 (9th Cir. 2008). In *Bustamante*, this Court held that, under *Mandel*, the deference afforded to the executive branch in its denial of a visa to an individual alien does not vary based on which executive officer is exercising the power to exclude. *Id.* (citing *Kleindienst v. Mandel*, 408 U.S. 753, 770 (1972)). In both *Bustamante* and *Mandel*, the Courts found valid exercises of executive authority because they were based on facts particular to an individual alien. *Id.* at 1062; *Mandel*, 408 U.S. at 770. Thus, neither case lends support to the Government's argument that courts should defer to sweeping immigration policy declarations issued by the executive branch.

Finally, even where, as here, Congress has delegated a measure of discretion to the President, that discretion is not unchecked. Both congressional and executive

[11] *Washington v. Trump*, No. 17-35105, 2017 WL 992527 (9th Cir. Mar. 15, 2017) (Bybee, J., dissenting from denial of rehearing on banc).

action are bounded by the requirements of the Constitution; the legislature cannot 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)[12] as the legal basis for the Executive Order.[13] 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 . . . before a statute will be construed to restrict access to judicial review." *Johnson v. Robison*, 415 U.S. 361, 373-74 (1974). There is no evidence here of congressional intent to strip the courts of jurisdiction. To the contrary, the Immigration and Nationality Act's subsequent prohibition of immigration determinations based on nationality and other criteria squarely preclude any conclusion that the legislature intended to shield such discriminatory actions from review. 8 U.S.C. § 1152(a)(1)(A). As another 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

[12] Section 1182(f) provides that "[w]henever 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, or impose on the entry of aliens any restrictions he may deem appropriate."

[13] Br. for Defendants-Appellants at 20, ECF No. 23.

*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).

In short, the District Court and this Court have the authority, and indeed the duty, to review the constitutionality and legality of this Executive Order.

2. 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 those affected by the Executive Order are irreparable, weighing in favor of affirming the preliminary injunction.

The harms caused by the deprivation of a constitutional right, no matter how brief the duration, are by their very nature irreparable. Unlike pecuniary harms, constitutional harms generally cannot be made whole by *post hoc* compensation. That is particularly true for harms to First Amendment rights. 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).[14] Here, the Executive Order threatens the constitutionally protected rights to be free of a government-established religion, to equal protection of the law, to international travel, and to family integrity.

As *amici* know from their work with immigrants and refugees, 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 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,[15]

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[14] 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).

[15] *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.

deprive family members of time with ill or elderly relatives,[16] and force overseas visa applicants to miss births, weddings, funerals, and other important family events. Affected individuals will be forced to choose between career obligations in the United States and time with family members in the banned countries.[17] 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).

Immigrants and visitors from the targeted countries contribute to local and national life in numerous ways that will be stymied by the Executive Order. For instance, public and private colleges and universities recruit students, permanent faculty, and visiting faculty from the targeted countries. 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.[18] 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

[16] *See, e.g.*, Ex. 3, Decl. of Shiva Hissong.

[17] *See, e.g.*, Ex. 1, Decl. of Omid Moghimi, ¶ 19.

[18] 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/.

provided each year by physicians" from the six affected countries.[19] 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 medical institutions and curtail the medical care available to citizens of Hawaii and the rest of the United States.

Despite the chaos following the first travel ban, and the significant upheaval that would be inherent in the second, the Government claims that the Executive Order's "narrow[ed] . . . scope" and "case-by-case waiver process" "completely address any conceivable due-process claim."[20] However, the case-by-case and highly discretionary waiver provisions in Sections 3(c) and 6(c) of the Executive Order do not mitigate the harms created by an order premised on religious and national discrimination. Reliance on a proposed waiver process as a cure is even more suspect, as no governmental agency has yet provided specific guidelines for applying for or obtaining a waiver, a process that will impose indefinite delays, additional costs, and uncertain outcomes for affected individuals and their families.

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[19] 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).

[20] Br. of Defendants-Appellants at 21.

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"[21] and for the implementation of a "Muslim ban"[22] are the backdrop to this Executive Order. That the Government has dressed the revised Executive Order in new clothing after its first effort was enjoined by this Court does not nullify the President's prior statements or their relevance to this Court's inquiry as to whether that revised order passes legal muster. Indeed, the District of Maryland preliminarily enjoined this Executive Order, citing the religious animus paving the path to issuance of this Executive Order and its predecessor. *See Int'l Refugee Assistance Project*, No. 17-cv-0361, 2017 WL 1018235, at *14 (D. Md. Mar. 16, 2017) ("Defendants have cited no authority concluding that a court assessing purpose under the Establishment Clause may consider only statements made by government employees at the time that they were government employees. Simply because a decisionmaker made the statements during a campaign does not

[21] 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.

[22] Amy B. Wang, *Trump asked for a 'Muslim ban,' Giuliani says — and ordered a commission to do it 'legally,'* WASH. POST, Jan. 29, 2017.

wipe them from the 'reasonable memory' of a 'reasonable observer.'") (quoting *McCreary Cty. v. Am. Civil Liberties Union of Ky.*, 545 U.S. 844, 866 (2005)), *appeal docketed*, No. 17-1351 (4th Cir. Mar. 17, 2017). Moreover, as revealed by a senior policy advisor to the President, the revised Executive Order still has "the same basic policy outcome for the country" as the first Executive Order.[23] This relentless anti-Muslim drumbeat, coupled with the Executive Order itself, has made immigrants and Muslim citizens justifiably fearful. Against the backdrop of the recent rise in hate crimes against Muslims in the United States,[24] the Executive Order amplifies the sense of persecution that citizens and immigrants of Muslim faith suffer. As organizations that work with immigrants and refugees, *amici* can confirm that such marginalization makes our country less safe, as those who are marginalized and fearful are less likely to cooperate with law enforcement.

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[23] *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/.

[24] *See, e.g.*, Matt Zapotosky, *Hate crimes against Muslims hit highest mark since 2001*, WASH. POST, Nov. 14, 2016; Albert Samaha and Talal Ansari, *Four Mosques Have Burned in Seven Weeks – Leaving Many Muslims and Advocates Stunned*, BUZZFEEDNEWS (Feb. 28, 2017), https://www.buzzfeed.com/albertsamaha/four-mosques-burn-as-2017-begins; David Neiwert, *Is Kansas' 'Climate of Racial Intolerance' Fueled by Anti-Muslim Political Rhetoric?*, SOUTHERN POVERTY LAW CENTER (Mar. 2, 2017), https://www.splcenter.org/hatewatch/2017/03/02/kansas'-'climate-racial-intolerance'-fueled-anti-muslim-political-rhetoric.

Further, the Executive Order's suspension of the U.S. Refugee Admissions Program ("USRAP") 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."[25] Individuals and families fleeing political or religious persecution in the six targeted countries are in a precarious state of limbo.

And, as seen with the January 27, 2017 Executive Order, the March 6, 2017 Executive Order will have follow-on effects on other refugee programs. For example, in the days after issuance of the January 27 Executive Order, the Government abruptly canceled the long-standing U.S. Lautenberg Program, through which Iranian Jews, Christians, and Bahá'ís fleeing persecution as religious minorities were offered visa interviews by U.S. immigration officials in Austria.[26]

Likewise, suspension of refugee admissions under the Executive Order entails suspension of the Central American Minors ("CAM") program. CAM was established in 2014, and expanded in 2016, to provide a process for Central

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[25] 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.

[26] Josephine Huetlin, *Iranian Jews, Christians, and Baha'i Stuck in Iran*, THE DAILY BEAST (Jan. 29, 2017), http://www.thedailybeast.com/articles/2017/01/29/iranian-jews-christians-and-baha-i-stuck-in-iran.html.

American parents lawfully present in the United States to request refugee status for their children at risk of harm in El Salvador, Honduras, or Guatemala via the U.S. Refugee Admissions Program.[27] Through a grant of refugee status or parole, the program offers a safe, legal way for children in danger to reunify with family in the U.S., as an alternative to the risk-filled journey that many children endure in order to seek protection in the U.S. Yet the Executive Order would suspend interviews of children seeking protection through CAM, halt the processing of applications in the pipeline, and leave children eligible to enter the U.S. stranded in harm's way.

These and other harms that would be caused by implementation and enforcement of the Executive Order are not fleeting. People's lives will be affected in myriad ways that cannot be undone. *Amici* accordingly urge this Court to recognize these harms when considering affirmance of the District Court's preliminary injunction.

CONCLUSION

For the foregoing reasons, *amici* respectfully support Plaintiffs-Appellees' request that the Court affirm the District Court's preliminary injunction order in full.

Dated: April 21, 2017 Respectfully submitted,

By: /s/ Alan C. Turner
ALAN C. TURNER

[27] *See Central American Minors (CAM) Program*, U.S. DEP'T OF STATE, https://www.state.gov/j/prm/ra/cam/index.htm.

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CERTIFICATE OF COMPLIANCE WITH RULE 32(G)(1)

1. This brief complies with the type-volume limitations of Fed. R. App. P. 29 and 32(a)(7)(B) because it contains 5,621 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14 point Times New Roman font.

/s/ Alan C. Turner
Alan C. Turner

Counsel for *Amici Curiae*

Docket No. 17-15589

IN THE

United States Court of Appeals

FOR THE

Ninth Circuit

STATE OF HAWAIʻI AND ISMAIL ELSHIKH,

Plaintiffs-Appellees,

v.

DONALD TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES, *ET AL.*,

Defendants-Appellants.

On Appeal from the United States District Court for the District of Hawaiʻi
Civil Action No. 1:17-cv-00050-DKW-KJM
The Honorable Derrick K. Watson

DECLARATION OF ALAN C. TURNER

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Counsel of Record

I, ALAN C. TURNER, declare as follows:

1. I am an attorney with the law firm of Simpson Thacher & Bartlett LLP, duly licensed to practice law in the State of New York and in the United States Court of Appeals for the Ninth Circuit, representing *Amici Curiae* HUMAN RIGHTS FIRST, KIND (Kids in Need of Defense), CITY BAR JUSTICE CENTER, COMMUNITY LEGAL SERVICES IN EAST PALO ALTO, CATHOLIC MIGRATION SERVICES, THE DOOR'S LEGAL SERVICES CENTER, AND SAFE PASSAGE PROJECT ("*Amici*") in *State of Hawaii and Ismail Elshikh v. Donald J. Trump, in his official capacity as President of the United States, et al.*, No. 17-15589. 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: April 21, 2017.

/s/ Alan C. Turner
ALAN C. TURNER

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.	)	Civil Action No._____
Donald J. Trump, President of the United States, *et al*.	)	
Defendants.	)	

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.	)	Civil Action No._____
Donald J. Trump, President of the United States, *et al*.	)	
Defendants.	)	

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.

I, Jane Doe #1, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this _5_ day of February, 2017, in __San Diego, CA__.

/s/ Jane Doe #1
Jane Doe #1

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.	)	Civil Action No._____
Donald J. Trump, President of the United States, *et al*.	)	
Defendants.	)	

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.

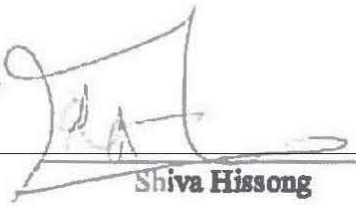
22. I have received no guidance, information, clarity, instruction, or correspondence from the United States government or my attorney concerning the issuance of visas and/or whether my parents' visas will be issued in course or whether it will not be issued under the terms of the January 27 Executive 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 5th day of February, 2017, in Spokane WA.



Shiva Hissong

CERTIFICATE OF SERVICE

I hereby certify that on April 21, 2017, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I hereby certify that on April 21, 2017, the foregoing document was served on all parties or their counsel of record through the CM/ECF system.

/s/ Alan C. Turner
Alan C. Turner

Counsel for *Amici Curiae*

CERTIFICATE OF SERVICE

I hereby certify that on April 21, 2017, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I hereby certify that on April 21, 2017, the foregoing document was served on all parties or their counsel of record through the CM/ECF system.

/s/ Alan C. Turner
Alan C. Turner

Counsel for *Amici Curiae*