

No. 17-2231 (L), 17-2232, 17-2233, 17-2240 (Consolidated)

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

INTERNATIONAL REFUGEE ASSISTANCE PROJECT,
a project of the Urban Justice Center, Inc., on behalf of itself and its clients;
HIAS, INC., on behalf of itself and its clients; JOHN DOES ##1 and 3;
JANE DOE #2; MIDDLE EAST STUDIES ASSOCIATION OF NORTH AMERICA,
INC., on behalf of itself and its members; MUHAMMED METEAB; PAUL
HARRISON; IBRAHIM AHMED MOHOMED; ARAB AMERICAN ASSOCIATION
OF NEW YORK, on behalf of itself and its clients,
Plaintiffs – Appellees,

and ALLAN HAKKY; SAMANEH TAKALOO,
Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as President of the United States;
UNITED STATES DEPARTMENT OF HOMELAND SECURITY;
DEPARTMENT OF STATE; OFFICE OF THE DIRECTOR OF NATIONAL
INTELLIGENCE; ELAINE C. DUKE; in her official capacity as Acting Secretary of
Homeland Security; REX TILLERSON, in his official capacity as Secretary of State;
DANIEL R. COATS, in his official capacity as Director of National Intelligence,
Defendants – Appellants

[Caption continued on inside cover]

BRIEF OF AMICI CURIAE
Muslim Justice League,
Muslim Public Affairs Council, and
Council on American-Islamic Relations, California
in support of Plaintiffs-Appellees and Affirmance

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No. 17-2231(L)

On Cross-Appeal from the United States District Court
District of Maryland, Southern Division No. 8:17-cv-00361-TDC

No. 17-2232
(8:17-cv-02921-TDC)

IRANIAN ALLIANCES ACROSS BORDERS; JANE DOE #1, JANE DOE #2,
JANE DOE #3, JANE DOE #4, JANE DOE #5, JANE DOE #6,
Plaintiffs – Appellees,

v.

DONALD J. TRUMP, in his official capacity as President of the United States;
ELAINE C. DUKE, in her official capacity as Acting Secretary of Homeland
Security; KEVIN K. MCALEENAN, in his official capacity as Acting Commissioner
of U.S. Customs and Border Protection; JAMES MCCAMENT, in his official
capacity as Acting Director of U.S. Citizenship and Immigration Services;
REX TILLERSON; JEFFERSON B. SESSIONS III, in his official capacity as
Attorney General of the United States,
Defendants – Appellants.

No. 17-2233 (1:17-cv-02969-TDC)

EBLAL ZAKZOK; SUMAYA HAMADMAD; FAHED MUQBIL;
JOHN DOE #1; JOHN DOE #2; JOHN DOE #3,
Plaintiffs – Appellees

Disclosure Of Corporate Affiliations And Other Interests

Pursuant to FRAP 26.1 and Local Rule 26.1, Amici Muslim Justice League, Muslim Public Affairs Council, and Council on American-Islamic Relations, California, state that:

1. None of Amici are publicly held corporations or entities;
2. None of Amici have any parent corporates;
3. None of Amici issue stock;
4. No publicly held corporation or entity related to Amici has a direct financial interest in the outcome of this litigation.

November 17, 2017

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TABLE OF CONTENTS

STATEMENT OF INTEREST OF AMICI CURIAE 1

SUMMARY OF ARGUMENT 4

ARGUMENT 5

The Proclamation Harms Muslims Throughout The Country,
Violates The Establishment Clause, And Was Properly Enjoined 5

I. The Proclamation’s Effect On Muslims In The United States
Constitutes Injury Under The Establishment Clause 5

 A. The Muslim Ban unlawfully and injuriously restrains
 travel among Muslim communities 9

 1. The Muslim Ban has had a chilling effect on
 personal activities 9

 2. The Muslim Ban has interfered with professional
 activities 12

 3. The Muslim Ban has also impeded academic
 activities 13

 4. The Muslim Ban impacts nationals beyond those
 from the Designated Countries..... 16

 B. The Muslim Ban promotes harmful stereotypes about
 Muslims 17

 C. In targeting Muslims, the Muslim Ban has caused
 psychological—and arguably physical—harm 21

II. Despite Inclusion Of Two Non-Muslim Majority Countries
And Attempts To Sanitize Its Text, The Clear Intent Of The
Muslim Ban Is To Disfavor And Burden Muslims 25

III. The Focus On Muslims And Muslim-Majority Countries Is
Divorced From Evidence, Ill-Conceived, And Ill-Advised 27

CONCLUSION 29

TABLE OF AUTHORITIES

CASES

<i>Aziz v. Trump</i> , 234 F. Supp. 3d 724 (E.D. Va. 2017)	6, 7
<i>Hawai‘i v. Trump</i> , 241 F. Supp. 3d 1119 (D. Haw. 2017).....	6, 7, 8
<i>IRAP v. Trump</i> , 2017 WL 4674314 (D. Md. Oct. 17, 2017)	8, 26
<i>IRAP v. Trump</i> , 241 F. Supp. 3d 539 (D. Md. 2017).....	6, 7
<i>IRAP v. Trump</i> , 857 F.3d 554 (4th Cir. 2017).....	passim
<i>Larson v. Valente</i> , 456 U.S. 228 (1982).....	5
<i>Moss v. Spartanburg Cty. Sch. Dist. Seven</i> , 683 F.3d 599 (4th Cir. 2012).....	7
<i>Sarsour v. Trump</i> , 245 F. Supp. 3d 719 (E.D. Va. 2017)	6, 7, 20
<i>Washington v. Trump</i> , 847 F.3d 1151 (9th Cir. 2017).....	6, 7

REGULATIONS / EXECUTIVE ORDERS

82 Fed. Reg. 45161 (Sept. 27, 2017).....	passim
Exec. Order No. 13,769, 82 Fed. Reg. 8977 (Jan. 27, 2017)	passim
Exec. Order No. 13,780, 82 Fed. Reg. 13209 (Mar. 9, 2017)	passim

OTHER AUTHORITIES

@BannedGrandmas, Instagram (July 1, 2017)	11
@BannedGrandmas, Instagram (July 2, 2017)	11
@BannedGrandmas, Instagram (June 30, 2017).....	11

TABLE OF AUTHORITIES
(continued)

<i>Around the World and the U.S., New Travel Ban Draws Anger, Applause and Shrugs</i> , N.Y. Times (Sept. 25, 2017)	22
Barry-Jester, <i>Trump’s New Travel Ban Could Affect Doctors, Especially In The Rust Belt And Appalachia</i> , FiveThirtyEight (Mar. 6, 2017)	13
Berman, <i>He yelled ‘Get out of my country,’ witnesses say, and then shot 2 men from India, killing one</i> , Wash. Post (Feb. 24, 2017)	23
Bernstein, <i>MAX attack unfolded quickly: extremist cut three in neck, police say</i> , The Oregonian/OregonLive (Jun. 2, 2017)	23
Beutel, <i>Data on Post-9/11 Terrorism in the United States</i> , Muslim Public Affairs Council (June 2012)	28
Beydoun, <i>Acting Muslim</i> , 53 Harv. C.R.-C.L. L. Rev. (forthcoming 2017)	24, 29
Beydoun, <i>Being a Muslim under Trump is risky. That’s why many are hiding their identity</i> , The Guardian (Mar. 30, 2017)	19
Bharath, <i>Muslim groups to march with allies to protest travel ban and call for immigration, criminal justice reform</i> , The Orange County Registry (Oct. 13, 2017)	12
Bier, <i>Travel Ban Is Based on Executive Whim, Not Objective Criteria</i> , Cato at Liberty (Oct. 9, 2017)	25
Bothwell, <i>International students less likely to accept offers in Trump’s US</i> , Times Higher Education (July 6, 2017)	14
Capecchi, Chapman <i>Where the Immigration Ban Hits Home</i> , N.Y. Times (Jan. 31, 2017)	10, 22
Chalabi, <i>Support for Trump travel ban in line with anti-Muslim attitudes in America</i> , The Guardian (Feb. 2, 2017)	18
Fariz, <i>Torrance Islamic community shaken by travel ban</i> , Easy Reader News (Feb. 25, 2017)	22
Gostin, <i>Presidential Immigration Policies Endangering Health and Well-being?</i> , JAMA (Mar. 23, 2017)	22

TABLE OF AUTHORITIES
(continued)

Guerra, <i>Students still uneasy, despite travel-ban ruling</i> , The Boston Globe (Oct. 18, 2017)	16
Hauslohner, <i>Imam: There’s an atmosphere of intolerance that says, ‘That’s okay, that’s acceptable now’</i> , Wash. Post (Mar. 10, 2017).....	19, 24
Healy, <i>Love, Interrupted: Travel Ban Separates Couples</i> , N.Y. Times (Feb. 9, 2017)	10
Hoffman, <i>Meet the People Posting Photos of ‘Banned Grandmas’ to Protest the Travel Ban</i> , Time Magazine (July 6, 2017).....	11
Human Rights Watch, <i>US: Trump’s new refugee order renews old harms</i> (Mar. 6, 2017)	20
Ingraham, <i>American mosques—and American Muslims—are being targeted for hate like never before</i> , Wash. Post. (Aug. 8, 2017).....	24
Karoub, <i>Batrawy Eid al-Adha 2017: US Muslims fear Donald Trump’s travel ban will prevent them returning from Hajj</i> , The Independent (Sept. 1, 2017).....	11
Lee, <i>‘There is too much anger out there.’ Bombing of a Minnesota mosque leaves Muslims concerned</i> , L.A. Times (Aug. 5, 2017)	24
Lui, <i>President Trump Added Three New Countries to His Travel Ban. Here’s What to Know About Them</i> , Time Magazine (Sept. 25, 2017)	26
McCrummen, <i>Love Thy Neighbor? When a Muslim doctor arrived in a rural Midwestern town, “it felt right.” But that feeling began to change after the election of Donald Trump</i> , Wash. Post (July 1, 2017)	13
McNeil Jr., <i>Trump’s Travel Ban, Aimed at Terrorists, Has Blocked Doctors</i> , N.Y. Times (Feb. 6, 2017)	10, 20, 23
Meet the Press (Jul. 24, 2016).....	8

TABLE OF AUTHORITIES
(continued)

Mourad, <i>Muslims at haj are worried about Trump’s policies towards them</i> , Reuters (Sept. 2, 2017)	26
Munshi, <i>Muslim Americans express anxiety over Trump travel ban</i> , Financial Times (Feb. 2, 2017).....	21
N.Y. Times Editorial Board, <i>President Trump’s Muslim Ban Lite</i> , N.Y. Times (Mar. 7, 2017)	21
Pennington, <i>Immigration puts Middle Eastern students off studying in US</i> , The National (Aug. 16, 2017).....	14
Pew Research Center, <i>A new estimate of the U.S. Muslim population</i> (Jan. 6, 2016)	28
Pew Research Center, <i>The Religious Affiliation of U.S. Immigrants: Majority Christian, Rising Share of Other Faiths</i> (May 17, 2013).....	28
Pilkington, <i>Trump travel crackdown turns ‘wedding celebration into a family separation,’</i> The Guardian (Apr. 14, 2017)	10
Rappeport, <i>Donald Trump Repeats Call to Inspect Mosques for Signs of Terrorism</i> , N.Y. Times (Nov. 16, 2015)	18
Redden, <i>Fragile Status: Two students from Libya consider the executive order banning entry to the U.S. for them and their compatriots</i> , Inside Higher Ed (Feb. 1, 2017).....	16
Redden, <i>International Enrollments: From Flat to Way Down</i> , Inside Higher Ed. (Sept. 5, 2017)	15
Saul, <i>Fewer Foreign Students Are Coming to U.S., Survey Shows</i> , N.Y. Times (Nov. 13, 2017)	14, 15
Shear, <i>New Order Indefinitely Bars Almost All Travel From Seven Countries</i> N.Y. Time (Sept. 24, 2017)	8
Siddiqui, <i>At mosque Obama visited, fear replaces hope as new Trump travel ban looms</i> , The Guardian (Mar. 14, 2017).....	11, 21, 23
Srikantiah, <i>The new travel ban, national security, and immigration</i> , Stanford Law School Blogs (Feb. 1, 2017)	17

TABLE OF AUTHORITIES
(continued)

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Trump (@realDonaldTrump), Twitter (June 5, 2017, 3:37 AM).....	27
Trump (@realDonaldTrump), Twitter (June 5, 2017, 6:20 PM).....	27
Trump, <i>Donald J. Trump Statement on Preventing Muslim Immigration</i> , Donald J. Trump for President, Inc. (Dec. 7, 2015).....	18
United Nations Human Rights Office of the High Commissioner, <i>US travel ban: “New policy breaches Washington’s human rights obligations”</i> (Feb. 1, 2017).....	21
Wilinson, <i>Iranian Americans join human rights groups in protesting new ban</i> , L.A. Times (Mar. 6, 2017)	19
Zapotosky, Takase, Schetti, <i>Federal judge in Hawaii freezes President Trump’s new entry ban</i> , Wash. Post (Mar. 16, 2017).....	26
Zapotosky, Nakamura, Hauslohner, <i>Revised executive order bans travelers from six Muslim-majority countries from getting new visas</i> , Wash. Post (Mar. 6, 2017).....	28

STATEMENT OF INTEREST OF AMICI CURIAE¹

Amici Curiae are organizations that advocate for the dignity and fair treatment of the Muslim community throughout the United States. Amici can provide unique and important insights regarding the impact of the September 24, 2017, Presidential Proclamation 9645 (the “Proclamation” or “Muslim Ban”) and how it unfairly subjects Muslims, persons from Muslim-majority countries, and even those simply perceived as Muslim, to unwarranted harassment and religious discrimination by government officials. Moreover, Amici can address the effects and public perceptions caused by an executive order that targets the Muslim community under the guise of national security, including the stigmatization of Muslims and Muslim communities, increased discrimination, and discouragement of Muslims and persons from Muslim-majority countries—U.S. citizens and non-citizens alike—from fully and freely participating in American society for fear of reprisal, directly undermining Amici’s work.

This case addresses the legality of the latest incarnation of a Muslim Ban that restricts immigrant and nonimmigrant entry into the United States from designated countries, most of which are Muslim-majority. Amici support the arguments that the Proclamation is

¹ This brief is filed with consent of all parties. No counsel for any party authored this brief in whole or in part, and no entity or person, aside from Amici and their counsel, made any monetary contribution toward the preparation or submission of this brief.

unconstitutional, and submit this brief to address the deleterious effects of targeting members, or perceived members, of a religious community via a proclamation that is the third attempt to implement a policy “motivated” by a “desire to exclude Muslims from the United States.”² Accordingly, Amici have a substantial interest in the proper resolution of the issues this case presents.

The **Muslim Justice League (MJL)** is an independent nonprofit organization advocating for the protection of human and civil rights that are threatened under national security pretexts, through community education and organizing, and legal and policy advocacy. In the course of providing educational workshops, MJL has fielded and increasing number of questions since the announcement of the Muslim Ban from concerned community members regarding their fears about the consequences of traveling to see family or to pursue educational, professional, or religious objectives. MJL participated as amicus curiae in *Ashcroft v. Abbasi* (U.S. 2017) challenging government policies and practices that targeted people based on their race, religion, ethnicity, or national origin.

² *IRAP v. Trump*, 857 F.3d 554, 626 (4th Cir. 2017), *as amended* (May 31 and June 15, 2017), *cert. granted*, 137 S. Ct. 2080 (2017), *vacated and remanded*, No. 16-1436, 2017 WL 4518553 (U.S. Oct. 10, 2017).

The **Muslim Public Affairs Council (MPAC)** is a community-based public affairs nonprofit organization working for the integration of Muslims into American society. MPAC aims to increase the public understanding of Islam and to improve policies that affect American Muslims, by engaging our government, media, and communities. MPAC's view is that America is enriched by the vital contributions of American Muslims. MPAC works diligently to offer the public a portrayal that goes beyond stereotypes and shows that Muslims are part of a vibrant American pluralism. MPAC participated as amicus curiae in cases concerning civil liberties (*Boumediene v. Bush* and *al Odah v. U.S.* (U.S. 2007)), immigration (*Arizona v. U.S.* (U.S. 2012)), and religious liberties (*Holt v. Arkansas Dept. of Correction* (U.S. 2014)).

The **Council on American-Islamic Relations, California (CAIR-CA)**, is a chapter of the nation's largest American Muslim civil rights and advocacy organization. CAIR-CA's mission is to enhance the understanding of Islam, encourage dialogue, protect civil liberties, empower American Muslims, and build coalitions that promote justice and mutual understanding. Through its four offices, CAIR-CA serves California's estimated one million American Muslims by providing direct legal services to victims of discrimination, working with the media, facilitating community education, and engaging in policy advocacy to advance civil rights and civic engagement.

SUMMARY OF ARGUMENT

On September 24, 2017, President Trump issued the Proclamation that will indefinitely bar or limit the entry into the United States of some or all nationals of Iran, Libya, Somalia, Syria, Yemen, Chad, North Korea, and Venezuela.³ The Proclamation is the Trump Administration's third attempt to limit or bar the entry of nationals from certain Muslim-majority countries and to tie the alleged "risks" of their nationals' entry to the need for enhanced vetting procedures, thus violating the Establishment Clause by creating a disfavored religion in the United States.

The Administration's first attempt to restrain entry from a number of Muslim-majority countries was Executive Order 13,769 ("EO-1"), barred the entry of nationals of seven predominantly Muslim countries for a 90-day period.⁴

After EO-1 was enjoined, the Administration issued Executive Order 13,780 ("EO-2").⁵ Courts, including the U.S. District Court of Maryland, enjoined enforcement of significant portions of EO-2 for again violating the Establishment Clause. This court affirmed in substantial part the issuance of a nationwide preliminary injunction, recognizing the Plaintiffs' right to challenge an Executive Order that

³ 82 Fed. Reg. 45161 (Sept. 27, 2017).

⁴ 82 Fed. Reg. 8977 (Jan. 27, 2017).

⁵ 82 Fed. Reg. 13209 (Mar. 9, 2017).

poorly concealed religious intolerance, animus, and discrimination behind vague words of national security.⁶

Here, just as with earlier iterations, the injuries the Proclamation inflicts apply to Muslim communities across the country, disrupting personal, professional, and academic activities and unfairly and irreparably stigmatizing Muslims. Because the Muslim Ban, in all of its iterations, is nothing more than religious intolerance masquerading as an attempt to address (unfounded) security concerns, the decision below should be affirmed.

ARGUMENT

THE PROCLAMATION HARMS MUSLIMS THROUGHOUT THE COUNTRY, VIOLATES THE ESTABLISHMENT CLAUSE, AND WAS PROPERLY ENJOINED.

I. The Proclamation's effect on Muslims in the United States constitutes injury under the Establishment Clause.

“[T]he clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another.” *Larson v. Valente*, 456 U.S. 228, 244 (1982). By imposing an indefinite ban on entry from six Muslim-majority countries and proposing either “additional scrutiny or “enhanced screening and vetting requirements” targeting travelers from Muslim-majority countries, the President has violated this “clearest command” and created a system officially

⁶ *IRAP*, 857 F.3d at 584.

disfavoring Muslims. Multiple courts evaluating challenges to the Proclamation's predecessors (EO-1 and EO-2) have found that the harms caused by the Muslim Ban are direct, concrete injuries under the Establishment Clause.⁷ These injuries include:

- ***Prolonged separation of family members***, an “imminent, sufficiently ‘real’ and concrete” injury that causes “a personal and ‘particularized’” harm.⁸
- ***The loss of First Amendment freedoms***, causing unquestionable irreparable harm from the moment the government action took place.⁹

⁷ See, e.g., *IRAP*, 857 F.3d at 584 (finding Plaintiff “Doe #1 has had ‘personal contact with the alleged establishment of religion’” due to injuries caused by prolonged separation from his wife, an Iranian national, and the alleged state-sanctioned message that foreign-born Muslims, like Doe #1, are political outsiders); *Washington v. Trump*, 847 F.3d 1151, 1168-1169 (9th Cir. 2017) (“When the [E.O.] was in effect, the States contend that the travel prohibitions harmed the States’ university employees and students, separated families, and stranded the States’ residents abroad. These [deprivations of constitutional rights] are substantial injuries and even irreparable harms.”); *Sarsour v. Trump*, 245 F. Supp. 3d 719, 740 (E.D. Va. 2017) (“The Fourth Circuit has held that, as a matter of law, ‘loss of First Amendment rights, for even minimal periods of time, unquestionably constitutes irreparable injury.’”); *IRAP v. Trump*, 241 F. Supp. 3d 539, 564 (D. Md.), *aff’d in part, vacated in part*, 857 F.3d 554 (4th Cir. 2017), *as amended* (May 31 and June 15, 2017), *cert. granted*, 137 S. Ct. 2080 (2017), *vacated and remanded*, No. 16-1436, 2017 WL 4518553 (U.S. Oct. 10, 2017) (“[W]hen an Establishment Clause violation is alleged, infringement occurs the moment the government action takes place.’ ... The Court accordingly finds that Plaintiffs have established a likelihood of irreparable harm when the Second Executive Order takes effect.”); see also *Aziz v. Trump*, 234 F. Supp. 3d 724, 737 (E.D. Va. 2017); *Hawai’i v. Trump*, 241 F. Supp. 3d 1119, 1139 (D. Haw. 2017).

⁸ *IRAP*, 857 F.3d at 583-84.

⁹ *Id.*

- ***Significant restraint of travel and freedom of movement***, causing, e.g., the separation of families,¹⁰ the cancellation of personal and professional travel plans abroad or visits from family or colleagues to America,¹¹ and disruption of academic activities¹².
- ***The promotion of harmful stereotypes of Muslims***, conveying the message that a broad travel ban is “needed” to prevent people from certain Muslim countries from entering the United States, and further sending an “alleged state-sanctioned message that foreign-born Muslims” are “outsiders.”¹³
- ***Psychological harm and mental stress***, including “significant fear, anxiety and insecurity” due to the Muslim Ban and underlying “anti-Muslim attitudes” and “official anti-Muslim sentiment”;¹⁴ feelings of isolation and disparagement, worries about safety and belonging in this country, and concerns about “the disfavoring of Islam”;¹⁵ “anxiety, confusion, and distress” due to the uncertainty introduced by the Muslim Ban, and “an uptick in students, employees, and faculty using [university] counseling services”;¹⁶ being affected by the knowledge that the federal government would discriminate against their ethnicity and religion; “psychological harm that flows from confronting official action preferring or disfavoring a particular religion”;¹⁷ the “direct, painful effects” of a message of “religious condemnations”;¹⁸ feeling targeted as Muslim because of their religious views and national origin, and concern about not being

¹⁰ *Id.*, at 606 (Keenan, J., concurring); *Washington*, 847 F.3d at 1169.

¹¹ *Aziz*, 234 F. Supp. 3d at 728-29; *Washington*, 847 F.3d at 1159.

¹² *Aziz*, 234 F. Supp. 3d at 728; *Sarsour*, 245 F. Supp. 3d at 729.

¹³ *IRAP*, 857 F.3d at 584 (citing *Moss v. Spartanburg Cty. Sch. Dist. Seven*, 683 F.3d 599, 607 (4th Cir. 2012)); *Hawai'i*, 241 F. Supp. 3d at 1132.

¹⁴ *IRAP*, 241 F. Supp. 3d at 552.

¹⁵ *Id.*; *IRAP*, 857 F.3d at 584-585.

¹⁶ *Aziz*, 234 F. Supp. 3d at 729.

¹⁷ *IRAP*, 857 F.3d at 585.

¹⁸ *Id.*

able to associate as freely as those of other faiths; and hurt, confusion, sadness, and stigma generally.¹⁹

Taking the Proclamation in context, it is common sense that the Proclamation is driven by the same anti-Muslim animus as EO-1 and EO-2.²⁰ In a *Meet the Press* interview, then-candidate Trump articulated his plan, stating: “People were so upset when I used the word Muslim. ... [Now] I’m okay with that, because I’m talking territory instead of Muslim.”²¹ And unlike EO-1 and EO-2, which were temporary, the Proclamation represents an indefinite extension of restrictions.²² With the Proclamation, the Administration again chose to use the bluntest of tools to tackle a problem that does not exist—there was no immediate security need that justified the ban.

Rather, the only common thread between those affected is their religion. While the President is provided wide discretion in administering the immigration laws, the policies and directives must be constitutional. The Administration’s intentional disfavoring of one religion is not constitutional.

¹⁹ *Hawai’i*, 241 F. Supp. 3d at 1132.

²⁰ *See generally IRAP v. Trump*, CV TDC-17-0361, 2017 WL 4674314 (D. Md. Oct. 17, 2017).

²¹ Meet the Press. (Jul. 24, 2016), <https://www.nbcnews.com/meet-the-press/meet-press-july-24-2016-n615706>.

²² Michael Shear, *New Order Indefinitely Bars Almost All Travel From Seven Countries* (Sept. 24, 2017) <https://www.nytimes.com/2017/09/24/us/politics/new-order-bars-almost-all-travel-from-seven-countries.html>.

A. The Muslim Ban unlawfully and injuriously restrains travel among Muslim communities.

The harmful impact of this and previous iterations of the Muslim Ban have been far-reaching—upending the personal, professional, and academic activities of countless Muslim individuals and communities around the world. Amici have been overwhelmed with inquiries from concerned Muslim individuals, both citizens and non-citizens alike, who are justifiably worried about the impact of a seemingly never-ending series of bans. Like the plaintiffs in this case, Amici’s members include Muslims and those from Muslim-majority countries forced to make difficult travel-related decisions on account of the Muslim Ban and facing alienation from loved ones who are banned from visiting them in the United States. In short, Muslims are disproportionately affected despite the government’s assertion of a religiously neutral order.

1. The Muslim Ban has had a chilling effect on personal activities.

As intended, this and previous iterations of the Muslim Ban have prevented peoples from traveling to the United States from designated Muslim-majority countries, often with heartrending effect on families. For instance, a bride’s mother and sister were barred from attending a wedding in Baltimore because the U.S. consulate canceled their scheduled visa interviews after the first executive order was instituted, and refused to reschedule, even after the initial Muslim Ban was

stayed.²³ The bride's sister-in-law (a green card holder) and her infant child were also visiting Iran and were temporarily barred from returning home to the United States when the initial Muslim Ban went into effect.²⁴

Those already in the United States with families from countries affected by the Muslim Ban are unable to see their families due to fear the Muslim Ban will bar their reentry into the United States.²⁵ Couples based in the United States “with immigrant parents say they are hesitant about traveling to their familial homelands to celebrate [weddings]” because they fear that they may not be allowed back into the United States.²⁶

²³ Ed Pilkington, *Trump travel crackdown turns 'wedding celebration into a family separation,'* The Guardian (Apr. 14, 2017), <https://www.theguardian.com/us-news/2017/apr/14/trump-travel-ban-visa-iran-wedding>.

²⁴ *Id.*

²⁵ See, e.g., Christina Capecchi, Mary Chapman, *Where the Immigration Ban Hits Home*, N.Y. Times (Jan. 31, 2017), <http://www.nytimes.com/2017/01/30/us/immigration-ban-locations.html>; Donald McNeil Jr., *Trump's travel ban, aimed at terrorists, has blocked doctors*, N.Y. Times (Feb. 6, 2017), <https://www.nytimes.com/2017/02/06/health/trump-travel-ban-doctors.html>.

²⁶ Jack Healy, Anemona Hartocollis, *Love, interrupted: travel ban separates couples*, N.Y. Times (Feb. 9, 2017), <http://www.nytimes.com/2017/02/08/us/love-interrupted-a-travel-ban-separates-couples.html>.

The Muslim Ban has resulted in familial separation for those in the United States.²⁷ At the popular Instagram account “Banned Grandmas,” people share pictures of their grandmothers with stories that include grandparents missing weddings, college and graduate school graduations, and being unable to receive medical treatment in the United States because of the travel ban.²⁸

Religious activity has also been chilled. For example, the Islamic Society of Baltimore canceled its annual pilgrimage to Mecca “amid fears that Donald Trump’s travel ban on certain Muslim-majority countries might bar reentry even to those who call the United States their home.”²⁹ Travelers embarking on the annual hajj pilgrimage feared that they would not be allowed to return to the United States.³⁰

²⁷ Ashley Hoffman, *Meet the people posting photos of “Banned Grandmas” to protest the travel ban*, TIME Magazine (July 6, 2017), <http://time.com/4845841/travel-ban-banned-grandmas-social-media/>.

²⁸ *Id.*, @BannedGrandmas, Instagram (July 2, 2017), https://www.instagram.com/p/BWEJI3_HxGf/; @BannedGrandmas, Instagram (July 1, 2017), https://www.instagram.com/p/BWAvUJ_neD-/?hl=en&taken-by=bannedgrandmas; @BannedGrandmas, Instagram (June 30, 2017), <https://www.instagram.com/p/BV-cFrin0U4/?taken-by=bannedgrandmas>.

²⁹ Sabrina Siddiqui, *At mosque Obama visited, fear replaces hope as new Trump travel ban looms*, The Guardian (Mar. 14, 2017), <https://www.theguardian.com/us-news/2017/mar/14/mosque-obama-visited-trump-travel-ban-muslim>.

³⁰ Jeff Karoub, Aya Batrawy, *Eid al-Adha 2017: US Muslims fear Donald Trump’s travel ban will prevent them returning from Hajj* (Sept. 1, 2017), <http://www.independent.co.uk/news/world/middle-east/hajj-2017-latest-us-muslims-fear-border-controls-return-islam-mecca-saudi-arabia-pilgrimage-a7923486.html>.

And in the United States this has led to Muslims changing the way they practice their religion, including Muslim women taking off their head scarves and some individuals becoming too fearful to pray in their mosques.³¹

2. The Muslim Ban has interfered with professional activities.

The Proclamation, like all previous versions of the Muslim Ban, has deeply impacted the professional lives of American Muslims and those traveling to the United States to conduct business. Amici report members carrying a United States passport when traveling domestically for fear of having to provide documentation of citizenship.

The Muslim Ban has also directly affected Amici's professional endeavors. For example, the various iterations of the Muslim Ban have led to Amicus MJL ratifying a practice of not allowing its staff to travel with electronics containing client information. MJL was concerned about how the profiling of Muslims at the border or at airports could lead to government searches of its employees' devices containing confidential client information and privileged communications. This burdens MJL's limited time and resources, requiring MJL employees to

³¹ Deepa Bharath, *Muslim groups to march with allies to protest travel ban and call for immigration, criminal justice reform*, The Orange County Registry (Oct. 13, 2017), <http://www.ocregister.com/2017/10/13/muslim-group-to-march-with-allies-to-protest-travel-ban-and-call-for-immigration-criminal-justice-reform/>.

make alternate arrangements and additional purchases to ensure that MJL staff can continue their vital work while traveling.

Further, this ban has greatly impacted highly skilled professionals who are working in the United States. There are over 7,000 physicians working in the U.S. who trained in the six countries that were listed in EO-2, many of whom would also be targeted by the Proclamation.³² Many of these highly skilled professionals are considering leaving the country, and their loss would be devastating for the mostly rural, underserved communities in which they practice.³³ For example, a physician in rural Minnesota found himself questioning why he should come to rural America to help people who think he is a “terrorist.”³⁴

3. The Muslim Ban has also impeded academic activities.

The Muslim Ban has resulted in a sharp drop in foreign student enrollment at universities due to fears of discrimination against Muslim

³² Anna Maria Barry-Jester, *Trump’s new travel ban could affect doctors, especially in the Rust Belt and Appalachia*, FiveThirtyEight (Mar. 6, 2017), <https://fivethirtyeight.com/features/trumps-new-travel-ban-could-affect-doctors-especially-in-the-rust-belt-and-appalachia/>.

³³ *Id.*

³⁴ Stephanie McCrummen, *Love Thy Neighbor? When a Muslim doctor arrived in a rural Midwestern town, “it felt right.” But that feeling began to change after the election of Donald Trump*, Wash. Post (July 1, 2017), https://www.washingtonpost.com/national/in-a-midwestern-town-that-went-for-trump-a-muslim-doctor-tries-to-understand-his-neighbors/2017/07/01/0ada50c4-5c48-11e7-9fc6-c7ef4bc58d13_story.html?utm_term=.3577e33033a1.

students.³⁵ According to the Institute of International Education, the number of newly arriving international students declined an average of 7% in 2017, with 45% of campuses reporting drops in new international enrollment.³⁶

Further, half of the universities responding stated that they noted declines in admission yield for students from the Middle East and North Africa.³⁷ Many international university students, particularly Muslim students, have expressed fears that can be linked to the President's anti-immigration rhetoric in general and to the Muslim Ban in particular.³⁸ Many professionals in higher education believe the Muslim

³⁵ Stephanie Saul, *Fewer Foreign Students Are Coming to U.S., Survey Shows*, N.Y. Times (Nov. 13, 2017), <https://www.nytimes.com/2017/11/13/us/fewer-foreign-students-coming-to-us.html>.

³⁶ *Id.*

³⁷ Ellie Bothwell, *International students less likely to accept offers in Trump's US*, Times Higher Education (July 6, 2017), <https://www.timeshighereducation.com/news/international-students-less-likely-accept-offers-trumps-us>.

³⁸ See Roberta Pennington, *Immigration puts Middle Eastern students off studying in US*, The National (Aug. 16, 2017), <https://www.thenational.ae/uae/immigration-puts-middle-eastern-students-off-studying-in-us-1.620323> (reporting 46% of institutions surveyed were told by Middle Eastern international students that securing and maintaining a visa were their biggest concerns, followed by "feeling welcome in the US [as] almost an equal concern" at 41% of institutions).

bans have caused significant damage to the country's reputation for openness.³⁹

One university official stated that fewer students were enrolling “because of concerns about the Trump administration’s travel ban.”⁴⁰ Muslim students from countries like India, which is not even subject to the Muslim Ban, were still concerned about the ban and said they did not feel welcome and safe in the United States.⁴¹ Further, the rhetoric from the White House has enhanced the perception that the United States is less welcoming and more xenophobic than before.⁴²

Even for foreign students who are already enrolled in an American university, the Muslim Ban has had a measurable impact. Amici have been contacted by students on valid visas who are forgoing trips home because they are concerned that their visas may be canceled, rendering meaningless their years of work toward advanced degrees. One Libyan graduate student reported that he had not seen his family in three years—“If I want to see them, I will not be able to come back

³⁹ Elizabeth Redden, *International Enrollments: From Flat to Way Down*, Insider Higher Ed. (Sept. 5, 2017), <https://www.insidehighered.com/news/2017/09/05/some-universities-are-reporting-declines-international-enrollments-ranging-modest>.

⁴⁰ Saul, *supra*, *Fewer Foreign Students Are Coming to U.S., Survey Shows*.

⁴¹ *Id.*

⁴² Redden, *supra*, *International Enrollments: From Flat to Way Down*.

here, and if I want to stay here, I will not be able to see my family.”⁴³ A Harvard pre-med student of Syrian and Lebanese descent stated that she did not attend her grandmother’s funeral because she feared not being able to return to Harvard.⁴⁴ Further, if the latest travel ban is implemented, her parents would not be able to see her graduate in May.⁴⁵

A recent Harvard graduate said “[t]he messaging, the signaling [of the travel ban] is[:] we want a country with less Muslims ... regardless of your contribution in society, regardless of what you do.”⁴⁶

4. The Muslim Ban impacts nationals beyond those from the designated countries.

Amici have reported that even those with no ties to the designated Muslim-majority countries have expressed concern about or described unpleasant experiences upon returning from travel outside of the country. For example, CAIR-CA was contacted by a U.S. citizen of

⁴³ Elizabeth Redden, *Fragile Status: Two students from Libya consider the executive order banning entry to the U.S. for them and their compatriots*, Inside Higher Ed (Feb. 1, 2017), <https://www.insidehighered.com/news/2017/02/01/two-students-libya-consider-trumps-entry-ban>.

⁴⁴ Cristela Guerra, *Students still uneasy, despite travel-ban ruling*, The Boston Globe (Oct. 18, 2017), <https://www.bostonglobe.com/metro/2017/10/17/college-students-hold-prayer-and-vigil-protest-trump-latest-travel-ban/S1YUqjQBtLQ5xjhUl3UTLK/story.html>.

⁴⁵ *Id.*

⁴⁶ *Id.*

Pakistani origin traveling to China for business. He was frightened that ancestry from a Muslim-majority country could bar or complicate his reentry into the United States.⁴⁷ Additionally, the unpredictable changes to restrictions and designated countries between EO-1, EO-2, and the Proclamation, combined with the immediate implementation of some restrictions, fuel concern that a traveler not subject to present restrictions of the Muslim Ban may be barred entry or reentry based on some future shift.

Those concerns are explicitly justified by Section 4 of the Proclamation, which requires regular reports and authorization recommendations for the President to consider extending the suspensions or limitations to countries not identified in the Proclamation.

B. The Muslim Ban promotes harmful stereotypes about Muslims.

Not only are this current and previous iterations of the Muslim Ban premised on offensive and false stereotypes, but they also further

⁴⁷ See also, Jayashri Srikantiah, et al., *The new travel ban, national security, and immigration*, Stanford Law School Blogs (Feb. 1, 2017), <https://law.stanford.edu/2017/02/01/the-new-travel-ban-national-security-and-immigration/> (“[T]here have been numerous reports of effects on individuals from countries that are not included in the current travel ban, such as Pakistan, possibly as the result of border agents treating the travel ban as a license to discriminate against other groups of travelers who are Muslim or perceived to be Muslim [thus affecting] immigrants beyond refugees and individuals from the seven countries.”).

perpetuate harm against Muslims across the country by broadly typecasting Muslims and those from Muslim-majority countries as threats to national safety. While campaigning, then-candidate Trump repeatedly invoked offensive stereotypes in calling for a ban to prevent Muslims from entering the United States,⁴⁸ a required registry of Muslims in the United States,⁴⁹ and the consideration of shutting down mosques as a purported strategy to fight terrorists.⁵⁰

In candidate Trump's press release calling for "a total and complete shutdown of Muslims entering the United States," he claimed "large segments of the Muslim population" harbored "great hatred towards Americans" and further justified a Muslim Ban by claiming it would protect the country from becoming "the victims of horrendous attacks by people that believe only in Jihad, and have no sense of reason or respect for human life."⁵¹ Candidate Trump further

⁴⁸ *Donald J. Trump Statement on Preventing Muslim Immigration*, Donald J. Trump for President, Inc. (Dec. 7, 2015), <https://www.donaldjtrump.com/press-releases/donald-j.-trump-statement-on-preventing-muslim-immigration>.

⁴⁹ Mona Chalabi, *Support for Trump travel ban in line with anti-Muslim attitudes in America*, *The Guardian* (Feb. 2, 2017), <https://www.theguardian.com/us-news/2017/feb/02/polls-widespread-backing-trump-travel-ban>.

⁵⁰ Alan Rappeport, *Donald Trump repeats call to inspect mosques for signs of terrorism*, *N.Y. Times* (Nov. 16, 2015), <https://www.nytimes.com/politics/first-draft/2015/11/16/donald-trump-repeats-call-to-inspect-mosques-for-signs-of-terrorism/>.

⁵¹ *Donald J. Trump Statement on Preventing Muslim Immigration*, *supra*.

insinuated that a majority of Muslims believe that “murder against non-believers who won’t convert, beheadings and more unthinkable acts that pose great harm to Americans, especially women” should become authorized in the United States.⁵²

It is therefore no surprise that previous versions of the Muslim Ban have been interpreted “by civil rights organizations and in other Muslim communities across the country [] as a ban on Muslims and, more broadly, as a statement that Muslims are not welcome in the United States.”⁵³

All versions of the Muslim Ban rest on, and serve to bolster, harmful and blatantly offensive stereotypes.⁵⁴ Like the stereotypes

⁵² *Id.*

⁵³ Abigail Hauslohner, *Imam: There’s an atmosphere of intolerance that says, ‘That’s okay, that’s acceptable now,’* Wash. Post (Mar. 10, 2017), https://www.washingtonpost.com/national/imam-theres-a-climate-of-hate-that-says-thats-okay-thats-acceptable-now/2017/03/09/127f4fd0-0434-11e7-ad5b-d22680e18d10_story.html?utm_term=.76d9792b8d12; see also Tracey Wilinon, *Iranian Americans join human rights groups in protesting new ban*, L.A. Times (Mar. 6, 2017), <http://www.latimes.com/politics/la-live-updates-9th-circuit-arguments-iranian-americans-others-protest-new-1488825822-htlmstory.html> (“Margaret Huang, executive director of the U.S. branch of Amnesty International, said the [revised] order represented ‘the same hate and fear with new packaging’ and ‘blatant bigotry.’ ‘It will cause extreme fear and uncertainty for thousands of families by, once again, putting anti-Muslim hatred into policy,’ she said, ‘and will do nothing to make the country safer.’”).

⁵⁴ See Khaled Beydoun, *Being a Muslim under Trump is risky. That’s why many are hiding their identity*, The Guardian (Mar. 30, 2017), <https://www.theguardian.com/commentisfree/2017/mar/30/being-muslim-under-trump-risky-many-hiding-identity> (“The stereotypes ...

perpetuated during the President's campaign, the stereotypes advanced by the Muslim Ban depict "Islam [as] an inherently violent and foreign faith, and Muslims [as] a presumptively subversive and inassimilable class of people,"⁵⁵ and further "send a message that Muslims are not welcome in the U.S."⁵⁶ Many Muslims are receiving this message not only from the country's highest office, but from their neighbors as well, putting some in the harmful position of "religious advocacy and outreach" to combat the Muslim Ban's "pernicious effects."⁵⁷ One Minneapolis physician described having to respond to these stereotypes after a patient asked, "Why do you people hate us?" in the weeks following the second Muslim Ban.⁵⁸

Since the initial Muslim Ban's signing, Muslim parents have been burdened with explaining to their children why their faith has been vilified in official U.S. policy. One Baltimore mother described finding her 10-year-old daughter crying when she went to pick her up from school; a friend told her that she "wasn't allowed to be friends with

are deeply rooted, and readily repackaged and redeployed by Trump's 'Muslim Ban' and rhetoric holding that 'Islam hates us.'").

⁵⁵ *Id.*

⁵⁶ Human Rights Watch, *US: Trump's new refugee order renews old harms* (Mar. 6, 2017), <https://www.hrw.org/news/2017/03/06/us-trumps-new-refugee-order-renews-old-harms>.

⁵⁷ *Sarsour*, 245 F. Supp. 3d at 729.

⁵⁸ McNeil, *supra*, *Trump's travel ban, aimed at terrorists, has blocked doctors*.

people who wear those things on their heads.”⁵⁹ “Kids,” a Pennsylvania parent explained, “don’t understand the difference between a green card or a citizen or a visa—but they know that Islam is mentioned all the time, and they want to know why the president is singling out Islam—are we different? Is there something wrong with us?”⁶⁰

In short, “the new ban, and its justification, conveys the same spurious messages: that Muslims are inherently dangerous.”⁶¹ These stereotypes foster the stigmatization of the Muslim communities, increase discrimination, and effectively prevent Muslims and persons from Muslim-majority countries from fully and freely participating in American society.

C. In targeting Muslims, the Muslim Ban has caused psychological—and arguably, physical—harm.

Muslims across the country have also suffered psychological harm and distress as a result of the Muslim Ban. A recent Somali immigrant reported feeling “lonely” following the announcement of the newest Muslim Ban because it destroyed her dream of bringing her parents

⁵⁹ Siddiqui, *supra*, *At mosque Obama visited, fear replaces hope as new Trump travel ban looms*.

⁶⁰ Neil Munshi, *Muslim Americans express anxiety over Trump travel ban*, Financial Times (Feb. 2, 2017), <https://www.ft.com/content/ba9f2d88-e905-11e6-893c-082c54a7f539>.

⁶¹ N.Y. Times Editorial Board, *President Trump’s Muslim Ban Lite*, N.Y. Times (Mar. 7, 2017), <http://www.nytimes.com/2017/03/06/opinion/president-trumps-muslim-ban-lite.html>.

over to unite with her toddler children, and stated: “When my children grow up, they will feel the pain.”⁶² Public health specialists warn that the Muslim Ban could result in mental health harms, as those targeted may “experience social isolation and alienation from their community.”⁶³ From “growing anxiety,”⁶⁴ “fear,”⁶⁵ and feeling “terrified,”⁶⁶ to describing the ban as “traumatizing,”⁶⁷ “increas[ing] stigmatization of Muslim communities,”⁶⁸ and leaving one “feeling

⁶² *Around the World and the U.S., New Travel Ban Draws Anger, Applause and Shrugs*, N.Y. Times (Sept. 25, 2017), <https://www.nytimes.com/2017/09/25/us/travel-ban-reaction.html>.

⁶³ Lawrence Gostin, et al., *Presidential immigration policies endangering health and well-being?* JAMA (Mar. 23, 2017), <http://jamanetwork.com/journals/jama/fullarticle/2613724> (“[L]awful residents such as Muslims could be adversely affected, experiencing social isolation and alienation from their community.”).

⁶⁴ Saima Fariz, *Torrance Islamic community shaken by travel ban*, Easy Reader News (Feb. 25, 2017), <https://www.easyreadernews.com/torrance-islamic-community-shaken-travel-ban/>.

⁶⁵ *Id.*

⁶⁶ Capecchi and Chapman, *supra*, *Where the Immigration Ban Hits Home*.

⁶⁷ *Id.*

⁶⁸ United Nations Human Rights Office of the High Commissioner, *US travel ban: “New policy breaches Washington’s human rights obligations” – UN experts* (Feb. 1, 2017), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21136&LangID=E> (“Such an order is clearly discriminatory based on one’s nationality and leads to increased stigmatization of Muslim communities,” said the UN Special Rapporteurs on migrants, François Crépeau; on racism, Mutuma Ruteere; on human rights and counter-terrorism, Ben Emmerson; on torture, Nils Melzer; and on freedom of religion, Ahmed Shaheed.”).

hunted [], as if you did something wrong, even if you didn't,"⁶⁹ the psychological harms of the Muslim Ban have been concrete and indisputable.

Worse still, the dangerous stereotypes fostered by the Muslim Ban have also led to physical violence against its targets.⁷⁰ In February 2017, a gunman in Kansas shot two Indian men, killing one and injuring the other.⁷¹ Before opening fire, he allegedly used racial slurs indicating that he thought the men were Middle Eastern and shouted, "Get out of my country."⁷² In May 2017, two men were killed and a third was violently injured in Oregon when they tried to intervene in a verbal attack against a Muslim teen and her African American friend.⁷³ At one

⁶⁹ McNeil, *supra*, *Trump's travel ban, aimed at terrorists, has blocked doctors*.

⁷⁰ See Siddiqui, *supra*, *At mosque Obama visited, fear replaces hope as new Trump travel ban looms* ("When you talk about the policies being harmful, that's one thing," said Ahmed Mahmoud, a native of Maryland who attends prayer services at the Islamic Society of Baltimore. "But the discourse that they use to justify and facilitate the creation of [Trump's] policies—that in and of itself has been harmful and you see that manifesting in the increase in hate crimes, targeting especially not just Muslims but anybody who shares the physical traits of Muslims.").

⁷¹ Mark Berman, *He yelled 'Get out of my country,' witnesses say, and then shot 2 men from India, killing one*, Wash. Post (Feb. 24, 2017), https://www.washingtonpost.com/news/morning-mix/wp/2017/02/24/get-out-of-my-country-kansas-reportedly-yelled-before-shooting-2-men-from-india-killing-one/?utm_term=.6c3c7c2a1ef9.

⁷² *Id.*

⁷³ Maxine Bernstein, *MAX attack unfolded quickly: extremist cut three in neck, police say*, The Oregonian/OregonLive (Jun. 2, 2017), http://www.oregonlive.com/portland/index.ssf/2017/05/horrific_scene_unfolds_on_max.html#incart_river_index#incart_big-photo.

point the attacker allegedly stated that “Muslims should die.”⁷⁴ In August 2017, an improvised explosive device was used to bomb a mosque in Minneapolis.⁷⁵ According to CAIR’s figures, the tally of anti-Islamic incidents at mosques during the first six months of 2017 was already greater than the total number of incidents in any year between 2009 and 2015.⁷⁶

Unfortunately, in the midst of increasing anti-Muslim rhetoric, “attacks on conspicuous Muslim expression were hardly confined to one part of the country, or in rural instead of urban centers.”⁷⁷ Many

⁷⁴ *Id.*

⁷⁵ Kurtis Lee, ‘*There is too much anger out there.*’ *Bombing of a Minnesota mosque leaves Muslims concerned*, L.A. Times (Aug. 5, 2017), <http://www.latimes.com/nation/la-na-mosque-bombing-20170805-story.html>.

⁷⁶ Christopher Ingraham, *American mosques—and American Muslims—are being targeted for hate like never before*, Wash. Post. (Aug. 8, 2017), https://www.washingtonpost.com/news/wonk/wp/2017/08/08/american-mosques-and-american-muslims-are-being-targeted-for-hate-like-never-before/?utm_term=.b066b29d76a0.

⁷⁷ Khaled Beydoun, *Acting Muslim*, 53 Harv. C.R.-C.L. L. Rev., (forthcoming 2017) at 39, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2926162; see also Hauslohner, *supra*, *Imam: There’s an atmosphere of intolerance that says, ‘That’s okay, that’s acceptable now’* (“Law enforcement officials in Texas and Florida are investigating fires at three mosques, at least two of which have been ruled arson. Last month in Kansas, a white man shouting ‘Get out of my country’ shot dead an Indian engineer, who he apparently believed to be from the Middle East. Near Seattle this month, a masked assailant wounded a Sikh man—a member of an Indian religious minority who are sometimes confused for Muslims because the men wear turbans—after shouting at him to ‘go back to your country,’ and authorities are investigating it as a hate crime.

American Muslims say they live in an atmosphere in which people feel as though they can voice prejudices or attack Muslims without fear of retribution.⁷⁸

II. Despite inclusion of two non-Muslim-majority countries and attempts to sanitize its text, the clear intent of the Muslim Ban is to disfavor and burden Muslims.

The addition of two non-Muslim majority countries, North Korea and Venezuela, does not disguise the anti-Muslim animus of the Muslim Ban. As the Maryland District Court found, the underlying architecture of the Proclamation is fundamentally the same as EO-1 and EO-2, and in fact doubles down by establishing an indefinite travel ban. The Cato Institute noted that the Muslim Ban is based on executive whim to achieve a pre-ordained result, instead of on any consistent criteria.⁷⁹ The government intentionally made subjective determinations to result in a disproportionate impact on majority-Muslim nations, and the inclusion of North Korea and Venezuela is

Police in South Carolina are investigating the shooting death of an Indian man there the day before.”).

⁷⁸ Mahmoud Mourad, Stephen Kalin, *Muslims at haj are worried about Trump's policies towards them*, Reuters (Sept. 2, 2017), <http://www.reuters.com/article/us-saudi-haj-trump/muslims-at-haj-are-worried-about-trumps-policies-towards-them-idUSKCN1BD0N4?il=0>.

⁷⁹ David Bier, *Travel Ban Is Based on Executive Whim, Not Objective Criteria*, Cato at Liberty (Oct. 9, 2017), <https://www.cato.org/blog/travel-ban-based-executive-whim-not-objective-criteria>.

merely window dressing.⁸⁰ As explained by the lower court, “[T]he Venezuela ban is qualitatively different from the others because it extends only to government officials, and the ban on North Korea will, according to State Department statistics, affect fewer than 100 people, only a fraction of one percent of all those affected by the Proclamation.”⁸¹

Notably, President Trump expressed regret for having to revise the Muslim Ban in light of successful court challenges⁸² and continued to portray Muslim-majority countries subject to the ban as “suspect” and the people as “SO DANGEROUS!”⁸³ In fact, President Trump said the “travel ban” was for “certain DANGEROUS countries, not some

⁸⁰ Kevin Lui, *President Trump Added Three New Countries to His Travel Ban. Here's What to Know About Them*, Time Magazine (Sept. 25, 2017), <http://time.com/4955280/donald-trump-new-travel-ban-what-to-know/> (“The administration is once again making cosmetic adjustments to the Muslim ban in hopes that it will pass the barest possible definition of anything else,” Johnathan Smith, legal director of legal advocacy group Muslim Advocates, said in a statement. “The vast majority of the executive order is completely unchanged.”).

⁸¹ *IRAP*, 2017 WL 4674314 at *10.

⁸² Matt Zapotosky, Kalani Takase, Maria Schetti *Federal judge in Hawaii freezes President Trump's new entry ban*, Wash. Post (Mar. 16, 2017), https://www.washingtonpost.com/local/social-issues/lawyers-face-off-on-trump-travel-ban-in-md-court-wednesday-morning/2017/03/14/b2d24636-090c-11e7-93dc-00f9bdd74ed1_story.html?utm_term=.2b9167813bd3.

⁸³ Donald J. Trump (@realDonaldTrump), Twitter (Feb. 11, 2017, 4:12 AM), <https://twitter.com/realDonaldTrump/status/830389130311921667>.

politically correct term that won't help us protect our people!"⁸⁴ and requested that the Justice Department "seek [a] much tougher version."⁸⁵

These statements highlight the Administration's continued commitment, carried through multiple iterations of the Muslim Ban, to exclude people from the United States on the basis of their religious identity, thereby causing irreparable harm to Muslims across the country. These statements cannot be dismissed as campaign rhetoric. Indeed, these are statements made or endorsed by the President to explain the reasoning behind, and support the continuance of, his Muslim Ban.

III. The focus on Muslims and Muslim-majority countries is divorced from evidence, ill-conceived, and ill-advised.

In stark contrast to the Administration's claims, reports clearly demonstrate that Muslims, especially Muslim immigrants, pose an infinitesimal threat to national security.⁸⁶ For example, an assessment

⁸⁴ Donald J. Trump (@realDonaldTrump), Twitter (June 5, 2017, 6:20 PM), <https://twitter.com/realDonaldTrump/status/871899511525961728>.

⁸⁵ Donald J. Trump (@realDonaldTrump), Twitter (June 5, 2017, 3:37 AM), <https://twitter.com/realDonaldTrump/status/871677472202477568>.

⁸⁶ Muslim immigrants constitute a very small portion of the American population. The Pew Research Center estimates that there were about 3.3 million Muslims living in the United States in 2015—approximately 1% of the total population. Approximately 10% of all immigrants are Muslim, and approximately half of all Muslims in the United States

of the initial executive order by the Department of Homeland Security reported that the targeted Muslim-majority countries were “rarely implicated” in U.S.-based terrorism and that citizenship (including citizenship from a Muslim-majority country) is an unreliable indication of a terrorist threat.⁸⁷

All told, the newest version of the Muslim Ban, like previous attempts, does nothing to make the United States safer.⁸⁸ Instead, the Proclamation traffics in prejudicial stereotypes, contributes to a climate of distrust toward the Muslim community, and has further stoked fears

immigrated in the past 25 years. Thus, recent immigrants make up approximately 0.5% of the total population. Pew Research Center, *A new estimate of the U.S. Muslim population* (Jan. 6, 2016), <http://www.pewresearch.org/fact-tank/2016/01/06/a-new-estimate-of-the-u-s-muslim-population/>; Pew Research Center, *The religious affiliation of U.S. immigrants: majority Christian, rising share of other faiths* (May 17, 2013), <http://www.pewforum.org/2013/05/17/the-religious-affiliation-of-us-immigrants/#muslim>.

⁸⁷ Matt Zapotosky, David Nakamura, Abigail Hauslohner, *Revised executive order bans travelers from six Muslim-majority countries from getting new visas*, Wash. Post (Mar. 6, 2017), https://www.washingtonpost.com/world/national-security/new-executive-order-bans-travelers-from-six-muslim-majority-countries-applying-for-visas/2017/03/06/3012a42a-0277-11e7-ad5b-d22680e18d10_story.html?utm_term=.f4a41594a2f8 (“A Department of Homeland Security report assessing the terrorist threat posed by people from the seven countries covered by the president’s original travel ban had cast doubt on the necessity of the executive order, concluding that citizenship was an ‘unreliable’ threat indicator and that people from the affected countries had rarely been implicated in U.S.-based terrorism.”).

⁸⁸ Alejandro Beutel, *Data on Post-9/11 Terrorism in the United States*, Muslim Public Affairs Council (June 2012), <http://www.mpac.org/assets/docs/publications/MPAC-Post-911-Terrorism-Data.pdf>.

in the Muslim community that “the Trump Administration would scrutinize their religious identity with an unprecedented degree of suspicion and heavy-handed policy.”⁸⁹

CONCLUSION

This Court should affirm.

November 17, 2017

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⁸⁹ Beydoun, *Acting Muslim*, *supra* at n. 48.

CERTIFICATE OF COMPLIANCE

This amicus brief complies with this Court's 6,500-word length limitation because it contains **6,153** words, excluding exempted parts of the brief. This brief complies with this Court's typeface and typestyle requirements because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Century Schoolbook font.

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I certify that on November 17, 2017 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users, or if they are not, by serving a true and correct copy at the addresses listed online.

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