

Nos. 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]

**CONSENT MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF IN
SUPPORT OF PLAINTIFFS-APPELLEES' RESPONSE BRIEF**

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No. 17-2231(L)

On Cross-Appeal from the United States District Court for the District of
Maryland, Southern Division
(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 MCCAMMENT, 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

INTRODUCTION

Non-party international law scholars and nongovernmental organizations (“Proposed *Amici*”) hereby move for leave to file an *amicus curiae* brief in support of Plaintiffs-Appellees’ Response Brief (Dkt. 89). Proposed *Amici* specialize in areas of international law involving the rights of aliens and refugees, and the obligations of the United States under various treaties and international covenants to which it has acceded, jurisprudence which the movants respectfully submit could assist the Court in assessing the legality of the Presidential Proclamation Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats of September 24, 2017 (“Proclamation”), apparently superseding Executive Order 13780 of March 6, 2017 (“EO”), which replaces the now-rescinded Executive Order dated January 27, 2017. The *amicus* brief that Proposed *Amici* request be considered is attached as Exhibit A.

IDENTITY AND INTEREST OF PROPOSED *AMICI CURIAE*

The eighty-five international law scholars include practitioners and tenured faculty members at law schools in the United States who have devoted extensive efforts to the study and practice of international law. *See* Appendix A to Proposed Amicus Brief (listing all *Amici*). They research, teach, speak, and publish widely on international law issues, and they routinely advise and practice in matters

addressing such issues before American courts. The nongovernmental organizations join the international law scholars as Proposed *Amici*. The nongovernmental organizations collectively are experts in civil rights law, immigration law, and international human rights law.

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

ARGUMENT

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

This Court has “broad discretion” to appoint *amici curiae*. *Skokomish Indian Tribe v. Goldmark*, No. C13-5071JLR, 2013 WL 5720053, at *1 (W.D. Wash. Oct. 21, 2013) (Robart, J.). Submission of an *amicus* brief is valuable to the Court because it “suggests the interpretation and status of the law, gives information concerning it, and advises the Court in order that justice may be done” *Cnty. Ass’n for Restoration of Env’t (CARE) v. DeRuyter Bros. Dairy*, 54 F. Supp. 2d 974, 975 (E.D. Wash. 1999). District courts normally allow *amicus* briefs when the *amicus* has “unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.” *Id.* *Amicus* participation is particularly appropriate where, as here, the ramifications of the decision extend beyond the parties directly involved. *Sierra Club v. BNSF Ry.*

Co., No. C13-967-JCC, 2016 U.S. Dist. LEXIS 124269, at *5 (W.D. Wash. Sept. 13, 2016).

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

Proposed *Amici* possess unique information and perspectives that can help this Court understand the impacts the Proclamation will have on the United States' international relations and its ability to honor its international law obligations—ramifications that extend beyond the individuals directly involved in this case.

The United States is party to several treaties and international covenants that address issues that are immediately and urgently raised by the Proclamation, including for example, provisions in the Proclamation making distinctions based on national origin. Proposed *Amici* respectfully submit that the accompanying *amicus* brief, by describing the rights and obligations established by those instruments, may assist the Court in assessing the legality of the Proclamation under both international and U.S. domestic law. Under the U.S. Constitution, of course, “all Treaties made . . . under the Authority of the United States, shall be the supreme Law of the Land.” U.S. Const., Art.VI, cl. 2. Moreover, even if the international covenants identified in the *amicus* brief do not independently or directly compel the Court to invalidate the Proclamation, they should inform the Court's interpretation of governing statutes based on well-established canons of statutory construction. The attached *amicus* brief may also illuminate the ways in

which the international community will assess the Proclamation in light of customary international law, which will in turn affect how other nations view and deal with the United States across a wide range of issues, including cooperation on national security matters.

C. The *Amicus* Brief is Timely, Filed in Support of Plaintiffs-Appellees' Response Brief

This Court issued an Order on October 31, 2017, *see* Dkt. 52, requiring that any amicus curiae brief in support of Plaintiffs-Appellees be filed by November 17, 2017. The instant motion and accompanying brief are filed on November 17, 2017. Accordingly, this submission by Proposed *Amici* is timely.

D. Plaintiffs-Appellees and Defendants-Appellants Consent to the Filing of the *Amicus* Brief

Proposed *Amici* have obtained Plaintiffs-Appellees' and Defendants-Appellants' consent to the filing of the attached *amicus* brief. Proposed *Amici* therefore submit this motion for leave to file their *amicus* brief in satisfaction of the Federal Rules of Appellate Procedure. Fed. R. Civ. P. 29(a).

CONCLUSION

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

RESPECTFULLY SUBMITTED this 17th day of November, 2017

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CERTIFICATE OF SERVICE

I certify that on November 17, 2017 the forgoing document was served on all parties or their counsel of record through the CM/ECF system if they are registers users or, if they are not, by serving a true and correct copy by First Class U.S. Mail at the address listed below:

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Respectfully Submitted,

s/ Amanda R. Callais
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Dated:

November 17, 2017