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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAI‘I**

STATE OF HAWAI‘I, and ISMAIL  
ELSHIKH,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as  
President of the United States; U.S.  
DEPARTMENT OF HOMELAND  
SECURITY; JOHN F. KELLY, in his official  
capacity as Secretary of Homeland Security;  
U.S. DEPARTMENT OF STATE; REX  
TILLERSON, in his official capacity as  
Secretary of State; and the UNITED STATES  
OF AMERICA,

Defendants.

Civil No. 17-00050-DKW-KSC

BRIEF AMICUS CURIAE OF  
ILLINOIS AND OTHER  
STATES

**BRIEF AMICUS CURIAE OF THE STATES OF ILLINOIS, CALIFORNIA,  
CONNECTICUT, DELAWARE, IOWA, MARYLAND, MASSACHUSETTS,  
NEW MEXICO, NEW YORK, OREGON, RHODE ISLAND, VERMONT,  
AND VIRGINIA, AND THE DISTRICT OF COLUMBIA IN SUPPORT OF  
PLAINTIFFS’ MOTION FOR TEMPORARY RESTRAINING ORDER**

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## INTERESTS OF *AMICI*

The States of Illinois, California, Connecticut, Delaware, Iowa, Maryland, Massachusetts, New Mexico, Oregon, Rhode Island, Vermont, Virginia, \_\_\_\_\_, \_\_\_\_\_, and the District of Columbia submit this brief as *amici curiae* in support of the State of Hawaii’s request for a temporary restraining order enjoining the enforcement of the revised Executive Order issued by President Donald J. Trump on March 6, 2017 (Am. Compl. Ex. 1) (“revised Order”). The initial version of the Executive Order barred all nationals of seven majority-Muslim countries from entering the United States for at least 90 days, halted the entire U.S. Refugee Admissions Program for at least 120 days, and indefinitely barred all Syrian refugees. *See* Exec. Order No. 13,769, 82 Fed. Reg. 8,977-79 (Jan. 27, 2017) (Am. Compl. Ex. 2) (“initial Order”). In litigation brought by the States of Washington and Minnesota, the District Court for the Western District of Washington entered a nationwide temporary restraining order barring enforcement of the initial Order, Am. Compl. ¶ 71, and the Ninth Circuit denied the federal government’s request for a stay of that judgment, *Washington v. Trump*, 847 F.3d 1151 (9th Cir. 2017) (*per curiam*). The Court of Appeals held that the State plaintiffs had standing to challenge the initial Order, *id.* at 1158-61, and that the federal government failed to demonstrate a likelihood of success on the merits of the plaintiffs’ due process claim, *id.* at 1164-68. Notably, the Court rejected the federal government’s

assertion that the initial Order was unreviewable, reasoning that the federal government's position was "contrary to the fundamental structure of our constitutional democracy." *Id.* at 1161.

Although the revised Order is narrower in some respects than the initial Order, it retains the two essential pillars of that Order: a sweeping ban on entry to the United States by nationals of several predominantly Muslim countries and a complete suspension of the refugee program. If allowed to go into effect, the revised Order will immediately harm the *amici* States' proprietary, quasi-sovereign, and sovereign interests. It will inhibit the free exchange of information, ideas, and talent between the six designated countries and the States, including at the States' many educational institutions; harm the States' life sciences, technology, health care, finance, and tourism industries, as well as innumerable other small and large businesses throughout the States; inflict economic damage on the States themselves through both increased costs and immediately diminished tax revenues; and hinder the States from effectuating the policies of religious tolerance and nondiscrimination enshrined in our laws and state constitutions.

While the *amici* States differ in many ways, all of us welcome and benefit from immigration, tourism, and international student and business travel, and all of us will face concrete and immediate harms flowing directly from the revised Order if it is not enjoined. The harms detailed in this brief exemplify, on a nationwide

scale, the injuries that form the basis for state standing to challenge the revised Order in this and other pending litigation,<sup>1</sup> as well as demonstrating the widespread and irreparable harms caused by the Order that necessitate nationwide injunctive relief.

## ARGUMENT

“States are not normal litigants for the purposes of invoking federal jurisdiction.” *Massachusetts v. E.P.A.*, 549 U.S. 497, 518 (2007). On the contrary, the Supreme Court has held that States are “entitled to special solicitude in our standing analysis.” *Id.* at 520. Like any litigant, States may sue in federal court to protect their proprietary interests, *Davis v. E.P.A.*, 348 F.3d 772, 778 (9th Cir. 2003), and, in appropriate circumstances, may bring actions to vindicate the rights of third parties such as students and instructors at state universities, *Washington*, 847 F.3d at 1160-61. In addition, States may invoke federal jurisdiction to protect

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<sup>1</sup> See *Washington v. Trump*, No. C17-0141JLR (W.D. Wash.). The District Court in *Washington* is currently considering whether the nationwide injunction previously entered in that case against the initial Order continues to bar the 90-day ban on entry of persons from the six Muslim-majority countries and the 120-day suspension of the U.S. Refugee Admissions Program. Emergency Motion to Enforce Preliminary Injunction, *Washington v. Trump*, No. C17-0141JLR, Dkt. 119 (W.D. Wash. Mar. 13, 2017). Because the District Court in that case has not yet enforced the injunction against the defendants on that basis, see Order Regarding Defendants’ Notice of the Filing of a New Executive Order and Plaintiffs’ Response, *Washington v. Trump*, No. C17-0141JLR, Dkt. 117 (W.D. Wash. Mar. 10, 2017), a pressing need for nationwide interim relief remains, and this Court should grant Hawaii’s request for a temporary restraining order against the revised Order.

“quasi-sovereign interests,” such as the welfare of their residents and the interest in seeing that their “residents are not excluded from the benefits that are to flow from participation in the federal system,” *Alfred L. Snapp & Son, Inc. v. Puerto Rico ex. rel. Barez*, 458 U.S. 592, 607-08 (1982), as well as sovereign interests such as the power to enforce their own laws and state constitutions, *id.* at 601.

State standing to challenge the revised Order is amply demonstrated by the substantial and immediate injuries the Order will inflict on the *amici* States. As a result of the Order, our States will suffer concrete proprietary injuries akin to those inflicted on individuals, families, businesses and private institutions across the country, as well as injuries to our quasi-sovereign and sovereign interests in protecting our residents and enforcing our laws and constitutions. Moreover, the breadth of the injuries immediately threatened by the revised Order—to our residents, public and private institutions, businesses, state treasuries, and economies as a whole—as well as the interconnectedness of our commercial and transportation networks, counsel strongly in favor of a nationwide temporary restraining order to return the country to the status quo that prevailed before the initial Order went into effect.

#### **I. The Revised Order Will Inflict Concrete Proprietary Injuries On The States.**

The revised Order has already caused concrete, irreparable harms to the *amici* States and their state institutions. Nationals from the six designated



countries are (or plan to become) faculty and students at our public universities, doctors at our medical institutions, employees at our businesses, and, frequently, guests who contribute to our economies when they come here to visit their families or for purposes of tourism. Although some of these people already have visas, the revised Order nonetheless harms them and the State: they may face delays in renewal when their visas expire that could jeopardize their employment; they may not be able to receive visits from family and friends while living in our States; and many may decide not to stay here because of hardships arising from the revised Order, a departure that will harm them and the State in equal measure. Others who plan to come here to study, teach, or provide health care or other services, but who have not yet secured a visa, may not be able to come to our States at all, causing further injury and disruption to state institutions and economies. The injuries to *amici* States detailed below are representative of the harms being suffered by States throughout the country.<sup>2</sup>

**A. The revised Order will harm state colleges and universities and their faculty and students.**

The revised Order will irreparably injure state colleges and universities, along with the faculty and students from around the world on whom they rely.

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<sup>2</sup> Although the specific harms and other facts described do not apply uniformly to every State—for example, Delaware does not have a state medical school—all of the *amici* States support the legal arguments put forward in this brief.

*Impact on faculty.* By barring entry for nationals of the six designated countries, the revised Order has already created disruption, uncertainty, and fear among current and potential faculty members and substantially hampered the ability of state universities to attract and retain scholars from abroad. The harm is deep and widespread. For example, the University of Massachusetts (“UMass”) employs approximately 130 employees from the affected countries who are neither lawful permanent residents nor U.S. citizens, including Professors, Researchers, Visiting Faculty, and Post-Doctoral Fellows across a wide variety of academic departments. To the extent these employees hold expired or single-entry visas, they now stand to face unprecedented delays in the renewal of their visas, precluding them from international travel—whether for personal reasons or to fulfill professional obligations—during the implementation of the entry ban. The revised Order’s 90-day entry ban also coincides with the peak period of the hiring season, during which UMass is interviewing top candidates and extending offers to faculty for the 2017-2018 year. UMass may be unable to hire top-ranked potential faculty, lecturers, or visiting scholars from the affected countries because the revised Order may preclude them from reaching the United States to fulfill their teaching obligations.<sup>3</sup> Baruch College, part of the City University of New York

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<sup>3</sup> Ex. C (Decl. of Deirdre Heatwole), ¶¶ 4-10.

(“CUNY”), which hires a significant number of foreign faculty members, already reports that potential faculty are voicing concerns about travel restrictions that will interfere with family obligations such as care of elderly parents, attending important family events, and participation in cultural holidays. The CUNY Graduate Center is currently negotiating with an international senior research scholar who has expressed serious concerns about moving to the United States at this time.<sup>4</sup>

Foreign-born faculty often have specialized expertise that cannot easily be replaced. Some of these scholars were slated to join our state universities for the Spring 2017 term. Our colleges and universities have already formed task forces and are making contingency plans to fill the unexpected gaps in their faculty rosters caused by the exclusion of scholars from the six designated countries, but there is no guarantee that they will succeed in doing so. These efforts have already required a considerable expenditure of scarce resources.<sup>5</sup>

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<sup>4</sup> Ex. H (Decl. of V. Rabinowitz), ¶ 21.

<sup>5</sup> See, e.g., Decl. of Michael F. Collins, MD, ¶¶ 4-5, *Louhghalam v. Trump*, No. 17-cv-10154-NMG (D. Mass. Feb. 2, 2017), ECF No. 52-2; Decl. of Marcellette G. Williams, Ph. D., ¶¶ 8, 10, *Louhghalam v. Trump*, No. 17-cv-10154-NMG (D. Mass. Feb. 2, 2017), ECF No. 52-9. (describing investment of resources in faculty hiring at the UMass more broadly, as well as the additional costs and burdens caused by the initial Order).

Likewise, the research laboratories at our state universities depend heavily on the work of foreign postdoctoral researchers to complete critical projects and studies, many of which are grant-funded. For instance, more than 200 graduate students, post-doctoral fellows, and faculty from the six designated countries staff the University of Maryland's scientific laboratories.<sup>6</sup> A shortfall of such researchers puts public institutions in peril of losing grant funding. The *amici* States are aware of specific affected researchers who have accepted offers of employment but are still awaiting visas abroad, their prospects of timely assuming their positions now deeply uncertain.<sup>7</sup>

*Impact on students.* The revised Order has already disrupted the academic plans of existing students and the admissions process for new students, imperiling tuition dollars for state institutions in the process. Our state colleges and universities enroll thousands of students from the designated countries. The University of California (UC), which has ten campuses, has numerous undergraduate students, graduate students, and medical residents who are nationals

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<sup>6</sup> Ex. F (Decl. of Ross D. Lewin), ¶ 8.

<sup>7</sup> See, e.g., Decl. of Michael F. Collins, MD, *supra* n.5, ¶ 9 (describing importance of work done by post-doctoral students, as well as two cases of individuals from the affected countries who had accepted employment offers from the University of Massachusetts Medical School); Decl. of Marcellette G. Williams, Ph. D., *supra* n.5, ¶ 8 (noting that the UMass spent over \$650 million on research in 2016 and describing risks to research funding).

of Iran, Libya, Somalia, Sudan, Syria, and Yemen. There are 436 students on student visas from these countries at UC's six largest campuses (Los Angeles, Berkeley, San Diego, Irvine, Davis, Santa Barbara). The California State University System has approximately 250 students on visas from these countries.<sup>8</sup> The University of Illinois has approximately 280 students from the six designated countries, with about 50 more admitted for Fall 2017.<sup>9</sup> Many students from the designated countries find themselves unable to make study and travel plans. For instance, the revised Order likely will delay the return to the University of Maryland of a student who has applied for renewal of his expired student visa, a process which typically requires a 90-day waiting period. If this student's visa is not issued prior to the effective date of the revised Order, the 90-day ban will increase his wait time to return to the United States to 180 days, thus impeding his academic progress and the University research in which he is engaged.<sup>10</sup> The revised Order's travel ban also will likely prevent family members from the designated countries from traveling to the United States for milestone events such

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<sup>8</sup> Information provided to the California Attorney General's Office by the Institutional Research and Academic Planning (IRAP) division of the University of California and by the Assistant Vice Chancellor of International and Off-Campus programs at the California State University System.

<sup>9</sup> These figures were provided to the office of the Illinois Attorney General by the general counsel of the University of Illinois.

<sup>10</sup> Ex. F (Decl. of Ross D. Lewin), ¶ 5.

as graduations, unless they are able to obtain the case-by-case waivers that “may, in the consular officer’s or the [Customs and Border Patrol] official’s discretion,” be granted under the open-ended standards set forth in the Order. Am. Compl. Ex. 1, § 3(c).

Even before going into effect, the revised Order has already deterred many students from the designated countries from beginning or continuing their studies at our state universities. For instance, roughly half of the students newly admitted to the Ph. D. program at the University of Illinois at Chicago’s civil engineering department—ten students out of roughly 20—are from Iran and thus will be unable to enroll because of the entry ban. Some of the department’s projects may need to be cancelled, and reportedly, several of the Iranian students have chosen to pursue their studies in Canada instead.<sup>11</sup> Portland State University in Oregon admitted thirteen international students from the designated countries for the Spring 2017 term; their tuition revenue will be lost if they are unable to travel to Oregon.<sup>12</sup> A number of students from the affected countries are currently enrolled in or have been accepted to Vermont’s public and private colleges and universities. The

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<sup>11</sup> Miles Bryan, *10 Prospective UIC Students Ineligible To Enroll Due To Travel Ban*, WBEZ News (Mar. 6, 2017), <https://www.wbez.org/shows/wbez-news/10-prospective-uic-students-ineligible-to-enroll-due-to-travel-ban/d29224a4-fb11-4184-a8a9-f03fb45a3be1>.

<sup>12</sup> Ex. B (Decl. of Margaret Everett), ¶ 16.

Vermont Attorney General was recently contacted by an Iranian graduate student, currently studying in Canada, who has been accepted and was planning to attend a doctoral program at the University of Vermont but is now unable to enter the United States because of the revised Order.<sup>13</sup>

The competitive harms caused by the revised Order are already being felt in the student recruitment process as well. Our university officials have learned that graduate schools in Canada, Australia, New Zealand, and elsewhere are aggressively recruiting international applicants with the assertion that their countries are more welcoming to international students than the U.S.

Consequently, the Graduate School at the City University of New York (“CUNY”) expects the yield on its outstanding offers to applicants—who must respond by April 15, 2017—to decline, as newly admitted students from the affected countries are concerned about their ability to travel to the United States to begin their studies in the Fall.<sup>14</sup> The Rochester Institute of Technology (“RIT”), a state institution in New York, has already experienced a 10% decrease in applicants from the Middle East and various Muslim majority countries for the 2017-18 academic year and

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<sup>13</sup> The information in these two sentences was provided to the Vermont Attorney General’s Office by personnel from the University of Vermont and the Vermont State Colleges and an affected student.

<sup>14</sup> Ex. H (Decl. of V. Rabinowitz), ¶ 12.

anticipates further declines in the future.<sup>15</sup> Close to 400 individuals from the six designated countries have submitted applications for Fall 2017 admission to the University of Maryland at College Park (“UMCP”), more than 90% of whom are from Iran. If just half of these students are admitted but do not enroll because of the revised Order, UMCP will incur a revenue loss of approximately \$1.6 million for academic year 2017-18. Moreover, the State of Maryland will lose these students’ long-term economic contributions, as most of these students are in high-demand science, technology, engineering and mathematics disciplines.<sup>16</sup>

The initial and revised Orders not only interfere with the matriculation of students from the six designated countries but also severely harm those who are already enrolled at our state institutions (as well as jeopardizing their continued enrollment) by deterring them from travelling for research, conferences, study abroad, and family visits.<sup>17</sup> For example, in New York, RIT has 32 students from the designated countries on its main campus; it has advised students, faculty and staff from those countries not to leave the United States for fear that they will not be able to return.<sup>18</sup>

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<sup>15</sup> Ex. K (Decl. of L. Warren), ¶ 24.

<sup>16</sup> Ex. F (Decl. of Ross D. Lewin), ¶ 10.

<sup>17</sup> *See, e.g.*, Decl. of Marcellette G. Williams, Ph. D., *supra* n.5, ¶¶ 7, 9.

<sup>18</sup> Ex. K (Decl. of L. Warren), ¶¶ 22-23.



**B. The revised Order will disrupt staffing and research at state medical institutions.**

Public medical institutions employ people from the designated countries as medical residents, fully trained physicians, research faculty, and postdoctoral researchers. Public medical institutions in the *amici* States have extended offers of employment that have already been accepted by individuals from the designated countries. But these would-be employees are now waiting for visas to be approved and are uncertain if and when they will be able to start work.<sup>19</sup> Because our patients must be cared for, our facilities must immediately adapt to these changed circumstances, and spend precious time and resources to do so. The risks posed by understaffing medical facilities are of course among the gravest irreparable harms that could befall our residents.

Additional disruption has occurred in the context of medical residency staffing, endangering our public health and placing our communities at risk. State medical schools participate in a “match” program that assigns residents to university hospital programs. These medical residents perform crucial services, including providing medical care to underserved populations. The process has already begun, with candidate applications and interviews and medical schools’ rankings of future residents already completed. The computerized “match” is

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<sup>19</sup> See, e.g., Decl. of Michael F. Collins, MD, *supra* n.5, ¶ 9.

scheduled for March 17 (one day after the revised Order is scheduled to go into effect), and matched residents are expected to begin work on July 1. Many programs regularly match medical residents from the six designated countries. Indeed, prior to the revised Order, institutions like the University of Massachusetts Medical School had already interviewed specific applicants from the designated countries. These programs now must forgo ranking applicants from these countries or risk having insufficient medical residents to meet staffing needs if their preferred choices are precluded from obtaining a visa or banned from entry even if they have one.<sup>20</sup> Similarly, in New York, the uncertainty created by the initial and revised Orders has had “a profound chilling effect on international medical students applying to New York hospitals’ residency programs and [has been] a major disincentive for hospitals to select foreign nationals for their residency programs.”<sup>21</sup>

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<sup>20</sup> If a program “matches” with an applicant who is then unable to come into the country, the program is left with an open slot. The only way to fill the slot is to seek a waiver from the National Resident Matching Program. Such a waiver puts a medical school in the difficult position of trying to hire a resident from the pool of applicants who did not match anywhere else, and the school may be unable to find a resident at all. These problems are described in detail in Decl. of Michael F. Collins, MD, *supra* n.5, ¶¶ 6-8.

<sup>21</sup> Ex. I (Decl. of Eric Scherzer), ¶ 15.

**C. The revised Order will reduce States' tax revenues and harm our economies more broadly.**

*Lost tax revenues.* Even before its implementation, the revised Order has caused the States to lose tax revenues—economic damage that cannot be undone. Every foreign student, tourist, and business visitor to the *amici* States contributes to our respective economies. They do so not only by direct payments, including tuition, room, and board payments to state schools, but also through the tax receipts that their presence generates. The revised Order will block thousands of travelers—potential consumers all—from entering the *amici* States, thereby halting their tax contributions as well. The broader chilling effect on tourism will be much larger; indeed, preliminary reports already suggest a significant downturn in international tourists traveling to the United States. For example, for the first time in seven years, New York City officials are expecting a drop in the number of foreign visitors, a decrease that they attribute to the President's anti-immigrant actions and rhetoric.<sup>22</sup> The city now expects to draw 300,000 fewer foreigners this year than in 2016, a decline that will cost New York City businesses at least \$600 million in sales.<sup>23</sup> Similarly, the Los Angeles Tourism and Convention Board has

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<sup>22</sup> Tourism Economics, *The Economic Impact of Tourism in New York: 2015 Calendar Year*, [https://cdn.esd.ny.gov/Reports/NYS\\_Tourism\\_Impact\\_2015.pdf](https://cdn.esd.ny.gov/Reports/NYS_Tourism_Impact_2015.pdf).

<sup>23</sup> Patrick McGeehan, *New York Expects Fewer Foreign Tourists, Saying Trump Is to Blame*, New York Times (Feb. 28, 2017), [https://www.nytimes.com/2017/02/28/nyregion/new-york-foreign-tourists-trump-policies.html?\\_r=0](https://www.nytimes.com/2017/02/28/nyregion/new-york-foreign-tourists-trump-policies.html?_r=0).

estimated that it might see 300,000 fewer international visitors in 2017, a three to four percent decrease from expectations, at least in part as a result of the initial and revised Orders. This decrease would amount to an estimated loss of \$220 million, which jeopardizes the employment of the hundreds of thousands of Los Angeles residents whose jobs rely on tourism.<sup>24</sup>

Absent preliminary relief during the pendency of challenges to the revised Order, the *amici* States will lose weeks or even months of otherwise available tax revenues. The States will never recover these revenues, even if those challenges ultimately prevail. The dollars at issue are immense, even just with respect to the contribution of foreign students. California universities and colleges host the largest number of students from the six designated countries, with 1,286 student visa-holders from Iran alone in 2015.<sup>25</sup> Students from the six designated countries who were enrolled in New York State institutions contributed \$28.8 million to the

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<sup>24</sup> Information provided to the California Attorney General's Office by the Vice President, Global Communications, Los Angeles Tourism & Convention Board; *see also* "Trump's Travel Ban Could Hurt LA's Tourism Industry," KPCC (March 7, 2017), <http://www.scpr.org/programs/take-two/2017/03/07/55468/trump-s-travel-ban-could-hurt-la-s-tourism-industr/>.

<sup>25</sup> *See* Teresa Watanabe & Rosanna Xia, *Trump Order Banning Entry from Seven Muslim-Majority Countries Roils California Campuses*, L.A. Times (Jan. 30, 2017), <http://www.latimes.com/local/california/la-me-trump-universities-20170130-story.html>.

State's economy, including direct payments for tuition, fees, and living expenses.<sup>26</sup> And these amounts do not include indirect economic benefits, such as the contributions of international students and scholars to innovation in academic and medical research. Our States, of course, are not the only ones affected. The six countries singled out by the revised Order account for more than 14,000 students who attended institutions of higher education nationally during the 2014-15 academic year.<sup>27</sup> During that period, Iran alone sent 11,338 students to colleges and universities across the United States, yielding an estimated economic impact of \$323 million.<sup>28</sup>

*Broader economic impacts.* The initial and revised Orders have also already inflicted harms on the *amici* States' economies more broadly, even if those harms will not be fully quantifiable for some time. The health of our economies depends in large part on remaining internationally competitive and attractive destinations for companies in the life sciences, technology, finance, health care, and other industries, as well as for tourists and entrepreneurs. In Illinois alone, for example, 22.1% of entrepreneurs are foreign-born; immigrant- and refugee-owned

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<sup>26</sup> This figure is based on information provided by the Institute of International Education to the office of the New York Attorney General on March 10, 2017.

<sup>27</sup> See Institute of International Education, *Open Doors Data, International Students: All Places of Origin*, <http://bit.ly/1ObpkM2>.

<sup>28</sup> See Institute of International Education, *Open Doors Data Fact Sheets: Iran*, <http://bit.ly/2lmPhjg>.

businesses employ more than 281,000 people; and immigrants represent 37.7% of the State's software developers.<sup>29</sup> A recent study found that if even half of the more than 3,900 foreign-born graduates of Illinois universities in so-called STEM fields (science, technology, engineering, and mathematics) stayed in the United States after graduation, it could result in the creation of more than 5,100 new jobs for U.S.-born workers by 2021.<sup>30</sup> A survey by the Urban Institute examined 2006 data and found that foreign-born residents accounted for 27% of Maryland's scientists, 21% of its health care practitioners, and 19% of its mathematicians and computer specialists.<sup>31</sup> Similarly, in the State of Washington, immigrant and refugee-owned businesses employ 140,000 people.<sup>32</sup> In addition, Washington's technology industry relies heavily on the H-1B visa program, with Redmond-headquartered Microsoft alone employing nearly 5,000 people through that program.<sup>33</sup> Other Washington companies, including Amazon, Expedia, and

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<sup>29</sup> See *The Contributions of New Americans in Illinois*, New American Economy, 2, 10 (Aug. 2016), <http://bit.ly/2kRVaro>.

<sup>30</sup> *Id.* at 13.

<sup>31</sup> Randy Capps & Karina Fortuny, *The Integration of Immigrants in Maryland's Growing Economy*, The Urban Institute, <http://www.urban.org/sites/default/files/publication/31521/411624-Integration-of-Immigrants-in-Maryland-s-Growing-Economy.PDF>.

<sup>32</sup> See Mot. for Temporary Restraining Order at 22, *Washington v. Trump*, No. 2:17-cv-00141-JLR (W.D. Wash. Jan. 30, 2017), ECF No. 3.

<sup>33</sup> *Id.*

Starbucks, likewise employ thousands of H-1B visa holders.<sup>34</sup> Loss of these highly skilled workers puts companies across the United States at a disadvantage compared to their global competitors.<sup>35</sup>

The revised Order suggests that some people might be able to receive discretionary waivers from the 90-day travel ban on a “case-by-case basis.” Am. Compl. Ex. 1, § 3(c). That possibility does not alleviate the injury that the revised Order inflicts on the States. The revised Order does not explain the process for applying for a waiver or the timeframe for receiving one or set concrete standards governing the issuance of waivers, and the ultimate decision regarding whether to issue a waiver appears to be entirely discretionary. The waiver provision is of little assistance to state institutions, such as universities and public hospitals, who need certainty when filling classes and vacant positions.

## **II. The Revised Order Will Harm The States’ Quasi-Sovereign And Sovereign Interests In Protecting Our Residents And Enforcing Our Laws.**

The harms inflicted on the States by the revised Order extend far beyond the proprietary interests described above. The Order also harms the States’ ability to protect “the well-being of [our] populace,” *Alfred L. Snapp & Son*, 458 U.S. at

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<sup>34</sup> *Id.*

<sup>35</sup> See Br. for Technology Companies and Other Businesses as *Amici Curiae* In Support of Appellees at 8-20, *Washington v. Trump*, No. 17-35105, Dkt. 19-2 (9th Cir. Feb. 5, 2017).

602, including via our antidiscrimination laws, and to ensure that our “residents are not excluded from the benefits that are to flow from participation in the federal system,” *id.* at 608.

*Decreased ability to enforce state antidiscrimination laws.* Most fundamentally, the revised Order prevents States from honoring the commitments to openness, tolerance, and diversity that lie at the heart of our state constitutions and laws. The *amici* States have exercised their sovereign prerogative to adopt constitutional provisions and enact laws that protect their citizens from discrimination. Our residents and businesses—and, indeed, many of the *amici* States ourselves—are prohibited by those state enactments from taking national origin and religion into account in determining to whom they can extend employment and other opportunities.<sup>36</sup> The revised Order stands in stark opposition to these core expressions of the States’ sovereignty. To be sure, under the Supremacy Clause these state provisions and laws must give way if they conflict with valid federal law. But the revised Order is unlawful and

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<sup>36</sup> See, e.g., Cal. Const. art. I, §§ 4, 7-8, 31; Cal. Gov’t Code §§ 11135-11137, 12900 *et seq.*; Cal. Civ. Code § 51, subd. (b); Conn. Gen. Stat. § 46a-60; Ill. Const. art. I, § 3; Ill. Const. art. I, § 17; 740 ILCS 23/5 (a)(1); 775 ILCS 5/1-102 (A); 775 ILCS 5/10-104 (A)(1); 5 Maine Rev. Stat. Ann. §§ 784, 4551-4634 (2013); Mass. Gen. L. ch. 151B, §§ 1, 4; Mass. Gen. L. ch. 93, § 102; Md. Code Ann., State Gov’t § 20-606; Or. Rev. Stat. § 659A.006(1); R.I. Gen. Laws § 28-5-7(1)(i); 9 Vt. Stat. Ann. §§ 4500-07; 21 Vt. Stat. Ann. § 495.



unconstitutional, and the States' interest in enforcing their state constitutions and laws gives them a distinct basis to so argue in federal court.

More specifically, the revised Order inflicts a distinctive harm on the States by violating the Establishment Clause of the First Amendment. The historical background of the revised Order demonstrates that it, no less than the initial Order, has the purpose and effect of conveying the message that Islam is a disfavored religion. When a party "alleges a violation of the Establishment Clause, this is sufficient, without more, to satisfy the irreparable harm prong for purposes of the preliminary injunction determination." *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 303 (D.C. Cir. 2006); *see also* *ACLU of Ill. v. City of St. Charles*, 794 F.2d 265, 275 (7th Cir. 1986); *cf. ACLU of Ky. v. McCreary Cty*, 354 F.3d 438, 445 (6th Cir. 2003), *aff'd*, 545 U.S. 844 (2005) (presuming irreparable harm where plaintiffs were likely to succeed on merits of Establishment Clause claim); *Parents' Ass'n of P.S. 16 v. Quinones*, 803 F.2d 1235, 1242 (2d Cir. 1986) (same). Moreover, States are uniquely positioned to vindicate Establishment Clause claims against the federal government in view of that Clause's unique history. Although the Clause indisputably protects individual rights against both state and federal infringement, several commentators have suggested that one of the Clause's original purposes was to prevent the federal government from

interfering with the States as to core matters of religion.<sup>37</sup> The revised Order does just that by requiring the *amici* States to tolerate a federal policy disfavoring Islam, in violation of their own profound commitments to religious pluralism. In view of all the harms detailed above, States are appropriate parties to make good on those commitments by seeking to enjoin such a policy.

*Contribution to an environment of fear and mistrust.* In addition, the initial and revised Orders have contributed to an environment of fear and insecurity among immigrant and minority populations that not only puts additional strain on state and local law enforcement resources but also runs counter to the *amici* States' deeply held commitment to inclusiveness and equal treatment. In the Chicago area alone, for example, the Council on American-Islamic Relations has counted 175 hate-related incidents in 2017 so far, as compared to 400 hate crimes reported in all of 2016.<sup>38</sup>

*Harm to refugee resettlement efforts.* The revised Order also hinders the efforts of the *amici* States to resettle and assist refugees. Between 2012 and 2015,

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<sup>37</sup> See, e.g., 2 J. Story, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES § 1873 (5th ed. 1891); see also A. Amar, THE BILL OF RIGHTS 32–42 (1998); *id.* at 246–257.

<sup>38</sup> Marwa Eltagouri, *Hate Crime Rising, Report Activists at Illinois Attorney General's Summit*, Chicago Tribune (Feb. 24, 2007), <http://www.chicagotribune.com/news/local/breaking/ct-madigan-immigration-hate-crimes-summit-20170223-story.html>.

California accepted 23,393 refugees, including 5,668 from Iran, 225 from Syria, and 119 from Sudan.<sup>39</sup> Between July 1, 2015 and June 30, 2016, California resettled 1,454 Syrian refugees, more than any other state.<sup>40</sup> According to the Maryland Office for Refugees and Asylees, during the five-year period ending September 30, 2016, 1,121 refugees from the six designated countries were resettled in Maryland, including 404 refugees from Syria.<sup>41</sup> In Chicago alone, approximately 795 refugees from four of the six designated countries were resettled in 2016.<sup>42</sup> Vermont is also home to a vibrant refugee population. Since 1989, approximately 1,000 refugees from the six designated countries have resettled in Vermont pursuant to the federal refugee resettlement program, which is administered in Vermont by the state Agency of Human Services.<sup>43</sup> In one public school district in the Burlington metropolitan area, roughly ten percent of the

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<sup>39</sup> Office of Refugee Resettlement, Refugee Arrival Data, (November 24, 2015) <https://www.acf.hhs.gov/orr/resource/refugee-arrival-data>.

<sup>40</sup> “California Leads the Nation in Resettlement of Syrian Refugees,” CBS SF Bay Area (Sept. 29, 2016), <http://sanfrancisco.cbslocal.com/2016/09/19/in-the-u-s-most-syrian-refugees-are-being-resettled-in-california/>.

<sup>41</sup> Maryland Office for Refugees and Asylees, “Refugees and SIV’s Resettled in Maryland by Nationality, FY 2012 – FY 2016, <https://tinyurl.com/hec8j8y>.

<sup>42</sup> U.S. Department of State, Bureau of Population, Refugees and Migration, Office of Admissions – Refugee Processing Center, <http://ireports.wrapsnet.org/>.

<sup>43</sup> This information was provided to the Vermont Attorney General’s Office by personnel from the U.S. Committee for Refugees and Immigrants: Vermont Refugee Resettlement Program; *see also* <http://humanservices.vermont.gov/departments/office-of-the-secretary/state-refugee-coordinator>.

student body—nearly 100 children, mostly refugees—are from Somalia or Yemen.<sup>44</sup>

By suspending the U.S. refugee program, the revised Order strands thousands of refugees—who have already been extensively vetted—in crisis zones, in many cases keeping them separate from family members who are already in the United States. In addition, even if the suspension is lifted rather than extended after 120 days, the revised Order indefinitely excludes tens of thousands of otherwise eligible refugees by reducing the cap on admissible refugees for Fiscal Year 2017 by more than half, from 110,000 to 50,000. Am. Compl. Ex. 1, § 6(b). Resettlement agencies such as the International Rescue Committee of New York, whose funding is allocated on a per-arrival basis under a contract with the State Department, face a reduction in resources.<sup>45</sup> Similarly, the revised Order will cause refugee resettlement organizations in Oregon to lose federal funding, which will force them to lay off staff and reduce operations, resulting in fewer services for refugees.<sup>46</sup> World Relief, a Baltimore-based non-profit organization that helps resettle refugees, has announced that it will lay off more than 140 staff and close

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<sup>44</sup> This information was provided to the Vermont Attorney General’s Office by personnel from the Winooski School District.

<sup>45</sup> Ex. J (Decl. of J. Sime), ¶¶ 11-12.

<sup>46</sup> *See generally* Ex. A (Decl. of Richard Birkel); Ex. D (Decl. of Howard N. Kenyon); Ex. A (Decl. of Richard Birkel); Ex. E (Decl. of Lee Po Cha).

five offices across the country as a result of the provision in the initial Order, virtually identical to § 6(b) of the revised Order, allowing fewer refugees to enter the United States.<sup>47</sup>

*Harm to residents seeking medical care.* The revised Order will harm residents seeking medical care in our States, particularly those in underserved communities. According to the Immigrant Doctors Project, at least 7,000 doctors practicing in the United States attended medical school in one of the six designated countries.<sup>48</sup> In New York, “safety-net hospitals”—which include all of New York City Health and Hospitals, public acute care hospitals, as well as most of the hospitals in Brooklyn, Queens, and the Bronx—rely heavily on foreign national resident physicians.<sup>49</sup> For example, of the 91 resident physicians in the Department of Internal Medicine at Interfaith Medical Center, a safety-net hospital in Brooklyn, 43 are on H-1B visas, 12 are on J-1 visas, 20 are legal permanent

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<sup>47</sup> Colin Campbell, *Baltimore-based World Relief to lay off 140, close Glen Burnie office after Trump’s refugee order*, Baltimore Sun (Feb. 16, 2017), <http://www.baltimoresun.com/news/maryland/bs-md-world-relief-layoffs-20170215-story.html>.

<sup>48</sup> See <https://immigrantdoctors.org/>; see also 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/>.

<sup>49</sup> Ex. I (Decl. of Eric Scherzer), ¶¶ 10-12.

residents, and only 16 are U.S. citizens.<sup>50</sup> The medical staff includes Sudanese resident physicians who are concerned about leaving the country for fear of not being allowed to return, and whose family members may not be able to visit them here because of the revised Order.<sup>51</sup> And in Oregon, one physician from a country affected by the revised Order who had been willing to work in the town of Florence—a community facing a physician shortage—has indicated through his counsel that because of the Order he will be unlikely to obtain a visa.<sup>52</sup> The revised Order thus directly harms the welfare of our most vulnerable populations.

### **III. A Nationwide Temporary Restraining Order Is Necessary To Provide Complete Relief.**

A nationwide injunction is necessary to return the country to the status quo that obtained prior to the issuance of the initial Order, provide complete relief to the plaintiffs, and prevent the irreparable harms described above. The “scope of injunctive relief is dictated by the extent of the violation established.” *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979). The Ninth Circuit confronted a similar issue when it rejected the government’s request to limit the geographic scope of a nationwide injunction regarding the initial Order. See *Washington*, 847 F.3d at 1166-67. The Ninth Circuit highlighted the reasoning of the Fifth Circuit, also in

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<sup>50</sup> *Id.* ¶ 12.

<sup>51</sup> *Id.*

<sup>52</sup> Ex. G (Decl. of Marc Overbeck), ¶ 4.

an immigration case, that a limited injunction resulting in “a fragmented immigration policy would run afoul of the constitutional and statutory requirement for uniform immigration law and policy.” *Id.* at 1166-67 (citing *Texas v. United States*, 809 F.3d 134, 187-88 (5th Cir. 2015), *aff’d by an equally divided Court*, 136 S. Ct. 2271 (2016)). As the Ninth Circuit further observed, the interconnections among this country’s economic, transportation, and educational systems frustrate any attempt to provide effective interim relief on less than a nationwide basis. 847 F.3d at 1167. A temporary restraining order limited to the geographical boundaries of a particular State would not sufficiently protect either firms and institutions that conduct business in multiple states or noncitizens who must arrive through entry points elsewhere. Only a nationwide injunction will provide complete relief.

## CONCLUSION

For the foregoing reasons, the Court should grant the plaintiffs' motion and enter a temporary restraining order enjoining the operation of the revised Order on a nationwide basis.

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