

The Honorable James L. Roberts

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOHN DOES, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as
President of the United States, et al.,

Defendants.

No. 2:17-CV-0178-JLR

**BRIEF OF AMICI CURIAE
MUSLIM ADVOCATES AND
THE RODERICK & SOLANGE
MACARTHUR JUSTICE
CENTER IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

**(related to Case No. 2:17-CV-
1707-JLR)**

JEWISH FAMILY SERVICE OF SEATTLE, et
al.,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as
President of the United States, et al.,

Defendants.

No. 2:17-CV-01707-JLR

BRIEF OF AMICI CURIAE MUSLIM ADVOCATES AND
THE MACARTHUR JUSTICE CENTER - Case No. 2:17-CV-01707-JLR
4825-5264-3672v.2 0050033-001543

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Civil Local Rule 7.1, *amici curiae* Muslim Advocates and the Roderick and Solange MacArthur Justice Center state that they are not-for-profit organizations with no parents, subsidiaries, or affiliates, and that no publicly-held corporation owns 10 percent or more of their stock.

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15
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18
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21
22
--

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
--

CORPORATE DISCLOSURE STATEMENT II

TABLE OF AUTHORITIES IV

INTEREST OF AMICI CURIAE 1

INTRODUCTION 1

ARGUMENT 3

I. PREVENTING THE ENTRY OF MUSLIM REFUGEES IS AN INTEGRAL PART OF THE PRESIDENT’S LONGSTANDING AND EXPRESS PLEDGE TO BAN MUSLIMS. 3

 A. The President Pledged To Favor Christians And Made Affirmative Efforts To Vilify Muslims. 3

 B. The President Has Expressly Stated His Intent To Curtail The Rights Of Muslims, Including By Restricting Their Entry To The United States. 7

 C. The President Has Reaffirmed His Discriminatory Intent On Numerous Occasions Since Taking Office..... 9

II. THE PREDECESSOR ORDERS THAT PRECEDED AND GAVE RISE TO REFUGEE BAN 3.0 WERE MOTIVATED ON THEIR FACE BY ANTI-MUSLIM ANIMUS..... 11

 A. The Refugee Ban Provision Of EO-1 Included A Priority Designed To Benefit Christian Refugees In Muslim-Majority Nations At The Expense Of Muslim Refugees. 11

 B. Both EO-1 And EO-2 Refer To “Honor Killings”—A Term Used Commonly And Almost Exclusively To Denigrate Muslims..... 12

III. REFUGEE BAN 3.0 IS A DIRECT CONTINUATION OF EO-1 AND EO-2 AND IS MOTIVATED BY THE SAME ANTI-MUSLIM ANIMUS. 155

CONCLUSION..... 16

TABLE OF AUTHORITIES

Page(s)

Regulations

8 C.F.R. § 207.7(d) 13

82 F.R. 8977 § 5(b) (Jan. 27, 2017) 11

Executive Order No. 13,769, 82 Fed. Reg. 8,977 (Feb. 1, 2017) 2

Executive Order No. 13,780, 82 Fed. Reg. 13,209 (Mar. 9, 2017) 2

Executive Order No. 13,815 1

Other Authorities

Aisha Gill, *Honor Killings and the Quest for Justice in Black and Minority Ethnic Communities in the United Kingdom*, 20 *Crim. Just. Pol’y Rev.* 475, 480 (2009) 13

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Sherene Razack, *CASTING OUT: THE EVICTION OF MUSLIMS FROM WESTERN LAW AND POLITICS* 128 (2008) 13

1 Tali Mendelberg, THE RACE CARD: CAMPAIGN STRATEGY, IMPLICIT MESSAGING,
AND THE NORM OF EQUALITY 94-95 (2001).....14

2
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4
5
6
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22 BRIEF OF AMICI CURIAE MUSLIM ADVOCATES AND
THE MACARTHUR JUSTICE CENTER - Case No. 2:17-CV-01707-JLR - v
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1 **INTEREST OF AMICI CURIAE**

2 The issue in this case is whether the Trump Administration’s recent changes to the U.S.
3 Refugee Admissions Program (“USRAP”) are premised on impermissible and unlawful anti-
4 Muslim animus. Amici Muslim Advocates and the MacArthur Justice Center (“MJC”) submit
5 this brief in support of Plaintiffs’ Motion for a Preliminary Injunction.

6 Muslim Advocates, a national legal advocacy and educational organization formed in
7 2005, works on the frontlines of civil rights to guarantee freedom and justice for Americans of
8 all faiths. The issues at stake in this case directly relate to Muslim Advocates’ work fighting
9 institutional discrimination against the American Muslim community, and its extensive work
10 assisting individuals who are impacted by the travel and refugee bans.

11 The MacArthur Justice Center is a not-for-profit organization founded by the family of
12 J. Roderick MacArthur to advocate for human rights and social justice through litigation. MJC
13 has represented clients facing myriad human rights and civil rights injustices, including issues
14 of discrimination, the unlawful detention of foreign nationals, and the rights of marginalized
15 groups in the American justice system. MJC has an interest in the rule of law and the
16 independence of the judiciary in determining whether government officials have acted with
17 discriminatory animus against an unpopular minority group.

18 **INTRODUCTION**

19 The executive order at issue in this litigation (“Refugee Ban 3.0” or the “Ban”)¹ is
20 motivated by unconstitutional animus against Muslims seeking to enter the United States as
21 refugees. This case, like the travel and refugee ban cases that preceded it, presents the rare
22 instance where a state actor explicitly announces his discriminatory motive for an action. The
23 President has not only made clear his intent to use the Office of the President and Executive
24 Branch federal agencies to discriminate against Muslims and to favor Christians, but in
25 repeated statements before and after taking office, he has specifically indicated his animus

26 _____
27 ¹ The Refugee Ban 3.0 is Executive Order No. 13,815, and its accompanying memorandum, with the addendum,
are attached as exhibits A and B to the Declaration of David Burman in Support of Plaintiffs’ Motion for
Preliminary Injunction (“Burman Decl.”), respectively.

1 toward Muslims, and also his specific intent to prevent Muslims from entering the United
2 States in part by implementing a ban on refugee admissions.

3 Within a week of taking office, the President initiated the first of several unilateral
4 executive orders intended to implement his campaign promise of banning Muslims from
5 entering the country. Far from ever retracting his discriminatory intent, his Administration has
6 embraced it: Asked recently whether “the President think[s] that Muslims are a threat to the
7 United States?” his Deputy Press Secretary explained, “*the President has addressed these*
8 *issues with the travel order that he issued earlier this year and the companion proclamation.*”²
9 And the President himself has repeatedly derided his own Department of Justice for drafting
10 orders that are too “politically correct”—i.e., that fail to expressly acknowledge the religious
11 animus that he has unabashedly communicated.

12 In fact, the predecessor executive orders that called for the interagency review
13 culminating in Refugee Ban 3.0, “EO-1”³ and “EO-2,”⁴ contained anti-Muslim and pro-
14 Christian bias on their face, referring to “honor killings” (a term with a long history as a
15 Muslim slur) and prioritizing the applications of Christian refugees.

16 Understood in context as a fulfillment of the President’s stated intentions and previous
17 travel bans, Refugee Ban 3.0 is plainly the President’s implementation of his long-promised
18 discriminatory ban. The effect of the Ban would be to suspend refugee applications from the
19 countries that send the vast majority of Muslim refugees to the United States and shift priority
20 to countries with refugees that are mostly Christian. Even more tellingly, the Ban’s suspension
21 of applications from children and spouses of refugees who have already been resettled to the
22 United States would cut off family reunion for a record number of Muslim refugees. The Ban
23 thus threatens to actualize the President’s signature pledge to prevent Muslims from entering
24 the country, and this Court should not allow it to move forward.

25 _____
26 ² The White House, *Press Gaggle by Principal Deputy Press Secretary Raj Shah en route St. Louis, MO* (Nov. 29,
2017) (emphasis added), <https://www.whitehouse.gov/the-press-office/2017/11/29/press-gaggle-principal-deputy-press-secretary-raj-shah-en-route-st-louis> (last visited Dec. 4, 2017).

27 ³ Exec. Order No. 13,769, 82 Fed. Reg. 8,977 (Feb. 1, 2017).

⁴ Exec. Order No. 13,780, 82 Fed. Reg. 13,209 (Mar. 9, 2017).

ARGUMENT

I. **PREVENTING THE ENTRY OF MUSLIM REFUGEES IS AN INTEGRAL PART OF THE PRESIDENT’S LONGSTANDING AND EXPRESS PLEDGE TO BAN MUSLIMS.**

The President’s latest plan to ban refugees is a realization of his repeated pledge to use the Office of the President and Executive Branch federal agencies to both discriminate against people who choose to practice Islam and to favor those who choose to adhere to Christianity—a discriminatory intent he has reaffirmed both before and after taking office. The ban arises in the context of the President’s broader attacks on Islam as a “problem” and his affirmative dissemination of false propaganda to vilify people of the Muslim faith (including Muslim migrants in particular).

A. **The President Pledged To Favor Christians And Made Affirmative Efforts To Vilify Muslims.**

As Plaintiffs note in their complaint and motion for preliminary injunction, within a week of taking office, the President issued EO-1, the first predecessor to Refugee Ban 3.0; that same day, he also appeared on television to make clear that the order was adopted for the purpose of prioritizing Christians.⁵ Expressly drawing a comparison between Muslim and Christian refugees, he explained that he viewed Christians as a “priority” and he was “going to help” them.⁶ Days later, he again singled out his intent to help “Christians in the Middle-East.”⁷ On the day the President issued Refugee Ban 3.0—which, as set out below, effectively converts the temporary ban on refugees into an indefinite one that disproportionately affects Muslim refugees—his Vice President made similar remarks. In a speech to “In Defense of Christians”

⁵ (Cmpl. ¶¶ 3, 67; Pl. Motion at 4-5.)

⁶ David Brody, *Brody File Exclusive: President Trump Says Persecuted Christians Will Be Given Priority As Refugees*, CBN News (Jan. 27, 2017), <http://www1.cbn.com/thebrodyfile/archive/2017/01/27/brody-file-exclusive-president-trump-says-persecuted-christians-will-be-given-priority-as-refugees> (last visited Dec. 4, 2017).

⁷ Donald J. Trump, Twitter (Jan. 29, 2017), <https://twitter.com/realDonaldTrump/status/825721153142521858> (last visited Dec. 4, 2017).

1 and in reference specifically to Christian refugees in the Middle East, the Vice President stated:
2 “Help is on the way.”⁸

3 Refugee Ban 3.0 must be understood in the context of the President’s longstanding
4 vilification of Muslims. The President has for years referred to Muslims in the United States as
5 a “problem.” As early as April 2011, Mr. Trump expressed his view that there “absolutely” was
6 “a Muslim problem” in the United States.⁹ He claimed that the Koran itself was the source of
7 the problem, claiming that it “teaches some very negative vibe” and “tremendous hatred.”¹⁰ He
8 has repeatedly echoed this view that there is a “massive Muslim problem” in the U.S. and
9 abroad.¹¹ At an event in 2015, for instance, the President agreed with an audience member’s
10 comment that “We have a problem in this country. It’s called Muslims.”¹² And several times
11 throughout 2015 and 2016, he declined to accept that a distinction could be drawn between
12 radical Islam and Islam itself. Asked to clarify: “Is it really a Muslim problem, or is it a radical
13 Islamist problem?” He responded: “Maybe it’s a Muslim problem, maybe it’s not”¹³ and
14 claimed “[i]t’s very hard to define.”¹⁴ Mr. Trump has repeatedly expressed the view that “Islam
15 hates us” and that Muslims have “tremendous hatred” and “unbelievable hatred.”¹⁵ Given the
16 opportunity to clarify whether his statement that “Islam hates us” referred to all 1.6 billion

17 ⁸ The White House, *Remarks by the Vice President at In Defense of Christians Solidarity Dinner* (Oct. 25, 2017),
18 [https://www.whitehouse.gov/the-press-office/2017/10/25/remarks-vice-president-defense-christians-solidarity-](https://www.whitehouse.gov/the-press-office/2017/10/25/remarks-vice-president-defense-christians-solidarity-dinner)
19 [dinner](https://www.whitehouse.gov/the-press-office/2017/10/25/remarks-vice-president-defense-christians-solidarity-dinner) (last visited Dec. 4, 2017). While the order did not appear in the Federal Register until later, it had been
20 announced by the time of Pence’s remarks.

21 ⁹ David Brody, *Brody File Exclusive: Donald Trump Says Something in Koran Teaches a ‘Very Negative Vibe,’*
22 CBN News (Apr. 12, 2011), [http://www1.cbn.com/thebrodyfile/archive/2011/04/12/brody-file-exclusive-donald-](http://www1.cbn.com/thebrodyfile/archive/2011/04/12/brody-file-exclusive-donald-trump-says-something-in-koran-teaches)
23 [trump-says-something-in-koran-teaches](http://www1.cbn.com/thebrodyfile/archive/2011/04/12/brody-file-exclusive-donald-trump-says-something-in-koran-teaches) (last visited Dec. 4, 2017).

24 ¹⁰ *Id.*

25 ¹¹ Donald J. Trump, Twitter (Dec. 10, 2015), [https://twitter.com/realDonaldTrump/](https://twitter.com/realDonaldTrump/status/674934005725331456)
26 [status/674934005725331456](https://twitter.com/realDonaldTrump/status/674934005725331456) (last visited Dec. 4, 2017); Donald J. Trump, Twitter (Dec. 10, 2015),
27 <https://twitter.com/realDonaldTrump/status/674936832010887168> (last visited Dec. 4, 2017); Donald J. Trump,
Twitter (Dec. 10, 2015), <https://twitter.com/realDonaldTrump/status/675123192864899072> (last visited Dec. 4,
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28 ¹² Jonathan Merritt, *Trump’s Proposals Could Backfire on Christians*, *The Atlantic* (Nov. 24, 2015),
29 <https://www.theatlantic.com/politics/archive/2015/11/donald-trump-muslims-christians/417255/> (last visited Dec.
30 4, 2017); Theodore Schleifer, *Trump doesn’t challenge anti-Muslim questioner at event*, *CNN* (Sept. 18, 2015),
31 <http://www.cnn.com/2015/09/17/politics/donald-trump-obama-muslim-new-hampshire/> (last visited Dec. 4, 2017).

32 ¹³ CNN Interview of Donald Trump, YouTube (Feb. 4, 2016), <https://www.youtube.com/watch?v=uW9UIMqJtro>
33 (minutes 18:42 to 18:46) (last visited Dec. 4, 2017).

34 ¹⁴ *Id.*

35 ¹⁵ Theodore Schleifer, *Donald Trump: ‘I think Islam hates us’*, *CNN* (Mar. 10, 2016),
36 <http://www.cnn.com/2016/03/09/politics/donald-trump-islam-hates-us/> (last visited Dec. 4, 2017).

1 Muslims in the world during one of the presidential debates, he responded: “I mean a lot of
2 them. I mean a lot of them. . . . [T]here’s tremendous hatred. And I will stick with exactly what
3 I said.”¹⁶

4 The President’s attack on Muslims has also included the affirmative dissemination of
5 group slander. Most recently, on November 29, 2017, the President promoted three unverified
6 videos published by a British anti-Muslim group depicting violent acts by purportedly Muslim
7 people—at least one of whom it turns out, is not Muslim—with titles intended to provoke
8 anti-Muslim bias. The videos were entitled “Muslim migrant beats up Dutch boy on
9 crutches!,”¹⁷ “Muslim Destroys a Statue of Virgin Mary!,”¹⁸ and “Islamist mob pushes teenage
10 boy off roof and beats him to death!”¹⁹

11 The President’s dissemination of these videos in manifest disregard of their effect or
12 their veracity is but the latest in an unbroken string of anti-Muslim statements and acts while in
13 office. On August 17, 2017, the President promoted his false story that terrorism could be
14 eradicated if suspected terrorists were subject to mass execution with bullets dripped in pigs’
15 blood. Given that this substance viewed as highly offensive by practicing Muslims, the
16 President was implying that “terrorist” is synonymous with “Muslim”: “Study what General
17 Pershing of the United States did to terrorists when caught. There was no more Radical Islamic
18 Terror for 35 years!”²⁰ The statement referred to the following false story, which he recounted
19 on numerous occasions while campaigning:

20 So General Pershing, . . . they catch 50 terrorists in the Philippines . . . And as
21 you know, swine, pig, . . . a big problem for them, big problem. He took two
22 pigs, they chopped them open. Took the bullets that were going to go and shoot
these men. Took the bullets, the 50 bullets, dropped them in the pigs, swished

23 ¹⁶ *Transcript of Republican Debate in Miami*, CNN (Mar. 15, 2016),

24 <http://www.cnn.com/2016/03/10/politics/republican-debate-transcript-full-text/> (last visited Dec. 4, 2017).

25 ¹⁷ Jayda Fransen, Twitter (Nov. 28, 2017), <https://twitter.com/JaydaBF/status/935609305574903812> (last visited
Dec. 4, 2017).

26 ¹⁸ Jayda Fransen, Twitter (Nov. 29, 2017), <https://twitter.com/JaydaBF/status/935805606447013888> (last visited
Dec. 4, 2017).

27 ¹⁹ Jayda Fransen, Twitter (Nov. 29, 2017), <https://twitter.com/JaydaBF/status/935775552102981633> (last visited
Dec. 4, 2017).

²⁰ Donald J. Trump, Twitter (Aug. 17, 2017), [https://twitter.com/realDonaldTrump/
status/898254409511129088](https://twitter.com/realDonaldTrump/status/898254409511129088) (last visited Dec. 4, 2017).

1 them around, so there was blood all over those bullets . . . They put the bullets
 2 into the rifles. And they shot 49 men . . . I'm just saying, if we're going to win,
 3 we're going to win or let's not play the game and let's not be a country any
 4 more. They put the bullets in the rifles and they shot 49 of the 50 men. Dead.
 5 Boom. So it was a pig-infested bullet in each one. . . . For 28 years, there was no
 6 terrorism. . . . We have to do what we have to do. We have to clean it out.²¹

7 The President has also spread the false story that thousands of Muslims cheered on
 8 rooftops during the September 11, 2011 attacks, claiming: "I watched when the World Trade
 9 Center came tumbling down. And I watched in Jersey City, New Jersey, where thousands and
 10 thousands of people were cheering as that building was coming down. Thousands of people
 11 were cheering."²² In the face of numerous authorities and articles debunking his claim,²³ the
 12 President repeated the lie on several occasions.²⁴

13 Significantly, the President's affirmative efforts to vilify Muslims have often focused
 14 specifically on Muslim refugees by equating them with terrorists. He has thus equated being a
 15 Syrian refugee with being a terrorist: "[W]e cannot allow people to come into the country who
 16 want to destroy us, we cannot do it. We can't allow the Syrians. We can't allow the migration
 17 of the Syrians into the country."²⁵ Mr. Trump has also stoked fear of Islam on the basis that his

18 ²¹ *FULL Speech: Donald Trump rally in Dayton, OH 3-12-2016*, YouTube (Mar. 12, 2016),
 19 <https://www.youtube.com/watch?v=-9KOAfh4GCw> (minutes 43:30 to 43:48) (last visited Dec. 4, 2017); *see also*
 20 Lydia Wheeler, *Trump resurrects story of Muslims shot with pig's blood-dipped bullets*, The Hill (Mar. 12, 2016),
 21 <http://thehill.com/blogs/blog-briefing-room/news-campaigns/272780-trump-resurrects-story-of-muslims-shot-with-pigs> (last visited Dec. 4, 2017); David Mikkelson, *Pershing the Thought*, Snopes (Apr. 28, 2016),
 22 <http://www.snopes.com/rumors/pershing.asp> (debunking Mr. Trump's story about General Pershing) (last visited Dec. 4, 2017).

23 ²² Glenn Kessler, *Trump's outrageous claim that 'thousands' of New Jersey Muslims celebrated the 9/11 attacks*,
 24 Wash. Post (Nov. 22, 2015), <https://www.washingtonpost.com/news/fact-checker/wp/2015/11/22/donald-trumps-outrageous-claim-that-thousands-of-new-jersey-muslims-celebrated-the-911-attacks/> (last visited Dec. 4, 2017).

25 ²³ *See, e.g.*, Lauren Carroll, *Fact Checking Trump's claim that thousands in New Jersey cheered when World Trade Center tumbled*, Politifact (Nov. 22, 2015), <http://www.politifact.com/truth-o-meter/statements/2015/nov/22/donaldtrump/fact-checking-trumps-claim-thousands-new-jersey-ch/> (last visited Dec. 4, 2017).

26 ²⁴ Kessler, *supra*, note 22; AP Archive, *Trump Defends 9/11 Celebrations with Article* (Nov. 24, 2015),
 27 <http://www.aparchive.com/metadata/US-OH-Trump-CR-/cadcfce1334d2a1fea065ba383ef6f8e> (last visited Dec. 4, 2017); Donald J. Trump, Twitter (Nov. 25, 2015),
 28 <https://twitter.com/realDonaldTrump/status/669682774673137665> (last visited Dec. 4, 2017).

²⁵ *FULL Speech: Donald Trump rally in Dayton, OH 3-12-2016*, YouTube (Mar. 12, 2016),
 29 <https://www.youtube.com/watch?v=-9KOAfh4GCw> (minutes 42:45 to 46:45) (last visited Dec. 4, 2017).

1 election opponent would “let the Muslims flow in”²⁶ and stoked fear that “[r]efugees are trying
2 to take over our children” by telling them “how wonderful Islam is.”²⁷

3 **B. The President Has Expressly Stated His Intent To Curtail The Rights Of
4 Muslims, Including By Restricting Their Entry To The United States.**

5 The President has also made clear his express intent to curtail the rights of Muslims in
6 various ways—including most notably to restrict their entry into the United States and to do so
7 in part by banning refugees.

8 Indeed, the signature promise of his campaign has always been that he would restrict
9 the entry of Muslims into the United States. He has further prioritized a ban on prohibiting the
10 entry of Muslim refugees. From the early days of his Presidential campaign, Mr. Trump
11 promised that, if elected, he would “be looking at” getting “rid of” Muslims.²⁸ On December 7,
12 2015, Mr. Trump announced on his website: “Donald J. Trump is calling for a total and
13 complete shutdown of Muslims entering the United States.”²⁹ The same day that Mr. Trump
14 issued this announcement, he also disseminated it to his millions of Twitter followers with the
15 title “Statement on Preventing Muslim Immigration”³⁰ and, further equating Muslims with
16 hatred and terror, he tweeted, “Just put out a very important policy statement on the
17 extraordinary influx of hatred & danger coming into our country.”³¹ At a rally the same day,
18 Mr. Trump claimed numerous times that “[w]e have no choice” but to implement “a total and
19 complete shutdown of Muslims.”³² Asked how border officials would ideally implement his

20 ²⁶ Donald J. Trump, Twitter (Mar. 22, 2016), <https://twitter.com/realDonaldTrump/status/712473816614772736> (last visited Dec. 4, 2017).

21 ²⁷ *Donald Trump Remarks in Manchester, New Hampshire*, C-SPAN (Jun. 13, 2016), <https://www.c-span.org/video/?410976-1/donald-trump-delivers-remarks-national-security-threats> (minutes 20:05 to 20:30) (last
22 visited Dec. 4, 2017).

²⁸ See Schleifer, *supra* note 12.

23 ²⁹ Press Release, Trump-Pence, *Donald J. Trump Statement on Preventing Muslim Immigration* (Dec. 7, 2015),
[https://web.archive.org/web/20170508054010/
https://www.donaldjtrump.com/press-releases/donald-j.-trump-statement-on-preventing-muslim-immigration](https://web.archive.org/web/20170508054010/https://www.donaldjtrump.com/press-releases/donald-j.-trump-statement-on-preventing-muslim-immigration)
24 (Internet Archive record on May 8, 2017) (last visited Dec. 4, 2017).

25 ³⁰ Donald J. Trump, Twitter (Dec. 7, 2015), [https://twitter.com/realDonaldTrump/
status/673993417429524480](https://twitter.com/realDonaldTrump/status/673993417429524480) (last visited Dec. 4, 2017).

26 ³¹ Donald J. Trump, Twitter (Dec. 7, 2015), <https://twitter.com/realdonaldtrump/status/673982228163072000> (last
visited Dec. 4, 2017).

27 ³² *Donald J. Trump is Calling for a Total and Complete Shutdown of Muslims Entering the United States Until
Our Country’s Representatives Can Figure Out What the Hell is Going On!*, YouTube (Dec. 8, 2015),
<https://www.youtube.com/watch?v=LRxozK6Bpvk> (minutes 0:00 to 0:36) (last visited Dec. 4, 2017).

1 plan, Mr. Trump explained: “They would say, ‘are you Muslim?’” and that “if they said yes,
2 they would not be allowed in the country.”³³ His complete equation of terrorism with a faith of
3 1.6 billion people, including approximately 3.3 million American citizens, is clear.

4 The President has also advocated for a registry of all Muslims in America in the teeth of
5 direct comparisons to the Nazis’ registration of Jewish people. On November 20, 2015, for
6 instance, Mr. Trump stated that he would “certainly implement” a database tracking Muslims in
7 the United States.³⁴ Asked whether he would favor making Muslims legally obligated to
8 register into the database, Mr. Trump responded, “They have to be—they have to be.”³⁵ Again,
9 given the opportunity to clarify whether he was “ruling out a database on all Muslims?”, Mr.
10 Trump doubled down, stating “No not at all.”³⁶ And, perhaps most appallingly, when asked
11 how registering Muslims would be different from the Nazis’ registration of Jewish people, he
12 expressed indifference, saying four times: “You tell me.”³⁷

13 The President even went so far as to expressly justify his intent to restrict the flow of
14 Muslims by reference to executive orders targeting Japanese Americans during World War II,
15 saying: “Take a look at Presidential proclamations back a long time ago . . . what [President
16 Roosevelt] was doing with Germans, Italians, and Japanese because he had to do it.”³⁸ When
17 asked whether he was given “any pause at all” by being compared to Hitler, Mr. Trump
18 responded “No,”³⁹ and justified banning Muslims based on President Roosevelt’s treatment of
19

20 ³³ *Donald Trump On Muslim Travel Ban, Obama And 2016*, YouTube (Dec. 8, 2015),
21 <https://www.youtube.com/watch?v=5I3E3-U-1jc> (minutes 14:58 to 15:14) (last visited Dec. 4, 2017); *Hardball*
22 *with Chris Matthews Transcript 12/8/15*, MSNBC (Dec. 8, 2015),
23 <http://www.msnbc.com/transcripts/hardball/2015-12-08> (last visited Dec. 4, 2017).

24 ³⁴ Vaughn Hillyard, *Donald Trump’s Plan for a Muslim Database Draws Comparison to Nazi Germany*, NBC
25 News (Nov. 20, 2015), [http://www.nbcnews.com/politics/2016-election/trump-says-he-would-certainly-
27 implement-muslim-database-n466716](http://www.nbcnews.com/politics/2016-election/trump-says-he-would-certainly-
26 implement-muslim-database-n466716) (last visited Dec. 4, 2017).

³⁵ *Id.*

³⁶ See Lauren Carroll, *In Context: Donald Trump’s comments on a database of American Muslims*, Politifact (Nov.
24, 2015), [http://www.politifact.com/truth-o-meter/article/2015/nov/24/donald-trumps-comments-database-
26 american-muslims/](http://www.politifact.com/truth-o-meter/article/2015/nov/24/donald-trumps-comments-database-
25 american-muslims/) (last visited Dec. 4, 2017).

³⁷ See Hillyard, *supra* note 34.

³⁸ *Donald Trump On Muslim Travel Ban, Obama And 2016*, YouTube (Dec. 8, 2015),
<https://www.youtube.com/watch?v=5I3E3-U-1jc> (minutes 00:46 to 01:03) (last visited Dec. 4, 2017).

³⁹ Miriam Hernandez, *Trump Cites History to Defend Muslim Immigration Ban*, ABC 7 (Dec. 9, 2015),
<http://abc7.com/politics/trump-cites-history-to-defend-muslim-immigration-ban/1116396/> (Dec. 4, 2017).

1 Japanese Americans.⁴⁰ Two days later, Mr. Trump defended his position by tweeting a link to
 2 an article stating that Islam is a “very evil and wicked religion,” a “false religion,” advocating
 3 that Muslims should be banned, and making further analogy to the treatment of Japanese during
 4 World War II.⁴¹

5 As part of advocating a ban on entry of nationals from predominately Muslim countries,
 6 the President consistently embraced a ban on refugees, and Syrian refugees in particular,
 7 describing the latter as “one of the great Trojan horses” and saying that “[w]e cannot let them
 8 into this country, period.”⁴² On numerous occasions, he urged that refugees should be banned
 9 because “[t]hey may be from Syria, they may be ISIS” and stoked fear that “[t]his is a
 10 migration, they have no anything, but they have cellphones — with ISIS flags on them and
 11 worse.”⁴³ He claimed that the United States had accepted “tens of thousands of Syrian refugees
 12 . . . who are definitely in many cases ISIS aligned.”⁴⁴

13 **C. The President Has Reaffirmed His Discriminatory Intent On Numerous**
 14 **Occasions Since Taking Office.**

15 Mr. Trump has never backed down from his hateful statements and pledges since
 16 assuming the Office of the President; in fact, he has repeatedly reaffirmed them. As discussed
 17 above, *as President*, Mr. Trump has expressly stated that he would implement policy to favor
 18 Christian refugees; affirmatively shared propaganda videos depicting purported violence by
 19 Muslims without regard to their authenticity or their defamatory consequences for innocent
 20 Muslims; and promoted propaganda such as his false story of a mass execution of terrorists

21 ⁴⁰ *Id.*

22 ⁴¹ Donald J. Trump, Twitter (Dec. 10, 2015), <https://twitter.com/realDonaldTrump/status/675034063447662592> (last visited Dec. 4, 2017); *see also* Sarah Larimer, *Why Franklin Graham says Donald Trump is right about stopping Muslim immigration*, Wash. Post (Dec. 10, 2015),
 23 <https://www.washingtonpost.com/news/acts-of-faith/wp/2015/12/10/why-franklin-graham-says-donald-trump-is-right-about-stopping-muslim-immigration/> (last visited Dec. 4, 2017).

24 ⁴² Tal Kopan, *Donald Trump: Syrian refugees a ‘Trojan horse’*, CNN (Nov. 16, 2015),
<http://www.cnn.com/2015/11/16/politics/donald-trump-syrian-refugees/index.html> (last visited Dec. 4, 2017).

25 ⁴³ Ben Kamisar, *Trump to Syrian refugee children: ‘You can’t come here’*, The Hill (Feb. 8, 2016),
<http://thehill.com/blogs/ballot-box/gop-primaries/268614-trump-to-syrian-refugee-children-you-cant-come-here>
 26 (last visited Dec. 4, 2017).

27 ⁴⁴ *Trump: Taking in Syrian Refugees ‘Great Trojan Horse’*, MSNBC (Oct. 19, 2016)
<http://www.msnbc.com/msnbc-quick-cuts/watch/trump-taking-in-syrian-refugees-great-trojan-horse-789644867592> (last visited Dec. 4, 2017).

1 using weapons dipped in pigs' blood. Continuing his discriminatory rhetoric specific to Muslim
 2 migrants, the President has also repeated his oft-expressed view that "[t]he assimilation [of
 3 Muslims in the U.S.] has been very, very hard. It's been a very, very difficult process."⁴⁵

4 Senior members of the Trump Administration have expressly acknowledged that his
 5 executive orders, including the present one, are motivated by negative stereotypes caricaturing
 6 all Muslims as terrorists. Following the issuance of Refugee Ban 3.0, the President's Deputy
 7 Press Secretary was recently, squarely asked: "Does the President think that Muslims are a
 8 threat to the United States?" Acknowledging the basis for the Refugee Ban in religious
 9 stereotype, he responded, "[T]he President has addressed these issues with the travel order
 10 that he issued earlier this year and the companion proclamation."⁴⁶

11 The President himself has made this discriminatory intent just as clear. After courts
 12 enjoined EO-1, which included provisions limiting refugee admission and banning refugees
 13 from certain countries, the President expressly complained that the refugees being admitted to
 14 the United States as a result included a large percentage of Muslims, tweeting: "72% of
 15 refugees admitted into U.S. (2/3-2/11) during COURT BREAKDOWN are from 7 countries:
 16 SYRIA, IRAQ, SOMALIA, IRAN, SUDAN, LIBYA & YEMEN."⁴⁷ Following his issuance of
 17 EO-2—and in the direct lead up to the present order—the President repeatedly derided his own
 18 Department of Justice for taking an approach that was too "politically correct."⁴⁸ The only
 19 plausible interpretation of that criticism is that the President understands his executive orders as
 20 "politically incorrect," i.e., based on an anti-Muslim presumption. He has also stated his view
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22 _____
 23 ⁴⁵ Chris Cillizza, *Donald Trump's explanation of his wire-tapping tweets will shock and amaze you*, Wash. Post
 24 (Mar. 16, 2017), <https://www.washingtonpost.com/news/the-fix/wp/2017/03/16/donald-trump-explained-twitter-the-universe-and-everything-to-tucker-carlson/> (last visited Dec. 4, 2017).

25 ⁴⁶ The White House, *Press Gaggle by Principal Deputy Press Secretary Raj Shah en route St. Louis, MO*
 26 (November 29, 2017) (emphasis added), <https://www.whitehouse.gov/the-press-office/2017/11/29/press-gaggle-principal-deputy-press-secretary-raj-shah-en-route-st-louis> (last visited Dec. 4, 2017).

27 ⁴⁷ Donald J. Trump, Twitter (Feb. 12, 2017), <https://twitter.com/realDonaldTrump/status/830747067379232769>
 (last visited Dec. 4, 2017).

⁴⁸ Donald J. Trump, Twitter (June 5, 2017), <https://twitter.com/realDonaldTrump/status/871899511525961728> (last visited Dec. 4, 2017).

1 that “The travel ban into the United States should be far larger, tougher and more specific.”⁴⁹
 2 This is precisely what he has done with Refugee Ban 3.0, which makes the ban on refugees
 3 indefinite and has an especially drastic impact on Muslim refugees.

4 **II. THE PREDECESSOR ORDERS THAT PRECEDED AND GAVE RISE TO**
 5 **REFUGEE BAN 3.0 WERE MOTIVATED ON THEIR FACE BY ANTI-**
 6 **MUSLIM ANIMUS.**

7 Refugee Ban 3.0 is a continuation and expansion of the temporary refugee suspensions
 8 in EO-1 and EO-2. Both of those predecessors contained on their face evidence of anti-Muslim
 9 animus. EO-1 prioritized the processing of refugee applications from religious minorities, a
 10 provision that, by the President’s own admission, was designed to benefit Christian refugees
 11 from Muslim-majority countries. And both EO-1 and EO-2 made explicit reference to “honor
 12 killings,” an attempt to communicate anti-Muslim animus that is wholly unrelated to national
 13 security. Refugee Ban 3.0 flows directly from these openly discriminatory orders, and is
 14 motivated by the same anti-Muslim animus that animated its predecessors.

15 **A. The Refugee Ban Provision Of EO-1 Included A Priority Designed To**
 16 **Benefit Christian Refugees In Muslim-Majority Nations At The Expense Of**
 17 **Muslim Refugees.**

18 EO-1 explicitly required that refugee admissions be “prioritize[d]” if the refugee made a
 19 claim “on the basis of religious-based persecution.”⁵⁰ However, this priority was only available
 20 if “the religion of the individual is a minority religion in the individual’s country of
 21 nationality.”⁵¹ As the President explained in public statements made the day he signed EO-1,
 22 this provision was designed to favor Christians, and to allow Christians from Muslim-majority
 23 countries the ability to continue coming to the United States as refugees.⁵² Further, EO-2
 24 eliminated the explicit reference to religious minorities but continued to operate as a ban on
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26 ⁴⁹ Donald J. Trump, Twitter (Sept. 15, 2017), <https://twitter.com/realDonaldTrump/status/908645126146265090> (last visited Dec. 4, 2017).

27 ⁵⁰ 82 F.R. 8977 § 5(b) (Jan. 27, 2017).

⁵¹ *Id.*

⁵² *See* Part I.A., *supra*

1 Muslims, changing the religious composition of refugees entering the United States—from
2 50% Muslim and 41% Christian to 57% Christian and 31% Muslim.⁵³

3 **B. Both EO-1 And EO-2 Refer To “Honor Killings”—A Term Used**
4 **Commonly And Almost Exclusively To Denigrate Muslims.**

5 In addition to the specific exception designed to disfavor Muslim refugees, the texts of
6 both EO-1 and EO-2 contain on their face language that reveals an invidious anti-Muslim intent
7 and is otherwise inexplicable. Both invoke, as justification, the practice of “honor killings”—
8 the homicide of a family member, typically female, due to the perpetrator’s belief that the
9 victim has shamed the family, usually by violating a religious tenet. Yet the idea of an “honor
10 killing” is wholly unrelated to the problem of international terrorism. Instead, it is deployed in
11 current political discourse as a coded message to invoke and reinforce animus against Muslims
12 by painting them as violent and uncivilized. Expressions of concern about “honor killings” are
13 hence not neutral references to all gender-based violence: they are a means of affirming and
14 propagating anti-Muslim stereotypes upon which the President and his surrogates have relied to
15 justify banning the entry of Muslims in the United States.

16 In EO-1, the term “honor killings” appears in the very first section as part of the
17 motivation for the order to prohibit “those who engage in acts of bigotry or hatred . . . including
18 ‘honor’ killings” from entering the United States. EO-1 § 1. EO-1 further required that the
19 Secretary of Homeland Security collect data on “‘honor killings’ in the United States by foreign
20 nationals.” *Id.* § 10(iii). EO-2 reiterated this command. EO-2 § 11(a)(iii) (requiring that the
21 Secretary of Homeland Security “collect and make publicly available . . . information regarding
22 the number and types of acts of *gender-based violence against women, including so-called*
23 *‘honor killings,’* in the United States by foreign nationals”) (emphasis added).

24 These references are inexplicable given the putative purpose of the two orders. There is
25 no known association between the incidence of “honor killings” and the likelihood that a
26

27 ⁵³ (Cmpl. ¶ 89.)

1 government of one of the covered nations will supply information requested by U.S.
2 immigration authorities.

3 There is no correlation between Islam and intrafamilial violence against women.⁵⁴
4 While regional rates vary, the incidence of intrafamilial violence exceeds 19 percent
5 everywhere in the world except East Asia.⁵⁵ To the extent the term “honor killings” isolate a
6 specific subcategory of domestic violence, “[h]onor crimes are committed worldwide and . . .
7 cu[t] across cultures and religions.”⁵⁶ Nor do Muslims condone such violence more often than
8 non-Muslims.⁵⁷ To the contrary, Muslim religious leaders have repeatedly and forcefully
9 condemned violence against women.⁵⁸

10 Despite all this, the term “honor killing” is used in current political discourse almost
11 exclusively to refer to Muslims, and thereby to promote that Muslims are distinctively violent
12 and uncivilized. There is a “constant association” of honor killings stories with “the Middle
13 East and South Asia, or immigrant communities originating in these regions, [which] has given
14 them a special association with Islam.”⁵⁹

15 Individuals and groups with anti-Muslim biases commonly invoke so-called “honor
16 crimes” as a phenomenon that supposedly “divides civilized societies from uncivilized

17 ⁵⁴ K.M. Devries et al., *The Global Prevalence of Intimate Partner Violence Against Women*, 340 *Science* 1527,
18 1527 (2013) (estimating that 30 percent of women “aged 15 and over have experienced, during their lifetime,
19 physical and/or sexual intimate partner violence”).

⁵⁵ *Id.* at 1528.

20 ⁵⁶ Brittany E. Hayes et al., *An Exploratory Study of Honor Crimes in the United States*, 31 *J. Fam. Violence* 303,
21 304 (2016); Aisha Gill, *Honor Killings and the Quest for Justice in Black and Minority Ethnic Communities in the*
22 *United Kingdom*, 20 *Crim. Just. Pol’y Rev.* 475, 480 (2009) (“Honor killings cut across ethnic, class, and religious
23 lines [and are committed] not only by Muslims but also by Druze, Christians, and occasionally Jews.”).

⁵⁷ *The Gallup Coexist Index 2009: A Global Study of Interfaith Relations* 34 (2009), <https://ec.europa.eu/migrant-integration/librarydoc/the-gallup-coexist-index-2009-a-global-study-of-interfaith-relations> (last visited Dec. 4,
24 2017).

⁵⁸ See, e.g., Paola Loriggio, *Shafia Murders: Imams Issue Fatwa Against Honour Killings, Domestic Violence*,
25 *Huffington Post* (Feb. 4, 2012), http://www.huffingtonpost.ca/2012/02/04/honour-killi%20ng-imams-fatwa-against_n_1254697.html (last visited Dec. 4, 2017) (Rather than condoning gender- based violence, “Islam and
26 Islamic law . . . [over time] are coming to be invoked more and more *against* honor crimes.”); Lila Abu-Lughod,
27 *DO MUSLIM WOMEN NEED SAVING?* 139 (2013); Gill, *supra*, at 480 (“[B]oth Sharia law (Islamic law) and
28 customary law alike have strict guidelines forbidding [honor killings].”).

⁵⁹ Abu-Lughod, *supra* fn. 58, at 114; accord Sherene Razack, *CASTING OUT: THE EVICTION OF MUSLIMS FROM
29 WESTERN LAW AND POLITICS* 128 (2008) (explaining how the same crime is labeled a crime of “passion” or of
30 “honor” depending on the religious identity of the perpetrator in a way that “reifies Muslims as stuck in
31 premodernity”); Inderpal Grewal, *Outsourcing Patriarchy: Feminist Encounters, Transnational Mediations and
32 the Crime of ‘Honour Killings,’* 15 *Int’l Feminist J. Pol.* 1, 5 (2013).

1 societies,”⁶⁰ notwithstanding the pervasive occurrence of intrafamilial violence against women
 2 across cultures.⁶¹ Anti-Muslim organizations and websites commonly depict Muslims as
 3 “inherently violent” and prone to “rape, sexual abuse against children, violent acts caused by a
 4 *culture of honour*, violence within arranged marriages, threats against public individuals and
 5 physical violence against non-Muslims.”⁶²

6 Coded stereotypes like these have frequently been used against disfavored minorities in
 7 U.S. politics. For example, Jim Crow was defended by “coded” appeals to white supremacy
 8 framed in terms of “African-Americans’ illegitimate sexual relations and proclivity to crime.”⁶³
 9 Coded invocations of racial fears are still employed in political debate.⁶⁴ The use of “subtle”
 10 allusions to negative stereotypes has been shown to reap political rewards because dog whistles
 11 “activate racial attitudes” while maintaining a measure of deniability.⁶⁵ That is precisely the
 12 function the reference to “honor killings” in EO-1 and EO-2 plays.

13 In sum, neither EO-1’s nor EO-2’s reference to “honor killings” can be written off as
 14 neutral nor superfluous. Instead, they are invocations of common negative stereotypes used to
 15 malign Muslims as violent and uncivilized—precisely the same negative, hateful, and false
 16 stereotypes that President Trump has conjured before and after inauguration. Such references
 17 undermine the purported justifications for those orders, and Refugee Ban 3.0 that followed and
 18 rendered these measures into permanent law, and show all to reflect impermissible animus
 19 against Muslims.

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 22 _____
 23 ⁶⁰ *Id.* at 115.

24 ⁶¹ Devries, *supra*, at 1528

25 ⁶² Mattias Ekman, *Online Islamophobia and the Politics of Fear: Manufacturing the Green Scare*, 38 *Ethnic &*
 26 *Racial Stud.* 1986, 1995 (2015) (emphasis added).

27 ⁶³ Tali Mendelberg, *THE RACE CARD: CAMPAIGN STRATEGY, IMPLICIT MESSAGING, AND THE NORM OF EQUALITY*
 94-95 (2001).

⁶⁴ Jon Hurwitz & Mark Peffley, *Playing the Race Card in the Post-Willie Horton Era: The Impact of Racialized*
Code Words on Support for Punitive Crime Policy, 69 *Pub. Opinion Q.* 99 (2005) (demonstrating the racially
 loaded effect of crime-related language).

⁶⁵ Nicholas A. Valentino et al. *Cues That Matter: How Political Ads Prime Racial Attitudes During Campaigns*,
 96 *Am. Pol. Sci. Rev.* 75, 75-76 (2002).

1 **III. REFUGEE BAN 3.0 IS A DIRECT CONTINUATION OF EO-1 AND EO-2 AND**
 2 **IS MOTIVATED BY THE SAME ANTI-MUSLIM ANIMUS.**

3 Refugee Ban 3.0, like its precursors, discriminates against Muslim refugees. Refugee
 4 Ban 3.0 was enacted the day after the refugee ban provision of EO-2 expired and is clearly
 5 intended to continue the policies that EO-1 and EO-2 originally put in place.⁶⁶ It consists of two
 6 main provisions: first, a provision that suspends refugee admissions from eleven countries, the
 7 overwhelming majority of which are Muslim; and second, a provision that suspends the
 8 “follow-to-join” process permitting a spouse or child to be reunited with a refugee already
 9 admitted to the United States, which in operation today tends largely to be used by Muslim
 10 refugees. Each of these steps furthers the stated anti-Muslim policies of the Trump
 11 administration and reflects the discriminatory animus evidenced in EO-1 and EO-2.

12 Refugee Ban 3.0 suspends refugee admissions from eleven countries that comprise the
 13 majority of the Muslim refugees entering the United States. As the Complaint alleges, the
 14 eleven countries affected by the suspension include nine countries with a population that is over
 15 85% Muslim (Egypt, Iran, Iraq, Libya, Mali, Somalia, Sudan, Syria, and Yemen), and two
 16 other countries (North Korea and South Sudan).⁶⁷ In the last two fiscal years, the nine Muslim-
 17 majority countries accounted for 80% of the Muslim immigrants to the United States,⁶⁸ and
 18 over 80% of the refugees resettled from those countries have been Muslim.⁶⁹ By contrast, the
 19 refugees admitted from countries *not* targeted by Refugee Ban 3.0 are 70% Christian and only
 20 16% Muslim.⁷⁰ The suspension thus operates to shift the composition of refugees admitted to
 21 the United States from mostly Muslim to mostly Christian, nearly as efficiently as possible, by
 22 using countries as a proxy for religion.

23
 24 ⁶⁶ (Cmpl. ¶ 94); section I(C) *supra*.

25 ⁶⁷ (Cmpl. ¶ 103-104.) Many of these countries have been repeatedly targeted by the previous Executive Orders; for
 26 example, six of these Muslim-majority countries were included in the travel bans of both EO-1 and EO-2 (Syria,
 27 Sudan, Iran, Libya, Somalia, and Yemen). (Cmpl. ¶ 79); EO-2 § 2(c).

⁶⁸ (Cmpl. ¶ 106)

⁶⁹ (Cmpl. ¶ 105)

⁷⁰ (Cmpl. ¶ 111); (Declaration of Casey Smith in Support of Plaintiff’s Motion for Preliminary Injunction (“Smith
 Decl.”), Dkt. No. 44, ¶ 19).

1 Refugee Ban 3.0 also indefinitely suspends the “follow-to-join” process, whereby the
2 spouse or child of a refugee accepted into the United States is permitted to join them. Memo at
3 3. Although this suspension applies worldwide, it has a disproportionate effect on Muslim
4 refugees: Follow-to-join is generally available only to family members of refugees admitted
5 within the last two years.⁷¹ Over the last two fiscal years, most refugees admitted to the United
6 States have been Muslim.⁷² Even prior to the recent increase in the number of Muslim refugees
7 admitted to the United States, Iraq and Somalia—two predominantly Muslim countries targeted
8 by the refugee and travel bans—were the nationalities most represented in the follow-to-join
9 process. Memo Addendum at 1.

10 Understood in context, therefore, Refugee Ban 3.0 is plainly the President’s
11 implementation of a longstanding pledge to prevent the entry of Muslims to the U.S.—
12 including specifically by restricting the flow of Muslim refugees—on the basis of an invidious
13 and false belief that equates Islam and violence. It plainly embodies the same anti-Muslim
14 animus that was expressly indicated in the predecessor orders that gave rise to Refugee Ban 3.0
15 in the first place. This Court should not allow it to be implemented.

16 CONCLUSION

17 For the foregoing reasons, amici urge this Court to grant Plaintiffs’ motion for a
18 Preliminary Injunction.

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⁷¹ 8 C.F.R. § 207.7(d).

⁷² (Smith Decl. ¶ 21.)

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DATED this 6th day of December, 2017.

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CERTIFICATE OF SERVICE

I hereby certify that on December 6, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to those attorneys of record registered on the CM/ECF system. All other parties (if any) shall be served in accordance with the Federal Rules of Civil Procedure.

Dated this 6th date of December, 2017.

/s/ Matthew W. Callahan
Matthew W. Callahan

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