

IN THE  
**United States Court of Appeals**  
FOR THE FOURTH CIRCUIT

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INTERNATIONAL REFUGEE ASSISTANCE PROJECT, on behalf of itself and its clients; HIAS, Inc., on behalf of itself and its clients; MIDDLE EAST STUDIES ASSOCIATION OF NORTH AMERICA, INC., on behalf of itself and its members; ARAB AMERICAN ASSOCIATION OF NEW YORK, on behalf of itself and its clients; YEMENI-AMERICAN MERCHANTS ASSOCIATION, on behalf of itself and its members; IRAP JOHN DOE #4; IRAP JOHN DOE #5; IRAP JANE DOE #2; MUHAMMED METEAB; MOHAMAD MASHTA; GRANNAZ AMIRJAMSHIDI; SHAPOUR SHIRANI; AFSANEH KHAZAEI; IRANIAN ALLIANCES ACROSS BORDERS; IAAB JANE DOE #1; IAAB JANE DOE #3; IAAB JANE DOE #5; IAAB JOHN DOE #6; IRANIAN STUDENTS' FOUNDATION, Iranian Alliances Across Borders Affiliate at the University of Maryland College Park; EBLAL ZAKZOK; FAHED MUQBIL; ZAKZOK JANE DOE #1; ZAKZOK JANE DOE #2,

—v.— *Plaintiffs-Appellees,*

DONALD J. TRUMP, in his official capacity as President of the United States;  
UNITED STATES DEPARTMENT OF HOMELAND SECURITY; UNITED STATES

*(Caption continued on inside cover)*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

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**BRIEF FOR AMICI CURIAE MUSLIM BAR ASSOCIATIONS,  
MUSLIM LAW STUDENT ASSOCIATIONS, AND CUNY-CLEAR  
IN SUPPORT OF PLAINTIFFS-APPELLEES**

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ADEEL A. MANGI  
*Counsel of Record*  
SOFIA G. SYED  
ABIGAIL E. MARION\*  
PATTERSON BELKNAP WEBB  
& TYLER LLP  
1133 Avenue of the Americas  
New York, New York 10036  
(212) 336-2000

*Attorneys for Amici Curiae*

\*Not admitted in this Court

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DEPARTMENT OF STATE; OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE; CHAD WOLF, in his official capacity as Acting Secretary of Homeland Security; MICHAEL R. POMPEO, in his official capacity as Secretary of State; JOSEPH MAGUIRE, in his official capacity as Acting Director of National Intelligence; MARK A. MORGAN, in his official capacity as Senior Official Performing the Functions and Duties of the Commissioner of U.S. Customs and Border Protection; KENNETH T. CUCCINELLI, in this official capacity as Acting Director of U.S. Citizenship and Immigration Services; WILLIAM P. BARR, in his official capacity as Attorney General of the United States,

*Defendants-Appellants.*

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## INTEREST OF *AMICI CURIAE*<sup>1</sup>

*Amici* are Muslim American bar associations and law student associations, and the Creating Law Enforcement Accountability & Responsibility Project (“CLEAR”). Lead *amicus*, the National Association of Muslim Lawyers (“NAML”), is the premiere national association for Muslim lawyers and legal professionals in the United States. The regional Muslim bar association *amici* are: the Association of Muslim American Lawyers, the Capital Area Muslim Bar Association, the Dallas Fort Worth Muslim Bar Association, the Muslim Bar Association of Chicago, the Muslim Bar Association of Houston, the Muslim Bar Association of New York, the Muslim Bar Association of Southern California, the New England Muslim Bar Association, and the New Jersey Muslim Lawyers Association. The *amici* Muslim law student associations represent Muslim law students at Boston University, George Washington University, Harvard University, Marquette University, Rutgers University, the University of Chicago, the University of Michigan, the University of Virginia, and Yale University. *Amicus*

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<sup>1</sup> Pursuant to Federal Rule of Appellate Procedure 29(a)(2), *amici* state that all parties have consented to the filing of this brief. Pursuant to Rule 29(a)(4), *amici* further state that (a) there is no party or counsel for a party in the pending appeal who authored this brief in whole or in part; (b) there is no party or counsel for a party in the pending appeal who contributed money that was intended to fund preparing or submitting the brief; and (c) no person or entity other than *amici* and their members contributed money that was intended to fund preparing or submitting the brief.

CLEAR is a clinical initiative at City University of New York School of Law that supports Muslim communities targeted by government agencies under the guise of national security. *Amici* have a significant interest in the outcome of this case because it directly affects the interests and legal practices of their Muslim American members.<sup>2</sup>

### SUMMARY OF ARGUMENT

*Amici* have been directly affected by the President’s promise to ban Muslims from entering the United States and the Proclamation at issue: “Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats,” Proclamation 9645, 82 Fed. Reg. 45,161 (Sept. 24, 2017) (the “Proclamation”).<sup>3</sup> As Muslim Americans, *amici* and their members are directly impacted by the President’s statements suggesting that their religion is an enemy of the United States. The President’s apparent willingness to make laws based on that premise also directly implicates *amici*’s members’ professional expertise. As lawyers, *amici*’s members feel a special responsibility within the Muslim American community to respond to the

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<sup>2</sup> A fuller description of *amici*’s identities and interests are set forth in the Addendum to this brief.

<sup>3</sup> The Executive Orders that preceded the Proclamation are referred to herein as “EO-1,” Exec. Order No. 13,769, *The President Protecting the Nation From Foreign Terrorist Entry Into the United States*, 82 Fed Reg. 8,977 (Jan. 27, 2017) and “EO-2,” Exec. Order No. 13,780, *Protecting the Nation From Foreign Terrorist Entry Into the United States*, 82 Fed. Reg. 13,209 (Mar. 9, 2017).

President’s official actions and to address the protections afforded to them by the Constitution.

*Amici* recognize that the Supreme Court in 2018 vacated preliminary injunctions issued by lower courts and allowed the Proclamation to take effect. *See Trump v. Hawaii*, 138 S. Ct. 2392 (2018) (“*Hawaii*”). But *Hawaii* did not deem the Proclamation immune from future constitutional challenge. Rather, the Supreme Court premised its ruling on the preliminary record before it, and the instant cases were ultimately remanded to lower courts for further proceedings. The district court then denied the government’s motion to dismiss the amended constitutional claims based on *Hawaii*. It emphasized that Plaintiffs have alleged facts beyond those addressed in *Hawaii* and that constitutional challenges, including those based on the Establishment Clause, remain viable. It allowed Plaintiffs to proceed with their challenge, which it concluded would be governed by the rational basis review standard under *Hawaii*.

*Amici* urge the Court to uphold the district court’s decision so that Plaintiffs can proceed with their challenges and develop a full record.

## ARGUMENT

### I. **HAWAII DOES NOT BAR THE AMENDED CONSTITUTIONAL CLAIMS**

The district court correctly recognized the boundaries of *Hawaii* in determining the path forward—and, more fundamentally, that there remains a path

forward in the first place. As the district court rightly concluded, “the Supreme Court’s merits analysis of the Proclamation under rational basis review was based on a preliminary record representing a snapshot in time and does not necessarily preclude a different determination at a later stage of the case on a more fulsome record.” *Int’l Refugee Assistance Project v. Trump*, 373 F. Supp. 3d 650, 675-76 (D. Md. 2019) (“*IRAP*”). The district court also correctly defined the task that lies before Plaintiffs under *Hawaii*, noting that “Plaintiffs will need to provide evidence to squarely refute the assertion that the Proclamation is rationally related to the national security goals of preventing entry of inadequately vetted individuals and inducing other nations to improve information sharing.” *Id.* at 671.

But this case is now at the Rule 12(b)(6) stage. In order to proceed on their claims, Plaintiffs need only demonstrate that their well-pleaded allegations set forth a legal theory that, if “ultimately” proven, will refute “the Government’s contention that the Proclamation is rationally related to the stated legitimate national security purpose.” *Id.* at 676.

## **II. THE PROCLAMATION IS BASED ON DISAPPROVAL OF MUSLIMS**

The district court emphasized that Plaintiffs had presented detailed allegations addressing why the Proclamation is not rationally related to its stated national security interests, but rather grounded in unconstitutional disapproval of Muslims, including allegations regarding the history of the Proclamation and the

President’s statements about it. *Id.* at 672. The district court further noted that *Hawaii* does not instruct courts to disregard these statements or deem irrelevant the subjective intent of the President or his advisors in formulating and issuing the Proclamation. Ignoring this history would “undermine[ ] judicial legitimacy by making the public believe judicial decisions rest on a false or inaccurate characterization of the governing facts.” *Id.* at 672-73 (cleaned up).

*Amici* agree. The public record is replete with evidence—in the form of explicit public statements by the President and his advisors—that the President wanted a Muslim ban, and asked his team to find a “politically correct,” *i.e.*, legally defensible, pretext for it.<sup>4</sup> Indeed, Donald Trump’s longstanding belief in a “Muslim problem” became a centerpiece of his policy agenda during his campaign for President. In December 2015, he praised an author for acknowledging “Muslim problems.”<sup>5</sup> He later declared, “I think Islam hates us.”<sup>6</sup> He championed this message throughout his campaign, repeatedly asserting the false claim that

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<sup>4</sup> Donald J. Trump (@realDonaldTrump), Twitter (Sept. 15, 2017, 3:54 AM), <https://twitter.com/realDonaldTrump/status/908645126146265090>.

<sup>5</sup> Donald J. Trump (@realDonaldTrump), Twitter (Dec. 10, 2015, 4:49 AM), <https://twitter.com/realDonaldTrump/status/674934005725331456>; Donald J.

Trump (@realDonaldTrump), Twitter (Dec. 10, 2015, 5:00 AM), <https://twitter.com/realDonaldTrump/status/674936832010887168>;

Donald J. Trump (@realDonaldTrump), Twitter (Dec. 10, 2015, 5:21 PM), <https://twitter.com/realDonaldTrump/status/675123192864899072>.

<sup>6</sup> Theodore Schleifer, *Donald Trump: ‘I Think Islam hates us,’* CNN (Mar. 10, 2016, 5:56 PM), <http://www.cnn.com/2016/03/09/politics/donald-trump-islam-hates-us>.

“thousands and thousands” of people in New Jersey “where you have large Arab populations” cheered as the World Trade Center collapsed on September 11, 2001.<sup>7</sup>

This anti-Muslim rhetoric was not mere sloganeering. Rather, it was backed by a specific policy agenda, beginning with a call for “a total and complete shutdown of Muslims entering the United States”—officially unveiled as a campaign position in December 2015.<sup>8</sup> And the Muslim immigration ban was not the only anti-Islam policy that President Trump advocated during his presidential campaign. Candidate Trump promised warrantless domestic surveillance of Muslims,<sup>9</sup> the closing of American mosques,<sup>10</sup> and even the eventual registration of all Muslims in the United States.<sup>11</sup> Pressed for a legal and historical justification

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<sup>7</sup> Glenn Kessler, *Trump’s outrageous claim that ‘thousands’ of New Jersey Muslims celebrated the 9/11 attacks*, 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/?utm\\_term=.e4a2a64060d4](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/?utm_term=.e4a2a64060d4).

<sup>8</sup> Press Release, Donald J. Trump Statement on Preventing Muslim Immigration (Dec. 7, 2015), <https://web.archive.org/web/20151208051322/https://www.donaldjtrump.com/press-releases/donald-j.-trump-statement-on-preventing-muslim-immigration>.

<sup>9</sup> Jeremy Diamond, *Trump doubles down on calls for mosque surveillance*, CNN (June 15, 2016, 8:10 PM), <http://www.cnn.com/2016/06/15/politics/donald-trump-muslims-mosque-surveillance>.

<sup>10</sup> Nick Gass, *Trump: ‘Absolutely no choice’ but to close mosques*, Politico (Nov. 18, 2015, 6:45 AM), <http://www.politico.com/story/2015/11/trump-close-mosques-216008>.

<sup>11</sup> Vaughn Hillyard, *Donald Trump’s Plan for a Muslim Database Draws Comparison to Nazi Germany*, NBC News (Nov. 20, 2015, 9:27 AM),

for his vision of Muslim exclusion, he cited a chilling precedent: the internment of Japanese Americans during World War II.<sup>12</sup>

After his election, President Trump set to work to find a pretext that would allow his unconstitutional Muslim ban to survive judicial scrutiny. Advisor Rudolph Giuliani recounted that “when [he] first announced it, he said, ‘Muslim ban.’ He called me up. He said, ‘Put a commission together. Show me the right way to do it legally.’”<sup>13</sup> The day after EO-1 was signed, Giuliani explained on national television that President-elect Trump had invited him to assemble a commission of “expert lawyers” to translate his desire for a “Muslim ban” into something that could pass legal muster.<sup>14</sup>

After signing EO-2, President Trump described the order as “a watered down version of the first order” and lamented that he could not “go all the way” to do “what [he] wanted to do in the first place.”<sup>15</sup> All the while, the President’s

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<http://www.nbcnews.com/politics/2016-election/trump-says-he-would-certainly-implement-muslim-database-n466716>.

<sup>12</sup> 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>.

<sup>13</sup> Amy B. Wang, *Trump asked for a ‘Muslim ban,’ Giuliani says—and ordered a commission to do it ‘legally,’* Wash. Post (Jan. 29, 2017), [https://www.washingtonpost.com/news/the-fix/wp/2017/01/29/trump-asked-for-a-muslim-ban-giuliani-says-and-ordered-a-commission-to-do-it-legally/?utm\\_term=.84671a57ed2c](https://www.washingtonpost.com/news/the-fix/wp/2017/01/29/trump-asked-for-a-muslim-ban-giuliani-says-and-ordered-a-commission-to-do-it-legally/?utm_term=.84671a57ed2c).

<sup>14</sup> *Id.*

<sup>15</sup> Andrew Prokop, *With Trump’s new travel order blocked and his health bill flailing, his agenda’s in tatters*, Vox (Mar. 16, 2017, 9:20 AM),

campaign website continued to call for a “total and complete shutdown of Muslims entering the United States,” even as government attorneys argued the contrary before appellate courts across the country.<sup>16</sup> The President himself publicly admitted his true purpose: “People, the lawyers and the courts can call it whatever they want, but I am calling it what we need and what it is, a TRAVEL BAN!”<sup>17</sup>

The eventual result of the President’s search for a convincing pretext was the Proclamation, invoking national security and information sharing as its rationale, as merely the latest in a series of attempts to implement a Muslim ban. Indeed, just nine days before signing the Proclamation, President Trump declared that “[t]he travel ban into the United States should be far larger, tougher and more specific—but stupidly, that would not be politically correct!”<sup>18</sup>

But even this extensive public record of animus may be just the tip of the iceberg. Leaked emails from presidential advisor Stephen Miller, an “architect” of the immigration policy at issue, document his desire to build an immigration policy

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<http://www.vox.com/policy-and-politics/2017/3/16/14935784/trump-achievements-accomplishments>.

<sup>16</sup> Fred Barbash, *Muslim ban language suddenly disappears from Trump campaign website after Spicer questioned*, Wash. Post (May 9, 2017),

[https://www.washingtonpost.com/news/morning-mix/wp/2017/05/09/trumps-preventing-muslim-immigration-vow-disappears-from-campaign-website-after-spicer-questioned/?utm\\_term=.85728f2f099e](https://www.washingtonpost.com/news/morning-mix/wp/2017/05/09/trumps-preventing-muslim-immigration-vow-disappears-from-campaign-website-after-spicer-questioned/?utm_term=.85728f2f099e).

<sup>17</sup> Donald J. Trump (@realDonaldTrump), Twitter (June 5, 2017, 3:25 AM), <https://twitter.com/realdonaldtrump/status/871674214356484096?lang=en>.

<sup>18</sup> Donald J. Trump (@realDonaldTrump), Twitter (Sept. 15, 2017, 3:54 AM), <https://twitter.com/realdonaldtrump/status/908645126146265090>.

advancing white nationalist values by, *inter alia*, excluding Muslims.<sup>19</sup> These emails only came to light in the last few weeks—well after *Hawaii* was issued. It is crucial that Plaintiffs be afforded the opportunity to develop a full evidentiary record at the district court level on the constitutional claims left available to them by *Hawaii*.

In sum, the full history and context leading to the Proclamation leave an “objective observer,” *McCreary County v. ACLU*, 545 U.S. 844, 862 (2005), little choice but to conclude that the Proclamation is, at its core, President Trump’s long-promised ban on the immigration of Muslims to the United States.

### **III. THE IMPLEMENTATION OF THE PROCLAMATION CONFIRMS THAT IT IS UNCONSTITUTIONAL**

As the district court observed, *Hawaii* left open the question of whether the Proclamation’s waiver process truly demonstrates that it is not a ban on Muslim travelers. *IRAP*, 373 F. Supp. 3d at 675. In addition, because the Proclamation had been enjoined until *Hawaii* was decided, the Supreme Court did not address how the government’s implementation of restrictions on listed non-Muslim countries (North Korea and Venezuela) compared to that on listed Muslim countries. Evidence available from public sources supports Plaintiffs’ allegations

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<sup>19</sup> See Michael Edison Hayden, *Stephen Miller’s Affinity for White Nationalism Revealed in Leaked Emails*, Southern Poverty Law Center (Nov. 12, 2019), <https://www.splcenter.org/hatewatch/2019/11/12/stephen-millers-affinity-white-nationalism-revealed-leaked-emails>.

that the Proclamation is based on animus—as do the experiences of *amici* members.

As for the waiver process, Plaintiffs allege that waivers have been granted at a rate of only approximately two percent, with thousands of qualified individuals denied waivers. Even a former consular official has deemed the waiver process a “fraud.” *IRAP*, 373 F. Supp. 3d at 673-74. *Amici*’s experience is consistent with those allegations. *Amici* member attorneys have repeatedly encountered delays and a Kafkaesque bureaucracy that appears designed to produce waiver denials. And even those lucky few who ultimately fall within the small percentage of approvals have been subjected to extreme challenges.

For example, one Yemeni American client of *amicus* CLEAR petitioned for his family in Yemen to join him in the United States in 2013. His wife’s February 2017 embassy interview was cancelled due to EO-1; she waited almost two years for the interview to be rescheduled. In January 2019, embassy personnel stated that her waiver application had been approved. However, they did not provide written documentation of approval until September 2019, without any explanation as to the cause of delay.<sup>20</sup> During that period of delay, there was no formalized process the client could pursue to confirm the success of the application—or to hold the government accountable to faithfully apply its own policies.

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<sup>20</sup> Email from CLEAR dated Nov. 18, 2019 (on file with counsel).

Furthermore, the fact that favorable waiver eligibility determinations have been made does not mean that visas have actually been issued to those applicants. Data released by the State Department does not disclose what percentage of successful waiver applicants have received visas, if any.<sup>21</sup> Indeed, multiple lawsuits have been filed by waiver applicants who have endured indefinite waiting periods without receiving visas. *See* ECF No. 75, 2<sup>nd</sup> Am. Compl., *Emami v. Nielsen*, No. 3:2018-cv-01587 (N.D. Cal. Feb. 23, 2019); ECF No. 1, Compl., *Pars Equality Center v. Pompeo*, No. 3:2018-cv-07818 (N.D. Cal. July 31, 2018).

As for the inclusion of non-Muslim countries in the Proclamation, its implementation reveals that their addition served as little more than window dressing. Statistics show that the Proclamation's application to Venezuela and North Korea is pretextual. The restrictions applied to Venezuela impact only a handful of government officials.<sup>22</sup> As a result, the ban has had no effect on Venezuelan visa applicants: "Out of 3,093 Venezuelan immigrant visa applicants and 87,573 nonimmigrant visa applicants not a single one was subject to the

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<sup>21</sup>Vahid Niayesh, *Trump's travel ban really was a Muslim ban, data suggests*, Wash. Post (Sept. 26, 2019), <https://www.washingtonpost.com/politics/2019/09/26/trumps-muslim-ban-really-was-muslim-ban-thats-what-data-suggest/>

<sup>22</sup> Kevin Lui, *President Trump Added Three New Countries to his Travel Ban. Here's What to Know About Them*, Time (Sept. 25, 2017), <http://time.com/4955280/donald-trump-new-travel-ban-what-to-know>.

ban.”<sup>23</sup> And the North Korean government does not even permit most of its citizens to travel abroad. Thus, the Proclamation affected *only 62 visa applicants* from North Korea.<sup>24</sup>

Plaintiffs must be afforded the opportunity to develop a full record on the implementation of the Proclamation, which *amici* believe will refute the government’s assertion of legitimate state interests.

#### **IV. THE PROCLAMATION GIVES RISE TO REASONABLE FEAR OF PERSECUTION ON THE PART OF THE MUSLIM AMERICAN COMMUNITY**

*Amici* urge the Court to consider the Proclamation, and the importance of allowing a constitutional challenge on the merits to proceed, in its full context. The President’s actions and the policies they represent have restricted Muslims’ rights, caused alarm and fear, and emboldened the persecution of Muslims.

In light of President Trump’s anti-Muslim statements and campaign promises, *amici* and their members were already on heightened alert when he took office. This heightened alert became an emergency response following the release of EO-1 one week after the inauguration. In the days that followed, *amici* bar associations mobilized and coordinated legal aid not only to assist Muslim

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<sup>23</sup> National Iranian American Council, *Memo: A Snapshot of Visas and Waivers Over One Year of the Muslim Ban*, (Apr. 10, 2019), <https://www.niacouncil.org/memo-snapshot-visas-waivers-one-year-muslim-ban/>.

<sup>24</sup> *Id.*

immigrants, but to provide travel precautions for all Muslims. The impact of the travel ban reached every corner of the Muslim legal community, as Muslim legal professionals of all areas of expertise worked to connect community members with the legal resources they needed to protect their rights.

This remains as true under the Proclamation as it was under EO-1 and EO-2. Since 2017, and continuing still to this day, *amici* members have been compelled to marshal their resources to combat the ban's successive iterations. They have diverted time and energy from their usual practices toward educating themselves and protecting colleagues, clients, and community members from the effects of the ban. In the months since the Proclamation was issued, individuals have turned to NAML and other *amici*'s attorney networks for advice on the government's search and seizure authority at the border, assistance to friends or families who had been detained, and explanations of the government's new vetting and waiver procedures.<sup>25</sup> Clients and colleagues have feared for relatives travelling overseas, altered or postponed their own travel plans, and confronted potentially indefinite family separations.

As attorneys and law students, *amici* are keenly aware of the ways in which government bias historically has led to the persecution of members of disfavored

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<sup>25</sup> NAML President Aliya Khalidi, Nov. 20, 2019 (interview notes on file with counsel).

groups. With this context, Muslim advocates perceive acutely the risks to their communities if the President's discriminatory policies are allowed to proliferate unchecked. In the not-so-distant past, bias and animus motivated the government to corral citizens into internment camps, *see Korematsu v. United States*, 323 U.S. 214 (1944) (upholding an executive order excluding Japanese Americans from certain areas under the guise of national security), and deny disfavored groups their fundamental rights, such as the right to vote, *see Davis v. Beason*, 133 U.S. 333 (1890) (upholding an Idaho law banning Mormons from voting). Much like doctors readying for an outbreak, members of *amici*, as current or future Muslim American lawyers, must prepare themselves to protect their community lest the President implement additional policies that target Muslims and curtail their rights.

Like Muslims across the United States, members of *amici* have also experienced persecution at the hands of fellow citizens whose anti-Muslim bias is fomented by government disfavor. Examples of anti-Muslim activity have been on the rise since 2017,<sup>26</sup> with perpetrators of white supremacist violence—itsself an existential threat to national security<sup>27</sup>—emboldened by President Trump's

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<sup>26</sup> *See* New America, *Anti-Muslim Activities in the United States*, (Nov. 25, 2019), <https://www.newamerica.org/in-depth/anti-muslim-activity>.

<sup>27</sup> Weiyi Cai and Simone Landon, *Attacks by White Extremists Are Growing. So Are Their Connections.*, N.Y. Times (Apr. 3, 2019), <https://www.nytimes.com/interactive/2019/04/03/world/white-extremist-terrorism-christchurch.html>.

policies.<sup>28</sup> And litigation around the country has ensued when once-welcoming communities organized to prevent Muslim Americans from practicing their faith in their own towns.<sup>29</sup>

Such events affect *amici* directly. Members of the Marquette University Muslim Law Students Association, for example, “have felt the need to hide [their] identities, deny [their] Islamic faith, and refrain from worship at [their] Mosques.”<sup>30</sup> For NAML’s President, who, like other attorneys, felt called to the legal field “to fight for justice,” it is discouraging “to know that the animus against Muslims is trampling on the legal rights of our communities, rendering the goal of upholding our constitutional values all the more urgent.”<sup>31</sup> In *amici*’s view, it is not a coincidence that anti-Muslim acts have multiplied in the wake of the

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<sup>28</sup> Aaron Rugar, *Kellyanne Conway’s stunningly irresponsible advice: read New Zealand mosque shooter’s manifesto*, Vox (Mar. 18, 2019 1:40 PM), <https://www.vox.com/policy-and-politics/2019/3/18/18270881/kellyanne-conway-new-zealand-mosque-shooter-manifesto-fox-news>.

<sup>29</sup> See, e.g., Charles Toutant, *Bayonne Agrees to \$400,000 Settlement of Mosque Suit*, N.J. L.J. (Feb. 1, 2018, 1:33 PM), <https://www.law.com/njlawjournal/sites/njlawjournal/2018/02/01/bayonne-agrees-to-400000-settlement-of-mosque-suit> (reporting a town’s settlement in a case alleging the denial of a zoning variance for a mosque based on religious animus).

<sup>30</sup> Email from Marquette University Muslim Law Students Association, dated Nov. 18, 2019 (on file with counsel); see also Khaled A. Beydoun, *The Ban and the Borderlands Within: The Travel Ban as a Domestic War on Terror Tool*, 71 Stan. L. Rev. 251 (2019) (describing chilling effect on speech and political expression in Muslim communities), <https://www.stanfordlawreview.org/online/the-ban-and-the-borderlands-within-the-travel-ban-as-a-domestic-war-on-terror-tool>.

<sup>31</sup> NAML President Aliya Khalidi, Nov. 20, 2019 (interview notes on file with counsel).

Proclamation. State action has encouraged like-minded American citizens to vilify a religious community that is now the target of official disfavor.

At base, these experiences reinforce Muslims' perceptions that their government disapproves of their faith and that this disapproval renders them lesser members of the American fabric—the very harm the Establishment Clause was designed to prevent. As the President of the Capital Area Muslim Bar Association puts it: “The Proclamation’s enactment—and now, enforcement—has been jarring. It sends a disheartening message to many American Muslims about their status in this country. No community should be targeted based on their faith—from the highest office in the country, no less.”<sup>32</sup> *Amici* look to this Court to vindicate their belief that no government can trample upon the rights granted to Muslim Americans by the United States Constitution.

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<sup>32</sup> CAMBA President Juvaria Khan, Nov. 19, 2019 (interview notes on file with counsel).

## CONCLUSION

For the foregoing reasons, *amici* respectfully request that the decision of the district court be affirmed.

Dated: December 2, 2019

Respectfully submitted,

/s/ Adeel Mangi

ADEEL MANGI

*Counsel of Record*

SOFIA G. SYED

ABIGAIL E. MARION\*

PATTERSON BELKNAP

WEBB & TYLER LLP

1133 Avenue of the Americas

New York, NY 10036

(212) 336-2000

aamangi@pbwt.com

*Attorneys for Amici Curiae Muslim  
Bar Associations, Muslim Law  
Student Associations, and CUNY-  
CLEAR*

\*Not admitted in this Court

**CERTIFICATION OF COMPLIANCE  
PURSUANT TO FED. R. APP. 32(g)**

I certify that, pursuant to Fed. R. App. P. 29(a)(5) and 32(a)(5), (a)(6), and (a)(7)(B)(i), the attached *amicus* brief is proportionately spaced, uses a typeface of 14-point Times New Roman font and contains 4,811 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

Dated: December 2, 2019

/s/ Adeel Mangi  
\_\_\_\_\_  
Attorney for *Amici Curiae*

## CERTIFICATE OF SERVICE

I certify that on December 2, 2019, I electronically filed the foregoing document with the Clerk of Court for the U.S. Court of Appeals for the Fourth Circuit by using the Court's CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

/s/ Adeel Mangi  
Attorney for *Amici Curiae*

## **ADDENDUM IDENTITY AND INTERESTS OF AMICI**

The **National Association of Muslim Lawyers (NAML)** is a professional organization dedicated to serving American Muslim legal professionals by promoting professional networking and mentorship among Muslim legal professionals and law students in the United States, supporting the growth of local Muslim bar associations, and serving the general public through volunteerism and community service efforts.

The **Association of Muslim American Lawyers (AMAL)** seeks to assist the Muslim American community's exercise of legal rights through education; encourage entry into the legal profession; assist members in their professional development; promote the administration of justice; benefit the community with legal resources and services; identify and explore themes common to American and Islamic jurisprudence; and promote the highest standards of professionalism, integrity and honor amongst AMAL members.

The **Capital Area Muslim Bar Association (CAMBA)** is an organization of legal professionals in the Washington, D.C. area. Its mission is to foster a sense of fellowship amongst diverse Muslim legal professionals and to establish an institutional presence within the Capital Area legal community. It strives to elevate its members to prominence, develop future leaders, and amplify its collective voice to impact legal issues affecting the Muslim community.

The **Dallas Fort Worth Muslim Bar Association (DFW-MBA)** is a non-denominational, non-political union of attorneys and law students of Muslim faith, open to legal professionals of all faith traditions. It seeks members who wish to serve and protect the constitutional rights of all Americans with a special focus on minority and Muslim American communities, aligning under the Association's banner to give back through community service and pro bono legal work, and to promulgate legal information as an educational tool of social empowerment.

The **Muslim Bar Association of Chicago (MBA)** is an organization comprised of legal professionals throughout the State of Illinois. Its mission includes fostering the highest ethics, integrity, and honor in the legal profession. The MBA also seeks to advance the administration of justice and the general welfare of the community through legal education, advocacy, and the professional development of the members of the association.

The **Muslim Bar Association of Houston (MBAH)** is a member-driven non-profit corporation based in the Greater Houston metropolitan area. Its mission is to serve the professional needs of area attorneys and law students through networking, clinics and seminars while contributing to the betterment of the Greater Houston area through community service. As one of its goals, MBAH aims to provide a vehicle and forum for the unified expression of opinions and positions by its members on legal matters and other events of concern affecting the Muslim American community.

The **Muslim Bar Association of New York (MuBANY)** is a member-based professional association serving the educational, professional, and social needs of Muslim legal professionals and law students living and working in the New York metropolitan area. It is one of the nation's largest and most active professional associations for Muslim lawyers and it provides a range of programs, events, and services for the legal community and the larger Muslim community.

The **Muslim Bar Association of Southern California (MBASC)** is a member-based professional organization putting local attorneys and legal professionals in contact with one another with the purpose of facilitating the advancement of legal careers and local communities. The organization serves Muslim legal professionals and law students living and working throughout Southern California.

The **New England Muslim Bar Association (NEMBA)** was established in 2009 to serve the educational and professional needs of Muslim lawyers and law students in New England and to serve as a legal resource for Muslim communities and others.

The **New Jersey Muslim Lawyers Association (NJMLA)** strives to address issues affecting the local and national Muslim American population, educate the local and national community about matters affecting the Muslim community, and advance and protect the rights of Muslims in America. NJMLA aspires to facilitate the sharing of resources among Muslim attorneys and promote education on issues relevant to Muslim attorneys, promote Muslim participation in public service, encourage Muslims to enter the legal profession, and to provide mentors for Muslims who wish to further their legal careers.

The **Boston University Muslim Law Students Association** is a student-led organization that aims to support Muslim students by providing academic and professional resources to help Muslim students succeed in the legal field, and fostering an environment that allows for better integration in the law school community. It also provides the broader BU law community with a direct resource

on Islam and a forum to facilitate dialogue on legal and policy issues that pertain to Muslims.

The **George Washington University Muslim Law Students Association** provides a religious, social, and career network for Muslim law students both within the George Washington University Law School and in the larger Muslim legal community. It works in conjunction with a broad-based coalition of student organizations on campus and in the Washington, D.C. area.

The **Harvard University Muslim Law Students Association** is a student-run organization that serves Muslim law students by acting as a nexus of community-building, increasing awareness of issues that particularly impact Muslims, and building campus wide coalitions with other organizations dedicated to pluralism and meaningful discourse.

The **Marquette University Muslim Law Students Association** is a campus organization geared towards fostering a space for people who are followers of Islam and for those who are interested in learning more about the religion. Its purpose is to inform and introduce the Marquette Law community to pertinent legislation and practices impacting the Muslim community. It also seeks to encourage discussions about Islamic culture, history, art, achievements, and the current direction of the Muslim lawyer.

The **Rutgers University Muslim Law Students Association** is a student organization at Rutgers Law School-Newark devoted to representing the interests of Muslim law students. Its mission is to develop Muslim legal professionals dedicated to the highest standards of excellence and integrity. Since 1997, Rutgers University-Newark has been rated as the most diverse national campus by *U.S. News & World Report*.

The **University of Chicago Muslim Law Students Association** is an organization that strives to introduce the Law School community to issues of importance to Muslims worldwide. It also provides cultural and religious programming to students.

The **University of Michigan Muslim Law Students Association** is dedicated to fostering a supportive community for Muslim law students in the law school and the legal profession. It offers academic, personal, and professional resources for members to enable them to succeed in law school and beyond. Additionally, it hopes to empower the community to raise awareness around legal matters related to American Muslims and Muslims around the world.

The **University of Virginia School of Law Muslim Law Students Association** was established to serve the educational and fellowship needs of Muslim law students at the University of Virginia School of Law and to promote a sense of community among Muslim students. Since its founding, the organization has organized seminars, talks, fundraisers, and group discussions to facilitate conversations between students, academics, and practicing attorneys on issues which affect Muslims in the United States and abroad.

The **Yale Law School Muslim Law Students Association** is a student-run organization that serves Muslim law students through community-building, event-organizing, and raising awareness around pertinent issues affecting Muslims at Yale, in New Haven, and in Connecticut.

The **Creating Law Enforcement Accountability & Responsibility (CLEAR) Project**'s mandate is to support Muslim, Arab, South Asian, and all other communities in the New York City area and beyond that are targeted by local, state, or federal government agencies under the guise of national security and counterterrorism. CLEAR was founded in 2009 and is housed at CUNY School of Law, within Main Street Legal Services, Inc., the clinical arm of the law school.