

No. 17-35105

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

STATE OF WASHINGTON, et al.,
Plaintiffs-Appellees,

v.

DONALD TRUMP, President of the United States, et al.,
Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON,
THE HONORABLE JAMES L. ROBERT PRESIDING,
CASE NO. 2:17-cv-00141-JLR.

**BRIEF OF AMICUS CURIAE HIAS, INC.,
IN SUPPORT OF PLAINTIFFS-APPELLEES**

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FRAP RULE 26.1 AND FRAP 29(a)(4)(E) DISCLOSURE STATEMENT

HIAS, Inc. is a 501(c)(3) not-for-profit refugee protection organization, with no parent corporation and no publicly traded stock. This brief was authored by counsel for HIAS, without the involvement of counsel for any party in this matter. No party or counsel for such party contributed money that was intended to fund preparing or submitting this brief. No person other than the amicus or its counsel contributed money that was intended to fund preparing or submitting this brief.

Dated: February 6, 2017

/s/ Robert J. Stein

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STATEMENT OF INTEREST OF AMICUS CURIAE

HIAS (“Amicus”) is an organization dedicated to rescuing people whose lives are in danger for being who they are. HIAS protects the most vulnerable refugees, helping them build new lives and reuniting them with their families in safety and freedom, as well as advocating for the protection of refugees and assuring that displaced people are treated with dignity and respect. Through offices in twelve countries, HIAS protects refugees around the world, and resettles refugees in the United States. HIAS is one of the non-profit refugee resettlement agencies working through cooperative agreements with the United States Department of State and Department of Health and Human Services.

Amicus further seeks to edify the Court about the needless difficulties and dangers that President Trump’s executive order has caused its clients with actual examples of the details of the hazards they now face. HIAS writes to shed light on the history and purpose of United States refugee laws and the requirements Congress placed on the President to consult with it on decisions about the number of refugees that the President decides should be allowed into the United States.

Amicus submits this brief under Fed. R. App. P. 29. This brief should be permitted to be filed without an accompanying motion for leave to file or leave of court because all parties have consented to its filing. Fed. R. App. P. 29(a).

STATEMENT OF AMICUS

Founded in the 1880s to help resettle Jews fleeing persecution in tsarist Russia, HIAS is the world's oldest refugee agency. Today, HIAS provides services to any refugees who are in need of assistance, regardless of their national, ethnic, or religious background. Although most of the refugees HIAS serves today are not Jewish, HIAS assists and advocates for them as an expression of Jewish values like *tikkun olam* (that is, acts of kindness performed to perfect or repair the world) and welcoming and protecting the stranger. Since its founding, HIAS has helped more than 4.5 million refugees start new lives by recovering and gaining control of their future. In 2016, HIAS assisted more than 350,000 refugees and asylum seekers globally and resettled thousands of refugees to the United States. Besides providing direct services such as social, legal, and integration assistance, HIAS advocates for the protection of refugees to ensure that displaced people are treated with respect and dignity.

U.S. Refugee Admissions Program

Since its founding, the United States has offered safety and the hope of a new life to refugees fleeing violence and persecution. The U.S. Refugee Admissions Program (USRAP) continues that legacy—it is a sophisticated humanitarian program designed to admit certain eligible refugees, set them up to quickly become self-sufficient, and enable them to restart their lives in safety.

A refugee is someone who has fled from his or her home country and cannot return because he or she has a well-founded fear of persecution based on religion, race, nationality, political opinion or membership in a particular social group¹. The first step for most refugees, as stated by the U.S. Department of State, is to register with the United Nations High Commissioner for Refugees (UNHCR) in the country to which s/he has fled. The U.S. Department of State continues, UNHCR determines if an individual qualifies as a refugee and, if so, works toward the best possible durable solution for each refugee: safe return to the home country, local integration, or third-country resettlement.

The U.S. Refugee Admissions Program is a multistep process that necessitates governmental and non-government agency partnerships coordinated by the U.S. Department of State. Applicants are subject to intensive biographic and biometric security checks. Applicants are referred to the program by the UNHCR. Before being accepted for resettlement in the U.S., applicants are interviewed by the U.S. Citizenship and Immigration Services. Refugee applicants have the highest level of background and security checks of any category of traveler to the United States².

¹ U.S. Department of State, *Refugee Admissions*, <https://www.state.gov/j/prm/ra/>

² U.S. Citizenship and Immigration Services, *Refugee Processing and Security Screening*, <https://www.uscis.gov/refugeescreening>

Of the more than 60 million displaced people around the world, 21.3 million are refugees³. The UNHCR, estimates that only one percent of the world’s refugees will ever be able to resettle in a third country. The UNHCR defines resettlement as “the transfer of refugees from an asylum country to another State that has agreed to admit them and ultimately grant them permanent settlement”⁴. By nationality, the main beneficiaries of UNHCR-facilitated resettlement programs during [2016] were refugees from the Syrian Arab Republic (71,600), the Democratic Republic of the Congo (20,400), Iraq (11,000) and Somalia (9,600) according to the UNHCR.

SUMMARY OF ARGUMENT

On January 27, 2017, President Donald Trump issued an executive order which purported to by its title “Protect the Nation from Foreign Terrorist Entry Into the United States” (the “Executive Order”). Among other things the Executive Order suspends the United States Refugee Admissions Program (“Refugee Program”) for 120 days, thereby effectively cutting off refugee movement into the United States for at least several months. President Trump claimed his authority for the Executive Order under the laws of the United States including the Immigration and Nationality Act (INA), 8 U.S.C. 1101 et seq. However, the Executive Order

³ U.S. Department of State, *Refugee Admissions*, <https://www.state.gov/j/prm/ra/>

⁴ UNHCR, *Resettlement*, <http://www.unhcr.org/en-us/resettlement.html>

was signed without statutory compliance and in derogation of the purpose and objectives of the Act, including its amendment by the 1980 Refugee Act.

The Executive Order claims that its purpose is to prevent individuals with terrorist ties from entering the United States and attacking the country, as occurred on September 11, 2001. It asserts that it is necessitated by the need to be “vigilant during the visa-issuance process to ensure that those approved for admission do not intend to harm Americans and that they have no ties to terrorism.” But the Executive Order focuses on preventing immigration only from countries whose citizens were not involved in the September 11 attacks and from which no radicalized Muslims have actually killed Americans in the United States since September 11, 2001. Moreover, there is no rational basis for the suspension of the Refugee Program because refugees trying to enter the United States are already subject to an intensive investigation, which can last for as long as two years, and which includes personal interviews and biometric analyses, and vetting by the United Nations High Commission on Refugees, the National Counterterrorism Center, the FBI's Terrorist Screening Center and the departments of State, Defense and Homeland Security. And contrary to the express purpose of the Refugee Act, the Executive Order has exacerbated the life-threatening position that an untold number of refugees find themselves in. Indeed, to the extent that the stay is lifted, the refugees would be subject to increased vulnerability in a myriad of ways.

By entering its temporary restraining order, (Doc. 52), the district court correctly acknowledged these salient points. Its order should not be disturbed.

ARGUMENT

I. THE EXECUTIVE ORDER VIOLATES THE INA.

In signing this executive order, President Trump violated his obligations under the Immigration and Nationality Act (“INA”). The INA regulates immigration to the United States by refugees. *Exodus Refugee Immigration, Inc. v. Pence*, 838 F.3d 902, 903 (7th Cir. 2016) (citing 8 U.S.C. §§ 1101 *et seq.*).

The Refugee Act of 1980 (“Refugee Act”), which amended the INA, was enacted, in part, “to bring the United States law into conformity with our international treaty obligations under the United Nations Protocol Relating to the Status of Refugees” *Chan v. Lothridge*, No. C 94-1827 SAW, 1994 WL 411723, at *3 (N.D. Cal. Aug. 5, 1994), *aff’d*, 81 F.3d 167 (9th Cir. 1996) (citing Senate Report No. 256, 96th Cong., 2d Sess., reprinted in U.S. Code Cong. and Admin. News 142). According to the relevant Senate Report, there were several basic objectives that the Refugee Act was designed to accomplish. These objectives included repealing the then-current immigration law's “discriminatory treatment of refugees by providing a new definition of refugee that recognizes the plight of the homeless people all over the world, and by according refugee admissions the same immigration status given all other immigrants.” *Id.* at *3

(citing Senate Report No. 256, 96th Cong., 2d Sess., reprinted in U.S. Code Cong. and Admin. News 142).

Besides ensuring the non-discriminatory treatment of refugees, a basic objective of the INA was to provide a statutory requirement that Congress be consulted as to the admission of refugees into the United States. *Chan v. Lothridge*, No. C 94-1827 SAW, 1994 WL 411723, at *7 (N.D. Cal. Aug. 5, 1994), *aff'd*, 81 F.3d 167 (9th Cir. 1996). The Refugee Act thus requires the President to engage in “appropriate consultation” regarding limitations on the number of refugees admitted to the U.S. 8 U.S.C.A. § 1157. “Appropriate consultation” means:

discussions in person by designated Cabinet-level representatives of the President with members of the Committees on the Judiciary of the Senate and of the House of Representatives to review the refugee situation or emergency refugee situation, to project the extent of possible participation of the United States therein, to discuss the reasons for believing that the proposed admission of refugees is justified by humanitarian concerns or grave humanitarian concerns or is otherwise in the national interest, and to provide such members with the following information:

- (1) A description of the nature of the refugee situation.
- (2) A description of the number and allocation of the refugees to be admitted and an analysis of conditions within the countries from which they came.
- (3) A description of the proposed plans for their movement and resettlement and the estimated cost of their movement and resettlement.
- (4) An analysis of the anticipated social, economic, and demographic impact of their admission to the United States.

(5) A description of the extent to which other countries will admit and assist in the resettlement of such refugees.

(6) An analysis of the impact of the participation of the United States in the resettlement of such refugees on the foreign policy interests of the United States.

(7) Such additional information as may be appropriate or requested by such members.

8 U.S.C.A. § 1157. By not engaging in such consultation, the Executive Order violates the Refugee Act.

The requirements of the Refugee Act cannot be ignored by appealing to alleged national security concerns. Such arguments ignore that refugees are carefully screened to ensure the safety of all in the United States. As this Court knows, the INA itself and current vetting measures ensure that refugee admission into the U.S. does not run counter to the need for safety. In fact, the INA's definition of refugee expressly excludes those who could harm the U.S.

Under the INA, the term "refugee" excludes "any person who ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion." *Barajas-Romero v. Lynch*, No. 13-70520, 2017 WL 192711, at *4 (9th Cir. Jan. 18, 2017) (citing 8 U.S.C. § 1101(a)(42)). Additionally, all refugees are subject to the myriad exclusionary grounds in Section 212 (a) of the

INA, including exclusion on health-related grounds, moral/criminal grounds, or misrepresentation of facts on visa applications.

Indeed, “all persons seeking to enter the United States as refugees are required to undergo multiple layers of screening by the federal government, following screening by the United Nations High Commissioner for Refugees, before they can be admitted to the United States.” *Exodus Refugee Immigration*, 838 F.3d at 903. As the White House Communications Office noted in 2015, refugees are “subject to the highest level of security checks of any category of traveler to the United States, including the involvement of the National Counterterrorism Center, the FBI's Terrorist Screening Center, the Department of Homeland Security, the Department of State, and the Department of Defense.” Amy Pope, *How We're Welcoming Syrian Refugees While Ensuring Our Safety*, Nov. 17, 2015, 2015 WL 7251679, at *1 (The White House, Office of Office of Communications). The Department of Homeland Security notes on its website that, “refugee applicants are subject to intensive biographic and biometric security checks. Through close coordination with the federal law enforcement and intelligence communities, these checks are continually reviewed and enhanced to address specific populations that may pose particular threats.”⁵

⁵ www.uscis.gov/refugeescreening#GeneralRefugee.

As the White House Communications Office has pointed out, the screening process involves more than nine detailed steps, including document collection, repeated biographic security checks, Department of Homeland Security Interviews and medical checks. See, *The Screening Process for Entry into the United States*, White House Communications Office, 11/20/15, 2015 WL 7307828, at *1–2. Only applicants who are strong candidates for resettlement even move forward from the earliest stages and those candidates make up less than 1% of global refugee population.” *Id.* The screening process can take up to two years. *Exodus v. Pence*, 838 F.3d at 903.

Accordingly, there was no justification for the President to ignore his legal requirement to seek and engage in appropriate consultation before issuing this overly broad, unnecessary, and hurtful executive order. Lifting the stay at this juncture merely exacerbates the problems caused by the Executive Order.

II. THE EXECUTIVE ORDER IS PUTTING PEOPLE AT RISK, AND THE STAY SHOULD NOT BE LIFTED.

A. Client #1

The Executive Order has fractured many refugee families whose safety and desire for unification were already fragile, and risks the lives of many who relied on the promises of the United States when they received their visas. Those people made irreversible plans to leave the countries in which they were residing, and followed established procedures to obtain their visas and permission to enter the United States. The Executive Order closes the door to their hope of avoiding the immense dangers that they currently face, leaving them in the perilous situation created by the Executive Order may never allow for it to be reopened for these individuals.

For example, Scott⁶ is a United States citizen of Iraqi origin who lives in White Marsh, Maryland. He came to the United States in 2009 as a refugee. In 2006, three days after his uncle and cousin were murdered and he received death threats, Scott fled Iraq for Syria. In Syria, he was followed and watched.

In 2007, Scott applied for refugee status through the United Nations High Commissioner for Refugees. He was approved, and came to the United States as a refugee in August 2009. He arrived with his wife and two daughters, also refugees.

⁶ The individual names have been changed to protect the identity of the individual refugees and their families.

All four are now United States citizens. Scott and his wife had a third daughter after they arrived in the United States. In March 2015, Scott applied for an I-130 immigration visa for his parents who remained in Iraq with one of his sisters. Another sister now lives in Virginia. His parents are retired teachers living in Baghdad. They were interviewed in September 2016 at the United States embassy in Baghdad, and were then informed that their visas had been approved. In December 2016, in response to a request for an update on the status of the visas, Scott's parents were informed that their cases required administrative processing. Because they anticipated coming to the United States early in 2017, Scott's parents sold their furniture and prepared to move. After learning of President Trump's executive order through the news, Scott's parents understood this travel ban would prevent them from joining their son and his family. The Executive Order would unnecessarily perpetuate this family's separation.

B. Client #2

Among those who the Executive Order punishes are brave foreign nationals who risked their lives to provide critical assistance to the United States military during the Iraq war. Mark is a case in point. Barred from entry into the United States and living just one hour from Mosul, his life is in imminent danger because it is known that he assisted the United States. Also endangered are the lives of his wife and three children, who were to arrive in Los Angeles this week.

Mark is an Iraqi citizen who helped the United States Army in Operation Iraqi Freedom and later military operations. Like many Iraqi men and women who helped the United States in military operations, Mark served the United States as an interpreter. He also served in combat, fighting alongside American troops and risking his life in military operations in northern and southern Iraq. After his term of service ended, Mark passed through a rigorous screening process to enter the United States with a Special Immigrant Visa, which grants its recipients refugee status and benefits upon arrival in the United States. Mark is increasingly anxious to emigrate from Iraq because his service to the United States has put his life in danger in Iraq. The Islamic State of Iraq and Levant (ISIL) is engaged in a military struggle for the city of Mosul, Iraq, a one-hour drive from where Mark lives. Information about Iraqi citizens who served with the United States military is readily available in Iraq. ISIL operatives target these individuals for kidnappings and murders. Compounding this danger is Mark's proximity to Mosul, which is now a warzone. He can hear the airplanes, bombs, and shooting from his house.

Chief among Mark's concerns are his 12-year-old son, who was born with Down's Syndrome. The entire family—Mark, his wife, his two sons, and his daughter—were originally booked to arrive in Los Angeles on February 9, 2017. When President Donald Trump signed an Executive Order barring individuals originating from Iraq from arriving in the United States, the United States Embassy

in Jordan called Mark to inform him that his travel had to be cancelled, as he and his family members are Iraqi citizens. He had had his visa and his airline tickets ready. He called his closest friend, a man who also served with the United States military in Iraq and now lives in Chula Vista, California. Mark told his friend that he had packed his bags, and sold all of his belongings. He also no longer had his job and did not know what to do.

While his friend waits in Chula Vista, Mark and his family wait to escape the dangers in Iraq. They are now rescheduled to arrive in Los Angeles on February 14, 2017. If they cannot travel then, they risk having to renew their medical screenings, which expire on February 23, 2017. They also risk the fear of being discovered and harmed or killed by ISIL or by artillery related to the battles in Mosul.

C. Client #3

HIAS is also familiar with the situation of a U.S. citizen of Syrian origin who lives in Cleveland, Ohio and works as a warehouse manager for a furniture store. He is married and has a young son and daughter. His entire family, including his parents, all live in Cleveland and are all US citizens. But one part of the family has not yet found in safety in the United States: Robert, the warehouse manager's brother, Robert's pregnant wife, and their seven year old daughter are in Dubai waiting for resettlement to the United States.

The Executive Order threatens the safety of this Syrian refugee family, headed by a father who, having cleared every hurdle necessary to enter the United States, gave notice to his employer and sold all of his belongings. He now has literally nothing. If he cannot enter into the United States, he faces deportation to Syria, the very country from which he fled civil war. His pregnant wife also faces the strong likelihood that she will deliver their child while separated from her husband.

Robert has been outside of Syria since 2008. His U.S. citizen brother filed an I-130 petition in 2016 for Robert to join him in Cleveland and be resettled as a refugee. Robert cleared extensive background and medical checks, and prepared to leave Dubai. Robert, an electrical engineer, was in Dubai on a work permit and once he left his job, he was only permitted to stay 20 days before being deported.

Robert and his family were booked to travel to the United States on February 12, 2017. In preparation for travel to the US, he gave notice to his employer, who in turn revoked his work permit. Robert then sold his belongings and gave notice that he would be vacating his apartment. When President Trump signed the Executive Order, Robert and his family were told they could not resettle in the United States. Robert and his family are at risk of deportation from Dubai, have no apartment or belongings in Dubai, and his daughter was removed from school.

If Robert does not leave Dubai by February 20, he will be deported to Syria. Robert's wife is 6 months pregnant and will need to travel before her third trimester or her medical clearance will expire and security and medical checks will need to restart for all members of the family. His U.S. citizen brother, puts it this way: "Seeing my brother and his family here with us is the most important thing. 12 years I haven't seen him, we're hoping to see him here, with us. The most important thing is the impact of him and his family. How bad he feels? I can't even explain. All they know about the US is freedom."

D. Client #4

Similarly, a United States Lawful Permanent Resident of Iranian origin lives in Seattle, Washington. She arrived in the United States in 2011 as a refugee from Iran and is now finishing her last quarter of schooling to become a dental assistant. She last spoke with her close friend, Mary, a fellow refugee from Iran, two weeks ago. Mary's plight embodies the precarious position and absolute despair that many refugees find themselves in, which will only be heightened if the stay is lifted.

Mary, a former nurse, is classified as a "Woman At Risk" by the United Nations High Commissioner for Refugees. She fled Iran with her son and twin daughters in 2014, and has had a transient living situation in Turkey while waiting to the resettle in the United States through the United States Refugee Program. The

family had scheduled a flight to Seattle. Shortly before the flight, the International Organization of Migration, the organization responsible for refugee travel, called the family and told them that the flight had been cancelled because President Trump had signed an order stating that people from seven countries—including Iran—could not travel to the United States. According to Mary's friend, they were so sad. The family sold everything they had, and they no longer had a home or other place to live. On February 5, 2017, following the stay of the executive order, the International Organization for Migration rescheduled Mary's family to travel to the United States on February 8, 2017. For now, they remain in Turkey, hoping they will not be denied a future in the United States.

The clients discussed above – from Iraq, Iran and Syria would all be subject to a ban on admission to the United States under the Refugee program if the Executive Order stands. They face ongoing separation, and heightened vulnerabilities having taken steps to prepare to come to the United States, in reliance upon their acceptance into the U.S. Refugee Program.

CONCLUSION

For these reasons, Amicus respectfully requests that the Court affirm the district court's temporary restraining order and not stay that order.

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STATEMENT OF RELATED CASES

Pursuant to Circuit Rule 28-2.6, undersigned counsel declares that there are no known related cases pending in this Court.

Dated: February 6, 2017

/s/ Robert J. Stein
Robert J. Stein

CERTIFICATE OF SERVICE

I hereby certify that on February 6, 2017, I filed the foregoing Brief Amici Curiae HIAS, Inc., in Support of Plaintiffs-Appellees with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the CM/ECF system. All participants in the case are registered CM/ECF users and will be served by the appellate CM/ECF system. I also served the Brief upon Michelle R. Bennett, U.S. Department of Justice, Civil Division, Federal Programs Branch, 20 Massachusetts Ave. NW, Washington, D.C. 20530 by depositing a copy so addressed with proper postage prepaid in the United States mail at 191 N. Wacker Dr., Suite 1800 Chicago, IL 60606.

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