

No. 17-35105

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

STATE OF WASHINGTON; STATE OF MINNESOTA,
Plaintiffs-Appellees,

v.

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

On Appeal from the United States District Court
for the Western District of Washington, Seattle
The Honorable James L. Robart
No. 2:17-cv-00141-JLR

**SERVICE EMPLOYEES INTERNATIONAL UNION'S MOTION FOR
LEAVE TO FILE BRIEF AS AMICUS CURIAE IN SUPPORT OF
PLAINTIFFS-APPELLEES**

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I. INTRODUCTION

The Service Employees International Union (“SEIU”) respectfully moves for leave to file an amicus curiae brief in support of Plaintiffs-Appellees. A copy of the proposed brief is attached is submitted herewith. The Defendants-Appellants initially gave blanket consent to the filing of all amicus briefs. However, at 10:34 p.m. PST (1:34 a.m. EST) on February 5, amici were informed that Defendants-Appellants altered their position from a uniform consent for the filing of all amicus briefs, to providing consent solely if the amicus briefs were filed by the deadline for the State of Washington’s brief of 11:59 p.m. PST (2:59 a.m. EST)—*i.e.*, less than an hour-and-a-half after the SEIU received notice of Defendants’ backtracking. Notwithstanding the Department of Justice’s apparent objection, SEIU respectfully submits that its filing of the attached brief is timely, desirable, and worthy of this Court’s consideration.

II. ARGUMENT

The goal of any amicus curiae is “to call the court’s attention to ... facts or circumstances in a matter then before it that may otherwise

escape its consideration.”¹ The fundamental requirements of Rule 29 of the Federal Rules of Appellate Procedure are that an amicus curiae brief be “relevant” and “desirable.”² The proposed brief here satisfies both requirements.

A. This Court Has Broad Discretion To Allow The Participation Of Amici Curiae

Permitting a nonparty to submit a brief as amicus curiae is, “with immaterial exceptions, a matter of judicial grace.”³ Circuit courts, including this Court, have rarely disclosed the considerations weighed when deciding a motion for leave to file an amicus brief. But the Ninth Circuit has recognized that the classic role of an amicus is “assisting in a case of general public interest, supplementing the efforts of counsel, and drawing the court’s attention to law that escaped consideration.”⁴

¹ 4 Am. Jur. 2d, *Amicus Curiae* § 6 (2004).

² Fed. R. App. P. 29(b)(1).

³ *NOW, Inc. v. Scheidler*, 223 F.3d 615, 616 (7th Cir. 2000).

⁴ *Miller-Wohl Co., Inc. v. Comm’r of Labor and Indus., Montana*, 694 F.2d 203, 204 (9th Cir. 1982).

B. Service Employees International Union Has the Requisite Interest

The Service Employees International Union is an international labor organization representing approximately two million working men and women in the United States and Canada employed in the private and public sectors. In the State of Washington alone, SEIU's local-union membership exceeds 126,000. Members include public school teachers, janitors, security officers, nurses, and long-term care workers who provide quality healthcare, education, and building services to Washington residents. Many of SEIU's Washington-resident members are foreign-born U.S. citizens, lawful permanent residents, or immigrants authorized to work in the United States. And many of SEIU's Washington-resident members have mixed-status families.

C. SEIU Can Provide Helpful Information To The Court That Will Not Duplicate Arguments Presented By The Parties

The accompanying amicus brief from SEIU provides additional information showing why the State of Washington has standing to challenge President Donald J. Trump's January 27, 2017 Executive Order ("Executive Order."). The amicus brief contains factual information that will assist the Court in resolving the parties'

competing claims on that issue, without duplicating the parties' arguments. The brief documents that the impact of the Executive Order on the SEIU and Washington residents and others across the nation – including SEIU members – is profound. These immediate, real-world impacts highlight the States' pressing interest in protecting their residents and their tax bases by providing real-life examples of the immediate and irreparable harm that will occur if the Executive Order is allowed to stand.

D. The Amicus Brief is Timely

The filing of this motion with the accompanying brief is timely. Under the Federal Rules of Appellate Procedure, the brief of an amicus is due “no later than seven days after the principal brief of the party being supported is filed.” Fed. R. App. P. 29(e). In this case, the parties being supported by SEIU are the States of Washington and Minnesota, and the States of Washington and Minnesota filed their principal briefs on Sunday, February 5, 2017. The United States has not yet filed its response. Accordingly, the instant motion and brief are being filed well within the seven day time frame that would apply under the appellate

rules. Alternatively, and again drawing on the appellate rules, this Court can exercise its discretion, as it deems necessary and appropriate, and specify a time within which the United States may “answer” the amicus brief from SEIU. *See* Fed. R. App. P. 29(e).

III. CONCLUSION

The Court should therefore exercise its discretion to permit SEIU to file the attached amicus brief. Counsel of record for SEIU is familiar with the scope of the arguments presented by the parties and will not unduly repeat those arguments. Instead, the SEIU draws from its communications with residents from Washington and around the nation – including SEIU members and their families. These communications illustrate the profound, widespread, and irreparable harm the Executive Order has caused and would continue to cause if the District Court’s Temporary Restraining Order were undone.

DATED: February 6, 2017

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on February 6, 2017.

All participants in the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29(a)(4)(A) of the Federal Rules of Appellate Procedure, Service Employees International Union makes the following disclosures:

(1) For non-governmental corporate parties please list all parent corporations: None

(2) For non-governmental corporate parties please list all publicly held companies that hold 10% of more of the party's stock: None

Dated: February 6, 2017

Respectfully Submitted,

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8 U.S.C. § 1152(a)(1)(A)2

I. INTRODUCTION

The profoundly adverse and discriminatory effects of the Executive Order are already wreaking havoc on the State of Washington and its residents—including members of the Service Employees International Union (“SEIU”)¹. Because the Executive Order bans individuals from seven predominately Muslim countries from entering the United States, and is plainly driven by animus against Muslims, the Executive Order violates the Constitution’s ban on discrimination based on national origin and religion. The Executive Order cannot satisfy even the deferential rational basis test, as it does nothing to further its purported goal of protecting the U.S. from terrorist attacks. Heavily-vetted children fleeing war-torn countries pose no more threat of terrorism to this country than did Jewish people fleeing Czarist Russia. The Executive Order also violates the Due Process Clause of the Constitution by denying lawful permanent

¹ *Amicus* affirms that no counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *Amicus* or their counsel made a monetary contribution to its preparation or submission.

residents and visa-holders the ability to enter Washington without notice and the opportunity to be heard, and others of the statutory right to seek asylum. Finally, the Executive Order violates the Immigration and Nationality Act's prohibition on discrimination in the issuance of visas based on nationality, place of birth, or place of residence.²

Consistent with our nation's laws, the Executive Order cannot stand, and the District Court properly granted Plaintiffs-Appellees motion for a Temporary Restraining Order to maintain the status quo pending a full evaluation of the unprecedented and patently unconstitutional Executive Order.

The SEIU respectfully urges that the Court deny the government's motion for a stay of the Temporary Restraining Order in order to prevent harm to the States, their businesses, and their residents. The SEIU writes to further document the immediate and irreparable harm Washington State residents—including SEIU members, their families, and their communities.

² 8 U.S.C. § 1152(a)(1)(A).

II. STATEMENT OF INTEREST OF AMICUS CURIAE

The SEIU is a labor organization representing approximately two million men and women in the United States and Canada employed in the private and public sectors. Many SEIU members are foreign-born U.S. citizens, lawful permanent residents, or immigrants authorized to work in the United States. Many SEIU members have mixed-status families. Many SEIU members and their families are directly affected by the Executive Order barring entry into the United States based on national origin.

III. ARGUMENT

The impact of the Executive Order on the SEIU and its members is profound and highlights the State's pressing interest in protecting its residents and preserving its tax base. The SEIU has over 100,000 members in Washington State in five local chapters, including the Public School Employees of Washington (representing over 28,600 public school employees); SEIU Healthcare 1199NW (over 29,000 nurses and healthcare workers across the state); SEIU Local 775 (over 40,000 long-term care workers providing in-home and nursing home

care in Washington and Montana); SEIU Local 6 (over 4,000 janitors, security officers, stadium and airport workers); and SEIU Local 925 (17,000 education, governmental, and non-profit workers).

A large percentage of these workers are immigrants. For example, more than 40% of SEIU Local 6's members are immigrants. The Executive Order will accordingly have an enormous impact on them. As an SEIU website states: "Among the members of SEIU Healthcare 1199NW are countless immigrants and refugees, green card holders and legal permanent residents, who care for our community's patients and mental health clients every day. [President] Trump's order means these caregivers face travel bans, could be unable to reunite with families, and will face more hate and discrimination in our community."

SEIU members work in industries that touch Washington residents' daily lives. They help educate the State's children, care for the State's elderly and infirm, keep the schools and buildings clean and secure, and—ironically enough—facilitate air travel in and out of the State. The impact on the State from losing these workers is self-

evident, and the Executive Order makes the State less secure and less prosperous as long as it stays in effect—and the State is obliged to protect the safety and prosperity of its residents. The risk and danger to SEIU members posed by the Executive Order, and the corresponding negative impacts on the State, are concrete and immediate. Many individuals—including SEIU members and those in their communities and families—have recounted their stories to SEIU staff. These individuals are fearful and do not want to reveal their identity.

1. Sara

Sara is a 33-year-old registered nurse and member of SEIU 1199NW who lives in Seattle. She came to the U.S. from Somalia when she was 12 years old. Both Sara and her parents are U.S. citizens; however, almost all of her extended family lives in Somalia.

Sara is adversely impacted by the Executive Order because her legitimate fear prevents her from travelling back to Somalia to visit her family. She has spent most of her life in the U.S. and considers this her home. She fears that if she leaves the U.S. she will not be able to get

back in. Sara is also worried that her relatives will never be able to come to the U.S. and visit her and her four children.

Sara's father is currently in Somalia visiting her grandmother. While her diabetic father was in Somalia, he developed a bad foot infection. His treatment in Somalia went badly, and he needs to return to the U.S. for medical treatment. Sara fears that her father, even though a U.S. citizen, will get detained when trying to re-enter the U.S. He is a senior citizen in need of immediate medical attention and will face serious health risks if he is detained.

2. *Dr. Kamal Fadlalla*

Dr. Kamal Fadlalla is a 33-year old second-year resident in internal medicine at Interfaith Medical Center in Brooklyn, New York. Dr. Fadlalla is a Muslim and citizen of Sudan who has been lawfully working in the United States for 20 months under the terms of his H-1B visa. In his work at Interfaith, Dr. Fadlalla serves a predominantly low-income patient base in the Brooklyn communities of Bedford–Stuyvesant and Crown Heights. Dr. Fadlalla is dedicated to his patients, many of whom have a myriad of health problems.

On January 13, 2017, a week before President Trump's inauguration, Dr. Fadlalla traveled to Sudan to visit family. Two weeks later, co-workers advised him to return to the United States because of rumors that President Trump would soon be imposing a travel ban on citizens from Muslim-majority countries. Dr. Fadlalla immediately arranged for his return to the United States, but was one day too late. On January 28, while he was waiting to board a plane in Khartoum with his boarding pass and valid visa, the airline agents told him he could not board due to the ban.

Dr. Fadlalla stayed in Sudan while his friends, colleagues and union worked to bring him back. Dr. Fadlalla worried that his hospital and patients would suffer in his absence. "My colleagues are going to be affected. My hospital is going to be affected. And for sure, my patients are going to be affected."

Dr. Fadlalla is one of the many doctors trained at foreign medical schools. Each year, around a quarter of the residents and fellows in advanced training programs around the U.S. attended medical school

outside the country. While some of those are U.S. citizens or permanent residents, about 15 to 20 percent of the total are not.

After the district court's order in State of Washington v. Donald Trump, Dr. Fadlalla successfully boarded a plane and arrived in the United States on February 5, 2017. He was greeted at JFK airport by colleagues, fellow union members, and elected officials, all eager for his return.

3. *Dasin*

Dasin was born in Iraq and lived there until 2012. He is Muslim. His father and uncle both worked for the U.S. Army in Iraq for about four years. Dasin helped his father and uncle while they were working for the U.S. Army. When the U.S. Army left Iraq it was very dangerous for Dasin and his family. ISIS bombed the front of Dasin's home, injuring Dasin in the face and neck. Dasin and his family then went to Turkey as refugees. Dasin had trouble finding work in Turkey because he was a refugee and faced discrimination.

Dasin came to the U.S. in 2013 and now lives Washington with his four siblings and his parents. He graduated high school in 2015. He

now works part-time as a dispatcher for a large company and part-time as a driver. Dasin is impacted by the Executive Order because he has many family members in Iraq that he can no longer see. Dasin's family hoped to bring Dasin's grandfather, grandmother, and uncle to the United States. Dasin fears that if his relatives are not able to come to the United States they will be killed in Iraq. Dasin has two close friends, also Iraqi refugees, who he met while living in Turkey. They waited several years to be processed for resettlement in the United States and scheduled flights for the United States this month. However, they had to cancel their flights after the Executive Order.

4. Nadia

Nadia is a 21 year-old Muslim woman who was born in the United States and is a U.S. citizen. Her parents are both U.S. citizens and originally from Somalia. Her mother is a childcare worker and member of SEIU Local 925. Nadia is studying to become a social worker and working part-time as a caregiver for her grandmother. She lives at home with her two parents and three siblings in Washington. Her father is currently in Somalia visiting her extensive family there..

Nadia is adversely impacted by the Executive Order because she hopes to be married in the U.S. to a Yemeni citizen currently residing in Saudi Arabia. Nadia was introduced to her fiancé through her parents, who met the man while they were on a pilgrimage to Saudi Arabia. Nadia and her fiancé spoke by phone and video chat for several months before she decided to visit him in Saudi Arabia. During the month that she spent in Saudi Arabia with her fiancé, she became increasingly drawn to his kindness, thoughtfulness, and great personality, and the couple decided to get married. When Nadia returned to the U.S. in March 2016, she filed an immigration application for her fiancé, a K-1 “fiancé” visa. Her fiancé’s application was approved pending a final interview at the U.S. Embassy abroad.

Nadia is fearful for both herself and her fiancé. Nadia is worried she will have to move to Saudi Arabia to be with her fiancé, and leave her home in the U.S. because it is too “hard to live our lives separately.” Nadia has been unable to see her fiancé, whom she misses dearly, due to the expense of flying to Saudi Arabia. Nadia’s fiancé is really

frightened that he will not be able to see her again, and upset that he is unable to move to the U.S. and start a life with Nadia.

5. John

John lives in Washington with his wife and three children. He came to the United States from Iran in 1978 as a student, was recognized as a religious refugee, and became a U.S. citizen in 1990.

The Executive Order adversely affects John's family and his business. John has several relatives living in Iran currently facing religious persecution because they are of the Baha'i faith. John's parents fled Iran in 1982 after three of his uncles were killed by an Iranian firing squad. John is now worried that his relatives cannot visit him or his family because of the immigration ban. John also has relatives who are Iranian citizens but reside all over the world. He is worried that they cannot visit him in the United States.

The Executive Order is also harming John's business, which is a small health clinic in Seattle. The comprehensive integrative clinic uses both Western and Eastern medicine. The clinic treats about 20 patients from Canada who are Iranian citizens. John estimates that

those patients comprise about 20 percent of his business, and the Executive Order would ban those patients from entering Washington.

6. Halima

Halima, a Muslim woman, lives in Seattle, Washington with her husband and children. She came to the United States from Somalia in 2001 as a legal resident, and became a U.S. citizen in 2008. Halima is a caregiver for disabled and elderly patients and has been a member of SEIU Local 775 since 2008. Although Halima and two of her children are U.S. citizens, her husband and her other four children are legal residents (green card holders). One of her children is in school; two of them attend community college; the other three children are working.

The Executive Order greatly worries Halima. She worries that her children may be attacked because of the hateful environment fueled by the Executive Order—particularly her four daughters, who all wear a hajib.

The husband of one of Halima's friends flew into the Seattle airport on January 27, 2017 with an approved visa, but was returned back to Somalia. Her friend, a U.S. citizen, was waiting for her

husband and couldn't even see him before he was turned around and sent back to Somalia—even though he was here legally. This incident has terrorized Halima's entire family. As Halima said, "[i]f they can treat people with green cards and visas the way they treated these people, who knows if they will come after naturalized citizens next? No one is safe."

The accounts of these individuals demonstrate that the Executive Order has an immediate and concrete impact on the well-being of Washington State citizens and others throughout the nation and is a matter of State concern. The Executive Order is separating families for no justifiable reason, causing many of Washington's citizens—including SEIU members—harm and distress when they face the genuine risk that they will be permanently separated from their loved ones. The State has a singular interest in protecting its citizens from precisely this type of irreparable harm from any source, including the federal government.

IV. CONCLUSION

The SEIU respectfully requests that the Court deny the government's motion for a stay of the Temporary Restraining Order.

DATED: February 6, 2017

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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface and type style requirements of Fed. R. App. P. 32(a)(5)(a) and (a)(6) because it has been prepared in a proportionally spaced typeface, using Microsoft Word in Century 14-point font.

This brief complies with the type-volume limitations of Fed. R. App. P. 29(d) because it contains 2,407 words excluding the parts exempted by Fed. R. App. P. 32(a)(7)(B)(iii). (The maximum number of words is 2,600 for an *amicus* brief in connection with a motion, which has a word limit of 5,200 words under Fed. R. App. P. 27(d)(2)(A)).

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