

No. 17-35105

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

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STATE OF WASHINGTON; STATE OF MINNESOTA,

Plaintiffs-Appellees,

v.

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

Defendants-Appellants.

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On Appeal from the United States District Court  
for the Western District of Washington

No. 2:17-cv-00141

The Honorable James L. Robart

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**MOTION OF WASHINGTON STATE LABOR COUNCIL  
FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE***

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## **CORPORATE DISCLOSURE STATEMENT**

The Washington State Labor Council is a non-profit organization of 600 union locals and councils representing approximately 400,000 rank-and-file union members throughout the State of Washington. It has no parent corporation and there is no publicly held corporation that owns 10 percent or more of its stock, of which it has none.

## I. INTRODUCTION & RELIEF REQUESTED

The Washington State Labor Council (“WSLC”) respectfully requests the Court grant it leave to file the 17-page *amicus* brief and supporting declarations attached hereto as **Exhibit A** in support of Plaintiffs’-Appellees’ (“State of Washington”) opposition to the emergency motion for a stay of the temporary restraining order (“TRO”) issued February 3, 2017, by the U.S. District Court for the Western District of Washington (Robart, J.). That TRO enjoins enforcement of certain unlawful and unconstitutional provisions of Executive Order No. 13,769, 82 Fed. Reg. 8977 (Jan. 27, 2017), which discriminatorily bans all refugees from entering the country for 120 days, bans all refugees from Syria indefinitely, and bans immigrants and non-immigrants from seven majority-Muslim countries from entering the U.S. for 90 days. The proposed *amicus* brief provides additional authority and evidence why the State of Washington is likely to prevail on the merits of its claim and how the Executive Order causes irreparable harm, including to members of labor unions living and working in Washington State.

## II. IDENTITY AND INTEREST OF *AMICUS CURIAE*

The WSLC is a state-wide labor council comprised of more than 600 local unions, and it represents more than 450,000 rank-and-file union members working in Washington State. Declaration of Jeff Johnson (“Johnson Dec.”), ¶ 2 (filed with the district court below; copy attached hereto in Exhibit A for the Court’s

convenience). The WSLC is widely considered to be the “voice of labor” in Washington State. *Id.* WSLC has a strong interest in advocating for the liberty interests of Washington State workers. *Id.*

The WSLC provides many services to its affiliated unions. Johnson Dec., ¶ 3. The Council has a focus on legislative advocacy, political action, communication through its website “The Stand,” supporting affiliated unions’ organizing drives by rallying community leaders and elected officials, and programs that provide affiliate and direct worker assistance like dislocated worker assistance, increasing student awareness about apprenticeship programs within community and technical colleges, Project Help, education and training for union members, and assistance for unions with contract and economic research. *Id.*

On January 30, 2017, the President of WSLC issued the following statement regarding President Donald Trump’s Executive Order that bans all refugees from entering the country for 120 days, bans all refugees from Syria indefinitely, and bans immigrants and non-immigrants from seven majority-Muslim countries from entering the U.S. for 90 days:

President Trump’s Executive Order on Friday *de facto* banning Muslims from certain Middle Eastern countries from entering/re-entering the country for 90 days went beyond the pale of common decency, human dignity, and further fans the flames of racism, xenophobia, and anti-Islamism that he thoughtlessly spewed during his campaign. Legal permanent residents, green card holders and vetted refugees from certain Muslim countries — only countries where the Trump Corporation has no business dealings — were

detained at airports, refused entry, and in some cases, sent back to the country they had just arrived from. This reckless action further contributes to the rising attacks on Muslims and others in America. The Southern Poverty Law Center reports a dramatic rise in hate incidents over the past two years, now at 260,000 hate incidents a year. This hateful and shameful Executive Order was met by thousands protesting at airports across the country as well as an emergency stay against the Executive Order by a federal judge.

As union members and as a labor movement we stand with immigrants and refugees. We cannot and will not allow the president to pick us off one group at a time. Another leader did this in the 1930s and 1940s with horrific consequences.

America was built by immigrants and refugees and they will continue to play a part in the values upon which we define America.

Johnson Dec., ¶ 4.

Among WSLC's affiliated unions, unions who have signed a Solidarity Charter with the WSLC and other labor allies are unions whose members are directly impacted by the Executive Order, because they are immigrants or non-immigrant temporary workers from one of the seven banned countries whose ability to travel into and out of the United States is prohibited outright or whose inability to re-enter the United States after traveling will put their livelihoods in jeopardy. Johnson Dec., ¶ 5. Members are also affected because the ability of their families to travel into the United States is prohibited temporarily or indefinitely, disrupting the members' family ties, personal freedoms and economic security. *Id.*

Moreover, as a representative of working people, WSLC is keenly aware that the United States has a lamentable history of wrongfully using the nation's immigration laws against labor, for political purposes. Perhaps most famously, from February 1917 to November 1919, during the notorious "Palmer Raids," federal agents working at the direction of Attorney General A. Mitchell Palmer deported more than 500 foreign citizens, including a number of prominent leftist leaders, for reasons that are now generally understood to have been overtly political, i.e., to eliminate (through deportation) the representatives and leaders of movements intended to improve the lives and working conditions of blue-collar workers. *See generally* The Palmer Raids (Labor Research Association 1948) (Robert W. Dunn, ed.).

### **III. ARGUMENT**

WSLC seeks leave to file a 17-page *amicus* brief in opposition to President Donald Trump et al.'s emergency Motion Under Circuit Rule 27-3 For Emergency Stay Pending Appeal ("Emergency Motion"), because of the actual and potential impact of the Executive Order on the members of unions in Washington State across a wide range of industries, and the irreparable harm that will be suffered by those workers if the Executive Order does not continue to be enjoined. The foregoing facts establish the interest of the labor community in the outcome of this proceeding. WSLC's brief offers additional examples of irreparable harm to

individuals working and residing in Washington, further establishing that the elements for continued temporary injunctive relief are met. *See* Exhibit A (Declarations of Jeff Johnson, David Parsons and Matt Haney). WSLC's brief also offers information about the intent of Congress to eliminate prejudice and discrimination in national immigration policy which supports, but does not duplicate, the arguments made by the States of Washington and Minnesota in support of their request for a temporary restraining order and their opposition, in this Court, to the request for a stay of the restraining order.

All parties to this litigation have, via e-mail, consented to the filing of this *amicus* brief, although Defendants-Appellants stated an expectation that filing would occur by the deadline for the State of Washington's Response Brief, e.g., before 1:00 a.m. February 6, 2017. Neither the Federal Rules of Appellate Procedure nor the Ninth Circuit Rules expressly authorize the filing of an *amicus curiae* brief in connection with a motion for a stay, even when the parties have consented, or provide for the length of such a brief. *C.f.*, Fed. R. App. P. 29(a)(5) (except with the Court's permission, an *amicus* brief may be no more than one-half the maximum length authorized for a party's principal brief); Circuit Rule 27-1(1)(d) (except with the Court's permission, a motion or response to a motion may not exceed 20 pages).

This case involves a number of constitutional and statutory questions involving the protection of individuals and groups from invidious discrimination based on nationality, national origin and religion – discrimination which is purportedly but falsely justified on the grounds of national security interests. The case also arises procedurally from a request for, and grant of, a nation-wide TRO affecting the operations of numerous governmental agencies around the country and the irreparable harm that has been caused by the Executive Order and would again be caused if the Court were to grant Defendants’-Appellants’ request for a stay pending appeal. For all of these reasons, a 20-page brief is justified, and WSLC thus respectfully requests that the Court grant WSLC leave to file the attached brief and declarations in support thereof.

#### IV. CONCLUSION

For the foregoing reasons, the Court should grant WSLC leave to file the 17-page *amicus* brief and declarations attached hereto as **Exhibit A**.



RESPECTFULLY SUBMITTED this 6<sup>th</sup> day of February, 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.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

DATED this 6th day of February, 2017, in Seattle, Washington.

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# Exhibit A

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***AMICUS CURIAE BRIEF***  
**OF WASHINGTON STATE LABOR COUNCIL**  
**IN SUPPORT OF THE OPPOSITION OF WASHINGTON AND**  
**MINNESOTA TO EMERGENCY MOTION FOR STAY**  
**PENDING APPEAL**

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### **Corporate Disclosure Statement**

Washington State Labor Council is a non-profit organization with 600 affiliated union locals and councils representing approximately 450,000 rank-and-file union members throughout the State of Washington. It has no parent corporation and there is no publicly held corporation that owns 10 per cent or more of its stock, of which it has none.

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## I. INTRODUCTION

For more than half a century the United States maintained discriminatory immigration laws excluding Chinese laborers and others of Chinese descent; in 2012, the United States House of Representatives passed a resolution acknowledging that “the United States was founded on the principle that all persons are created equal” and formally expressing the regret of the House of Representatives for the Chinese Exclusion Acts. H.R. Res. 683, 112th Cong. (2012).

Acknowledging “the fundamental injustice of the evacuation, relocation, and internment of United States citizens and permanent resident aliens of Japanese ancestry during World War II,” in 1988, President Ronald Reagan signed the Civil Liberties Act of 1988 to offer a formal apology, and grant reparations in the amount of \$20,000, to each living victim of the Japanese internment resulting from an Executive Order issued in 1942. Civil Liberties Act of 1988, Pub. L. No. 100-383, 102 Stat. 903 (1998). The Act stated that the government “actions were carried out without adequate security reasons...and were motivated largely by racial prejudice, wartime hysteria, and a failure of political leadership.” *Id.*

After decades of maintaining discriminatory national origin quotas that disfavored non-European immigrants, Congress enacted the Immigration and Nationality Act Amendments of 1965, Pub.L. No. 89-236, 79 Stat. 911 (1965)

(hereinafter, “INA”), which finally ended “strong overtures of an indefensible racial preference” in our immigration law. John F. Kennedy, *A Nation of Immigrants* 77 (1964).

Yet, once again if not restrained, discriminatory and destructive governmental action will later lead to sober thought, contrition and the need for apology. One week after assuming office, President Donald Trump signed an Executive Order fulfilling his campaign promise to enact a “Muslim ban” and to subject immigrant applicants to “extreme vetting.” The Executive Order bans all refugees from entering the country for 120 days, bans all refugees from Syria indefinitely, and bans immigrants and non-immigrants from seven majority-Muslim countries from entering the U.S. for 90 days: Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen. President Trump defends the Executive Order with rhetoric of national security. Even if future leaders of our government feel compelled to issue formal apologies or statements of regret for this unlawful and discriminatory act, no amount of contrition, or even reparations, will undo the harm to individuals, and most importantly to our democracy, caused by the Executive Order at issue here.

The Washington State Labor Council (“WSLC”) submits this brief in opposition to President Donald Trump, *et. al.*’s Emergency Motion Under Circuit Rule 27-3 For Administrative Stay And Motion For Stay Pending Appeal

(“Emergency Motion”) because the members of its affiliated unions would suffer irreparable harm from revived enforcement of the Executive Order.

### **I. IDENTITY AND INTEREST OF *AMICUS CURIAE***

The WSLC is a state-wide labor council comprised of more than 600 local unions and represents more than 450,000 rank-and-file union members working in Washington State. It is widely considered to be the “voice of labor” in Washington State. Declaration of Jeff Johnson (“Johnson Dec.”), ¶ 2.<sup>1</sup> WSLC has a strong interest in advocating for the liberty interests of Washington State workers. *Id.* Because of the irreparable harm being done to union members in Washington State, which is set forth in detail below, the WSLC and other labor leaders have spoken out vehemently against President Trump’s Executive Order. *Id.*, ¶ 4 and Ex. A (statements from labor unions regarding the Executive Order).<sup>2</sup>

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<sup>1</sup> All of the declarations referenced herein were filed with the district court below, and copies are attached for the court’s convenience hereto.

<sup>2</sup> *See also* Washington State Labor Council statement at <http://www.thestand.org/2017/01/wslc-trump-orders-bring-shame-to-the-u-s/>; Service Employees International Union statement at <http://www.seiu.org/2017/01/seius-saenz-trumps-executive-actions-are-an-attack-on-american-values-that-will-hurt-immigrant-muslim-and-refugee-families>; American Federation of Teachers statement at: <http://allin.rtp.aft.org/aft-opposes-trump-executive-orders-information-and-resources>; American Nurses Association statement at <http://nursingworld.org/FunctionalMenuCategories/MediaResources/PressReleases/ANAPresidentResponds-ImmigrationEO.html>; Teamsters Joint Council 16 at <http://teamsters.nyc/2017/02/01/new-york-teamsters-support-immigrants-oppose-trump-immigration-orders/>; AFL-CIO’s

The WSLC submits this brief in opposition to the Emergency Motion and to support the State of Washington's efforts to ensure that the unconstitutional, unlawful Executive Order does not again go into effect.<sup>3</sup>

## II. ARGUMENT

The WSLC joins, but will not repeat here, the States' meritorious arguments, made to this Court, that the Executive Order violates the United States Constitution and federal statutes. It submits this brief to add its unique perspective and voice to the chorus of voices seeking to point out to this Court the truly appalling consequences this misguided and wrongfully-motivated Executive Order will have if the Order enjoining it is stayed pending appeal. The WSLC also writes to emphasize that careful review of the history of discriminatory immigration rules demonstrates the significance of the irreparable harm that is being caused in

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statement at <http://www.thestand.org/2017/02/attacking-immigrants-refugees-hurts-us-all/>; UniteHERE! statement at <http://unitehere.org/press-releases/statement-by-d-taylor-on-president-trumps-travel-ban/>; United Farmworkers statement at [http://www.ufw.org/board.php?mode=view&b\\_code=news\\_press&b\\_no=19078&page=1&field=&key=&n=1221](http://www.ufw.org/board.php?mode=view&b_code=news_press&b_no=19078&page=1&field=&key=&n=1221); SEIU California's statement at <http://www.seiuca.org/2014/11/21/seiu-california-statement-on-the-presidents-action-on-immigration/>; California Faculty Association at <http://www.calfac.org/headline/cfa-issues-statement-trump-immigration-ban>.

<sup>3</sup> Pursuant to Circuit Rule 29(a) the WSLC states that no party's counsel authored this brief in part or whole, no party or party's counsel contributed money that was intended to fund preparing or submitting this brief, and no person other than *amicus curiae*, its members, or its counsel contributed money that was intended to fund preparing or submitting the brief.

*particular* by the fact that this Executive Order violates the INA—the statute meant to *end* pernicious discrimination in immigration law.

- A. Absent continuing injunctive relief, residents of Washington will suffer irreparable harm because their government, in clear contravention of the INA, has labelled some of them as being less valuable than others, and as having no rights.**

“The negative policies the United States government establishes concerning immigrants, non-immigrant visitors and refugees of certain national origins or religions reflects the attitudes the government has of its own citizens of those same national origins and religions – that they are less valued, less than equal. Such policies cause harm to our unions’ members that cannot be undone.” Johnson Dec. ¶ 6.

In discussing the Immigration Act of 1965, Secretary of State Dean Rusk similarly observed that immigration rules have significant domestic, as well as foreign, meaning:

[G]iven the fact that we are a country of many races and national origins, that those who built this country and developed it made decisions about opening our doors to the rest of the world; that anything which makes it appear that we, ourselves, are discriminating in principle about particular national origins, suggests that we think ... less well of our own citizens of those national origins, than of other citizens....<sup>4</sup>

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<sup>4</sup> *Immigration: Hearings Before Subcomm. No. 1 of the Comm. on the Judiciary, House of Representatives, on H.R. 7700 and 55 Identical Bills*, 88th Cong. 901-02 (1964), reprinted in 10A Oscar Trelles & James Bailey, *Immigration and Nationality Acts: Legislative Histories and Related Documents*, doc. 69A (1979) 390. See also *id.* at 410 (remarks of Attorney General Robert Kennedy) (noting

Attorney General Katzenbach accurately assessed the damage done by discriminatory immigration rules the 1965 Act was meant to abolish:

I do not know how any American could fail to be offended by a system which presumes that some people are inferior to others solely because of their birthplace.... The harm it does to the United States and to its citizens is incalculable.”

*Hearings on S. 500 Before the Subcomm. on Immigration and Naturalization of the Senate Comm. on the Judiciary*, 89th Cong. 119 (1965) 9.

Through this language in the INA, the Congress abolished discrimination long codified in statutory national origin quotas which disfavored non-European immigrants:

Except as specifically provided in paragraph (2) and in sections 1101(a)(27), 1151(b)(2)(A)(i), and 1153 of this title, no person shall receive any preference or priority or be discriminated against in the issuance of an immigrant visa because of the person's race, sex, nationality, place of birth, or place of residence.

8 U.S.C. § 1152 (enacted by Pub.L. No. 89-236, 79 Stat. 911 (1965)).

The quotas were introduced into law in 1921, and extended by the Immigration Act of 1924, which required a study of the ethnic sources of America’s white population from the origins of settlement; and quotas were derived from the percentages of the U.S. population that were derived from any

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that the bill “would remove from our law a discriminatory system of selecting immigrants that is a standing affront to millions of our citizens”).

particular nation. This had the effect of limiting immigration from Asia, and non-Protestant eastern and southern Europe. Pub.L. 67-5; 42 Stat. 5 (1921); Pub.L. 67-5; 42 Stat. 5 (1924). The Immigration and Nationality Act of 1952, ch. 477, 66 Stat. 163, retained modified quotas that again reflected the existing demographic mix of U.S. inhabitants and had no purpose other than to maintain the existing ethnic and religious composition of the national population. See Mary Jane Lapointe, *Discrimination in Asylum Law: The Implications of Jean v. Nelson*, 62 Ind. L.J. 127, 149 (1986). That discriminatory purpose became the focal point of intense debate which fueled the impetus for the 1965 Act.

President Harry Truman opposed the discriminatory quota system and when his veto of the 1952 act was overridden, he denounced the system as being contrary to American values because it “discriminates, deliberately and intentionally, against many of the peoples of the world.” The President's Veto Message, June 25, 1952, reprinted in *The President's Comm'n on Imm. and Nat., Whom We Shall Welcome* 277. President Truman's Commission on Immigration and National Origin had found that “the major disruptive influence in our immigration law is the racism and national discrimination caused by the national origins system,” and that the present system should be replaced with a “unified quota system, which would allocate visas without regard to national origin, race, creed, or color.” *The*

*President's Comm'n on Imm. and Nat., Whom We Shall Welcome* 263 (submitted Jan. 1, 1953).

In 1958, then Senator John Kennedy published a broadside against the national origin quota system in which he criticized the system for having “strong overtures of an indefensible racial preference.” John F. Kennedy, *A Nation of Immigrants* 77 (1964). As President, he introduced legislation to end the quota system and President Lyndon Johnson strongly advocated for the bill, after President Kennedy’s deal. The INA was enacted in 1965 as one of three complimentary bills passed early in Johnson's presidency, the others being the Civil Rights Act of 1964, Pub.L. No. 88-352, 78 Stat. 241 (1964), and the Voting Rights Act of 1965, Pub.L. No. 89-110, 79 Stat. 437 (1965).<sup>5</sup> See Roger Daniels, *Coming To America: A History of Immigration And Ethnicity In American Life* 338 (1990) (observing that the Civil Rights Act, Voting Rights Act and Immigration

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<sup>5</sup> Senator Hiram Fong described the purpose of the Act as “seeking an immigration policy reflecting America’s ideal of the equality of all men without regard to race, color, creed or national origin” which he noted reflected the values of the Civil Rights Act:

Last year we enacted the historic Civil Rights Act of 1964, which was designed to wipe out the last vestiges of racial discrimination against our own citizens . . . . As we move to erase racial discrimination against our own citizens, we should also move to erase racial barriers against citizens of other lands in our immigration laws.

Hearings on S. 500 Before the Subcomm. on Imm. and Nat. of the Senate Comm. on the Judiciary, pt. 1, 89th Cong., 1st Sess. 44-45 (1965).



Act “represent a kind of high-water mark in a national consensus of egalitarianism”); Vernon M. Briggs, Jr., *Immigration Policy and the American Labor Force* 62 (1984) (“Just as overt racism could no longer be tolerated in the way citizens treated their fellow citizens, neither could it be sanctioned in the laws that governed the way in which noncitizens were considered for immigrant status.”).

In supporting passage of the INA, Senator Edward M. Kennedy argued that the national origins quota system was “contrary to our basic principles as a nation.” 111 Cong.Rec. 24, 225 (1965). Senator Joseph Clark insisted that “the national origins quotas and the Asian-Pacific triangle provisions are irrational, arrogantly intolerant, and immoral” and that it was unjust that “[a] brilliant Korean or Indian scientist is turned away, while the northern European is accepted almost without question.” *Id.* at 24, 501. Representative Paul Krebs stated that immigration rules based on national origin were “repugnant to our national traditions,” and that “we must learn to judge each individual by his own worth and by the value he can bring to our Nation.” *Id.* at 21, 778. Representative Dominick Daniels rejected the national origin quotas that “racism simply has no place in America in this day and age.” *Id.* at 21, 787. Other senators and officials condemned the national origins quota system as “un-American” and “totally alien to the spirit of the Constitution,” and praised the new bill for its recognition of individual rights. Hearings on S. 500

Before the Subcomm. on Imm. and Nat. of the Senate Comm. on the Judiciary, pt. 1, 89th Cong., 1st Sess. 11 (1965) (statement of Attorney General Katzenbach), 47 (statement of Secretary of State Dean Rusk), 127 (statement of Senator Hugh Scott), 165 (statement of Senator Paul Douglas) and 217 (statement of Senator Robert Kennedy); *see also* Hearings Before Subcomm. No. 1 of the House Comm. on the Judiciary, 88th Cong., 2d Sess. 723 (1964), where the Secretary-Treasurer of the AFL-CIO, James B. Carey, quotes the AFL-CIO Declaration in support of the bill).

The INA repealed a system that, in the words of President Johnson, “violated the basic principle of American democracy—the principle that values and rewards each man on the basis of his merit . . . .” T. Aleinikoff & D. Martin, *Immigration Process and Policy* 55 (1985). In that regard, like Title VII of the Civil Rights Act of 1964, the INA’s “focus on the individual is unambiguous. It precludes treatment of individuals as simply components of a racial, religious, sexual, or national class.” *City of Los Angeles, Dep’t of Water & Power v. Manhart*, 435 U.S. 702, 708, 98 S. Ct. 1370, 55 L. Ed. 2d 657 (1978). In enacting the INA, Congress intended to end discrimination based on national origin and religion and non-discrimination “requires . . . focus on fairness to individuals rather than fairness to classes. Practices that classify employees in terms of religion, race,

or sex tend to preserve traditional assumptions about groups rather than thoughtful scrutiny of individual.” *Manhart*, 435 U.S. at 709-10.

The Executive Order at issue here is blanket discrimination against classes of individuals based on their national origin and religion, classifications that are not consistent with American law, or even rational, and are at the same time over and under inclusive, as the States of Washington and Minnesota have pointed out. It denies Syrian refugees, immigrants and the resident family members of immigrants of the seven excluded nations evaluation on individual merit and instead imposes what our Constitution and laws protect against: invidious discrimination based on particular characteristics. The order works precisely as did the repealed quota system, by denying liberty to whole classes of people based on their national origin. The Executive Order thus directly contravenes the INA and the Nation’s values, which mandate that each individual is evaluated on his or her own merit. The WSLC joins in the following statement of former national security, foreign policy, and intelligence officials in the United States Government condemning the Executive Order as antithetical to American law and values:

As government officials, we sought diligently to protect our country, even while maintaining an immigration system free from intentional discrimination, that applies no religious tests, and that measures individuals by their merits, not stereotypes of their countries or groups. Blanket bans of certain countries or classes of people are beneath the dignity of the nation and Constitution that we each took oaths to protect. Rebranding a proposal first advertised as a “Muslim Ban” as “Protecting the Nation from Foreign

Terrorist Entry into the United States” does not disguise the Order’s discriminatory intent, or make it necessary, effective, or faithful to America’s Constitution, laws, or values.

ECF 29-2, ¶ 9 (Declaration of Madeleine K. Albright, Avril D. Haines, Michael V. Hayden, John F. Kerry, John E. Mclaughlin, Lisa O. Monaco, Michael J. Morell, Janet A. Napolitano, Leon E. Panetta, Susan E. Rice).

For all of the foregoing reasons, the States of Washington and Minnesota are likely to prevail on the merits, and the district court’s temporary restraining order should be left intact.

**B. Absent continuing injunctive relief, residents of Washington will also suffer irreparable harm because their government has interfered with their liberties by limiting their movement, their ability to associate with their families, and to work.**

In addition to dignitary harm, Washington residents have suffered tangible harm and will continue to suffer harm if the temporary restraining order enjoining enforcement of the Executive Order is stayed. Lost opportunities to engage in one’s chosen profession, to travel, and to be united or reunited with families and loved ones are all irreparable, because losses of this kind sustained by individuals affected by the Executive Order cannot be remedied by money damages. *See, e.g., Enyart v. Nat’l Conf. of Bar Examiners, Inc., cert. denied*, 132 S. Ct. 366, 181 L.Ed.2d 232 (2011); *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1068 (9th Cir. 2014). In addition to the irreparable harm set forth in the pleadings filed by

the States of Washington and Minnesota, and other *amici curiae*, individuals who live and work in Washington are being subjected to the irreparable harm described herein.

Among WSLC's affiliated unions, unions who have signed a Solidarity Charter with the WSLC and other labor allies are unions whose members are directly impacted by the Executive Order, because they are immigrants or non-immigrant temporary workers from one of the seven banned countries whose ability to travel into and out of the United States is prohibited outright or whose inability to re-enter the United States after travelling will put their livelihoods in jeopardy. Johnson Dec., ¶ 6. Members are also affected because the ability of their families to travel into the United States is prohibited temporarily or indefinitely, disrupting the members' family ties, personal freedoms and economic security. *Id.* The members of unions affiliated or allied with WSLC affected by the Executive Order ban include hospitality workers, retail employees, health care industry workers, laborers, factory workers, and state, county and municipal employees among others. *Id.* These union members are exceptionally diverse, comprised of an array of races, nationalities, and religions. *Id.* The negative policies the United States government establishes concerning immigrants, non-immigrant visitors and refugees of certain national origins or religions reflects the attitudes the government has of its *own* citizens of those same national origins and

religions – that they are less valued, less than equal. *Id.* Such policies cause harm to unions’ members that cannot be undone. *Id.*

United Automobile, Aerospace and Agricultural Implement Workers of America, Local 4121 (“UAW 4121”) represents academic student employees (“ASEs”) at the University of Washington (“UW”). Declaration of David Parsons (“Parsons Dec.”), ¶ 1. Some ASEs are citizens or nationals of one of the seven countries listed in the Executive Order and are present in the U.S. with valid visas. *Id.*, ¶ 3. Many have expressed serious concerns about the impact of the Executive Order on their work at and for UW. *Id.* In particular, since the Executive Order has been issued, impacted ASEs from the seven named countries believe they can and should not travel outside the U.S., and have been advised by UW to avoid any international travel. *Id.* This impacts in numerous ways these ASEs’ ability to perform research and complete their courses of study. *Id.* If the restraining order is stayed, at least one ASE conducts research that requires overseas travel, and therefore may be significantly delayed or lose altogether the work completed pursuant to this project, which has been in process for years and directly impacts degree completion. *Id.* For some ASEs, any delay in completing research and course work could jeopardize funding and employment opportunities. *Id.* Additionally, if the restraining order is stayed ASEs will again be restricted from

visiting close family members or friends outside the U.S., which creates significant emotional hardships. *Id.*

UAW 4121 is aware of at least one ASE who is a citizen or national of one of the seven countries, and is outside the U.S. *Id.*, ¶ 4. If he or she is unable to re-enter the U.S. as a result of the Executive Order, his/her ability to conduct research for UW related to his/her course of study could be limited, and his/her graduate program training sequence could be disrupted. *Id.*

Service Employees International Union 6 Property Services Northwest (“SEIU 6”) has historically represented immigrants and refugees employed in the commercial janitorial industry, and its membership often reflects the different flows of immigrants and refugees coming into the U.S. workforce. Declaration of Matt Haney (“Haney Dec.”), ¶ 2. The current membership includes over 350 individuals originally from the seven affected countries in the Executive Order travel ban. *Id.*, ¶ 3. The majority of these members originated from Somalia. *Id.* The members from these countries tend to save up their money in order to be able to afford to return to their countries of origin for a month or more. *Id.*

Since President Trump issued the Executive Order banning all refugees from entering the country for 120 days, banning all refugees from Syria indefinitely, and banning immigrants and non-immigrants from seven majority-Muslim countries from entering the U.S. for 90 days, SEIU 6 members who have made travel plans

to Somalia have been contacting union representatives at SEIU 6 expressing their fears that they may not be able to return to the U.S., to their families and to their jobs, if they travel now. *Id.*, ¶ 4.

Additionally, a SEIU 6 member currently on leave in Somalia has contacted union representatives about fears of losing his job and in turn his health coverage, essential to controlling his chronic health condition, because he will not be able to return to the United States by April 15th as was arranged with his employer. *Id.*, ¶ 5.

These individual tangible harms are irreparable, as they cannot be remedied by money damages. Re-implementation of the Executive Order would cause irreparable injury to individuals living and working in Washington. The requested stay should therefore be denied.

### **III. CONCLUSION**

The individual tangible and dignitary harm that is being suffered by residents whose national origin is from the countries subject to the Executive Order is irreparable, in violation of the INA, and the Constitution's guarantees of equal protection and due process. The Executive Order is not rationally related to its stated goal of protecting national security and is, and must be, subject to judicial review, unless we are to abandon the rule of law. The harms that would be suffered if the ruling below enjoining enforcement of the unlawful and



unconstitutional Executive Order were to be stayed are severe, and the need for continuing injunctive relief is urgent. Because each of the elements for injunctive relief is met, this Court should deny the Emergency Motion.

RESPECTFULLY SUBMITTED this 6<sup>th</sup> day of February, 2017.

s/Jennifer L. Robbins

Jennifer Robbins, WSBA No. 40861

s/Dmitri Iglitzin

Dmitri Iglitzin, WSBA No. 17673

s/Kathleen Phair Barnard

Kathleen Phair Barnard, WSBA #17896

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*Attorneys for WSLC*

## CERTIFICATE OF COMPLIANCE

We certify that this brief complies with Rule 32-1 and is proportionally spaced, has a type face of 14 points or more and contains 3,831 words.

Dated this 6<sup>th</sup> day of February, 2017.

s/Jennifer Robbins

Jennifer Robbins, WSBA No. 40861

s/Dmitri Iglitzin

Dmitri Iglitzin, WSBA No. 17673

s/Kathleen Phair Barnard

Kathleen Phair Barnard, WSBA #17896

SCHWERIN CAMPBELL BARNARD

IGLITZIN & LAVITT, LLP

THE HONORABLE JAMES L. ROBART

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

STATE OF WASHINGTON,  
  
Plaintiff,  
  
v.  
  
DONALD TRUMP, in his official capacity as  
President of the United States; U.S.  
DEPARTMENT OF SECURITY; JOHN F.  
KELLY, in his official capacity as Secretary of  
the Department of Homeland Security; TOM  
SHANNON, in his official capacity as Acting  
Secretary of State; and the UNITED STATES  
OF AMERICA,  
  
Defendants.

No. 2:17-cv-00141-JLR

**DECLARATION OF JEFF  
JOHNSON**

I, Jeff Johnson, hereby declare as follows based on personal knowledge.

1. I am the president of the Washington State Labor Council (“WSLC”). I have held the position since 2010. Since 1986, I have held other positions with the WSLC, including special assistant to the president, lead lobbyist, research and organizing director, and shop steward for the administrative staff unit. I also sit on the Governor’s Council of Economic Advisors, the Workforce Training and Education Coordinating Board, the Washington State Apprenticeship Council, the Board of Washington Community Action Network and Alliance for Jobs and Clean Energy, and I serve as Co-Chair of the Washington State Blue Green Alliance.

DECLARATION OF JEFF JOHNSON - 1  
Case No. 2:17-cv-00141-JLR

LAW OFFICES OF  
SCHWERIN CAMPBELL  
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SEATTLE, WASHINGTON 98119-3971  
(206) 285-2828

1           2.       The WSLC is comprised of more than 600 local unions and represents more than  
2 450,000 rank-and-file union members working in Washington State. It is widely considered to  
3 be the “voice of labor” in Washington State. WSLC has a strong interest in advocating for the  
4 liberty interests of Washington State workers.

5           3.       The WSLC provides many services to its affiliated unions. The Council has a  
6 focus on legislative advocacy, political action, communication through its website “The Stand,”  
7 supporting affiliated unions’ organizing drives by rallying community leaders and elected  
8 officials, and programs that provide affiliate and direct worker assistance like dislocated worker  
9 assistance, increasing student awareness about apprenticeship programs within community and  
10 technical colleges, Project Help, education and training for union members, and assistance for  
11 unions with contract and economic research.

12           4.       On January 30, 2017, I issued the following statement regarding President Donald  
13 Trump’s Executive Order that bans all refugees from entering the country for 120 days, bans all  
14 refugees from Syria indefinitely, and bans immigrants and non-immigrants from seven majority-  
15 Muslim countries from entering the U.S. for 90 days:

16  
17           President Trump’s Executive Order on Friday *de facto* banning Muslims from  
18 certain Middle Eastern countries from entering/re-entering the country for 90 days  
19 went beyond the pale of common decency, human dignity, and further fans the  
20 flames of racism, xenophobia, and anti-Islamism that he thoughtlessly spewed  
21 during his campaign. Legal permanent residents, green card holders and vetted  
22 refugees from certain Muslim countries — only countries where the Trump  
23 Corporation has no business dealings — were detained at airports, refused entry,  
24 and in some cases, sent back to the country they had just arrived from. This  
25 reckless action further contributes to the rising attacks on Muslims and others in  
26 America. The Southern Poverty Law Center reports a dramatic rise in hate  
incidents over the past two years, now at 260,000 hate incidents a year. This  
hateful and shameful Executive Order was met by thousands protesting at airports  
across the country as well as an emergency stay against the Executive Order by a  
federal judge.

1 As union members and as a labor movement we stand with immigrants and  
2 refugees. We cannot and will not allow the president to pick us off one group at a  
time. Another leader did this in the 1930s and 1940s with horrific consequences.

3 America was built by immigrants and refugees and they will continue to play a  
4 part in the values upon which we define America.

5 6. Among WSLC's affiliated unions, unions who have signed a Solidarity Charter  
6 with the WSLC and other labor allies are unions whose members are directly impacted by the  
7 Executive Order, because they are immigrants or non-immigrant temporary workers from one of  
8 the seven banned countries whose ability to travel into and out of the United States is prohibited  
9 outright or whose inability to re-enter the United States after travelling will put their livelihoods  
10 in jeopardy. Members are also affected because the ability of their families to travel into the  
11 United States is prohibited temporarily or indefinitely, disrupting the members' family ties,  
12 personal freedoms and economic security. The members of unions affiliated or allied with  
13 WSLC affected by the ban include hospitality workers, retail employees, health care industry  
14 workers, laborers, factory workers, and state, county and municipal employees among others.  
15 These union members are exceptionally diverse, comprised of an array of races, nationalities,  
16 and religions. The negative policies the United States government establishes concerning  
17 immigrants, non-immigrant visitors and refugees of certain national origins or religions reflects  
18 the attitudes the government has of its *own* citizens of those same national origins and religions –  
19 that they are less valued, less than equal. Such policies cause harm to our unions' members that  
20 cannot be undone.  
21  
22

23 //

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25 //

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DECLARATION OF JEFF JOHNSON - 3  
Case No. 2:17-cv-00141-JLR

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SEATTLE, WASHINGTON 98119-3971  
(206) 285-2828



**DECLARATION OF SERVICE**

I hereby declare under penalty of perjury under the laws of the state of Washington that on this 2nd day of February, 2017, I caused the foregoing Declaration of Jeff Johnson to be filed with the Court using the cm/ecf system, which will automatically provide notification of such filing to:


Colleen M. Melody  
Patricio A. Marquez  
Marsha Chien  
Office of the Attorney General  
800 Fifth Avenue, Suite 2000  
Seattle, WA 98104

Robert W. Ferguson  
Anne E. Egeler  
Noah G. Purcell  
Office of the Attorney General  
PO Box 40100  
Olympia, WA 98504-0100

Jacob Campion  
Attorney General of Minnesota  
445 Minnesota Street, Suite 1100  
St. Paul, MN 55101

Michelle R. Bennett  
Arjun Garg  
U.S. Department of Justice  
Civil Division, Federal Programs Branch  
20 Massachusetts Avenue NW  
Washington, DC 20530

Signed in Seattle, Washington, this 2nd day of February, 2017.

  
\_\_\_\_\_  
Jennifer Woodward, Paralegal

# Exhibit A



**Contact:**

Maria Ponce, [maria.ponce@seiu.org](mailto:maria.ponce@seiu.org) (<mailto:maria.ponce@seiu.org>), 202-394-2139

Issued January 27, 2017

## **SEIU's Sáenz: Trump's executive actions are an attack on American values that will hurt immigrant, Muslim and refugee families**

WASHINGTON, D.C. – *In response President Trump's announcement of a series of executive actions on immigration and refugees, SEIU International Executive Vice President and iAmerica Action President Rocio Sáenz issued the following statement:*

"Another day brings another executive action that attacks immigrants, refugees and their families and compromises American values. Earlier this week, President Trump followed through on his promise to create a mass deportation force, turned the vast majority of immigrants into deportation priorities, fast-tracked their deportation, and made mandatory detention the default for all immigrants, including families and children fleeing persecution. Trump's executive actions today will continue to intensify the criminalization of immigrants.

"America should always be a nation that welcomes immigrant and refugee families and their contributions to our communities and economy. Restrictions on immigration from predominantly Muslim countries repudiate our own values and give license to others around the world to do the same or worse. Denying refuge to persons fleeing persecution at a time when they are most in need of safety is morally wrong and un-American. It undermines our security because it harms the victims of persecution and violates our international obligations.

"SEIU members and our communities will keep standing up for immigrants, refugees and their families, despite these attacks. Tens of thousands rallied and marched in more than 70 cities throughout America on Jan. 14, and we will use our collective power in the days and months ahead to prevent deportations and protect immigrant families. We will build our movement so we can come back stronger in 2018 and 2020 to win common sense immigration reform that works for working families."

1800 Massachusetts Ave NW  
Washington, DC 20036

**twitter** (<https://twitter.com/seiu>)

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(<https://www.facebook.com/seiu>)

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(<https://www.youtube.com/user/SEIU/videos>)

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**United Farm Workers**  
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**Trump refugee ban executive order is 'appalling,' UFW and UFW Foundation say**

01/27/2017

# Trump refugee ban executive order is 'appalling,' UFW and UFW Foundation say

*UFW Foundation Executive Director and United Farm Workers National Vice President Diana Tellefson Torres issued the following statement from Los Angeles in response to President Trump's executive orders issued today and aimed at those who seek refuge in the United States:*

Any type of refugee ban for any period of time is appalling and in direct opposition to long-held American values. Seeking refuge in the U.S is most often the last resort for those who face genuine risk of persecution and can't return to their countries from which they fled. This ban not only turns America's back on the world's most oppressed people, it also undermines our nation's founding principles. We are a nation of immigrants, a nation that has historically offered refuge to the oppressed. The UFW Foundation and UFW will continue standing firmly with immigrant and refugee families, and denounces today's executive actions.



**PRIMA**



**For immediate release**

January 29, 2017

Annemarie Strassel

astrassel@unitehere.org

# Statement by D. Taylor, President of UNITE HERE, on President Trump's Travel Ban

<http://unitehere.org/wp-content/uploads/uniteherelogostacked.jpg> “With several executive orders this week, President Trump has brought shame upon the United States and its rich humanitarian legacy. He has put the lives of refugees, most of them children, fleeing for their very lives, in danger once again. His orders barring individuals holding green cards and visas has created a humanitarian crisis and thrown our nation’s airports into chaos. He has now established a religious test for our Nation, in spite of his denials of the truth once again, by ordering that a Christian refugee child is more important than a Muslim refugee child. This is not only obscene, but must certainly be against the Constitution of the United States which Mr. Trump only one week ago publicly vowed to defend.



“Mr. Trump has singled out Muslim-majority countries for this ban ostensibly because they have produced terrorists who have attacked the United States. Yet he exempts the Kingdom of Saudi Arabia from which came the greatest number of these terrorists, and some other countries, where he owns businesses, in an utter conflict of interest with security of the United States. Mr. Trump’s order betrays those who assisted our Nation in the war on terror sending them back to lands where their lives are certainly at risk.

“Trump’s orders are fundamentally inhumane and reckless. They are un-American and unconstitutional. These orders can only put our Nation, our citizens, and our allies at greater risk.

“Mr. Trump has also threatened to cut off federal funding to “sanctuary” cities, where government officials are defying the President’s anti-immigrant attacks to uphold the Constitution and preserve the peace. But we commend mayors in New York, Boston, Chicago, Los Angeles and beyond, who are declaring their cities sanctuary cities in defiance of Mr. Trump’s unconstitutional and immoral directives. We demand that leaders in other American cities where our members live and work do the same.

“As the Union of hospitality workers, including thousands of workers at airports across the US, we welcome travelers and refugees from across the globe. We are proud to serve you. For the sake of our families, the people we serve and the values our nation holds so dear, we will fight President Trump’s un-American attacks on travelers from Muslim countries and immigrants of any ethnicity, race or creed.

“In the coming days and months ahead, Maria Elena Durazo, UNITE HERE’s General Vice President of Immigration, Civil Rights and Diversity, will be leading our Union’s fight against this illegal and immoral policy.”



**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON**

STATE OF WASHINGTON

Plaintiff,

v.

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

Defendants.

NO. 2:17-cv-00141-JLR

DECLARATION OF DAVID PARSONS

I, David Parsons, declare as follows:

1. I am President of United Automobile, Aerospace and Agricultural Implement

Workers of America, Local 4121 (UAW 4121 or Union), which represents academic student

DECLARATION OF DAVID PARSONS - 1

Douglas Drachler McKee & Gilbrough  
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Seattle, WA 98101  
Phone: (206) 623-0900  
Fax: (206) 623-1432

1 employees (ASEs) at the University of Washington (UW). Prior to becoming President, I was a  
2 member of UAW Local 4121 as a Teaching Assistant and a Research Assistant in the English  
3 Ph.D. program at UW. I work closely with the Union's International Solidarity Working Group  
4 (comprised of members of UAW 4121), which has led the Union's advocacy for international  
5 academic student employees on campus.

6  
7 2. UAW 4121 is extremely concerned about the immigration-related Executive  
8 Orders issued by President Donald Trump last week. The Executive Order issued on January 27,  
9 2017 entitled "Protecting the Nation From Foreign Terrorist Entry Into the United States"  
10 (Executive Order) has particular adverse impacts for ASEs at UW. Section 3(c) of the Executive  
11 Order states that "entry into the United States, as immigrants and nonimmigrants" of people from  
12 Iraq, Iran, Libya, Somalia, Sudan, Syria, and Yemen (with certain exceptions) is suspended for  
13 90 days. The Executive Order provides for the possibility of an extension of this time period.

14  
15 3. Some ASEs are citizens or nationals of one of the seven countries listed in the  
16 Executive Order and are present in the U.S. with valid visas. Many have expressed serious  
17 concerns about the impact of the Executive Order on their work at and for UW. In particular,  
18 since the Executive Order has been issued, impacted ASEs from the seven named countries  
19 believe they can not and should not travel outside the U.S., and have been advised by UW to  
20 avoid any international travel. This impacts in numerous ways these ASEs' ability to perform  
21 research and complete their courses of study. At least one ASE conducts research that requires  
22 overseas travel, and therefore may be significantly delayed or lose altogether the work completed  
23 pursuant to this project, which has been in process for years and directly impacts degree  
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27 DECLARATION OF DAVID PARSONS - 2

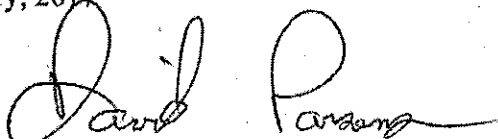
Douglas Drachler McKee & Gilbrough  
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Seattle, WA 98101  
Phone: (206) 623-0900  
Fax: (206) 623-1432

1 completion. For some ASEs, any delay in completing research and course work could jeopardize  
2 funding and employment opportunities. Additionally, ASEs are restricted from visiting close  
3 family members or friends outside the U.S., which creates significant emotional hardships.

4 4. UAW 4121 is aware of at least one ASE who is a citizen or national of one of the  
5 seven countries, and is outside the U.S. If he or she is unable to re-enter the U.S. as a result of the  
6 Executive Order, his/her ability to conduct research for UW related to his/her course of study  
7 could be limited, and his/her graduate program training sequence could be disrupted.

9 5. I declare under penalty of perjury under the laws of the State of Washington that  
10 the foregoing is true and correct to the best of my knowledge and ability.

11 Dated this 2<sup>nd</sup> day of February, 2017

12  
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14 David Parsons

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27 DECLARATION OF DAVID PARSONS - 3

Douglas Drachler McKee & Gilbrough  
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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

STATE OF WASHINGTON,

No. 2:17-cv-00141

Plaintiff,

**DECLARATION OF MATT  
HANEY**

v.

DONALD TRUMP, in his official capacity  
as President of the United States; U.S.  
DEPARTMENT OF SECURITY; JOHN F.  
KELLY, in his official capacity as Secretary  
of the Department of Homeland Security;  
TOM SHANNON, in his official capacity as  
Acting Secretary of State; and the UNITED  
STATES OF AMERICA,

Defendants.

I, Matt Haney, hereby declare as follows based on personal knowledge:

1. I am the Director of Strategic Research and Affairs for Service Employees International Union 6 Property Services Northwest (“SEIU6”), where I have worked for five years.

2. SEIU6 has historically represented immigrants and refugees employed in the commercial janitorial industry, and our membership often reflects the different flows of immigrants and refugees coming into the U.S. workforce.



## 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.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

DATED this 6th day of February, 2017, in Seattle, Washington.

s/Kathleen Phair Barnard

Kathleen Phair Barnard, WSBA #178967

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& Lavitt LLP

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