

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

HAMEED KHALID DARWEESH and HAIDER SAMEER ABDULKHALEQ
ALSHAWI, on behalf of themselves and others similarly situated,

Petitioners,

and

PEOPLE OF THE STATE OF NEW YORK, by ERIC T. SCHNEIDERMAN,
ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Intervenor-Plaintiff,

Case No.
1:17-cv-00480(CBA)

-against-

DONALD TRUMP, President of the United States; U.S.
DEPARTMENT OF HOMELAND SECURITY (“DHS”); U.S. CUSTOMS
AND BORDER PROTECTION (“CBP”); JOHN KELLY, Secretary of
DHS; KEVIN K. MCALEENAN, Acting Commissioner of CBP; and
JAMES T. MADDEN, New York Field Director, CBP,

Respondents.

**BRIEF FOR AMICI CURIAE THE CITIES OF NEW YORK, NY; ALBANY,
NY; AUSTIN, TX; BUFFALO, NY; CHICAGO, IL; GARY, IN; ITHACA, NY;
JERSEY CITY, NJ; LOS ANGELES, CA; MADISON, WI; MINNEAPOLIS, MN;
NASHVILLE, TN; NEW HAVEN, CT; OAKLAND, CA; PATERSON, NJ;
PHILADELPHIA, PA; PLAINFIELD, NJ; PORTLAND, OR; PROVIDENCE, RI;
ROCHESTER, NY; SANTA MONICA, CA; SEATTLE, WA; SCHENECTADY, NY;
SOMERVILLE, MA; SOUTH BEND, IN; SYRACUSE, NY; TRENTON, NJ;
WEST HOLLYWOOD, CA; AND YONKERS, NY; THE CITY AND COUNTY OF
SAN FRANCISCO, CA; THE TOWN OF CARRBORO, NC; THE BOROUGHS OF
HALEDON, NJ AND PRINCETON, NJ; AND THE VILLAGE OF SKOKIE, IL
IN SUPPORT OF PETITIONERS**

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INTEREST OF AMICI CURIAE AND SUMMARY OF ARGUMENT

Amici are the Cities of New York, NY; Albany, NY; Austin, TX; Buffalo, NY; Chicago, IL; Gary, IN; Ithaca, NY; Jersey City, NJ; Los Angeles, CA; Madison, WI; Minneapolis, MN; Nashville, TN; New Haven, CT; Oakland, CA; Paterson, NJ; Philadelphia, PA; Plainfield, NJ; Portland, OR; Providence, RI; Rochester, NY; Santa Monica, CA; Seattle, WA; Schenectady, NY; Somerville, MA; South Bend, IN; Syracuse, NY; Trenton, NJ; West Hollywood, CA; and Yonkers, NY; the City and County of San Francisco, CA; the Town of Carrboro, NC; the Boroughs of Haledon, NJ and Princeton, NJ; and the Village of Skokie, IL. Amici submit this brief in support of petitioners' application for injunctive relief against enforcement of President Trump's Executive Order 13769, titled "Protecting the Nation from Foreign Terrorist Entry into the United States," and commonly known as the "travel ban."

Amici demonstrate below that the broader public interest strongly favors the injunctive relief that petitioners seek. In the short time that the Executive Order was in effect, it stranded students, separated families, disrupted travel and commerce, spread fear among our residents and visitors, and projected a message of intolerance and distrust toward members of our communities.¹ The Order would bar our residents from returning home, block their loved ones from visiting, and turn back refugees we would have welcomed into our communities—all based on animus

¹ Another federal court has issued nationwide injunctive relief against certain of the Executive Order's provisions. See *Washington v. Trump*, No. C17-0141JLR, 2017 U.S. Dist. LEXIS 16012 (W.D. Wash. Feb. 3, 2017), *emergency stay denied*, 2017 U.S. App. LEXIS 2369 (9th Cir. Feb. 9, 2017). Given the fluidity of events, entry of injunctive relief remains appropriate and necessary to prevent irreparable harm pending full merits review of the legality of the Executive Order by this Court.

toward those individuals' nationality and religion, and without affording them any process. These deprivations offend the values of our cities and would inflict deep wounds on our most basic institutions, including our families, businesses, educational and cultural organizations, and medical facilities. The resulting hardships and instability acutely burden local governments, which form the front line in providing critical services and maintaining public order and safety.

The xenophobia and religious discrimination endorsed by the Executive Order are particularly toxic for amici cities, whose social fabric depends on tolerance and inclusiveness. New York City, for example, has a population of over eight million people, exceeding that of forty states;² three million of its residents were born abroad, and just under half speak a language other than English at home.³ The city is home to an estimated 27,000 individuals born in the seven countries explicitly targeted in the Executive Order and another 46,000 individuals whose ancestry traces to those nations.⁴ The city has also been a beacon for refugees: more than a thousand refugees have resettled here in the last five years⁵ and, according to city estimates, over 10,000 people who have fled violence or danger in their home countries live and work here. New York City also contains one

² *Population Facts*, N.Y.C. Dep't of Planning, <http://on.nyc.gov/1ovRl4S> (last visited Feb. 14, 2017).

³ American Community Survey 2011-2015, *U.S. Census Bureau*, <http://bit.ly/2dmQmHD> (last visited Feb. 14, 2017) (hereinafter, ACS Five-Year Data).

⁴ *See id.*

⁵ *See Interactive Reporting*, U.S. Dep't of State Bureau of Population, Refugees, and Migrants Office of Admissions, Refugee Processing Center, <http://bit.ly/2hTJ1Oi> (last visited Feb. 16, 2017).

of the country's largest Muslim populations, including almost 1,000 Muslim police officers.⁶

Together, American cities are home to nearly half of the country's foreign-born population and nearly 800,000 individuals born in the seven countries targeted by the Executive Order.⁷ The Order will affect cities both large and small. Los Angeles' population of nearly four million, for example, includes almost one and a half million individuals born abroad and over 150,000 residents from the seven targeted countries.⁸ South Bend, Indiana's population of just over 100,000 includes 40 families from Iraq, 70 families from Iran, 17 families from Syria, 20 families from Sudan, and 20 families from Yemen. About 4,500 of Skokie, Illinois' residents were born in Iraq, Iran, or Syria. More broadly, Muslims make up a significant portion of the populations of amici cities, including about 70,000 in Los Angeles County; 40,000 in Philadelphia; and 250,000 in the San Francisco Bay Area.⁹ Amici cities also include tens of thousands of refugees.¹⁰

Although couched as a security measure, the Executive Order would interfere with, rather than aid, the efforts of amici cities to keep our populations safe. By

⁶ Laura Ly, *Muslim NYPD Officer Threatened, Told 'Go Back to Your Country,'* CNN (Dec. 6, 2016), <http://cnn.it/2kPIgdx>.

⁷ Alan Berube, *These Communities Have a Lot at Stake in Trump's Executive Order on Immigration*, The Brookings Institution (Jan. 30, 2017), <http://brook.gs/2jnBzit> (last visited Feb. 14, 2017); *The Foreign-Born Population in the United States: 2003*, U.S. Census Bureau (Aug. 2004), <http://bit.ly/2ldssB4>.

⁸ ACS Five-Year Data, *supra* note 3.

⁹ See, e.g., *Bay Area Muslims Face Ongoing Islamophobia*, The San Francisco Foundation (May 15, 2013), <http://bit.ly/2kWHMkw>.

¹⁰ For example, Chicago has welcomed almost 7,000 refugees over the last five years; Syracuse, 5,000; Minneapolis, almost 4,500; and Philadelphia, over 3,000. See U.S. Dep't of State Bureau of Population, Refugees, and Migrants Office of Admissions, *supra* note 5.

placing the federal government's imprimatur on expressions of fear and hatred towards adherents of a particular religion and persons of specific nationalities, the Order would impair our ability to combat discrimination and hate crimes; chill cooperation with law enforcement and make crime victims hesitant to reach out for help; and undermine our counterterrorism efforts by bolstering a false narrative that our nation is at war with Islam.

Amici cities are keenly aware of the need to safeguard our populaces against terrorist attacks. Cities bear the scars of many of the worst terrorist attacks on U.S. soil, including the attacks of September 11, 2001; the Boston Marathon bombing; and the Orlando nightclub shooting. And amici cities share the concern of scores of our nation's most respected security and counterterrorism experts that spreading animus toward the members of a faith does nothing to make us safer. Our experience confirms that cities are safest when we adhere to our core values and when government fosters an environment in which everyone—regardless of their religious beliefs, nationality, or ethnicity—is respected and protected.

ARGUMENT
THE PUBLIC INTEREST STRONGLY
FAVORS INJUNCTIVE RELIEF

In determining whether to grant injunctive relief, courts consider (1) whether the moving party is likely to succeed on the merits; (2) whether that party is likely to suffer irreparable harm absent injunctive relief; (3) whether the issuance of injunctive relief will substantially injure other parties interested in the proceeding; and (4) where the public interest lies. *See Nken v. Holder*, 556 U.S. 418, 434 (2009);

Kabenga v. Holder, 76 F. Supp. 3d 480, 482 (S.D.N.Y. 2015). Amici focus here on the fourth prong to demonstrate that the requested relief strongly serves the public interest and, in particular, the interests of our over 23 million combined residents in the continued vibrancy and safety of our cities.

The Executive Order's disregard for the values that sustain daily life in our cities is unprecedented. No contemporary presidential order has sought to bar admission from several entire countries or to single out adherents of a particular religious faith as targets for exclusion. By barring the citizens of seven majority-Muslim nations from visiting our cities—and sending a message that Muslims and refugees are unwelcome—the Executive Order will deeply harm our cities' economies, institutions, and communities and erode the core principles that our cities' functioning depends on.

A. The Executive Order Will Damage the Economic Vitality and Social Fabric of Amici Cities.

1. The economies and cultures of the amici cities depend on openness to immigrants and visitors.

Openness to the outside world is the basic currency of life in amici cities. Our workforces are composed of individuals from all over the world, many of whom have immediate family members or other loved ones living abroad. Our educational and cultural institutions thrive on the free movement of students, scholars, teachers, and artists—and with them the free exchange of knowledge and ideas. The safety and cohesiveness of our families and communities, too, depend on inclusiveness and respect for others. By disrupting our residents' family lives, undermining key

segments of our economy and our cultural institutions, and damaging our standing across the globe, the Executive Order will harm virtually every aspect of city life.

New York City, like several of amici cities, is a frequent point of entry and a potent symbol of our origin story as a nation of immigrants.¹¹ New York City's openness in welcoming immigrants and visitors is the centerpiece of its economy and a common thread running through its residents' daily lives. Nearly half of New York City's workforce was born in another country; more than half of our city's business owners are immigrants.¹² About 60 million visitors per year, including 12.3 million international tourists, keep New York City's retail and hospitality sectors humming, accounting for \$42.2 billion in direct spending.¹³ The city's businesses and financial institutions—the foundation for our nation's financial markets—have connections to stakeholders in all corners of the globe. Its cultural and research institutions draw scholars, artists, musicians, and scientists from every region in the world. And close to 50,000 foreign students are enrolled in New York City's universities, creating tens of thousands of jobs and an annual economic impact of over two billion dollars.¹⁴

¹¹ See, e.g., L.B. Johnson, *Remarks at the Signing of the Immigration Bill, Liberty Island, New York* (Oct. 3, 1965), <http://bit.ly/2kCuW7Z> (remarking, in signing bill eliminating national-origin quotas and forbidding discrimination in issuance of visas, that America was “built by a nation of strangers” who hailed “[f]rom a hundred different places or more”).

¹² *Our Immigrant Population Helps Power NYC Economy*, N.Y.C. Comptroller (Jan. 11, 2017), <http://on.nyc.gov/2lgiJJW>.

¹³ *NYC Travel & Tourism Visitation Statistics*, N.Y.C. & Company, <http://bit.ly/1ajQwlJ> (last visited Feb. 14, 2017).

¹⁴ *International Students in NYC*, N.Y.C. Eco. Dev. Corp. (Jan. 28, 2014), <http://bit.ly/2knj5iO>; see *NAFSA International Student Economic Value Tool*, Nat'l Ass'n for Foreign Student Advisers, <http://bit.ly/2aO3nYj> (last visited Feb. 16, 2017).

Other amici cities have similarly deep international connections. Significant segments of amici cities' workforces are foreign-born, including over 960,000 in Los Angeles; 184,100 in San Francisco; 108,000 in Philadelphia; and 51,000 in Portland.¹⁵ The Los Angeles metro region saw almost 50 million tourists in 2015, including 6.7 million international visitors, visitors who alone generated \$6.3 billion in direct spending.¹⁶ San Francisco had more than 24 million tourists that same year, generating over \$9 billion in spending and supporting over 76,500 jobs.¹⁷ About 1.2 million international tourists visited the Philadelphia metropolitan area in 2015, generating \$800 million in direct spending.¹⁸ Chicago welcomed over 54 million visitors last year, including over 1.5 million from abroad, bringing in over \$900 million in local tax revenue and \$2.3 billion in hotel revenue.¹⁹ And across the nation, the number of international students in U.S. colleges and universities has surged, topping one million in the 2015-16 academic year.²⁰ Amici's medical

¹⁵ ACS Five-Year Data, *supra* note 3.

¹⁶ *Los Angeles Sets New Tourism Record, Announces 45.5 Million Visitors in 2015*, Discover Los Angeles (Jan. 19, 2016), <http://bit.ly/2kngyFj>.

¹⁷ *San Francisco Travel Reports Record-Breaking Year for Tourism*, San Francisco Travel (Mar. 29, 2016), <http://bit.ly/2lMs61E>.

¹⁸ *Tourism as an Economic Engine for Greater Philadelphia 2015 Visitation and Economic Impact Report*, at 38, <http://vstphl.ly/2kEgFHT> (last visited Feb. 15, 2017).

¹⁹ *Mayor Emanuel and Choose Chicago Announce Record Tourism in 2016*, Choose Chicago (Jan. 5, 2017), <http://bit.ly/2lWrLsM>.

²⁰ Tara John, *International Students in U.S. Colleges and Universities Top 1 Million*, Time (Nov. 16, 2016), <http://ti.me/2fT1KYg>.

facilities, local governments, and public universities, too, rely on personnel who come from other countries.²¹

The vitality of amici cities and the well-being of our inhabitants thus depend on the federal government's willingness to allow open exchange with the outside world. The Ninth Circuit recently confirmed that the injuries caused by the Executive Order—including separating families, prohibiting travel by professors and students, and stranding residents abroad—impose significant and irreparable harm on states. *See Washington v. Trump*, No. 17-35105, 2017 U.S. App. LEXIS 2369, at *32-33 (9th Cir. Feb. 9, 2017). The harm to the cities within those states is more concentrated, and so even more strongly felt.

Congress has repeatedly recognized the profound damage done to society when families are kept apart. Family reunification has formed the cornerstone of America's immigration policy for the last half century. *See, e.g.*, S. Rep. No. 89-748, at 13 (1965) (emphasizing that keeping families together “is to be the foremost consideration” in immigration); H.R. Rep. No. 101-723(1), at 40 (1990) (finding that uniting permanent residents with their families serves the national interest). The

²¹ For example, the three major hospitals in Madison, Wisconsin, employ 104 foreign-born medical residents. Dozens of medical residents serving in New York City's safety-net hospitals are affected by the Executive Order, including a second-year resident who was denied re-entry into the country after visiting family in Sudan. *See* Compl. in Intervention of the N.Y. State Att'y Gen., at ¶¶ 53-55, ECF No. 39. A doctoral student and employee at the City University of New York (CUNY) was diverted while returning from visiting family in Iran, and was able to re-enter the United States only after extensive advocacy on her behalf. Anya Kamenetz, *Students Stranded Worldwide by Trump Order*, NPR (Jan. 30, 2017), <http://n.pr/2kHBza3>. CUNY's Chancellor estimates that the ban will apply to at about 120 students, as well as faculty and staff. *Message from Chancellor Milliken*, The City University of New York (Jan. 29, 2017), <http://bit.ly/2khI6dQ>. Los Angeles hospitals collectively rely upon more than one dozen physicians and researchers from the seven targeted countries; more than two dozen of the city's municipal employees are also lawful permanent residents from those countries.

Executive Order rejects this fundamental value, separating so many members of our communities from loved ones. In doing so, it enshrines into law a discriminatory worldview that threatens the ethic of inclusiveness on which our communities depend.

2. The harms wrought by the Executive Order are sharply magnified by the Order’s failure to furnish constitutionally required procedural protections.

The harms to amici cities, our residents, and their families are made all the worse by the federal government’s failure to afford individuals affected by the Executive Order the basic procedural protections guaranteed by the U.S. Constitution and federal statutes—protections that are essential to ensuring fundamental fairness in the administration of the laws. These hostile measures, the Mayor of New York City has warned, go “against our constitutional values” and send a message to Muslims that “for no reason whatsoever they could be detained or even sent to their home country even though they’re part of the life of the United States.”²²

The Due Process Clause of the Fifth Amendment requires that government provide an individual with due process before that person is deprived of a liberty interest. *See Kerry v. Din*, 135 S. Ct. 2128, 2132 (2015). Procedural due process requirements apply to all persons physically present in the United States, *see Zadvydas v. Davis*, 533 U.S. 678, 693-94 (2001), and to certain lawful permanent residents seeking to reenter after traveling abroad, *see Landon v. Plasencia*, 459

²² Eric Bradner, *NYC Mayor: Trump Travel Ban Sends a Horrible Message*, CNN (Jan. 29, 2017), <http://cnn.it/2lHmaKE>.

U.S. 21, 33 (1982), requiring that those individuals be provided notice and an opportunity to be heard before being denied admission or removed. Federal law, consistent with international treaties, further requires that a noncitizen at U.S. borders and ports of entry be given the opportunity to apply for asylum and for protection from return to a country where he or she will face torture or persecution. *See, e.g.*, 8 U.S.C. §§ 1158(a)(1), 1225(b)(1)(A)(ii), 1231(b)(3)(A); 8 C.F.R. §§ 1208.5, 1208.16. Citizens or U.S. institutions with a relationship to an alien seeking admission may also possess a protected interest in ensuring the lawfulness of admission procedures. *See Washington v. Trump*, 2017 U.S. App. LEXIS 2369, at *26-27.

On its face, the Executive Order provides not a single procedural safeguard—none—for the individuals caught in its sweeping net. The order does not purport to provide residents and visa-holders with any opportunity to contest their exclusion, nor any assurance that, if they travel, they will not be denied re-entry without recourse.²³ It also supplies no mechanism for individuals from the affected countries reaching ports of entry to make applications for asylum, as is required under federal law and our international covenants.

The Executive Order's arbitrary and sudden denial of access to our cities for millions of people causes tangible harm to our economies and institutions. Our

²³ Although the federal government disputes that the Executive Order places restrictions on current lawful permanent residents (*see* Def. Mem. of Law in Supp. of Mot. to Dismiss, at 4, ECF No. 66 (citing a memorandum of White House counsel)), the Ninth Circuit has rejected that contention, finding no basis in law to conclude that a statement of the White House Counsel can alter the scope of an executive order or control the order's enforcement, *see Washington v. Trump*, 2017 U.S. App. LEXIS 2369, at *25-*26.

tourism industry, civic and educational institutions, and technology and healthcare sectors are organized around the expectation that visitors, students, professors, and workers will be able to come and go. The Order's unexpected interruption of that vital flow, without affording individuals notice and an opportunity to be heard, is thus all the more disruptive to those sectors of our cities. And the chaos, fear, and instability caused by detentions, removals, and visa revocations is exacerbated by the arbitrary and haphazard method by which government has acted. City officials know this firsthand, having worked with advocacy organizations, volunteers, and others at airports across the country to help affected families in their attempts to obtain information about the many individuals detained because of the Executive Order.

Stripping the procedural rights of particular groups harms the civil rights of all, by weakening key links in the chain of legal protections that hold our democracy together. And the violation of procedural norms here causes particular offense to the character of amici cities, which is defined by values of openness, diversity, and inclusion, and depends on our ability to welcome visitors, immigrants, and refugees. Barring refugees, residents, and visa holders because of their national origin and faith and without procedural protections—including at JFK Airport, only a short distance from Ellis Island—not only violates basic constitutional tenets, but also impairs the fundamental values that animate and support city life.

B. The Executive Order Sends a Message of Fear and Animus that Will Harm Amici's Efforts to Keep Our Cities Safe.

The Executive Order's measures will not only disrupt the economies and communities of the amici cities, but also will hamper our ability to police our cities, protect public safety, and maintain public order—key responsibilities of local government. The Executive Order's adoption of a national policy that discriminates based on religion and national origin will make it more difficult for amici cities to eliminate discrimination and hate crimes within our own confines. The atmosphere of fear and intimidation created by the federal government's actions also threatens to chill cooperation with local law enforcement among immigrants and minorities, including by making victims more hesitant to report crimes. And although the Order was issued as a purported national-security measure, its restrictions do not support the efforts of amici cities to keep our populations safe from terrorism. Instead, as many of our nation's most respected leaders and security experts have cautioned, the Order can only undermine efforts to protect our cities from terrorism.

1. Enshrining religious and national-origin discrimination in federal policy clashes with cities' attempts to combat discrimination and hate crimes.

The federal government's endorsement of discriminatory views not only rows against the overwhelming tide of federal and constitutional law, but also grossly undercuts amici's own efforts to protect our populaces from discrimination and violence. The mandate to safeguard freedom of religion and protect against discrimination is layered strand by strand throughout our nation's laws. Most relevant here, the Establishment Clause of the First Amendment of the U.S.

Constitution prohibits the federal government from preferring one set of religious beliefs over another. *See Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971). The equal-protection component of the Fifth Amendment's Due Process Clause furnishes an additional layer of protection, prohibiting government from acting with an invidious discriminatory purpose predicated upon religion or national origin. *See Ashcroft v. Iqbal*, 556 U.S. 662, 676-77 (2009). And Congress enshrined the same principles in the nation's immigration laws, prohibiting discrimination on the basis of race, sex, nationality, place of birth, or place of residence in the issuance of visas. *See* 8 U.S.C. § 1152(a)(1)(A).

The Executive Order's restrictions violate these prime directives in a host of ways, and the President's own public statements reveal that their purpose is to exclude adherents of Islam from the country. *See* Compl. in Intervention of the N.Y. State Att'y Gen., at ¶¶ 9-12, ECF No. 39; *Washington v. Trump*, 2017 U.S. App. LEXIS 2369, at *30-*31 (discussing the President's statements about implementing a "ban" of Muslims and the evidence suggesting that the Executive Order is intended to implement that ban). Those statements constitute competent evidence of the Executive Order's discriminatory intent. *See Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 264-68 (1977) (explaining that an enactment's discriminatory purpose may be inferred from circumstantial evidence, including the historical background of a governmental decision and statements by lawmakers).

Amici cities have been leaders in combating discrimination and in protecting our populations from hate crimes. As a supplement to state and federal law, many amici cities have passed local laws extending additional protections against discrimination or bias-motivated crimes.²⁴ But the harmful stereotypes and prejudices embedded in the Executive Order threaten amici cities' efforts to fight discrimination within our communities. Amici cities have already witnessed the serious consequences of the xenophobic messages conveyed by the President's election platform, including promises to build a wall along the Mexican border and a "shutdown" of Muslim immigration.²⁵

Hate crimes exploded after last November's election. According to the Southern Poverty Law Center, there were at least 867 incidents of bias-related harassment or intimidation across the nation in just the 10 days following the election.²⁶ New York City alone saw hate crimes more than double in the weeks following the election, compared to the same period last year.²⁷ Many of these incidents were directed at immigrants and religious minorities, as well as women, gays, and lesbians. The crimes occurred in schools, in workplaces, and in public

²⁴ See, e.g., Chi. Mun. Code §§ 8-4-020, 8-4-085; L.A. Admin. Code §§ 4.400, 10.8, and 10.13; L.A. Charter §§ 104(i), 1024; Madison Gen. Ordinance § 39.03; N.Y.C. Admin. Code §§ 8-101 to 8-907; Phila. Code §§ 9-1100 to 9-1130; Providence Code of Ord. 2014, ch. 2014-33, § 1, 8-8-14; Santa Monica Mun. Code § 4.48.030; S.F. Admin. Code §§ 12B, 12C; S.F. Police Code Art. 33, §§ 3301-3313; South Bend, Ind. Mun. Code § 2-127; W. Hollywood Mun. Code Ch. 9.32.

²⁵ Madina Toure, *NYPD Says Hate Crimes Have 'Leveled Off' After Spike Following Trump's Election*, Observer (Feb. 6, 2017), <http://bit.ly/2lgNICK>.

²⁶ *Ten Days After: Harassment and Intimidation in the Aftermath of the Election*, Southern Poverty Law Center (Nov. 26, 2016), <http://bit.ly/2gFmBjr>.

²⁷ Michael Scotto, *NYPD Reports a Spike in Hate Crimes Around the City Since Election Day*, Time Warner Cable News (Dec. 5, 2016), <http://bit.ly/2h27SPM>; Sarah Maslin Nir, *Finding Hate Crimes on the Rise, Leaders Condemn Vicious Acts*, N.Y. Times (Dec. 5, 2016), <http://nyti.ms/2ldH5EK>.

spaces, and took the form of graffiti, verbal attacks, and even physical violence.²⁸

The perpetrators of some of these incidents expressly invoked the President's name:²⁹

- In New York City, a man was charged with hate crimes for kicking an airline worker wearing a hijab, telling her "Trump is here now" and "he will get rid of all of you."³⁰ Separately, in Brooklyn, two swastikas were spray-painted on playground property, with the words "Go Trump."³¹
- In Philadelphia, African American students at the University of Pennsylvania received a racist text that included lynching threats against them, sent by the username "Daddy Trump."³²
- In Chicago, starting from before the election, a church with a predominantly immigrant congregation was the target of recurring acts of vandalism. Swastikas and messages such as "Rape N Kill Mexico," "KKK," and "Trump Rules" were scrawled on the church's doors and walls on repeated occasions.³³

Amici cities swiftly responded to combat this surge in hate crimes, publicly denouncing these episodes, implementing initiatives to prevent hate crimes, and reaffirming their commitment to inclusion.³⁴ In Philadelphia, for example, the District Attorney's Office established a new task force to "vigorously prosecute" hate

²⁸ Southern Poverty Law Center, *supra* note 26.

²⁹ Southern Poverty Law Center, *supra* note 26.

³⁰ Christopher Mele, *Man Kicked J.F.K. Airport Worker Wearing Hijab, Prosecutor Says*, N.Y. Times (Jan. 26, 2017), <http://nyti.ms/2jX1Otp>.

³¹ Nir, *supra* note 27.

³² Kate Reilly, *Racist Incidents Are Up Since Donald Trump's Election*, Time (Nov. 13, 2016), <http://ti.me/2fKAbBq>.

³³ Tahman Bradley, *Pilsen Church Tagged With Racist Graffiti*, WGNtv.com (Oct. 4, 2016), <http://bit.ly/2lc4HHn>; Tina Orlando, *Chicago Church Vandalized for the 6th Time This Year, Pastor Says* (Oct. 3, 2016), NBC Chicago, <http://bit.ly/2dpLCP8>.

³⁴ Nir, *supra* note 27.

crimes.³⁵ And many cities recently launched hotlines specifically for hate-crime victims.³⁶

The Executive Order threatens to further inflame the xenophobic attitudes that have fueled this recent rise in hate crimes, and to circumvent amici cities' efforts to protect their minority communities. The Order sends a distinct message that the Muslims in our communities "are outsiders, not full members of the political community," *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 310 (2000), and that they have been singled out for suspicion and mistreatment. The Executive's ratification of these views profoundly undermines local efforts to oppose discrimination and prevent bias-motivated crime.

2. Creating an atmosphere of fear and intimidation chills cooperation with local law enforcement and makes victims fearful to report crimes.

The Executive Order also endangers amici cities' residents by diminishing the willingness of members of immigrant communities to cooperate with law enforcement. Studies have shown that immigrants may avoid reaching out to law enforcement when they are the victim of or witness to a crime, out of fear that they may be questioned about their own immigration status or the status of a family

³⁵ Press Release, *Statement on Prosecution of Hate Crimes*, City of Phila. (Nov. 21, 2016), <http://bit.ly/2kw0QYD>; Leanna Garfield, *6 Major U.S. Cities Are Ramping Up Police Efforts to Fight a Surge of Hate Crimes Following Trump's Win*, Business Insider (Nov. 30, 2016), <http://read.bi/2ldRbW9>.

³⁶ Garfield, *supra* note 35; *Mayor Elorza Announces City Hate Crime Hotline*, Office of Mayor Jorge O. Elora (Feb. 9, 2017), <http://bit.ly/2kvRcFo>; *San Francisco DA Launches Hotline Amid Post-Election Hate Crimes*, CBS San Francisco Bay Area (Nov. 18, 2016), <http://cbsloc.al/2kCvNW8>.

member or friend.³⁷ When the individuals and groups targeted by the Executive Order are the victims or witnesses of crimes, they will similarly be more reluctant to come forward. This chilling effect imperils both crime victims and the wider community: when a person fails to report a crime or is unwilling to cooperate with a police investigation, the perpetrators of those crimes may remain at large.

Knowing from direct experience that the public-safety costs stemming from these fears are real, amici cities share the deep concern that the Executive Order will undo longstanding efforts to foster trust with immigrant communities in general, and Muslim communities in particular. Following the President's election, amici cities have intensified their outreach efforts to Muslim communities, stressing the importance of maintaining these relationships.³⁸ But by cementing already existing fears that the federal government intends to target individuals or their loved ones, the Executive Order will impede the ability of their police departments to protect their residents, to the substantial detriment of the public at large.

3. The Executive Order's broad-brush approach destabilizes security and counterterrorism efforts, rather than making our populations safer.

The Executive Order's underlying message of animus and fear also hampers amici cities' counterterrorism efforts. As the Mayor of Los Angeles has cautioned:

³⁷ See, e.g., Nik Theodore, *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement* i-ii, 5-6 (May 2013), <http://bit.ly/2lN80nu> (presenting findings from survey of approximately 2,000 Latinos indicating a heightened fear of law enforcement and its impact on crime reporting by immigrants and U.S.-born Latinos).

³⁸ Noelle Phillips, *As Trump's Policies Stoke Fears, Denver's Muslim Community Worries About Eroding Trust in Law Enforcement*, Denver Post (Feb. 4, 2017), <http://dpo.st/2kcdasJ>; John R. Ellement, *Police 'Need to Build Trust' with Immigrant Community, Evans Says*, Boston Globe (Jan. 31, 2017), <http://bit.ly/2lgwtEu>.

“[B]anning people based on religion or country of origin is not only un-American, it is dangerously counter to our national security. There are effective, rational, humane and constitutional strategies to keep Americans safe—and that is what we expect the president to offer the American people.”³⁹

Our nation’s cities are acutely mindful of the need for continued vigilance to protect our residents against future threats. Cities have borne many of the starkest wounds of terrorist attacks on U.S. soil: three killed and 264 injured in the Boston marathon attack; five killed and at least six injured at the Fort Lauderdale airport; six killed and over a thousand injured during the first World Trade Center bombing; 14 killed and 22 injured in San Bernardino; 49 killed and 53 wounded in the Orlando nightclub shooting; 168 killed and over 650 injured in the Oklahoma City bombing; and 2,753 people killed and untold thousands injured in New York City on September 11, 2001.⁴⁰

Because cities have been a focus for terrorist attacks, many of amici cities play a vital and proactive role in preventing and responding to terrorism. New York City, for example, has partnered with federal law enforcement and government agencies across the world to thwart dozens of credible threats to its residents and

³⁹ *L.A. Mayor and Other City Leaders Denounce President Donald Trump’s Travel Ban*, KCET (Feb. 1, 2017), <http://bit.ly/2kPZOFm>.

⁴⁰ *See, e.g.*, Brad Plumer, *Nine Facts About Terrorism in the United States Since 9/11*, The Wash. Post (Sept. 11, 2013), <http://wapo.st/2ld57NH>; *US Terrorist Attacks Fast Facts*, CNN (Sept. 10, 2016), <http://cnn.it/2lcX5Et>; Morgan Winsor, Aaron Katersky, David Caplan, Matt Foster, and Dominick Proto, *Suspect Charged with Federal Crimes in Fort Lauderdale Airport Attack*, ABC News (Jan. 7, 2017), <http://abcn.ws/2jeir1O>; *San Bernardino Shooting Updates*, L.A. Times (Dec. 16, 2015), <http://lat.ms/1TwhA9t>; Ralph Ellis, Ashley Fantz, Faith Karimi, and Elliott C. McLaughlin, *Orlando Shooting: 49 Killed, Shooter Pledged ISIS Allegiance*, CNN (Jun. 13, 2016), <http://cnn.it/1UcyaMC>.

visitors since 9/11.⁴¹ The Philadelphia Police Department's Major Incident Response Team works closely with federal, state, and other local agencies to act as the city's first line of defense in a major disaster or terrorist-related event. And Los Angeles has a nationally recognized counterterrorism unit and owns and operates LAX airport, which handled over 80 million travelers last year.⁴²

National-security leaders and experts from across the political spectrum have warned that the broad brush of the Executive Order destabilizes security and counterterrorism efforts, rather than making our populace safer. Former Secretaries of State Madeline K. Albright and John Kerry, former Homeland Security Secretary Janet A. Napolitano, former CIA Director Leon E. Panetta, and several other former leaders of the intelligence community have cautioned that the Order "ultimately undermines the national security of the United States" by feeding into the pernicious narrative that the U.S. is at war with Islam.⁴³ Senator John McCain, chairman of the Senate Committee on Armed Services, and Senator Lindsey Graham expressed similarly grave concerns, urging that the Order "will become a self-inflicted wound in the fight against terrorism."⁴⁴ The director of national intelligence under President Obama, James Clapper, told CNN that he

⁴¹ *Terrorist Plots Targeting New York City*, N.Y.C. Police Dep't, <http://on.nyc.gov/1QDNXCn> (last visited Feb. 14, 2017).

⁴² *LAPD Named Best Counterterrorism Squad*, Homeland Security News Wire (Nov. 29, 2011), <http://bit.ly/2l5r4xZ>; *Counter-Terrorism and Special Operations Bureau*, L.A. Police Dep't, <http://bit.ly/2lN9kXm> (last visited Feb. 14, 2017); Los Angeles World Airports, <http://bit.ly/2lMJvY2> (last visited Feb. 14, 2017).

⁴³ *Response to Emergency Mot.*, <http://bit.ly/2kcGS0K> (last visited Feb. 2017).

⁴⁴ Susan Cornwell, *GOP Senators: Trump's Immigration Order Could Help Terrorist Recruiting Efforts*, Business Insider (Jan. 29, 2017), <http://read.bi/2kyyuvX>.

worries about the Order's effect on the nation's "reliable partners" and that the Order will function as a recruiting tool for ISIS.⁴⁵ And over 100 former government, military, and intelligence officials who served in the George W. Bush and Obama administrations recently wrote to the President asking him to rescind the Order, warning that it would do lasting damage to counterterrorism and national-security efforts.⁴⁶

Although the Executive Order invokes the terrorist attacks of September 11, 2001, it does not advance the interests of New York City and other cities that have suffered from terrorism. Amici cities have learned through experience the importance of maintaining our unity and preserving our values in the face of external threats and adversity. After the September 11 attacks, President Bush reminded the country that those who would seek to intimidate our nation's millions of Muslim citizens "represent the worst of humankind" and do not represent "the America I know."⁴⁷ New York City's then-Mayor, addressing the United Nations, reiterated that to prevail over terrorism, New Yorkers must "not engage in any form of group blame or group hatred."⁴⁸ Amici cities agree that our collective safety and well-being is best served by adhering to our core American values of equality, religious freedom, and respect for individual rights. The recent Executive Order of

⁴⁵ Jamie Crawford, *Former Spy Chief Calls Trump's Travel Ban 'Recruiting Tool for Extremists,'* CNN (Feb. 9, 2017), <http://cnn.it/2IHBk2J>.

⁴⁶ Ltr. from Madeline K. Albright, et al., to Hon. John F. Kelly, et al. (Jan. 30, 2017), *available at* <http://politi.co/2klc2FU>.

⁴⁷ Press Release, "Islam is Peace," Says President: Remarks by the President at the Islamic Ctr. of Wash., D.C., White House Archives (Sept. 17, 2001), *at* <http://bit.ly/1tqVCN7>.

⁴⁸ *Mayor Giuliani's Address to the United Nations General Assembly on Combatting Terrorism*, Archives of Rudolph W. Giuliani (Oct. 1, 2001), <http://on.nyc.gov/2IN7PIA>.

the current Administration stands opposed to those values and makes us less safe, not more so.

CONCLUSION

For the reasons set forth in this brief, as well as those set forth by petitioners and their other supporting amici, the district court should grant petitioners' motion for injunctive relief.

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