

No. 17-1351

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

INTERNATIONAL REFUGEE ASSISTANCE PROJECT, et. al.,
Plaintiffs – Appellees,

v.

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

Appeal from the United States District Court
For The District of Maryland, Southern Division
The Honorable Theodore D. Chuang, District Judge

**BRIEF FOR *AMICUS CURIAE*
AMERICAN PROFESSIONAL SOCIETY
ON THE ABUSE OF CHILDREN
IN SUPPORT OF PLAINTIFFS - APPELLEES**

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Memo. for the Sec’y of State, the Att’y Gen., & the Sec’y of Homeland Sec.,
82 Fed. Reg. 16,279 (Apr. 3, 2017) 13

U.S. Citizenship & Immigration Servs., Policy Manual (Jan. 5, 2017)..... 20

Other Authorities

Am. Professional Soc’y on the Abuse of Children, Practice Guidelines: The
Commercial Sexual Exploitation of Children: The Medical Provider’s Role
in Identification, Assessment and Treatment (2013). 23

Theresa S. Betancourt et al., Trauma History and Psychopathology in War-
Affected Refugee Children Referred for Trauma-Related Mental Health
Services in the United States, 25.6 J. Traumatic Stress 682 (2012). 25

Monica Bucci et al., Toxic Stress in Children and Adolescents, 63 Advances
in Pediatrics 403 (2016). 28, 29

Centers for Disease Control and Prevention, Violence Prevention, Child
Abuse and Neglect: Consequences. 23

CIA World Factbook..... 14

Judy Eidelson, Traumatic Memories, Well-Founded Fears, and Credibility,
Psychologists for Social Responsibility (Jan. 1, 2010). 21

Tim Gaynor, UNHCR concerned at reports of sexual violence against refugee
women and children (Oct. 23, 2015). 27

Human Rights Watch, World Report (2017) passim

International Organization for Migration, IOM Libya Brief (last updated Sept.
2016). 8

Ida Kaplan et al., Cognitive Assessment of Refugee Children: Effects of Trauma and New Language Acquisition, 53.1 Transcultural Psychiatry 81 (2016).....	20, 21, 22
Emmy Werner, Children and War: Risk, Resilience, and Recovery, 24.02 Dev. & Psychopathology 553 (2012).	22, 27
Mercy Corps, Quick Facts: What You Need To Know About the South Sudan Crisis (Feb. 23, 2017).	10
Nat'l Sci. Council on the Developing Child, Persistent Fear and Anxiety Can Affect Young Children's Learning and Development: Working Paper No. 9 (2010).....	26, 27, 29
Ruth V. Reed et al., Mental Health of Displaced and Refugee Children Resettled in Low-Income and Middle-Income Countries: Risk and Protective Factors, 379.9812 Lancet 250 (2012).....	24
Save the Children, Struggling To Survive: Stories from Yemen's Collapsing Health System (2016).	11
Audrey Sheehy, Sexual Assault in the Refugee Camp, Harvard Political Rev. (Oct. 17, 2016).	27
Fernando Stein, AAP Statement on Revised Immigrant and Refugee Travel Ban Executive Order, American Academy of Pediatrics (Mar. 6, 2017).	22, 28
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United Nations High Comm'r for Refugees, Global Trends: Forced Displacement in 2015 (2015).....	passim
United Nations High Comm'r for Refugees, UNHCR Resettlement Handbook (July 2011).	16

United Nations High Comm’r for Refugees, Syria Regional Refugee Response Inter-agency Information Sharing Portal.....6

U.S. Dep’t of Justice Office of Justice Programs, Human Trafficking Task Force E-Guide.....21

U.S. Dep’t of State Bur. of Population, Refugees, & Migration, U.S. Refugee Admissions Program FAQs (Jan. 20, 2017) 16, 17, 18

Richard Williams, The Psychosocial Consequences for Children of Mass Violence, Terrorism and Disasters, 19.3 Int’l Rev. Psychiatry 263 (2007).
.....22, 24, 25, 27

INTEREST OF *AMICUS CURIAE*

The American Professional Society on the Abuse of Children (“APSAC”) is the leading national organization for professionals serving children and families affected by child maltreatment, which includes both abuse and neglect. A multidisciplinary group, APSAC achieves its mission through expert training and educational activities, policy leadership and collaboration, and consultation emphasizing theoretically sound, evidence-based principles.

For 30 years, APSAC has played a central role in developing guidelines that address child maltreatment. It is qualified to inform the Court about the damage maltreatment can inflict on children’s brain development and cognitive ability. APSAC submits this brief to assist the Court in understanding the impact of war, terrorism, and refugee status on children’s physical, emotional, and mental development.¹ These facts provide important background information useful to a complete understanding of Executive Order 13,780’s impact.

¹ *Amicus* acknowledges the assistance and contributions of Keith Bradley, J.D., Ph.D.; Rachel Boochever, member of the Stanford Law School Class of 2018; and Sarah Brim, member of the Stanford Law School Class of 2018.

APSAC members have a direct and substantial interest in these issues because of their historical and scientific experience with juvenile brain development, especially where child maltreatment is involved. APSAC is therefore qualified to advise the Court on the impact of child maltreatment on child and youth refugee health, well being, and ability to survive.

This brief is filed with the consent of all parties, pursuant to Federal Rule of Appellate Procedure 29(a)(2).

FED. R. APP. P. 29(C)(5) STATEMENT

Pursuant to Federal Rule of Appellate Procedure 29(c)(5), *amicus* certifies that no party or party's counsel authored this brief in whole or in part, or contributed money that was intended to fund preparing or submitting this brief. No person contributed money intended to fund the preparation or submission of this brief.

SUMMARY OF ARGUMENT

War and communal violence impose terrible burdens on innocent civilians forced to endure them. Many flee for their lives in the hope of escape and survival. For decades, the United States has shouldered its responsibility to help them by receiving and granting asylum to refugees in cooperation with the United Nations High Commissioner for Refugees' exigent vetting process. Executive Order 13,780 denies that assistance to refugees from some of the most violent and unstable areas in the world.²

The District Court properly enjoined the implementation of § 2(c) of the Order. Section 2 suspends the entry of immigrants in general from six majority-Muslim countries; it does not address refugees in particular. Nonetheless, any review of the District Court's order must weigh, in the balance of the public interest, the impact of § 2 on refugees in these countries and especially on refugees who are children. Section 2, if allowed to come into force, would essentially block the United Nations High Commission on Refugees from resettling refugees from these six countries in the United States. More of them will have to remain in limbo in refugee camps or continue their journey in violation of international law and at the mercy of

² See Exec. Order 13,780, 82 Fed. Reg. 13,209 (Mar. 9, 2017).

international traffickers. *Amicus* submits this brief to inform the Court about the resulting harm to refugee children.

ARGUMENT

I. THE ORDER AFFECTS LARGE NUMBERS OF REFUGEES AND REFUGEE CHILDREN.

Section 2(c) of Executive Order 13,780 would close the United States to refugees from six Muslim-majority countries: Libya, Sudan, Somalia, Syria, Yemen, and Iran. *Amicus* explains below why § 2(c) is important for refugee admissions on its own, distinct from the explicitly refugee-specific sections of the Order. First, however, *amicus* reviews why refugees and refugee children constitute an important category, among citizens of these countries, of potential entrants to the United States. Countries among the six covered by § 2(c) have generated some of the largest flows of refugees in modern history. In 2015, 37% of refugees worldwide had come from Syria and Somalia.³ Sudan accounted for more than 600,000 refugees, and in Libya and Yemen almost 3 million people are displaced internally.⁴

³ United Nations High Comm’r for Refugees, Global Trends: Forced Displacement in 2015 3 (2015) (“UNHCR 2015 Report”), <http://www.unhcr.org/statistics/unhcrstats/576408cd7/unhcr-global-trends-2015.html>.

⁴ *Id.* at 62-65 (annex tab. 2).

1. Syria

Syria is suffering the worst humanitarian crisis since World War II due to a brutal civil war that began with a military crackdown on antigovernment protests in March 2011. For six years, President Bashar al-Assad's government, a variety of rebel forces, and the Islamic State have mired the country in a conflict that has killed nearly half a million people. Over 13 million people are affected within Syria, 6 million of them children. Five million Syrians have fled the country and registered as refugees, 2.4 million of them children.⁵

Since 2011 airstrikes have struck civilian areas indiscriminately and occasionally even intentionally. Consequently, Syrian families have been exposed to wide-area explosives, barrel bombs, cluster munitions, and flammable incendiary weapons in their homes, markets, schools and hospitals.⁶ Moreover, government forces and armed opposition groups

⁵ See United Nations Children's Fund, Syria Crisis Situation Report (Feb. 2017), available via UNHCR Syria Regional Refugee Response Inter-agency Information Sharing Portal, data.unhcr.org/syrianrefugees/regional.php#_ga=1.54009320.1956903019.1492444710.

⁶ Human Rights Watch, World Report 572-73 (2017) ("HRW 2016 Report"), https://www.hrw.org/sites/default/files/world_report_download/wr2017-web.pdf.

frequently block the delivery of humanitarian aid to those in need. Indeed, in February of 2016 alone, the government prevented 80,000 medical treatment items, including antibiotics and other medicines, from going into besieged areas.⁷

As a result of this violence, more than five million Syrians have fled the country, creating the largest refugee movement in recent history. *Half of Syria's refugees are children, and more than a third are under the age of twelve.*⁸ Many internally displaced or refugee children do not attend school. UNICEF reports that “in 2016, there were verified reports of over 2,300 grave violations against children by armed forces and groups throughout Syria,” with the actual number likely far higher. Killing and maiming of children were among the most prevalent offenses, along with abuse, recruitment and use by armed groups, and sexual and gender-based violence.⁹ As of early 2014,

⁷ *Id.* at 573-74.

⁸ United Nations High Comm'r for Refugees, Syria Regional Refugee Response Inter-agency Information Sharing Portal, data.unhcr.org/syrianrefugees/regional.php.

⁹ United Nations Children's Fund, Syrian Conflict and Europe's Refugee Crisis in Numbers, UNICEF Blog (Sept. 30, 2015), <https://blogs.unicef.org/blog/the-syrian-conflict-and-europes-refugee-crisis-in-numbers/>.

UNICEF estimates that more than 300,000 children under the age of five remain in besieged areas.¹⁰

2. *Iran*

Despite campaign promises, human rights violations have not improved significantly under President Hassan Rouhani. Under Iranian law, many nonviolent crimes, such as “insulting the Prophet,” same-sex relations and adultery remain punishable by death.¹¹

Iranian children are also subject to similar human rights violations. Indeed, flogging remains a lawful punishment for children and LGBTQ Iranian youth have been subjected to electric shocks to “cure” them.¹² The age of marriage for girls in Iran is thirteen, and sexual intercourse with girls as young as nine remains legal. Children also continue to be legally executed by the state. In 2016 alone, at least forty-nine inmates on death row were convicted of crimes that they committed when they were under eighteen.¹³ Violations such as these have contributed to almost 85,000 refugees fleeing Iran as of 2015; and over 57,000 refugees have sought asylum as of 2015.¹⁴

¹⁰ *Id.*

¹¹ HRW 2016 Report, at 334.

¹² *Id.* at 335.

¹³ *Id.*

¹⁴ UNHCR 2015 Report, at 63.

3. *Libya*

Government instability in Libya has resulted in a bloody power struggle that has displaced nearly half a million civilians and has led 6,000 refugees to flee the country since the start of the crisis in 2011.¹⁵ Many have been displaced since the start of the crisis and face a limited ability to return.¹⁶ Moreover, the civilian population that remains in Libya struggles to gain access to basic services such as healthcare, fuel, and electricity.¹⁷ Human Rights Watch reports that in 2016, dozens of rival militia groups and military forces continued to indiscriminately bomb civilians and abduct, forcibly disappear, torture, and unlawfully kill individuals and seize their property.¹⁸

Libya also serves as an important transit country for migrants trying to reach Europe. Indeed, as of September 2016, an estimated 256,000 migrants have been identified in Libya, of which 23,102 are children, with a third of this group consisting of unaccompanied children.¹⁹ A report by the United

¹⁵ *Id.*

¹⁶ International Organization for Migration, IOM Libya Brief, www.iom.int/countries/libya (last updated Sept. 2016).

¹⁷ HRW 2016 Report, at 405.

¹⁸ *Id.* at 403.

¹⁹ United Nations Children's Fund Press Release, A Deadly Journey For Children, The Central Mediterranean Migration Route (Feb. 28, 2017), https://www.unicef.org/media/media_94941.html.

Nations Support Mission in Libya revealed high levels of violence with many migrants including children receiving punishment, including torture, for no discernible reason. Migrants were at a loss for words when attempting to explain why the torture or punishment was taking place.²⁰ In 2016, Human Rights Watch also reported that these migrants are often subject to beatings, forced labor, and sexual violence.²¹ Barring refugees and immigrants from Libya will thus likely extend the suffering of this population of children.

4. Somalia

In 2015, the number of Somalian refugees and internally displaced persons together reached over two million.²² Civilians, and especially children, continue to face abuses by all warring parties. Children are arbitrarily detained and recruited by security forces, and used as informants by Somalia's national intelligence agency to identify Al-Shabab members.²³ Al-Shabab continues to target civilians and civilian structures, including schools, hotels, and restaurants.²⁴ Humanitarian agencies struggle to reach needy and displaced populations because of security risks, restrictions, and

²⁰ *Id.*

²¹ HRW 2016 Report, at 409.

²² UNHCR 2015 Report, at 64.

²³ HRW 2016 Report, at 537.

²⁴ *Id.*

targeted attacks. Further, in September 2016, the U.S. “imposed partial military sanctions on Somalia due to its continued recruitment and use of child soldiers.”²⁵ Nevertheless, over 10,000 Somalian refugees arrived in the United States in 2016, over 4,000 of which were children under the age of fourteen.²⁶

5. *Sudan*

The UN Refugee Agency reports that as of 2015, there are over 1.4 million refugees from Sudan and South Sudan, and over 5 million internally displaced persons.²⁷ Mercy Corps reports six out of ten South Sudanese refugees are children.²⁸ However, less than 1,500 refugees arrived in the U.S. in 2016, approximately 500 of which were children under the age of fourteen.²⁹ Sudan continues to criminalize homosexual activity, apply punishments disproportionately to women and girls for morality “crimes”

²⁵ *Id.* at 543.

²⁶ Relevant data downloadable in report form via the database maintained by the Refugee Processing Center, an agency of the United States Refugee Assistance Program, ireports.wrapsnet.org/Interactive-Reporting.

²⁷ UNHCR 2015 Report, at 64.

²⁸ Mercy Corps, Quick Facts: What You Need To Know About the South Sudan Crisis (Feb. 23, 2017), <https://www.mercycorps.org/articles/south-sudan/quick-facts-what-you-need-to-know-about-south-sudan-crisis>.

²⁹ Relevant data downloadable in report form via the database maintained by the Refugee Processing Center, an agency of the United States Refugee Assistance Program, ireports.wrapsnet.org/Interactive-Reporting.

such as adultery, and block peacekeeping missions.³⁰ Despite the continued human rights violations, countries including Italy, Jordan, and Egypt, have been deporting Sudanese back to Sudan, sometimes without assessing their claims to asylum.³¹

6. Yemen

Since conflict broke out in March 2015, almost 6,000 Yemeni people have become refugees,³² but 18.7 million, including 10 million children, more than one-third of the total population, are in urgent need of humanitarian assistance.³³ However, less than thirty refugees arrived in the U.S. in 2016.³⁴ Save the Children reported that “[e]very ten minutes, one Yemeni child dies from preventable killers like diarrhea, malnutrition and respiratory tract

³⁰ HRW 2016 Report, at 561.

³¹ *Id.* at 564.

³² UNHCR 2015 Report, at 67.

³³ Save the Children, *Struggling To Survive: Stories from Yemen’s Collapsing Health System 1* (2016) (“Save Yemen’s Children”), <https://yemen.savethechildren.net/sites/yemen.savethechildren.net/files/library/YEM-cx-15-StrugglingToSurvive-H%26NBrief-19December2016.pdf>.

³⁴ Relevant data downloadable in report form via the database maintained by the Refugee Processing Center, an agency of the United States Refugee Assistance Program, ireports.wrapsnet.org/Interactive-Reporting.

infection.”³⁵ Airstrikes have targeted health facilities, including hospital supply routes.³⁶

II. SECTION 2(C) BLOCKS ENTRY BY THESE REFUGEES INTO THE UNITED STATES.

These are people who have fled conditions of unbearable violence, and many of them are seeking safety in more stable host countries. Section 2 blocks their entry into the United States.

A. Section 2(c) is particularly detrimental to refugees.

On its face, § 2 does not mention refugees, and the Order expressly addresses refugees in § 6 (which the District Court has not enjoined). However, distinctive features of § 2 will give it extra force with respect to refugees, regardless of whether § 6 continues in force.

The internal logic of the Executive Order reveals that § 2(c) initiates a long-term, not a temporary, ban on entries by refugees from the affected countries. While § 2(c) bars entries from the six Muslim-majority countries for 90 days, it does not suggest that entries will resume after the 90-day period or that the Government is developing plans to admit refugees from of those

³⁵ Save Yemen’s Children, at 1.

³⁶ HRW 2016 Report, at 675-76.

countries. To the contrary, the Order begins a process for formally making the ban permanent.

Section 2 instructs the Secretaries of State and Homeland Security to take various steps to identify countries whose nationals the United States will not accept because their governments do not cooperate with United States screening procedures. First, § 2(a) instructs the Secretary of Homeland Security to determine what “additional information will be needed from each foreign country to adjudicate an application by a national of that country” to enter the United States. Section 2(b) asks the Secretary to report, within 20 days of the effective date of the Order, on which countries do not provide adequate information. The Secretary of State is then to ask foreign governments to provide the information the United States wants “regarding their nationals,” within 50 days of notice (roughly 70 days after the Order’s effective date). *Id.* § 2(d). After that period, the Secretary of Homeland Security is supposed to identify countries that do not provide the requested information, and recommend that the President indefinitely prohibit entry of “appropriate categories of foreign nationals” from those countries. *Id.* § 2(e). The total time that the Order contemplates for this process is shortly under 90

days. Thus, when the purportedly temporary § 2(c) ban ends, the Government will be in a position to extend the ban indefinitely.³⁷

It is predictable that the Government will do so, at least for refugees from the affected countries. As noted, the Order emphasizes the need to obtain information “*from each foreign country*” about its nationals and contemplates a permanent ban for “appropriate categories of foreign nationals” of countries that do not comply. *Id.* § 2(e) (emphasis added). Refugees from the six Muslim-majority countries will surely be on that list. After all, the principal concern the Order states about these countries is that prevailing conditions—each “is a state sponsor of terrorism, has been significantly compromised by terrorist organizations, or contains active conflict zones”—these countries are unable or unwilling to perform the “screening and vetting” that the United

³⁷ An implementation memorandum provides further context for the question whether the ban is a permanent one. Section 4(b) of the memorandum orders submission of a report “detailing the estimated long-term costs of the United States Refugee Admissions Program at the Federal, State, and local levels, along with recommendations about how to curtail those costs.” Section 4(c) orders a report comparing long-term costs of supporting refugees in their country of first asylum with costs to support those refugees in the United States (though residence in a country of first asylum does not yield any permanent benefits, including citizenship). Memo. for the Sec’y of State, the Att’y Gen., & the Sec’y of Homeland Sec., 82 Fed. Reg. 16,279 (Apr. 3, 2017).

States wants. *Id.* § 1(d), (f). Of course, Somalia, Sudan, Syria, and Yemen are undergoing violent internal conflicts.³⁸ The governments of those countries do not control all their territory, and are consequently unable (even if they were willing) to do U.S.-mandated security screening. There is no prospect that these facts will change soon, and certainly not within 90 days.

The irony is deep: Under the logic that the Order articulates, desperate refugees fleeing unimaginable violence must be blocked from entering the United States, precisely because that violence prevents their home governments from doing background screening.

B. Section 2(c) affects refugees independently of § 6.

Amicus acknowledges that the District Court did not enjoin the implementation of § 6, the section of the Executive Order that expressly discusses the U.S. Refugee Admissions Program. However, § 2(c) harms refugees from the six Muslim-majority countries on its own, and regardless of whether the Government carries out § 6.

Section 6 halts the Refugee Admissions Program for 120 days. Executive Order 13,780, § 6(a). Like § 2, it permits admissions to resume only to the extent screening procedures are adequate. *Id.* Unlike § 2, it does not

³⁸ See CIA World Factbook, <https://www.cia.gov/library/publications/the-world-factbook/> (listing conflicts by nation).

require a refugee's national government to participate in the screening. *Compare id.* § 6(a) (“resume making decisions . . . only for stateless persons and nationals of countries for which . . . the additional procedures implemented pursuant to this subsection are adequate”) *with id.* § 2(e) (“prohibit the entry of . . . foreign nationals of countries that have not provided the information requested”).

This difference is significant, because for refugees in general an extensive process already exists to identify and evaluate candidates for resettlement. The vast majority of refugees resettled in the United States arrive through a process administered by the United Nations High Commission for Refugees.³⁹ The High Commission selects a refugee who might qualify for settlement in a host country (as opposed to some other solution for a refugee's problem) by stringently evaluating the person according to established criteria; determining whether a refugee must be excluded from resettlement on the basis of criminal record, actions against the principles of the United

³⁹ U.S. Dep't of State Bur. of Population, Refugees, & Migration, U.S. Refugee Admissions Program FAQs (Jan. 20, 2017), <https://www.state.gov/j/prm/releases/factsheets/2017/266447.htm> (“*USRAP FAQs*”).

Nations, and other criteria; and then assessing which country could take the refugee.⁴⁰

After the High Commission's process, the United States conducts its own review of a refugee candidate for settlement in this country. "No traveler to the United States is subject to more rigorous security screening than the refugees the U.S. Government considers for admission. Only after the U.S. Government's rigorous and lengthy security screening process has been completed and an applicant is not found to pose a threat does the U.S. Government grant that individual refugee admission to the U.S."⁴¹ The Government runs nine Resettlement Support Centers around the world, at which Department of Homeland Security staff prepare a refugee's case file, interview the refugee and any accompanying family, photograph the applicants, check facts, and collect additional information.⁴² Officers from Citizenship and Immigration Services conduct "extensive, in-depth interviews in the countries in which the refugees are located."⁴³ If the officers decide an individual qualifies for refugee status, U.S. officials gather further

⁴⁰ United Nations High Comm'r for Refugees, UNHCR Resettlement Handbook, 299-368 (July 2011), <http://www.unhcr.org/4a2ccf4c6.html>.

⁴¹ USRAP FAQs.

⁴² *Id.*

⁴³ *Id.*

information constituting “the highest level of security checks of any category of traveler to the United States.”⁴⁴

All this screening relies on information gathered and prepared by the High Commission and by the U.S. Government—not the governments of the countries from which refugees have fled. The government of a country involved in civil war is highly unlikely to contribute to background screening. Not only do the conditions that generate refugees also undermine governments, but also a weakened government is least likely to have extensive information about people who have left its territories to escape the violence. Perhaps for that reason, the United States has had extensive experience screening “large numbers of refugees from chaotic environments, including where intelligence holdings are limited.”⁴⁵

Thus, for refugees in many areas it is conceivable the Government will resume admissions after further refining its screening protocols. For refugees from Libya, Somalia, Sudan, Syria, Yemen, or Iran, the prospects are grimmer. Because they are citizens of these Muslim-majority countries, the Government will—pursuant to § 2 of the Order—demand information from

⁴⁴ *Id.*

⁴⁵ *Id.*

their national governments before admitting them.⁴⁶ That information will not be forthcoming, as the Order essentially recognizes, and § 2 will thus operate to bar these refugees indefinitely.

C. Exemptions to the Travel Ban Provide Only Limited Relief.

Thus, § 2(c), were the Government allowed to implement it, would begin a permanent ban on the entry of refugees from the six Muslim-majority countries it covers. The Order does permit certain exceptions, but those exceptions are far too narrow to help most refugees, and especially refugee children.

The Order applies only to individuals who did not have a valid visa on the effective date of either Executive Order 13,780 or its predecessor. Executive Order 13,780, § 3(a). But the vast majority of refugees who would seek to enter the United States surely did not. If nothing else, the crises in Somalia, Sudan, Syria, and Yemen are ongoing, and more people flee every year. In 2015 alone the 1 million new Syrian refugees were registered.⁴⁷

⁴⁶ In principle, the President could decide that refugees from the six countries are an “appropriate category” to exclude from the § 2 expectation that an immigrant’s home country provide background information. This is not a serious possibility, given that the Order and § 2 in particular was principally a response to refugee admissions. See Exec. Order 13,780, § 1(h) (emphasizing acts committed by refugees).

⁴⁷ UNHCR 2015 Report, at 13.

The Order also allows case by case exceptions, such as for foreign nationals seeking to visit or reside with close relatives in the United States or infants or young children. But these are not blanket exceptions. Each is only an example of a circumstance in which a case-by-case exception to the ban “could be appropriate.” Executive Order 13,780, § 3(c). Overall, any person seeking such a case-by-case exception must “demonstrate[]” that “denying entry . . . would cause undue hardship, and that his or her entry would not pose a threat to national security and is in the national interest.” *Id.*

Two features put this relief beyond the reach of most refugees. First, the undue hardship standard will likely be difficult to meet as a substantive matter. Needless to say, refugees do suffer; and as *amicus* explains in this brief, refugee children undergo particular hardship. That suffering ought to have been enough to warrant a general exception for children. Instead, the order recognizes children seeking entry as a class, and nonetheless requires them to show “undue” hardship. While that term has no established meaning in the immigration context, Citizens and Immigration Services has interpreted an analogous term in the Immigration and Nationality Act, “extreme hardship,” as meaning “more than the usual level of hardship that commonly

results from family separation or relocation.”⁴⁸ The implication is clear: The hardship that refugees regularly undergo, while significant and foreseeable, is not “undue,” and only especially dire circumstances will warrant an exception.

Second, even when a child experiences hardship that could qualify as “undue,” children are especially unlikely to be able to prove their circumstances. Refugee children commonly experience a broad range of highly traumatic events, including “coming under combat fire and bombing; destruction of home and schools; separation from and disappearance of parents, family members, and friends; witnessing violence and death; prolonged danger; and perilous journeys.”⁴⁹ Traumatic experiences often cause “impaired memory, attention, executive skills, and abstract reasoning.”⁵⁰ Post-traumatic stress disorder—known to impair memory—is relatively common among refugee children.⁵¹ In short, the trauma that refugee

⁴⁸ U.S. Citizenship & Immigration Servs., Policy Manual vol. 9, part B ch. 2 (Jan. 5, 2017), <https://www.uscis.gov/policymanual/> (interpreting, *inter alia*, 8 U.S.C. § 212(a)(9)(B)).

⁴⁹ Ida Kaplan et al., Cognitive Assessment of Refugee Children: Effects of Trauma and New Language Acquisition, 53.1 *Transcultural Psychiatry* 81, 83 (2016).

⁵⁰ *Id.* at 84.

⁵¹ *Id.* at 85.

children experience damages their cognitive and neurological development, and that damage will often prevent them from providing evidence to prove “undue hardship.” “[T]rauma survivors are often denied asylum precisely because they show the signs of the traumas they have experienced.”⁵² Researchers have extensively documented these phenomena.⁵³

In sum, Executive Order 13,780 unjustifiably burdens refugee children by specifically banning the entry of refugees—including children—most affected by contemporary violence and terrorism. While it provides a potential discretionary waiver for children, refugee children must nevertheless demonstrate that barring their entry causes undue hardship—a bar they are highly unlikely to surmount given the obstacles to testimony created by the very traumatizing conditions they are attempting to escape.

⁵² Judy Eidelson, *Traumatic Memories, Well-Founded Fears, and Credibility, Psychologists for Social Responsibility* (Jan. 1, 2010), <https://psysr.wordpress.com/2010/01/01/traumatic-memories-well-founded-fears-and-credibility/>.

⁵³ *See* Kaplan, *supra* n.50, at 85 (citing research). The Government has also recognized, in other contexts, that the effects of trauma interfere with victims’ ability to participate successfully in interviews. U.S. Dep’t of Justice Office of Justice Programs, *Human Trafficking Task Force E-Guide*, ch. 5.3, at <https://www.ovcttac.gov/taskforceguide/eguide/> (last viewed Apr. 17, 2017) (advising interviewers of “trauma-informed victims” to take account of “[m]emory loss, lack of focus, emotional reactivity, and multiple versions of a story”).

III. CHILDREN WHO REMAIN REFUGEES SUFFER CONTINUING DAMAGE TO THEIR MENTAL AND PHYSICAL HEALTH.

The current refugee crisis bears especially heavily upon the young. Children make up a sizeable proportion of those affected by disaster; “civilians comprise 80 to 90% of all who die or are injured in conflicts – mostly children and their mothers”.⁵⁴ Nearly half of the casualties in today’s violent civil wars are children.⁵⁵ And fifty percent of the world’s 10.1 million refugees in 2013 were below the age of 18.⁵⁶

These are children who have experienced and witnessed “pervasive fear, anxiety and trauma,” which will “impact these children for years to come.”⁵⁷ Denying entry to these children would cause particularly significant harm, because while they persist as refugees they suffer damage to their developing brains and bodies that cannot easily, if ever, be undone. Extensive research in recent years has revealed the serious long-term consequences that

⁵⁴ Richard Williams, *The Psychosocial Consequences for Children of Mass Violence, Terrorism and Disasters*, 19.3 *Int’l Rev. Psychiatry* 263, 266 (2007).

⁵⁵ Emmy Werner, *Children and War: Risk, Resilience, and Recovery*, 24.02 *Dev. & Psychopathology* 553, 553 (2012).

⁵⁶ Kaplan, *supra* n.50, at 82.

⁵⁷ Fernando Stein, *AAP Statement on Revised Immigrant and Refugee Travel Ban Executive Order*, American Academy of Pediatrics (Mar. 6, 2017) (“AAP Statement”), <https://www.aap.org/en-us/about-the-aap/aap-press-room/pages/AAP-Statement-on-Revised-Immigrant-and-Refugee-Travel-Ban-Executive-Order.aspx>.

people suffer from experiencing extended periods of war and refugee status as children. The U.S. Centers for Disease Control and Prevention has noted the studies on Adverse Childhood Experiences (ACEs) in the U.S., which have highlighted the damaging long-term consequences of this trauma, including improper brain development, impaired cognitive (learning ability) and socio-emotional (social and emotional) skills, lower language development, blindness, cerebral palsy from head trauma, and higher risk for heart, lung and liver diseases, obesity, cancer, high blood pressure, and high cholesterol, anxiety, smoking, alcoholism, and drug abuse.⁵⁸ In addition, extended refugee status causes disruptions in civil society that may potentiate increased commercial sexual exploitation (trafficking) of children with additional devastating consequences.⁵⁹

A. Children are uniquely vulnerable to violence and trauma associated with war and terrorism.

All people are heavily impacted by witnessing and experiencing violence and terrorism. But due to the fragility of their neurological and

⁵⁸ Centers for Disease Control and Prevention, Violence Prevention, Child Abuse and Neglect: Consequences, <https://www.cdc.gov/violenceprevention/childmaltreatment/consequences.html>.

⁵⁹ Am. Professional Soc’y on the Abuse of Children, Practice Guidelines: The Commercial Sexual Exploitation of Children: The Medical Provider’s Role in Identification, Assessment and Treatment (2013).

psychological development, children are uniquely vulnerable to damage from trauma that is highly impactful and difficult to heal. Children are “more vulnerable than adults to the traumatic events, chaos, and disruptions experienced in disasters,” and the results can be “serious and persistent even for preschool children.”⁶⁰ Children experience a wide range of feelings and exhibit a broad variety of behaviors in response to war and terrorism.⁶¹ Examples include loneliness, disrupted sleep and nightmares, anger, tantrums, re-enactment or re-living of distressing experiences, fear of being alone, fear of death, emotional withdrawal, somatic symptoms, and truncated moral development.⁶²

Children are more vulnerable to chaos, violence, and war than are adults, with lasting effects. Exposure to violence—common among the children of the six nations targeted by the Order—is likely the strongest contributor to the “risk of subsequent psychological disturbances” among

⁶⁰ Williams, *supra* n.55, at 264.

⁶¹ While terrorism may not involve mass casualties, it is a form of mass violence “because of the destructive psychological effects on large numbers of people, including children[.]” *Id.* at 266.

⁶² *Id.*

displaced and refugee children.⁶³ Direct exposure to threat, the cumulative number of violent events, and the duration of exposure “all consistently increase[] the odds of mental health symptoms,” whether a child has experienced actual or threatened violence or witnessed violence to other people.⁶⁴ Thus, the simple fact of trauma exposure does not tell the whole story; both “dose” and co-occurrence of multiple traumas play a role in the damage done to children. Further, the stresses of war and political violence tend to co-occur with “forced displacement; traumatic loss; bereavement or separation; exposure to community violence; and exposure to domestic violence.”⁶⁵ These combined traumas compound the damage done to children in the midst of key developmental stages in their neurobiology.

The persistent trauma characteristic of war and violence in the six Muslim-majority countries that the Order covers risks causing permanent damage to affected children. While the impacts of trauma can be limited to the short term, “negative developmental effects appear more likely if children

⁶³ Ruth V. Reed et al., *Mental Health of Displaced and Refugee Children Resettled in Low-Income and Middle-Income Countries: Risk and Protective Factors*, 379.9812 *Lancet* 250, 257 (2012).

⁶⁴ *Id.*

⁶⁵ Theresa S. Betancourt et al., *Trauma History and Psychopathology in War-Affected Refugee Children Referred for Trauma-Related Mental Health Services in the United States*, 25.6 *J. Traumatic Stress* 682, 682 (2012).

experience repeated or repetitive ‘process’ trauma or live in unpredictable climates of fear.”⁶⁶ When “persistent fear and chronic anxiety” can “disrupt[] the developing architecture of the brain,” with permanent effects.⁶⁷ Post-traumatic stress disorder is more likely to affect children who have been a witness to or victim of violence, have been exposed to shelling or heavy combat, and have lost loved ones.

B. Children in refugee status continue to suffer similar harms.

Even after a child escapes the cauldron of war in his or her home country, the realities of persisting in refugee status are also harmful to children. Transitory refugee camps are unstable situations, in which refugees can struggle from day to day to obtain the basic necessities of life. For adults, living in such circumstances is difficult; for children it is positively harmful. Children are adversely affected by the “collapse of social networks and daily routines.”⁶⁸ The psychological trauma involved can “wield a severe blow to a child’s sense of security and self, including central organising fantasies and

⁶⁶ Williams, *supra* n.55 at 274.

⁶⁷ Nat’l Sci. Council on the Developing Child, Persistent Fear and Anxiety Can Affect Young Children’s Learning and Development: Working Paper No. 9, 1 (2010) (“NSC on Persistent Fear”), <http://developingchild.harvard.edu/resources/persistent-fear-and-anxiety-can-affect-young-childrens-learning-and-development/>.

⁶⁸ Williams, *supra* n.55 at 264.

meaning structures.”⁶⁹ Children are developing, both neurologically and psychologically, the ability to understand who they are and how they relate to the world. The uncertainties of life of a refugee can “effect great damage not so much because of the immediate harm they cause but also because of the lingering need to re-evaluate one’s view of oneself and the world.”⁷⁰

Refugee camps can also be violent places in their own right.⁷¹ This violence exacerbates the developmental harms from the violence that a refugee child fled in the first place. “Negative developmental effects appear more likely if children experience repeated or repetitive ‘process’ trauma or live in unpredictable climates of fear.”⁷² “[P]ersistent fear and chronic anxiety” can “disrupt[] the developing architecture of the brain,” with permanent effects.⁷³

⁶⁹ *Id.*

⁷⁰ *Id.* at 268.

⁷¹ See, e.g., Audrey Sheehey, Sexual Assault in the Refugee Camp, Harvard Political Rev. (Oct. 17, 2016), <http://harvardpolitics.com/hprgument-posts/sexual-assault-in-refugee-camps/>; Tim Gaynor, UNHCR concerned at reports of sexual violence against refugee women and children (Oct. 23, 2015), <http://www.unhcr.org/news/latest/2015/10/562a3bb16/unhcr-concerned-reports-sexual-violence-against-refugee-women-children.html>.

⁷² Williams, *supra* n.55, at 274.

⁷³ NSC on Persistent Fear, at 1.

Separation from parents is most likely to lead to depression, and enforced separation from parents increases the likelihood of poor health in old age by a factor of 3.6.⁷⁴ Children exposed to bombing were 2.3 times more likely to be seriously ill in their sixties, while children fighting in a war are 4.9 times more likely.⁷⁵ The painful irony of Executive Order 13,780 is that it excludes the very children most likely to be permanently and deeply affected by the violence they attempt to flee.

C. Refugee status causes physiological changes.

Both the violence of war and the stress of living as a refugee cause physiological changes that result in long-term mental and physical problems. Stress is not just a mental state. It is a physical condition, in which a person's body adjusts to cope with the difficult conditions he or she is facing.

Persistent stress is toxic. “[A] maladaptive response to stress during childhood, referred to as a toxic stress response, plays an important role in the pathway from early adversity to disease.”⁷⁶ As the American Academy of Pediatrics recently noted in responding to newly developing immigration policies, “fear and stress, particularly prolonged exposure to serious stress –

⁷⁴ Werner, *supra* n.56, at 554-55.

⁷⁵ *Id.* at 555.

⁷⁶ Monica Bucci et al., Toxic Stress in Children and Adolescents, 63 *Advances in Pediatrics* 403, 404 (2016).

known as toxic stress – can harm the developing brain and negatively impact short- and long-term health.”⁷⁷ When normal stress becomes chronic and pronounced, it can cause a “dysregulation of the physiologic stress response [that] plays a critical role in the development of negative health outcomes.”⁷⁸ If a child is exposed to severe and/or prolonged trauma without adequate buffering factors, the trauma “can cause lasting changes to the stress response regulation.”⁷⁹ If the body loses the ability to return to homeostasis, instead remaining in perpetual hyperarousal, chronic stress can damage children’s bodies and brains.⁸⁰ “The current body of data suggests that a maladaptive response to stress during childhood, referred to as a toxic stress response, plays an important role in the pathway from early adversity to disease.”⁸¹

⁷⁷ AAP Statement.

⁷⁸ Bucci, *supra* n.77, at 407.

⁷⁹ *Id.* at 408.

⁸⁰ *Id.* at 408, 415; *see also id.* at 420 (“[E]pigenetic regulation caused by a chronically activated toxic stress response during sensitive periods of development affect(s) how the systems respond to stress in adulthood and can result in increased risk of chronic disease.”); NSC on Persistent Fear, at 1 (stating that chronic activation of the stress response system disrupts brain circuitry and can lead to long-term physical and psychological problems).

⁸¹ Bucci, *supra* n.77, at 404.

IV. THE UNITED STATES HAS A RESPONSIBILITY TO CONTINUE RESETTLING CHILD REFUGEES FROM WAR-TORN NATIONS.

As noted above, children make up at least half of refugees and are most vulnerable to significant harm due to trauma. Their generation is critically important to the stability and future success of their nations. And yet the United States has chosen to shut its doors to refugees from some of the worst violence in the world today.

To be sure, the United States is not obligated to receive any particular refugee; it retains its authority over its immigration policies. But the United States has made important promises to the international community and to refugees. These promises include ratification of significant treaties that promise to receive refugees. The most important is the Convention and Protocol Relating to the Status of Refugees, originally ratified in the shadow of World War II by parties including the United States.⁸² For example, the Convention and Protocol commit the United States to provide safe haven to refugees and to cooperate with the UNHCR without regard to religion or nationality.⁸³ And while the Convention and Protocol contain strong

⁸² Convention and Protocol Relating to the Status of Refugees, <http://www.unhcr.org/protection/basic/3b66c2aa10/convention-protocol-relating-status-refugees.html>.

⁸³ See, e.g., *id.* arts. 3-4, at 17; *id.* art. 35, at 31.

assurances of cooperation with the United Nations and international community, the United States has received relatively few Syrian refugees, even though Syria suffers a catastrophic humanitarian crisis.⁸⁴ Finally, the ordinary policies of the United States provide individualized review. The new Order shuts out all refugees originating from six Muslim-majority countries and offers only the narrowest possibility of individualized review.

Fulfillment of the United States' responsibility will not resolve the child refugee problem. But it will mean that the United States is doing its part, together with a myriad of other nations resettling refugees, to stem the tide of despair and destruction that threatens to effectively wipe out an entire generation of leaders and citizens of these six nations. Although the United States cannot stop the catastrophic violence in these countries, it can fight the underlying causes by receiving and supporting refugee children. The children the United States accepts today may one day return to lead their countries out of chaos.

⁸⁴ Since the 2011 protests that triggered Syria's current civil war, the United States has received approximately 20,300 refugees, about 13,000 of whom arrived in 2016. More than 4 million Syrians have fled to neighboring countries in that time.

CONCLUSION

For the foregoing reasons, *amicus* American Professional Society on the Abuse of Children respectfully requests that this Court affirm the district court's judgment.

Dated: April 19, 2017 Respectfully submitted,

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CERTIFICATE OF COMPLIANCE**Fed. R. App. P. 32(g)**

Pursuant to Fed. R. App. P. 32(g), I certify that the attached brief is proportionally spaced, has a typeface of 14 points or more, and contains 6,215 words as counted by the Microsoft Word word processing program used to generate the brief.

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I hereby certify that on April 19, 2017, I electronically filed the foregoing *amicus curiae* brief by using the appellate CM/ECF system.

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I certify that on April 19, 2017 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

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