

No. 17-15589

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

STATE OF HAWAII AND ISMAIL ELSHIKH,
Plaintiffs-Appellees,

v.

DONALD J. 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
HOMELAND SECURITY; U.S. DEPARTMENT OF STATE; REX W.
TILLERSON, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE;
AND THE UNITED STATES OF AMERICA,
Defendants-Appellants.

On Appeal from the United States District Court for the District of Hawai`i
Case No. 1:17-cv-00050-DKW-KSC (Hon. Derrick K. Watson)

**BRIEF OF OXFAM AMERICA, INC. AS *AMICUS CURIAE*
IN SUPPORT OF PLAINTIFFS-APPELLEES**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, *Amicus Curiae* Oxfam America, Inc., certifies that it has no parent corporation and that no publicly held corporation owns 10% or more of its stock.

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INTERESTS OF AMICUS

Oxfam America, Inc. and its affiliates (Oxfam) work around the globe to end poverty. Oxfam has worked in more than 90 countries to end poverty and injustice over the past 70 years. Oxfam addresses the institutional issues that keep people poor and marginalized: inequality, discrimination, and unequal access to resources including food, water, and land. Oxfam helps people survive during and after natural and manmade disasters, and provides the support people need to build stronger futures. Oxfam seeks to challenge the structural barriers that foster conflict and human suffering and that limit people from gaining the skills, resources, and power to become self-sufficient.

Central to Oxfam's work is its advocacy to promote good policy by national governments and supranational organizations. For example, Oxfam has advocated policies to modernize food aid, so that local food merchants are not put out of business by the dropping of free supplies into food-insecure areas. Oxfam has also worked to create and implement systems that provide government transparency on payments received for natural resources, enabling citizens to hold their governments accountable. Although Oxfam plays a critical role in responding to crises, its ultimate goal is to address the root causes of violence and poverty by supporting civil society so that communities can address their own problems.

Oxfam employs 8,500 people worldwide, works with 60,000 volunteers, and operates in four of the six countries targeted by Executive Order No. 13,780, 82 Fed. Reg. 13,209 (Mar. 9, 2017) (Order) (Yemen, Syria, Somalia, and Sudan), with more than 300 employees stationed in those four countries. Oxfam provides infrastructure and direct aid to refugees, including to people from Somalia, South Sudan, and Syria. Oxfam has helped 1.12 million Syrian refugees in Jordan and Lebanon by providing clean drinking water, cash assistance, and relief supplies. Oxfam is one of the few non-governmental organizations currently working in Sudan, providing desperately needed aid, including clean water and sanitation programs, to people in the Darfur region and beyond. The Executive Order harms Oxfam and the organizations with which it works, and prevents Oxfam from advancing its mission to help people escape violence and build better lives. Oxfam therefore has a direct interest in the outcome of this case.¹

INTRODUCTION

Much has been written about the fundamental legal concerns raised by the President's Executive Order restricting travel to, and refugee resettlement in, the United States, and rightly so. The Order threatens to disrupt lives and weaken institutions both domestically and abroad. If the injunction is lifted, families will

¹ No party's counsel authored any part of this brief, and no party or person other than *amicus*, its members, or its counsel made any monetary contribution intended to fund preparation or submission of this brief. All parties have consented to the filing of this brief. *See* Fed. R. App. P. 29(a)(2), (4)(E).

be separated and lives disrupted. The Nation's great universities will suffer. And impoverished communities will be deprived of qualified and desperately needed medical professionals.

Enforcement of the Order will also render domestic governmental and non-governmental institutions less able to shape effective foreign policy. It will block their access to a crucial educational and advocacy tool—the bringing of staff and affected individuals to the United States so they can bear witness to the violence and suffering occurring overseas. The insights gained through such in-person conferences are critical to many organizations' work to support and rebuild civil societies in the affected countries. Thus, enforcement of the Order will not only make the current situations worse for people fleeing violence, it will also prevent solutions from taking root in the countries that need them the most.

Finally, the Order will make it far more difficult for some of the world's most vulnerable populations to escape to safety. Refugees abroad who have followed the rules, undergone years-long screening processes, and overcome nearly insurmountable obstacles to come to this country will see their dreams indefinitely postponed or dashed entirely. Many will be stuck in limbo, forced to the back of the line to repeat without rhyme or reason the same exhaustive screening processes. In the meantime, they will be left living lives of

uncertainty—often with the most minimal of provisions—waiting to see if, when, and where their futures may begin.

ARGUMENT

I. SECTION 2 OF THE EXECUTIVE ORDER HARMS THE AMERICAN PUBLIC

Section 2(c) of Executive Order No. 13,780, 82 Fed. Reg. 13,209, 13,213 (Mar. 9, 2017) (Order) suspends “entry into the United States,” for a period of 90 days, of all nationals of six countries: Iran, Libya, Somalia, Sudan, Syria, and Yemen. This travel ban—based solely on a traveler’s nationality—negatively and irreparably affects not only individuals from these countries, but also the American public, including American-based organizations that work in these imperiled regions. If implemented, the ban will separate families, disrupt the lives and employment of many already in the United States, and bar many others from admission in the first place. It will also prevent organizations that work in the affected regions from fulfilling their missions and accomplishing their goals.

The travel ban will not be simply a brief administrative hiccup for those directly affected by it. Instead, it will have a lasting effect on American life, from families torn apart to students unable to return home or complete their studies; from the loss of skilled doctors and engineers to the creation of a vital information gap. Though ostensibly brief in duration, the Order’s travel ban will have an immediate, adverse effect on all corners of United States society.

A. The Travel Ban Will Separate Families

One of the primary reasons many travel to the United States is to reunite with family. In fact, there are several visa categories for this very purpose.² The travel ban immediately bars these important visits, in callous disregard of the crucial family ties of everyone whose relatives are nationals of the six targeted countries. The ban's devastating effects on these families are neither speculative nor remote: they were on full display after the government's first attempt at a travel ban, contained in now-revoked Executive Order No. 13,769, 82 Fed. Reg. 8977 (Feb. 1, 2017).

Syrian refugee Milad Korkis, who now lives in Belfast with his American-citizen wife, Holly, faced the prospect of cancelling his April trip with Holly to visit her family in Pennsylvania.³ When interviewed, Holly expressed her hope that things would get better because visiting family is "a very important part of our life."⁴ Sara, an Iranian whose brother lives in Texas, is another traveler whose

² See, e.g., Bureau of Consular Affairs, U.S. Dep't of State, Nonimmigrant Visa for a Spouse (K-3), <http://bit.ly/2o7G6Ei> (last visited Apr. 18, 2017); Bureau of Consular Affairs, U.S. Dep't of State, Nonimmigrant (V) Visa for Spouse and Children of a Lawful Permanent Resident (LPR), <http://bit.ly/2p0roCB> (last visited Apr. 19, 2017).

³ *Trump travel ban: Belfast refugee not able to visit family*, BBC News (Jan. 31, 2017), <http://www.bbc.com/news/uk-northern-ireland-38817542>.

⁴ *Id.*

hopes to reunite with family were imperiled.⁵ She had spent three years securing the necessary approvals to come to the United States for her brother's wedding. Yet by its terms, the initial ban would have barred her attendance. "My brother was looking forward to having us at his wedding," Sara explained, "but no one from his family or the family of his [future] wife will be there."⁶ The revised Executive Order promises the very same harms.

Individuals from targeted countries already in the United States on nonimmigrant visas will also suffer and face untenable choices. During the pendency of the ban, these individuals will have to choose between remaining in the United States and forgoing contact with family abroad, or traveling home and risking being barred from returning. Within this category are many who have invested years in study (such as Ph.D. students) or given up jobs abroad for career opportunities in the United States.⁷ The decision for them to visit a parent, sibling, or grandchild back home will suddenly become a potentially life-altering choice.⁸

⁵ Golnaz Esfandiari, *Groom And Doom: Iranians' Wedding Visit Dashed By U.S. Travel Ban*, RadioFreeEurope/RadioLiberty (Jan. 31, 2017), <http://www.rferl.org/a/iran-travel-ban-wedding-plans-dashed/28270446.html>.

⁶ *Id.*

⁷ See Bureau of Consular Affairs, U.S. Dep't of State, Student Visa, <http://bit.ly/1UjkJfF> (last visited Apr. 18, 2017); Bureau of Educ. & Cultural Affairs, U.S. Dep't of State, J-1 Visa: Professor and Research Scholar Program, <http://bit.ly/1GU1Rxs> (last visited Apr. 18, 2017); Bureau of Educ. & Cultural

B. The Travel Ban Will Compromise The Ability of Many Organizations To Fulfill Their Humanitarian Missions

Humanitarian and other non-governmental organizations regularly bring staff members and other individuals from partner organizations in the affected countries to the United States. Organizations use these visits to gather, first hand, information about the work being done by their overseas counterparts. These in-person exchanges of information are crucial because they allow organizations to understand the conditions on the ground in the countries where they work, which informs both their programmatic and advocacy efforts. Without talking face to face with these partners—many of whom cannot speak freely while in the countries where they work—these organizations cannot function effectively. Already, two Oxfam staff members in Sudan have had to cancel planned visits to the United States due to the initial travel ban.

Affairs, U.S. Dep't of State, J-1 Visa: Specialist Program, <http://bit.ly/1bbhIKY> (last visited Apr. 18, 2017).

⁸ See, e.g., Lyric Lewin, *These are the faces affected by Trump's travel ban: People directly affected by the travel ban share their stories*, CNN, <http://cnn.it/2kgCbGo> (last visited Apr. 18, 2017); Elizabeth Redden, *Stranded and Stuck*, Inside Higher Ed (Jan. 30, 2017), <https://www.insidehighered.com/news/2017/01/30/students-and-scholars-are-stranded-after-trump-bars-travel-nationals-7-countries> (A Ph.D. student at Portland State University described how the ban would “affect her summer plans to return to her home country of Iran to conduct field research and, after four long years, to see her family.”).

Additionally, many organizations, including Oxfam, host or participate in conferences and programs in the United States that include attendees or panelists from the affected countries. The travel ban will significantly hamper these activities. For example, in January of 2017, Oxfam staff participated in a conference at Harvard Divinity School addressing the interaction of secular aid groups and local (mostly religious) humanitarian actors in Syria and Sudan, among other regions. One panel included Syrian Fadi Hallisso, who directs an Oxfam-partner aid organization for Syrian refugees.⁹ If the travel ban had been in place, he would have been unable to attend the conference. In fact, Fadi was planning to return to the United States for further meetings regarding the Syrian crisis.¹⁰ But he had to cancel those plans because, due to the uncertainty caused by the Order, he was unable to obtain the necessary travel documents.¹¹ The travel ban threatens the ability of organizations like Oxfam to host and participate in crucial programming discussions.

⁹ Elizabeth Stevens, *Humanitarian crises and the role of faith*, The Politics of Poverty, Oxfam America (Jan. 26, 2017), <http://bit.ly/2ocrdiZ>; Michael Naughton, Harvard Divinity Sch., *A Shift in Humanitarian Crisis Response* (Jan. 12, 2017), <http://bit.ly/2p1iHs8>.

¹⁰ Electronic correspondence from Noah Gottschalk, Senior Humanitarian Policy Advisor, Oxfam America (Apr. 18, 2017) (on file with author).

¹¹ *Id.*

C. The Travel Ban Will Adversely Affect American Institutions Including Universities, The Technology Industry, And The Medical Profession

1. Universities

Foreign students—including those from the countries targeted by the Order—play a central role in higher education in the United States. In the 2015 to 2016 school year alone, more than 15,000 students from the targeted countries attended United States colleges and universities.¹² The Order’s indiscriminate ban on travel based solely on nationality makes no meaningful effort to account for their importance or wellbeing. Although there is a waiver provision, students cannot depend on it because the Department of State appears to have complete discretion over the issuance of waivers and it is unclear how waiver decisions will be made.¹³ Students from the affected countries who have been accepted into United States universities are thus faced with the possibility that they may not be able to travel to the United States for the start of classes. And students already in

¹² *All Places of Origin 2014/15 – 2015/16*, Inst. of Int’l Educ., <http://bit.ly/2ofuy0K> (last visited Apr. 18, 2017).

¹³ Office of Public Affairs, Dep’t Homeland Security, *Q&A: Protecting the Nation From Foreign Terrorist Entry to the United States* (Mar. 6, 2017), <http://bit.ly/2pebO3u> (“Q: What is the process for overseas travelers affected by the Executive Order to request a waiver?” A: “Waivers for overseas travelers without a valid U.S. visa will be adjudicated by the Department of State in conjunction with a visa application.”).

this country risk being barred from returning if they make a trip home to see family.¹⁴

Predictably, the travel ban already appears to be dissuading many foreign students, including those seeking advanced degrees, from even considering study in the United States. Graduate engineering programs, for example, have already seen as much as a 30 percent decline in applications for the coming academic year.¹⁵ Drops of that magnitude will have dramatic adverse effects on America's universities. According to the National Foundation for American Policy, international students account for 70% of graduate students in electrical engineering, 63% in computer science, and more than half in industrial engineering, economics, chemical engineering, materials engineering, and mechanical engineering.¹⁶ These students are vital to universities' research efforts and contribute to work that "attracts and retains high quality professors at U.S. universities, which in turn helps students by keeping science and engineering

¹⁴ See Sue Tone, *Travel ban touches Prescott's Embry-Riddle campus*, The Daily Courier, Mar. 23, 2017, <http://bit.ly/2pWCjda>.

¹⁵ Anna Maria Barry-Jester, *Trump's New Travel Ban Could Affect Doctors, Especially in the Rust Belt and Appalachia*, FiveThirtyEight (Mar. 6, 2017), <http://53eig.ht/2IOVcwv>; Jeffrey Mervis, *Drop in foreign applicants worries U.S. engineering schools*, Science Magazine (Feb. 14, 2017), <http://bit.ly/2kJd246>.

¹⁶ Stuart Anderson, *The Importance of International Students to America* at 1, Nat'l Found. for Am. Policy (July 2013), <http://bit.ly/2ILHLOW>.

programs at a high level.”¹⁷ And by keeping these programs at high levels, American universities and America itself are able to remain “at the center of both education and innovation around the world.”¹⁸

Foreign graduate students, especially in science, technology, engineering, and math, provide important economic contributions as well. One study found that for “every 100 international students who receive science or engineering Ph.D.s from American universities, the nation gains 63 future patent applications.”¹⁹ And in the 2015 to 2016 academic year alone, international students contributed \$32.8 billion to the United States economy and supported more than 400,000 jobs.²⁰

2. Technology Industry

In addition to its adverse impact on universities, especially on their science and engineering programs, the travel ban will also harm the science and technology sector more generally. While the ban is in effect, engineers, scientists, and skilled workers from the affected countries will be prevented from traveling to the United

¹⁷ Stuart Anderson, *International Students Are 70% Of EE Grad Students in U.S.*, Forbes.com (July 15, 2013), <http://bit.ly/2otXQwa>.

¹⁸ *Id.*; see also Anderson, *supra* note 16, at 2 (“Foreign graduate students are crucial in assisting in research that attracts top faculty and strengthens the academic programs at U.S. schools, which benefits U.S. students and ensures America retains its preeminence as a teaching center in science, technology, engineering and math (STEM) fields.”).

¹⁹ Anderson, *supra* note 16, at 5.

²⁰ *NAFSA International Student Economic Value Tool*, NAFSA: Ass’n of Int’l Educators, <http://bit.ly/2aO3nYj> (last visited Apr. 18, 2017).

States to work and contribute to these sectors. As of 2006, foreign-born individuals made up almost a quarter of science and engineering workers.²¹ Not only do these foreign-born workers expand the United States' high-tech workforce, but they have also helped to start "one-fourth of all new U.S. engineering and technology business established between 1995 and 2005."²²

3. Medical Profession

The travel ban will be especially detrimental to the medical profession, with many rural communities being hit the hardest. There are currently more than 7,000 doctors from Iran, Syria, Sudan, Somalia, Libya, and Yemen practicing medicine in the United States.²³ These doctors provide 14 million annual medical appointments, 2.3 million of which occur in areas that have doctor shortages.²⁴ "The doctors [from the targeted countries] are more likely to work in underserved areas and more likely to practice in areas of medicine facing shortages, such as pediatrics and psychiatry, meaning that many likely play a vital role in vulnerable communities."²⁵ This is because foreign-born physicians are willing to work "in

²¹ Mary Mederios Kent, *More U.S. Scientists and Engineers Are Foreign Born*, Population Reference Bureau (Jan. 2011), <http://bit.ly/2paDkPf>.

²² *Id.*

²³ Barry-Jester, *supra* note 15.

²⁴ Felice J. Freyer, *Doctors from banned countries serve millions of Americans, analysis finds*, Boston Globe, Mar. 6, 2017, <http://bit.ly/2mBojaP>.

²⁵ Barry-Jester, *supra* note 15.

small towns where there are no other doctors, in poor urban neighborhoods and in Veterans Affairs hospitals. . . . ‘They go to the places where [other] graduates . . . don’t want to go.’”²⁶

Already there are not enough American doctors to fill all of the residency positions the country requires: there are 22 percent more residencies available each year than there are American medical school graduates to take them.²⁷ Iranian doctors, in particular, help to fill this residency gap.²⁸ Yet if the travel ban goes into effect, an estimated 100 to 400 doctors from the six affected countries could have trouble getting visas to start their residencies this summer.²⁹

D. The Travel Ban Will Prevent Policymakers And The Public From Hearing Directly From People In The Targeted Countries

Finally, if the injunction is lifted, American policymakers, government officials, and business leaders will be denied access to critical information from individuals with direct experience in the affected countries. All six countries are embroiled in varying degrees of turmoil, from drought and extreme food insecurity to political upheaval and civil war. Non-governmental organizations, along with

²⁶ Donald G. McNeil Jr., *Trump’s Travel Ban, Aimed at Terrorists, Has Blocked Doctors*, N.Y. Times, Feb. 6, 2017, <http://nyti.ms/2lgZygH>.

²⁷ *Id.*

²⁸ *Id.*

²⁹ Lisa Schencker, *Chicago med students celebrate Match Day, though travel ban uncertainty remains*, Chi. Trib. (Mar. 18, 2017), <http://trib.in/2oZAhg7>.

the American government, play an important role in helping to improve the conditions in these countries, thereby saving lives and promoting global stability. The success of this work, however, relies at least in part on the ability of those organizations, along with the American public and American lawmakers, to gain a detailed understanding of the situations on the ground.

Oxfam and other similar organizations facilitate the sharing of information about conditions on the ground by regularly bringing people from the affected countries to the United States to speak with American governmental officials, Members of Congress and their staffs, and members of the United Nations Security Council. Officials who attend these meetings are able to gain information about the humanitarian and political conditions in countries where the United States government often has limited insight because of ongoing conflict—information that is key to the shaping of effective policies related to those countries, and to global peace and security.

Despite the availability of technology, video conferencing and electronic communication are not viable substitutes for these in-person meetings. Many of those who are willing to share information about the conditions in their countries and their experiences must come to the United States to do so because they cannot safely or legally speak about these matters at home. And it is not feasible for

American officials and policymakers to travel to the countries at issue, many of which are embroiled in active conflict, to obtain this information.

Non-governmental organizations also hold conferences and publish reports and articles to inform the public more generally about the situations in these countries.³⁰ Reports on country conditions from those with firsthand knowledge are of value not only to the government, but also to the financial sector, the media, and the public at large. The need for Americans to understand the situation in conflict-ridden countries could not be more pressing. Yet the travel ban will compromise the ability of all Americans to do so.

II. SECTION 6 OF THE EXECUTIVE ORDER SEVERELY, IRREPARABLY, AND UNNECESSARILY HARMS INTERNATIONAL ORGANIZATIONS AND REFUGEES

Section 6 of the Executive Order suspends the United States Refugee Admissions Program for 120 days.³¹ And it sets the total number of refugees who

³⁰ See, e.g., *NGO Letter regarding the human rights situation in Sudan*, Human Rights Watch (Sept. 8, 2016), <http://bit.ly/2nH99IP>; *Shattered lives: Syria*, Int'l Rescue Comm., <http://bit.ly/2pw7UT8> (last visited Apr. 18, 2017); Humanitarian Response, *Yemen: Humanitarian Response Plan 2017* (2017), <https://www.humanitarianresponse.info/en/operations/yemen/document/yemen2017-hrpfinal> (last visited Apr. 18, 2017); *Quick Facts: What You Need to Know About the Syria Crisis*, Mercy Corps (Mar. 9, 2017), <http://bit.ly/1Hlie2t>; *Famine and Food Insecurity: What's at Stake*, Mercy Corps (Mar. 1, 2017), <http://bit.ly/2o8dc71>; Martha Newsome, *Beware: 4 Refugee Myth Busters*, Medical Teams International: Official Blog (Jan. 28, 2017), <http://bit.ly/2ouEcjt>.

³¹ Order § 6(a), 82 Fed. Reg. at 13,215.

can be admitted in 2017 at 50,000³²—a drastic reduction from the 110,000 target set by the prior Administration—at a time when the number of displaced people worldwide has reached unprecedented levels.³³ This will have heart-rending and potentially life-threatening effects on refugees fleeing dangerous war zones with hopes of resettling in the United States only to find themselves subsisting on the periphery of towns and cities or in minimally equipped refugee camps. The Order will indefinitely delay or permanently halt the ability of thousands of refugees to rebuild their lives, and cannot be reconciled with the United States’ historic role in mitigating refugee crises.

A. The United States Plays A Critical Role In The Resettlement Of Refugees

The Statue of Liberty, one of the iconic symbols of the United States’ steadfast commitment to freedom and liberty for all, has these words engraved at its base: “Give me your tired, your poor, your huddled masses yearning to breathe free, the wretched refuse of your teeming shore. Send these, the homeless, tempest-tossed to me, I lift my map beside the golden door!” The Order’s immediate ban on refugees followed by its significant reduction in available

³² *Id.* § 6(b), 82 Fed. Reg. at 13,216.

³³ Juliet Eilperin, *White House raises refugee target to 110,000*, Wash. Post, Sept. 14, 2016, <http://wapo.st/2cXmmyt>.

resettlement spots—only about 10,000 more for the remainder of Fiscal Year 2017³⁴—abandons these bedrock principles.

The United States has long recognized its moral responsibility to serve as a safe haven for those fleeing violence and persecution in search of freedom and opportunity.³⁵ Since 2002 alone, the United States has successfully resettled over 900,000 refugees, approximately 190,000 of whom were from the countries targeted by the Order's travel ban.³⁶ Most refugees affected by the order, of course, have no connection whatsoever to those nations. In the last decade, for example, the United States has resettled approximately 160,000 refugees from Myanmar.³⁷ And last year alone, the United States resettled more refugees from the Democratic Republic of the Congo (DRC) than from anywhere else in the

³⁴ Patrick Goodenough, *2,070 Refugees Arrived in U.S. in March; 54% Drop From February*, CNSNews.com (Apr. 3, 2017), <http://bit.ly/2phHBAB> (as of March 31, the number of refugees that had arrived in the U.S. during Fiscal Year 2017 totaled 39,098).

³⁵ See, e.g., *Resettlement in the United States*, UNHCR, <http://www.unhcr.org/en-us/resettlement-in-the-united-states.html> (last visited Apr. 18, 2017); Office of Refugee Resettlement, Dep't of Health & Human Services, *Annual Refugee Arrival Data by Resettlement State and Country of Origin*, <http://bit.ly/2o7V5xL> (last visited Apr. 18, 2017).

³⁶ *Admissions and Arrivals: Interactive Reporting*, Refugee Processing Center, U.S. Dep't of State Bureau of Population, <http://bit.ly/2krxYj3> (enter date range, select the six targeted countries and all religions) (last visited Apr. 19, 2017).

³⁷ Martha Mendoza & Meghan Hoyer, *Trump's planned reduction in refugees may hit Myanmar worst*, AP (Mar. 16, 2017), <http://apnews.com/708b8e900e6f44e1b1a33803c711078c>.

world.³⁸ Regardless of where they come from, however, there is no justification for diminishing or halting the resettlement of refugees in the United States—refugees who are, per the United States’ strict standards, some of the most vulnerable in the world.

B. The Resettlement Process

The ostensibly temporary halt on refugee admissions will cause far more than a brief delay for those awaiting resettlement. Because of the complicated and interdependent web of screenings required before admission, a short hiatus now can mean years of additional waiting before admission. In some cases, refugees who were on the brink of admission might never make it here at all.

It is impossible to appreciate the ripple effect the ban will have on those awaiting resettlement without some understanding of the resettlement process. To embark on this often years-long process, a refugee must first register and interview with the United Nations (UN), which in many cases determines whether to grant refugee status.³⁹ The UN then decides whether the person is among the most vulnerable refugees and therefore eligible for resettlement in a country like the

³⁸ Ruth Igielnik & Jens Manuel Krogstad, *Where refugees to the U.S. come from*, Pew Research Center (Feb. 3, 2017), <http://pewrsr.ch/2kBJLuU>.

³⁹ United States Citizenship and Immigration Services (USCIS), Dep’t of Homeland Security, *Refugee Processing and Security Screening* (last updated Dec. 3, 2015), <http://bit.ly/1YodRyW>; Haeyoun Park & Larry Buchanan, *Refugees Entering the U.S. Already Face a Rigorous Vetting Process*, N.Y. Times, Jan. 29, 2017, <http://nyti.ms/2o7WN2o>.

United States.⁴⁰ Once a refugee is referred to the United States for resettlement, he or she must interview with a State Department partner organization.⁴¹ The refugee then undergoes two background checks, along with three fingerprint screenings.⁴² These background checks include consultation with the State Department, the Federal Bureau of Investigation, the Drug Enforcement Agency, the National Counterterrorism Center, the Department of Defense, and Interpol.⁴³ Syrian refugees in particular must undergo two additional steps at this point: review by a refugee specialist from the United States Citizenship and Immigration Services and review by the Department of Homeland Security.⁴⁴ Only after all of these extensive checks and screenings are complete does the refugee attend an in-person interview with a Homeland Security officer.⁴⁵ If the officer determines, based on the interview and the refugee's case file, that the individual qualifies as a refugee and is admissible under United States law, then the refugee must undergo a

⁴⁰ Park & Buchanan, *supra* note 39; Amy Pope, *Infographic: The Screening Process for Refugee Entry into the United States*, Obama White House Archives (Nov. 20, 2015), <http://bit.ly/2kqqbmh>.

⁴¹ Park & Buchanan, *supra* note 39; U.S. Comm. for Refugees and Immigrants (USCRI), *Security screening of refugees admitted to the United States*, <http://refugees.org/wp-content/uploads/2015/12/USCRI-Security-Screening-Process-5.16.16.pdf> (last visited Apr. 18, 2017).

⁴² Park & Buchanan, *supra* note 39.

⁴³ USCIS, *supra* note 39.

⁴⁴ Park & Buchanan, *supra* note 39; USCRI, *supra* note 41.

⁴⁵ Park & Buchanan, *supra* note 39.

screening for contagious disease and a cultural orientation class.⁴⁶ Finally, because the amount of time between the initial screening and actual departure is often significant, there is another security check before the refugee can actually come to the United States and begin the next chapter of his or her life.⁴⁷

Because of this carefully calibrated process, the Order's refugee ban is not simply a matter of a 120-day delay. Many of the checks conducted during the refugee admission process expire after a set amount of time. For instance, some medical tests expire within three months, while other checks and screenings are valid for a little over a year.⁴⁸ The combination of these different windows of validity often leaves less than a two-month period during which all checks are simultaneously valid.⁴⁹ Once a check expires, during the time it takes to repeat

⁴⁶ *Id.*; USCIS, *supra* note 39; USCRI, *supra* note 41.

⁴⁷ Park & Buchanan, *supra* note 39.

⁴⁸ *Medical Examination: Frequently Asked Questions (FAQs)*, Ctr. for Disease Control and Prevention (last updated Feb. 22, 2017), <http://bit.ly/2ocISHp>; *US Refugee Admissions Program: An overview of built-in security safeguards for refugee resettlement*, Int'l Rescue Comm., <http://bit.ly/2oeddfT> (last visited Apr. 18, 2017); Elise Foley & Willa Frej, *Court Ruling May Force Trump To Admit The Number Of Refugees Obama Wanted*, Huffington Post, Mar. 16, 2017, <http://huff.to/2mUyCGi>; *see also* Natasha Hall, *Refugees are already vigorously vetted. I know because I vetted them.*, Wash. Post, Feb. 1, 2017, <http://wapo.st/2oEGRHZ>; Ann M. Simmons, *We don't know exactly what 'extreme vetting' will look like, but screening for refugees is already pretty tough*, L.A. Times, Jan. 29, 2017, <http://lat.ms/2jKJvsP>.

⁴⁹ Erol Kekic, *Homeland Security Chief John Kelly Says Waiting 120 Days Won't Hurt Refugees. He's Wrong*, Time (Feb. 10, 2017), <http://ti.me/2ITAYT8>.

that check, another check may expire, creating a domino effect. This becomes even more complicated when a family attempts to travel together, because all of their windows need to line up at the same time.⁵⁰ If the window for travel passes before the refugee has made it to the United States, the refugee must generally start the process all over again from the beginning.⁵¹ This could take up to another two years. And this wait time would likely be compounded by the backlog created by the Order's decrease in total refugee admissions.

These consequences are not merely hypothetical. There are currently approximately 26,000 Syrian refugees in Jordan who are in the midst of completing the process to be resettled in the United States.⁵² If the ban goes into effect, more than half of them will have no hope of coming to the United States anytime soon. And many more could miss their brief window for travel, forcing them to the back of the line.

⁵⁰ *Id.*

⁵¹ Sarah Wildman, *9 Questions about the global refugee crisis you were too embarrassed to ask*, Vox (Jan. 30, 2017), <http://bit.ly/2p8N5k0>; Michael Brindley, *After Trump's Executive Order, Refugees Who Were N.H. Bound Now On Hold*, N.H. Pub. Radio (Jan. 31, 2017), <http://bit.ly/2pwf6hT>.

⁵² Electronic correspondence from Soman Moodley, Jordan Policy Advisor, Oxfam (Apr. 19, 2017) (on file with author).

C. The Real-Life Consequences That Will Result From The Order's Implementation

Any delay or decrease in the number of refugees resettled in the United States means that some of the most vulnerable refugees in the world will be forced to remain in dire conditions with nothing but uncertainty about their futures. In Syria, over half of the country's population has fled: 5 million people have sought refuge outside of Syria, while 6.3 million people are internally displaced, in most cases multiple times.⁵³ For those living in Syria, stopping the resettlement process will have life-and-death consequences. Fatima, a Syrian living in besieged East Aleppo, said of life during the conflict: "We stay at home, hoping that we will be safe as the planes hover above us in the sky and the shelling doesn't stop. We usually wait till the bombing stops to take a chance and go out and find food. We can't find enough to eat."⁵⁴

The situation is just as desperate in Africa. The DRC has produced one of the largest refugee populations in the world—the result of a series of conflicts in

⁵³ *UN: Number of Syrian refugees passes five million*, Al Jazeera (Mar. 30, 2017), <http://bit.ly/2njYrwx>; Mark Bixler & Michael Martinez, *War forced half of all Syrians from home. Here's where they went*, CNN (Apr. 18, 2016), <http://cnn.it/1O9wYss>.

⁵⁴ *Six years after start of the crisis, there is no escape for Syrians seeking safety*, Oxfam (Mar. 13, 2017), <http://bit.ly/2nGYPKN>.

the DRC since the 1960s.⁵⁵ By the beginning of 2014, almost half a million refugees had fled the DRC, forced out by continued armed conflicts and ethnic tensions.⁵⁶ Most have been unable to return, and many that remain have no permanent homes. “Large numbers of Congolese refugees continue to live in restricted camp environments, heavily dependent on international aid with their populations steadily increasing due to births and new arrivals.”⁵⁷

Even after refugees escape their home countries, many face the limitations of life in overburdened refugee camps, where they are forced to give up agency and freedom of movement.⁵⁸ In Jordan’s Za’atari refugee camp, for example, refugees must apply for permits to be able to legally leave the camp even temporarily.⁵⁹ This involves waiting for hours at a time in the hot sun, a process which must be repeated every 14 days to renew the permit.⁶⁰ Life in these camps is also not intended to be long term, even though people often remain for years.⁶¹ Refugees thus find themselves living in limbo, with enormous uncertainty—and

⁵⁵ UNHCR, *Congolese refugees – A protracted situation* at 1, <http://www.unhcr.org/558c0e039.pdf> (last visited Apr. 18, 2017).

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Electronic correspondence from Alexandra Saieh, Policy and Campaigns Advisor, Oxfam Syria Crisis Response (Apr. 20, 2017) (on file with author).

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

resulting mental strain—about the most basic aspects of their lives, such as where they will live, when (or whether) they will see their family, and when and where they will be able to move.⁶²

Myanmar refugees in camps in Thailand encounter similar challenges. While the camps offer “relatively more protection than for [Myanmar refugees] living outside the camps, the Thai government imposes harsh restrictions on refugees’ freedom of movement, prohibiting residents from leaving the camps, earning income, or their children from obtaining a good quality education.”⁶³ Many of these camps are located in remote mountain regions, generally far from the nearest hospitals and towns.⁶⁴ And although some residents have been there for ten years or more, the houses are supposed to be temporary and thus often are made from bamboo or other wood with roofs of thatched leaves.⁶⁵ Health conditions are precarious, and house fires are a constant threat.⁶⁶

⁶² *Id.*

⁶³ *Ad Hoc and Inadequate: Thailand’s Treatment of Refugees and Asylum Seekers*, Human Rights Watch (Sept. 12, 2012), <https://www.hrw.org/report/2012/09/12/ad-hoc-and-inadequate/thailands-treatment-refugees-and-asylum-seekers>.

⁶⁴ *Id.*

⁶⁵ Roopa Matthews, *What’s Life Like in Thailand’s Largest Burmese Refugee Camp*, iguacu Blog (Jan. 21, 2016), <https://weareiguacu.com/mae-la-refugee-camp/>.

⁶⁶ *Id.*

Many refugees live in communities rather than in formal camps, and life outside the camps is hard as well. In Jordan, for example, opportunities for refugees to work are extremely limited.⁶⁷ As a result, 87% of refugees in Jordan live below the poverty line.⁶⁸ Almost half of the non-camp refugee households in Jordan do not have heating, and a quarter do not have reliable electricity.⁶⁹ And approximately a quarter are not connected to a sewage system.⁷⁰ The situation in Lebanon, home to 1.5 million Syrian refugees, is comparable, with 71% of Syrian refugees living below the poverty line and 53% living below the extreme poverty line.⁷¹

Compounding the harms suffered by refugees is the drain on the organizations that support them. Given the limited options available to refugees to support themselves, humanitarian organizations provide crucial assistance for

⁶⁷ UNHCR, *Living in the Shadows: Jordan Home Visits Report* 28 (2014), <http://bit.ly/2oZMnFY> (UNHCR Home Visits Report); Electronic correspondence from Soman Moodley, Jordan Policy Advisor, Oxfam (Apr. 13, 2017) (on file with author).

⁶⁸ Oxfam et al., *Stand and Deliver: Urgent action needed on commitments made at the London Conference one year on* at 6 (Jan. 2017), <http://bit.ly/2l3yXDP> (*Stand and Deliver*).

⁶⁹ Press Release, UNHCR, *UNHCR Study Shows Rapid Deterioration in Living Conditions of Syrian Refugees in Jordan* (Jan. 14, 2015), <http://bit.ly/2pwhkP> (UNHCR Press Release).

⁷⁰ UNHCR Home Visits Report, *supra* note 67, at 58.

⁷¹ *Stand and Deliver*, *supra* note 68, at 9.

refugees' basic needs.⁷² The refugee ban and subsequent reduction in admissions will have a direct effect on this work. Oxfam, for example, expects its program costs to increase if the Order goes into effect.⁷³ Other organizations likewise will be faced with assisting not only those refugees slated for resettlement in the United States but unable to make the journey but also those refugees that will now remain in transitional locations due to the dramatic decrease in admissions to the United States.

D. The People Affected By The Order

The sagas of refugees who will be left in limbo under the Order illustrate the devastating effect it will have on families across the globe. Even with the Order enjoined, the uncertainty that remains has made it difficult if not impossible for refugees to obtain the appointments and other checks necessary to complete the vetting process.⁷⁴ These are just a handful of their stories.

⁷² UNHCR Home Visits Report, *supra* note 67, at 12-16, 28-46; UNHCR Press Release, *supra* note 69; *Global humanitarian appeal for 2017 requires record \$22.2 billion in funding – UN*, UN News Centre (Dec. 5, 2016), <http://bit.ly/2pd5Oea>; Ann M. Simmons, *Global refugee crisis overwhelms humanitarian aid system and exacerbates its shortcomings*, L.A. Times, May 23, 2016, <http://lat.ms/25numk7>.

⁷³ Electronic correspondence from Alexandra Saieh, *supra* note 58.

⁷⁴ Electronic correspondence from Alexandra Saieh, *supra* note 58; *see also* Robert King, *Flow of Refugees into Indiana has been cut in half under Trump*, Pacific Daily News (Apr. 7, 2017), <http://bit.ly/2p1xYZ8>.

Feras Almuqdad is a 29-year-old lawyer who fled Syria with his parents and siblings in 2012. Since arriving in Jordan, Feras has married another Syrian refugee and he and his wife have three small children. He and his family live in the Jordanian town of Zarqa and receive a small monthly voucher from UNHCR (the UN Refugee Agency). Although the conditions in Jordan are better than back home in war-torn Syria, Feras cannot practice law in Jordan because Syrian refugees are prohibited from practicing law or medicine. Instead, he has worked occasionally as a barber to make ends meet. Shortly after his twins were born in December 2016 he was informed that his family would be resettled in the United States in February 2017. But the Order has halted this process, and Feras and his young family remain in Jordan—now uncertain of what their future holds.

Khaled Al-Wadi, an accountant, also fled Syria for Jordan in 2012, along with his wife and two children. Since 2012, they have lived in Za'atari refugee camp. The camp does not have adequate resources, so Khaled and his family wait in long lines for bread and have difficulty accessing other basic services. Life in the camp is especially difficult for Khaled because he has polio. The roads are not paved, and his illness renders navigating the uneven terrain extremely demanding. Recently, he has begun working in Oxfam's office as part of Oxfam's Cash for Work Program. He was almost through the United States' exhaustive refugee vetting process, with only a tuberculosis test remaining. He was preparing to move

his family to the United States and was anticipating much-needed ankle surgery to improve his health. But due to the Order, Khaled and his family's resettlement plans are now on hold indefinitely, and Khaled's medical needs remain unmet.

Dahabo Hashi and her five children, all Somali refugees, were set to travel to South Dakota on March 10 after 8 years of processing and over 20 years in a refugee camp. They were initially slated for travel to the United States at the end of January, but their trip was canceled because of the Order.⁷⁵ Plans were then made for them to come after the initial Order was blocked, but once the new Order was signed, efforts to resettle the family again stalled.⁷⁶ Syrian refugee Abdul Ghani and his family of five had likewise been cleared for resettlement in the United States.⁷⁷ They were supposed to leave Turkey for the United States in December 2016, but could not make the trip because their two-year-old, Abdul Jawad, was too sick to fly. The move was pushed back to February 1, 2017, and then canceled because of the first Order. Their travel window was especially short because both of Abdul Ghani's children had Omenn Syndrome and were very vulnerable to infectious diseases, making it difficult to find a window when both were healthy enough to travel. Omenn Syndrome can be cured with a bone

⁷⁵ Moulid Hujale, *Trump travel ban devastating for Somali refugees cleared for new life in US*, The Guardian (Mar. 14, 2017), <http://bit.ly/2nDHLAK>.

⁷⁶ *Id.*

⁷⁷ Mahmoud Eskaf, *How Trump's travel ban is killing the Syrian refugees*, Middle East Observer (Mar. 16, 2017), <http://bit.ly/2nGZxHH>.

marrow transplant, but that treatment is not widely available to Syrians in Turkey. Days after the February move to the United States was canceled, Abdul's six-year-old son Yahya became ill and had to be treated in a small hospital's intensive care unit. Yahya died in the ill-equipped ICU.⁷⁸

These stories are not in any way anomalous. And it is not just refugees from the six targeted countries who are affected by the Order. Two of the top three countries from which United States refugees hailed in 2016—the DRC and Myanmar—are not mentioned in the Order at all.⁷⁹ But the Order affects these refugees as well. For instance, a refugee from the DRC was resettled in Virginia with his wife and young sons the week before the first ban took effect. He is trying to bring his other sons who are stuck in Burundi to the United States, and one has been approved for resettlement. But his son had to cancel his plans to travel here because of the refugee ban.⁸⁰ Eleven refugees from Myanmar and the DRC were cleared to resettle in New Hampshire but have been forced to wait because of the Order.⁸¹ And Myanmar refugees are particularly vulnerable to the Order's limit on refugee admissions, as research suggests they are the most likely to lose

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ Keegan Hamilton, *How Trump's blocked travel ban is still creating havoc for refugee families*, VICE News (Mar. 16, 2017), <http://bit.ly/2ouH9Av>.

⁸¹ Brindley, *supra* note 51.

resettlement spots.⁸² Tin, her husband, and her five children are just one Myanmar family at risk. All “have cleared years of refugee hurdles to come to the U.S.: blood tests, interviews, DNA and fingerprints, background checks. She has her one must-bring possession within reach, a well-worn Bible, and keeps their phone charged for the U.S. Embassy to call. But the odds of that happening just dropped precipitously.”⁸³

⁸² Mendoza & Hoyer, *supra* note 37.

⁸³ *Id.*

CONCLUSION

The Order should not be understood or analyzed in a vacuum. As the foregoing demonstrates, enforcement of the Order would have immediate, concrete, and significant adverse effects on people and institutions within the United States and around the world. These effects bear on the legal questions presented.

This Court should affirm the District Court's decision enjoining enforcement and implementation of Sections 2 and 6 of the Executive Order.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that pursuant to Federal Rules of Appellate Procedure 29(a)(5), 32(a)(5), (6) and Ninth Circuit Rules 29-2(c)(3), 32-1, the foregoing Brief of *Amicus Curiae* Oxfam America In Support of Plaintiffs-Appellees is proportionately spaced, has a typeface of 14-point and contains 6,958 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

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Dated: April 21, 2017

CERTIFICATE OF SERVICE

I, Richard P. Bress, hereby certify that I electronically filed the foregoing Brief of *Amicus Curiae* Oxfam America, Inc. In Support of Plaintiffs-Appellees with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on April 21, 2017, which will send notice of such filing to all registered CM/ECF users.

s/ Richard P. Bress
Richard P. Bress