

17-15589

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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STATE OF HAWAII et al.,  
*Plaintiffs-Appellees,*

v.

DONALD TRUMP, *et al.*

*Defendants-Appellants*

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On Appeal from the United States District Court for the District of Hawaii

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**BRIEF OF MASSACHUSETTS TECHNOLOGY LEADERSHIP COUNCIL,  
INC., AS *AMICUS CURIAE* IN SUPPORT OF PLAINTIFF-APPELLEE'S  
RESPONSE BRIEF**

GOODSILL ANDERSON QUINN & STIFEL

A Limited Liability Law Partnership LLP

BRETT R. TOBIN

*btobin@goodsill.com*

First Hawaiian Center

999 Bishop Street, Suite 1600

Honolulu, Hawaii 96813

Telephone: (808) 547-5600

Facsimile: (808) 547-5880

MICHAEL B. KEATING

*mkeating@foleyhoag.com*

KRISTYN DeFILIPP

*kbuncedefilipp@foleyhoag.com*

CHRISTOPHER E. HART

*chart@foleyhoag.com*

DANIEL L. McFADDEN

*dmcfadden@foleyhoag.com*

155 Seaport Blvd.

Boston, MA 02210-2600

Telephone: (617) 832-1000

Facsimile: (617) 832-7000

*Attorneys for Amicus Curiae*

MASSACHUSETTS TECHNOLOGY LEADERSHIP COUNCIL, INC.

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### **INTEREST OF AMICUS CURIAE**

*Amicus Curiae* is the Massachusetts Technology Leadership Council, Inc. (“MassTLC”), a not-for-profit association of companies that collectively employ more than 170,000 people in the Massachusetts technology industry. MassTLC represents a vibrant and growing community of innovators in fields including software, computers, robotics, and security products. MassTLC therefore closely follows issues—including immigration policy—that may affect the ability of its members to build value, attract talent, and compete in the diverse global marketplace.

In accordance with Fed. R. App. P. 29(a)(2), MassTLC states that all parties have consented to the filing of this amicus brief. Pursuant to Fed. R. App. P. 29(a)(4)(E), Mass TLC also states that no party’s counsel authored this brief in whole or in part. No party or party’s counsel contributed money intended to fund preparing or submitting this brief. No person other than MassTLC, its members or its counsel contributed money intended to fund preparing or submitting this brief.

### **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 29(4)(A), Massachusetts Technology Leadership Council, Inc., is a not-for-profit organization based in Burlington, Massachusetts. It has no parent company, and no publicly traded organization owns 10% or more of its stock.

## **ARGUMENT**

MassTLC writes in support of the Respondents in opposing the Administration's effort to overturn a nationwide injunction restraining the execution of President Donald Trump's Executive Order dated March 6, 2017, entitled "Protecting the Nation from Foreign Terrorist Entry into the United States" (the "Revised Travel Ban")<sup>1</sup>. As the Court is aware, the Revised Travel Ban was issued to voluntarily narrow an identically titled Executive Order issued January 27, 2017 (the "Original Travel Ban")<sup>2</sup>.

The Revised Travel Ban is arbitrary, illegal, and does not serve the public interest. This is fundamentally the same discriminatory "Muslim Ban" that has been repeatedly enjoined over the last three months.<sup>3</sup> Cosmetic changes—such as the *post hoc* addition of purported security justifications—do not alter the fact that this policy still proceeds from the same irrational and unconstitutional religious animus. Indeed, the President's own Senior Policy Advisor admits that it is

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<sup>1</sup> 82 Fed. Reg. 13,209 (Mar. 6, 2017).

<sup>2</sup> 82 Fed. Reg. 8,977 (Jan. 27, 2017).

<sup>3</sup> See, e.g., *Washington v. Trump*, No. 17-35105, 2017 U.S. App. LEXIS 2369, at \*3-7 (9<sup>th</sup> Cir. Feb. 9, 2017); *Aziz v. Trump*, No. 17-116, 2017 U.S. Dist. LEXIS 20889, at \*9-13, 27 (E.D. Va. Feb. 13, 2017); *Hawai'i v. Trump*, No. 17-361, 2017 U.S. Dist. LEXIS 36935, at \*33-45 (D. Haw. Mar. 15, 2017).

intended to achieve the “same basic policy outcome” as its patently illegal predecessor.<sup>4</sup>

The public interest demands an immigration system that does not discriminate against any religion, and that is fair, orderly, and predictable. In particular, technology companies in Massachusetts require such a system to recruit innovators from around the world to build businesses here at home, and to sell their products back out into the global marketplace. President Trump’s attempt to ban the entry of entire nationalities—even when the person seeking entry clearly poses no risk—is antithetical to the public interest and undermines America’s innovation economy and its fundamental values.

**I. THE NEW TRAVEL BAN IS MERELY A CONTINUATION OF THE PRESIDENT’S UNCONSTITUTIONAL ANTI-MUSLIM POLICIES.**

**A. The President Banned Muslims.**

During his recent election campaign, President Trump repeatedly promised to ban Muslims from entering the United States.<sup>5</sup> As one court has explained, “[t]he ‘Muslim ban’ was a centerpiece of the president’s campaign for months, and

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<sup>4</sup> See *Trump Advisor Says New Travel Ban Will Have ‘Same Basic Policy Outcome,’* FoxNews.com, Feb. 21, 2017, available at <http://www.foxnews.com/politics/2017/02/21/trump-adviser-says-new-travel-ban-will-have-same-basic-policy-outcome.html>.

<sup>5</sup> See *Aziz*, 2017 U.S. Dist. LEXIS 20889, at \*9-13.

the press release calling for it was still available on his website as of [Feb. 13, 2017].”<sup>6</sup>

Within days of taking office, President Trump issued the Original Travel Ban. Section 3(c) of that order immediately prohibited all people from seven predominantly Muslim countries from entering the United States, even including returning permanent residents and visa-holders residing in the United States.<sup>7</sup> The President ordered that this exclusion continue for 90 days, during which time federal agencies would purportedly review their immigration security procedures.<sup>8</sup> To implement this order, the Department of State “provisionally revoke[d] all valid nonimmigrant and immigrant visas of nationals” of those seven countries without any due process or advance notice.<sup>9</sup>

Notably, the Original Travel Ban contained provisions to add additional countries to the “banned” list, and also to extend the ban indefinitely beyond the

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<sup>6</sup> *See id.*

<sup>7</sup> *See Washington*, 2017 U.S. App. LEXIS 2369, at \*3-7. Notably, the order included a safety valve to permit “religious minorities”

<sup>8</sup> 82 Fed. Reg. 8977, 8977-78.

<sup>9</sup> *See* January 27, 2016 Letter of Edward J. Ramotowski, Deputy Ass’t of State, Bureau of Consular Affairs, Department of State. This letter made a small number of exceptions for military and diplomatic visas, or case-by-case determinations “in the national interest.”

initial 90-day period.<sup>10</sup> Thus, with the stroke a pen, President Trump suddenly excluded a vast number of Muslims from the United States, stripped legal status from many already residing here, and created well-founded fear that more nationalities would find themselves banned without warning.

**B. The Federal Courts Ordered The President To Cease Implementing The Ban.**

The Original Travel Ban was rapidly enjoined by numerous federal courts. Most broadly, Judge James Robart of the U.S. District Court for the Western District of Washington issued an order that the federal government was “ENJOINED and RESTRAINED from . . . [e]nforcing Section 3(c)” of the Original Travel Ban on a nationwide basis.<sup>11</sup> The federal government appealed this order, but ultimately dismissed the appeal after the 9<sup>th</sup> Circuit construed the order as a preliminary injunction and refused to stay its operation.<sup>12</sup>

Notably, at least one court enjoined the Original Travel Ban based on the strong likelihood that it would be proved to be an exercise in religious

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<sup>10</sup> 82 Fed. Reg. 8977, 8978.

<sup>11</sup> *Washington*, No. 17-141, 2017 U.S. Dist. LEXIS 16012, at \*7-8 (W.D. Wash. Feb. 3, 2017).

<sup>12</sup> *See Washington*, 2017 U.S. App. LEXIS 2369, at \*34 (stay of preliminary injunction denied); Order, *Washington*, No. 17-35105 (9<sup>th</sup> Cir. Mar. 8, 2017) (granting federal government’s motion to voluntarily dismiss appeal of preliminary injunction, including payment of State of Washington’s costs).

discrimination. Judge Brinkema of the U.S. District Court for the Eastern District of Virginia concluded, based in large part on the President's own statements, that the Commonwealth of Virginia had established such a strong likelihood of success on its Establishment Clause claim that the Original Travel Ban should be enjoined on that basis alone.<sup>13</sup>

**C. The Revised Travel Ban Is A Continuation Of The Original And Is Equally, If Not More, Flawed.**

On March 6, 2017, President Trump signed the Revised Travel Ban, which purports to revoke and replace his earlier order. Unchanged, however, is the ban's basic function: to prohibit people from predominantly Muslim countries from entering the United States based solely on their national origin.<sup>14</sup>

The Revised Travel Ban will last at least 90 days (prior to the injunctions entered by the District Court below and the District of Maryland, that time was to begin March 16<sup>th</sup>), again purportedly to permit a review of immigration security procedures, again subject to indefinite extension, and again subject to the addition of new "banned" countries. In fact, MassTLC is not aware of any evidence that

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<sup>13</sup> *Aziz*, 2017 U.S. Dist. LEXIS 20889, at \*28 n.11.

<sup>14</sup> This is prohibited discrimination even if the ban does not restrict travel from *every* predominantly Muslim country. *See id.* at \*26-27 ("The major premise of that argument—that one can only demonstrate animus toward a group of people by targeting all of them at once—is flawed.").



such a review was ever even begun, providing yet more reason to believe that the entire notion was nothing more than pretext for discrimination.

To be sure, while the Revised Travel Ban is somewhat narrower, it nevertheless still achieves (in the words of President Trump’s own senior advisor) the “same basic policy outcome.”<sup>15</sup> For example, although permanent residents and aliens already issued visas are exempted from the revised order, the residents of six Muslim-majority countries still cannot obtain new visas. Inevitably, travel from those countries will be incrementally extinguished as existing visas expire.

Further, although the Revised Travel Ban now contains purported security justifications for restricting travel from the six remaining countries, it is telling that these justifications were not proffered until after the Original Travel Ban had been enjoined.<sup>16</sup> Asserted now—in the teeth of numerous adverse rulings—these *post hoc* rationalizations are entitled to little weight.<sup>17</sup>

## **II. THE REVISED TRAVEL BAN IS NOT ONLY ILLEGAL, BUT IT WILL OPERATE AGAINST THE PUBLIC INTEREST, INCLUDING AGAINST THE INTERESTS OF THE TECHNOLOGY SECTOR.**

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<sup>15</sup> See *Trump Advisor Says New Travel Ban Will Have ‘Same Basic Policy Outcome,’* n.4, *supra*.

<sup>16</sup> *Washington*, 2017 U.S. App. LEXIS 2369, at \*32 & n.8.

<sup>17</sup> *Aziz*, 2017 U.S. Dist. LEXIS 20889, at \*24 n.10 (citing *Peacock v. Duval*, 694 F.2d 644, 646 (9<sup>th</sup> Cir. 1982)); *Hawai’i*, 2017 U.S. Dist. LEXIS 36935 at \*39-40, n. 15 (citing *Aziz*).

Although the Revised Travel Ban is contrary to the public interest in many ways, MassTLC writes to explain one particular facet of that harm: the ban's profoundly disruptive effect on the technology sector, including in Massachusetts.

**A. The Domestic Technology Industry Benefits From Immigration.**

**1. Immigration Supports The Innovation Economy.**

The technology industry is a critical driver of the Massachusetts economy. Nearly 400,000 people in Massachusetts work in jobs that are either in the technology sector, or are in technology-related occupations in other sectors—roughly 13% of the state's total workforce.<sup>18</sup> This industry is a global enterprise, fueled in large part by immigration and international travel. According to one recent study, as of January 1, 2016, “[i]mmigrants have started more than half (44 of 87) of America's startup companies valued at \$1 billion dollars or more and are key members of management or product development teams in over 70 percent (62

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<sup>18</sup> MassTLC, *The Connected Commonwealth: How the Massachusetts Tech Ecosystem is Creating New Growth Opportunities*, at 14, available at <http://www.masstlc.org/2016-state-of-technology-report>.

of 87) of these companies.”<sup>19</sup> More than half of Silicon Valley’s corporate founders are immigrants.<sup>20</sup>

The integral role that immigrants play in the technology industry does not arise because “immigrants steal jobs” (as many nativist demagogues have claimed), but rather because the technology industry is growing too rapidly to be staffed through domestic labor alone. By 2020, for example, projections indicate that 1.4 million computer specialist positions will be open in the United States, but domestic universities will only produce enough graduates to fill 29% of those jobs.<sup>21</sup> In Massachusetts today, there are seventeen technology jobs for every person who graduates with a degree in computer science or information technology.<sup>22</sup> Immigrants are responsible for substantial economic growth. This

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<sup>19</sup> Stuart Anderson, *Immigrants and Billion Dollar Startups*, National Foundation for American Policy (March 2016), at 1 & app’x 5, *available at* <http://nfap.com/wp-content/uploads/2016/03/Immigrants-and-Billion-Dollar-Startups.NFAP-Policy-Brief.March-2016.pdf>.

<sup>20</sup> *Why These Business School Professors Oppose Trump’s Executive Order On Immigration*, Harvard Business School: Working Knowledge, Jan. 31, 2017, *available at* <http://hbswk.hbs.edu/item/why-these-business-school-professors-oppose-trump-s-executive-order-on-immigration>.

<sup>21</sup> Adams Nager and Robert D. Atkinson, *The Case for Improving U.S. Computer Science Education*, Information Technology & Innovation Foundation, May 2016, at 3, *available at* <http://www2.itif.org/2016-computer-science-education.pdf>, *accessed* March 11, 2017.

<sup>22</sup> Massachusetts Department of Higher Education, *The Degree Gap* (June 2016) at 14, *available at*

is true as a general matter of the country as a whole: in 2015, immigrants contributed \$2 trillion to the U.S. GDP, which represents 11% of the country's total GDP.<sup>23</sup> Zooming in to the Massachusetts technology sector, one study projects that, if half of Massachusetts' 3,608 advanced level graduates in science, technology, engineering, and mathematics (STEM) related fields, studying on temporary visas, remained in Massachusetts upon graduation, then 4,726 new jobs would be created for U.S.-born workers by 2021.<sup>24</sup>

As it stands, immigrant students are disproportionately more likely to get their degrees in a STEM field, and international students make up over 30% of the post-baccalaureate degrees in STEM fields.<sup>25</sup> Individuals from the six banned countries, moreover, are more likely to have a bachelor's degree, approximately

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[http://www.mass.edu/visionproject/\\_documents/2016%20The%20Degree%20Gap%20-%20Vision%20Project%20Annual%20Report.pdf](http://www.mass.edu/visionproject/_documents/2016%20The%20Degree%20Gap%20-%20Vision%20Project%20Annual%20Report.pdf).

<sup>23</sup> "People on the Move: Global Migration's Impact and Opportunity," *McKinsey Global Institute*, December 2016, at 56, available at <http://www.mckinsey.com/~media/McKinsey/Global%20Themes/Emplyment%20and%20Groth/Global%20migrations%20impact%20and%20opportunity/MGI-People-on-the-Move-Executive-summary-December-2016.ashk>, accessed March 5, 2017.

<sup>24</sup> The Partnership for a New American Economy, *The Contributions of New Americans in Massachusetts* (2016), at 14, available at [www.newamericaneconomy.org/wp-content/uploads/2017/02/nae-ma-report.pdf](http://www.newamericaneconomy.org/wp-content/uploads/2017/02/nae-ma-report.pdf).

<sup>25</sup> American Community Survey, 2015 5-year sample, available at <https://usa.ipums.org/usa-action/variables/group>, accessed April 4, 2017.

twice as likely to have a graduate degree, and four times as likely to have a doctoral degree relative to the native-born population.<sup>26</sup> Quite apart from this population being a disproportionately educated and skilled one, they are also part of a population making immediate impacts on the U.S economy: During the 2015-16 academic year, international students contributed \$32.8 billion to the U.S. economy and supported more than 400,000 jobs.<sup>27</sup>

## **2. Immigrants Are Inventors.**

So too do immigrants drive the development of inventions and other useful arts. For example, in 2011, 76% of patents awarded to the Top 10 patent-producing U.S. universities had an inventor that was foreign-born.<sup>28</sup> In recent years, foreign nationals contributed to more than three quarters of patents in the fields of information technology, molecular and microbiology, and pharmaceuticals.<sup>29</sup>

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<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> The Partnership for a New American Economy, *Patent Pending: How Immigrants Are Reinventing the American Economy* 1 (2012), available at <http://www.renewoureconomy.org/wp-content/uploads/2013/07/patent-pending.pdf>.

<sup>29</sup> *Id.* at 11.

The amount of invention originating from immigrants can have dramatic effects on innovation, with discernable spillover effects. One academic study noted that a 1.3 percentage point increase in the share of the overall U.S. population composed of immigrant college graduates, and a 0.7 percentage point increase in that same share composed of post-graduate immigrants, led to an increase in patenting by approximately 12 to 21%.<sup>30</sup> Similarly, as little as a 0.45 percentage point increase in immigrant scientists and engineers in the overall U.S. population increases patenting per capita by approximately 13 to 32%.<sup>31</sup> High-skilled immigration has an important and discernable impact on the innovation economy. Limiting such immigration clearly threatens future innovation.

### **3. Immigrants Are Top in Technology Fields.**

The highly-educated foreign-born scientists, mathematicians, and engineers also represent some of the best in the field. 41% of the Nobel Prizes won by Americans in Chemistry, Medicine, and Physics since 2000 were awarded to immigrants.<sup>32</sup> In 2016, all six American winners of the Nobel Prize in economics

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<sup>30</sup> Hunt, Jennifer, and Marjolaine Gauthier-Loiselle, “How Much Does Immigration Boost Innovation?” *American Economic Journal: Macroeconomics*, vol. 2, no. 2, 2010, pp. 31-56, available at [www.jstor.org/stable/25760296](http://www.jstor.org/stable/25760296), accessed March 5, 2017, p. 51.

<sup>31</sup> *Id.*

<sup>32</sup> National Foundation for American Policy, “Immigrants and Nobel Prizes,” *NFAP Policy Brief*, October 2016, available at <http://nfap.com/wp->

and scientific fields were foreign born.<sup>33</sup> From 2010-2015, four out of eight U.S. Turing Award (for computing) recipients were first or second generation immigrants.<sup>34</sup> Since 1936, 63% of Fields Medal (for mathematics) recipients affiliated with a U.S. research institution have been foreign born (and *all* such recipients have been foreign-born since 2002).<sup>35</sup> 40% of National Medal of Science recipients in math or computer science are foreign-born.<sup>36</sup> In Massachusetts, 37% of Nobel Prize winners associated with MIT are foreign-born;<sup>37</sup> 33% of Nobel prize winners who are current faculty or alumni of Harvard

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content/uploads/2016/10/Immigrants-and-Nobel-Prizes.NFAP-Policy-Brief.October-2016.pdf, *accessed* February 21, 2017.

<sup>33</sup> *Id.*

<sup>34</sup> Complete list of Turing Award winners is *available at* <http://amturing.acm.org/alphabetical.cfm>, *accessed* February 21, 2017. Data on award winners' country of birth are available on each winner's Turing Award profile.

<sup>35</sup> "List of Fields Medalists," Math Union, 2014, *available at* <http://www.mathunion.org/general/prizes/fields/prizewinners/>, *accessed* March 20, 2017.

<sup>36</sup> National Science & Technology Medals Foundation, "Laureates," 2017, *available at* <https://www.nationalmedals.org/laureates/>, *accessed* March 24, 2017.

<sup>37</sup> MIT, "Nobel Prize," *available at* <http://web.mit.edu/ir/pop/awards/nobel.html>, *accessed* March 24, 2017; place of birth from biographies at [nobelprize.org](http://nobelprize.org), "Nobel Prize Facts," *available at* [https://www.nobelprize.org/nobel\\_prizes/facts/](https://www.nobelprize.org/nobel_prizes/facts/), *accessed* March 24, 2017.

University are foreign-born;<sup>38</sup> and 75% of Nobel Prize winners who have been affiliated with Boston University are foreign born.<sup>39</sup> There is little question as to the importance of the contributions that immigrants make to STEM fields, in both the U.S. and Massachusetts.

#### **4. Immigrants Are Business Leaders.**

American companies that are household names—Microsoft, McDonald’s, U.S. Steel—are led by foreign-born CEOs.<sup>40</sup> As of 2016, over 10% of Fortune 500 CEOs were born outside of the U.S.; the same was true for 14% of Fortune 100

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<sup>38</sup> Harvard University, “Nobel Laureates,” *available at* <http://www.harvard.edu/about-harvard/harvard-glance/honors/nobel-laureates>, *accessed* March 24, 2017.

<sup>39</sup> Boston University, “Nobel Laureates,” *available at* <https://www.bu.edu/provost/awards-publications/faculty-achievement/national-awards-and-distinctions/nobel-laureates/>, *accessed* March 24, 2017, and “List of Nobel Laureates by University Affiliation,” *available at* [https://en.wikipedia.org/wiki/List\\_of\\_Nobel\\_laureates\\_by\\_university\\_affiliation](https://en.wikipedia.org/wiki/List_of_Nobel_laureates_by_university_affiliation) *accessed* March 24, 2017.

<sup>40</sup> *Immigrant CEOs of the Fortune 500*, Boardroom Insiders (March 2016), *available at* <http://info.boardroominsiders.com/get-our-fortune-500-immigrant-ceo-list-for-free>.



CEOs.<sup>41</sup> In 2016, over 40% of Fortune 500 firms were founded either by an immigrant or the child of immigrants.<sup>42</sup>

The same holds true in Massachusetts. More than half of the Massachusetts-based Fortune 500 companies were founded by immigrants, or by children of immigrants.<sup>43</sup> Their impact on the Massachusetts economy has been significant, generating over \$130 billion in annual revenue, and employing nearly half a million people around the world.<sup>44</sup> At the beginning of this decade, over 17 percent of all business owners in Massachusetts were foreign born.<sup>45</sup> In 2013, the same was true of nearly 19 percent of business owners in the greater Boston area.<sup>46</sup>

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<sup>41</sup> “Immigrant CEOs of the Fortune 500,” *Boardroom Insiders*, 2016, available at <http://info.boardroominsiders.com/get-our-fortune-500-immigrant-ceo-list-for-free>, accessed February 22, 2017.

<sup>42</sup> The Partnership for a New American Economy, *Reason for Reform: Entrepreneurship* (2016), available at <http://www.newamericaneconomy.org/research/reason-for-reform-entrepreneurship/>

<sup>43</sup> *The Contributions of New Americans in Massachusetts*, n.24, *supra*, at 3.

<sup>44</sup> *Id.*

<sup>45</sup> Fiscal Policy Institute, *Immigrant Small Business Owners: A Significant and Growing Part of the Economy* 24 & Fig. 24 (2012), available at <http://www.fiscalspolicy.org/immigrant-small-business-owners-FPI-20120614.pdf>.

<sup>46</sup> David Dyssegaard Kallick, *Bringing Vitality to Main Street: How Immigrant Small Businesses Help Local Economies Grow* (2015), interactive data display available at <http://www.as-coa.org/articles/interactive-impact-immigrants-main-street-business-and-population-us-metro-areas>.

From 2006 to 2010, Massachusetts businesses owned by new immigrants had a total net business income of \$2.8 billion.<sup>47</sup>

Prominent American innovators, past and present, hail from countries directly targeted by the Revised Travel Ban, including Steve Jobs (the co-founder of Apple whose father is from Syria),<sup>48</sup> Ali Hajimiri (an academic and entrepreneur who holds over 85 U.S. and European patents, who is from Iran),<sup>49</sup> and Joe Kiani (founder, chairman, and CEO of Masimo, and also from Iran).<sup>50</sup> Iranian-Americans either founded or lead mainstays of the technology sector like Twitter, Dropbox, Oracle, and eBay.<sup>51</sup> Similarly, several of the top venture capitalists who fund new technology companies were born in Tehran.<sup>52</sup>

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<sup>47</sup> The Partnership for a New American Economy, *Open For Business: How Immigrants Are Driving Small Business Creation In The United States* 33 (2012), available at <http://www.renewoureconomy.org/sites/all/themes/pnae/openforbusiness.pdf>.

<sup>48</sup> Baig, Edward C., “Steve Jobs’ biological father was Syran migrant, some note,” *USA Today*, November 16, 2015, available at <http://www.usatoday/story/tech/columnist/baig/2015/11/16/steve-jobs-biological-father-syrian-migrant-some-note/75899450/>, accessed March 19, 2017.

<sup>49</sup> “Ali Hajimiri,” Caltech High-Speed Integrated Circuits, available at <http://chic.caltech.edu/hajimiri/>, accessed March 19 2017.

<sup>50</sup> “Company Overview of Masimo Corporation,” *Bloomberg*, available at <http://www.bloomberg.com/research/stocks/private/person.asp?personID=541010&privcapID=31167>, accessed March 19, 2017.

<sup>51</sup> Kaveh Waddell, *How Trump’s Immigration Rules Will Hurt the U.S. Tech Sector*, THE ATLANTIC (Feb. 1, 2017), available at

## 5. Immigrants Contribute To The Field Of Medicine.

Medicine, in particular, has benefitted greatly from immigrants. More than 25 percent of physicians practicing in the United States are foreign born.<sup>53</sup> Importantly, foreign-born physicians are disproportionately represented in rural clinics and public safety-net hospitals treating isolated and vulnerable populations.<sup>54</sup> The simple reason for this is that the United States does not produce enough physicians to keep up with demand. According to a report published by the Association of American Medical Colleges (AAMC) in 2016, a current deficit of 11,000 physicians is expected to grow as the population grows and ages.<sup>55</sup> The AAMC estimates that the U.S. will face a shortage of up to 94,700 doctors by

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<https://www.theatlantic.com/technology/archive/2017/02/how-trumps-immigration-rules-will-hurt-the-us-tech-sector/515202/>.

<sup>52</sup> *Id.*

<sup>53</sup> Kristen McCabe, *Foreign-Born Health Care Workers in the United States*, MIGRATION POLICY INSTITUTE, June 27, 2012, <http://www.migrationpolicy.org/article/foreign-born-health-care-workers-united-states#4>.

<sup>54</sup> Casey Ross & Max Blau, *US Health Care Relies Heavily on Foreign Workers. Trump's Immigration Ban Is Raising Alarms.*, STAT (Jan. 30, 2017), available at <https://www.statnews.com/2017/01/30/trump-immigration-ban-health-workers/>.

<sup>55</sup> Association of American Medical Colleges, *The Complexities of Physician Supply and Demand: Projections from 2014 to 2015*, at 27, 36 (2016), available at [https://www.aamc.org/download/458082/data/2016\\_complexities\\_of\\_supply\\_and\\_demand\\_projections.pdf](https://www.aamc.org/download/458082/data/2016_complexities_of_supply_and_demand_projections.pdf).

2025.<sup>56</sup> Almost a third of the shortage will be primary care physicians.<sup>57</sup> More than 8,400 doctors working in the U.S. are from the two countries listed in the Revised Travel Ban: Iran and Syria.<sup>58</sup> Specifically in Massachusetts, in 2016 almost 1 in 4 physicians graduated from a medical school outside of the United States (suggesting non-U.S. origin).<sup>59</sup>

**B. Unless It Is Enjoined, The Revised Travel Ban Will Harm The Technology Industry.**

Implementation of irrational and discriminatory immigration policies, including the Revised Travel Ban, would severely harm the technology industry in the U.S. generally, and Massachusetts specifically. Indeed, Massachusetts has one of the highest numbers of applications for temporary non-agricultural work permits in the United States.<sup>60</sup> The impact is expected to destabilize the workforce and reduce the competitiveness of U.S. technology firms. For example, Microsoft's public securities filings explain that "[c]hanges to U.S. immigration policies that

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<sup>56</sup> *Id.* at 27.

<sup>57</sup> *Id.*

<sup>58</sup> Seema Yasmin, *Trump Immigration Ban Can Worsen U.S. Doctor Shortage, Hurt Hospitals*, Scientific American (Feb. 1, 2017), *available at* <https://www.scientificamerican.com/article/trump-immigration-ban-can-worsen-u-s-doctor-shortage-hurt-hospitals/>.

<sup>59</sup> *The Contributions of New Americans in Massachusetts*, n.24, *supra*, at 15.

<sup>60</sup> Labor Certification Applications Disclosure Data, *available at* <http://www.foreignlaborcert.doleta.gov/performance/cdata/cfm>.

restrain the flow of technical and professional talent may inhibit our ability to adequately staff our research and development efforts.”<sup>61</sup> In addition to stifling recruiting from the “banned” countries, the Revised Travel Ban could accelerate the rise of technology hubs abroad, making such locales as Vancouver, London, and Singapore more “attractive alternatives to existing hubs” of technology in the United States,<sup>62</sup> and force companies based abroad to put off opening offices in the United States.<sup>63</sup> It will also likely result in the relocation of foreign born employees from the United States to other countries where they can reside without fear of a sudden revocation of their rights to access their families and homes.

The Massachusetts technology sector expects to feel this impact acutely. As reported in the press, numerous Boston-based businesses have expressed grave concern regarding the Administration’s travel ban and its potential expansion. As Jeff Bussgang, a general partner at the venture capital firm Flybridge and professor at Harvard Business School stated, the travel ban is “the innovation economy’s

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<sup>61</sup> Form 10-Q for Quarter Ended Dec. 31, 2016, Microsoft Corp., at 58, *available at* <https://www.microsoft.com/en-us/Investor/sec-filings.aspx>.

<sup>62</sup> *How Trump’s Immigration Rules Will Hurt the U.S. Tech Sector*, n.42, *supra*.

<sup>63</sup> *How Would Curbs on Immigration Affect U.S. Tech Firms?*, KNOWLEDGE @WHARTON (Feb. 7, 2017), *available at* <http://knowledge.wharton.upenn.edu/article/immigration-ban-impact-u-s-tech-firms/>.

worst nightmare.”<sup>64</sup> Paul English, founder of the travel booking site Kayak and startup Lola, expressed concern about a Mexican national hired to develop an app who was worried about traveling out of the country to visit his family.<sup>65</sup> Leaders of Massachusetts-headquartered technology companies, from large to small—including GE, TripAdvisor, Carbonite, Brightcove, and Fuze—have expressed concern over the direct impact that implementation of the travel ban had on their businesses.<sup>66</sup> This anecdotal evidence is strongly supported by the empirical data noted above: a high percentage of founders, managers, and employees of Massachusetts technology companies are immigrants and potentially impacted by the Revised Travel Ban, either directly or indirectly.

It is thus clearly in the public interest—including in the interests of the Massachusetts technology industry—for the Court to restrain the operation of the Revised Travel Ban. The United States deserves fair, rational, and predictable rules to govern immigration and international travel. Such a system permits

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<sup>64</sup> Adam Vaccaro, *Boston Business Leaders Oppose Trump Immigration Order*, The Boston Globe (Jan. 29, 2017), *available at* <https://www.bostonglobe.com/business/2017/01/29/chief-says-company-will-stand-with-employees-from-banned-countries/5v00oFyvZZpGPd5CxPDjfN/story.html>.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*; Zeninor Enwemeka, *Local Tech Companies Say Trump’s Immigration Order Is Bad For Business*, WBUR (Feb. 7, 2017), *available at* <http://www.wbur.org/bostonmix/2017/02/07/boston-business-travel-ban>.

individuals and companies to reliably arrange employment and commercial relationships, without fear that those relationships will be abruptly disrupted by irrational or discriminatory policies.

**C. Unless It Is Enjoined, the Revised Travel Ban Will Undermine the Competitive Strength of the Domestic Technology Industry and Will Chill the Culture of Innovation.**

The Revised Travel Ban is also contrary to the public interest because it substantially undermines the ability of the Massachusetts technology industry to compete in the international marketplace. It discourages travel to the U.S. by potential customers and investors, either because they are directly impacted by the ban, or because they are worried that the ban would be unexpectedly expanded to exclude additional nationalities. Indeed, this is not a theoretical concern. Flight bookings to the United States from January 28, 2017 to February 4, 2017 dropped by 6.5% overall in comparison to the previous year.<sup>67</sup> Bookings to the United States from the six targeted countries in the Revised Travel Ban have dropped by 80%.<sup>68</sup>

It may also force companies to move jobs outside of the U.S., locating businesses where employees live rather than enticing them to come to the U.S.

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<sup>67</sup> Trump Travel Ban Impact on Air Travels to the U.S.A.,” ForwardKeys, March 6, 2017, *available at* <https://forwardkeys.com/revenue-management/article/trump-travel-ban-impact-on-air-travels-to-the-USA.html>.

<sup>68</sup> *Id.*

Similarly, the Revised Travel Ban discourages talented foreign students from attending local educational institutions, from which the technology industry hires many engineers and scientists to drive innovation in the United States. Foreign-born students already in the U.S. will be less likely to remain, as they may be unable to receive or renew a visa, or may be fearful of that possibility. The Revised Travel Ban will inevitably reduce the relative strength of domestic industry in global markets, which does nothing to make the United States more safe, prosperous, or secure.

The technology industry, in Massachusetts as elsewhere, thrives on a culture of diversity, inclusivity, and equal opportunity. The Revised Travel Ban is antithetical to these values. It is a patently illegal and discriminatory attempt to inflict harm upon a religious minority.<sup>69</sup> This animus was both proven and magnified by the manner of the Original Travel Ban's implementation, which—without any notice—barred the re-entry of Muslims who have made their home in our country, separating them from their homes, families, and careers. A government that acts to hurt people based on their religion (or non-religion) undermines not only the inclusive principles of the modern technology industry, but also legal principles “rooted in the foundation soil of our Nation” and

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<sup>69</sup> *Aziz*, 2017 U.S. Dist. LEXIS 20889, at \*9-13, 27.



“fundamental to freedom.”<sup>70</sup> “Freedom of thought, which includes freedom of religious belief, is basic in a society of free men [and women].”<sup>71</sup>

### **CONCLUSION**

For all the foregoing reasons, MassTLC respectfully requests that this Court affirm the decision below.

Dated: April 21, 2017.

/s/ Brett R. Tobin

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BRETT R. TOBIN  
MICHAEL B. KEATING  
KRISTYN DeFILIPP  
CHRISTOPHER E. HART  
DANIEL L. McFADDEN  
FOLEY HOAG LLP  
155 Seaport Boulevard  
Boston, MA 02210

Attorneys for *Amicus Curiae*  
MASSACHUSETTS TECHNOLOGY  
LEADERSHIP COUNCIL, INC.

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<sup>70</sup> *Epperson v. Arkansas*, 393 U.S. 97, 103-09 (1968).

<sup>71</sup> *United States v. Ballard*, 322 U.S. 78, 86 (1944).

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Signature of Attorney or  
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/s/ Brett R. Tobin

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### **CERTIFICATE OF SERVICE**

I hereby certify that on this 21st day of April, 2017, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF System, which will send notification of such filing to all attorneys of record.

Dated April 21, 2017.

/s/ Brett R. Tobin

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BRETT R. TOBIN  
MICHAEL B. KEATING  
KRISTYN DeFILIPP  
CHRISTOPHER E. HART  
DANIEL L. McFADDEN

*Attorneys for Amicus Curiae*  
MASSACHUSETTS TECHNOLOGY  
LEADERSHIP COUNCIL, INC.