

No. 17-15589

IN THE
United States Court of Appeals
for the Ninth Circuit

STATE OF HAWAII; ISMAIL ELSHIKH
Plaintiffs-Appellees,

v.

DONALD J. TRUMP, ET AL.,
Defendants-Appellants.

On Appeal from the United States District Court
for the District of Hawaii, No. 17-cv-0050-DKW-KSC

Brief of Muslim Civil Rights Activists Linda Sarsour, Rashida Tlaib, Zahra Billoo, Basim Elkarra, Hussam Ayloush, Alia Salem, Adam Soltani, Imraan Siddiqi, Namira Islam, Karen Dabdoub, Jim Sues, Hanif Mohebi and Jaylani Hussein as *Amici Curiae*, in Support of Appellees, and in Opposition to Appellants' Motion for a Stay and on the Merits

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CONSENT OF THE PARTIES

Counsel for both Appellees and Appellants have consented to the filing of this *amicus curiae* brief.

Respectfully submitted,

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INTEREST OF AMICI CURIAE¹

This *amici curiae* brief is submitted on behalf of the amici described below in support of Appellees, and in Opposition to Appellants' Motion for a Stay and on the Merits. The *amici*, all of whom are prominent civil rights and grassroots activists, have suffered and will continue to suffer an ongoing, concrete and irreparable harm, in addition to psychological and spiritual consequences, since the initial announcement of the "Muslim Ban" as a result of the defendants sending a message of (1) disfavor and condemnation of their religion of Islam, (2) marginalization and exclusion of Muslims, including themselves, based on the false messaging that Muslims are prone to commit terrorism, (3) the endorsement of all religions over their own, (4) Muslims are outsiders, dangerous, and not full members of the political community, and (5) all non-adherents of Islam are insiders and therefore favored. In fact, the *amici* have had to change their conduct adversely in that they have been required to assist and advocate on behalf of Muslims targeted by Executive Order 13780 entitled "Protecting the Nation from Foreign Terrorist Entry into the United States," issued on March 6, 2017 (hereinafter "EO-2" or "Revised

¹ No counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of the brief. No person other than *amici curiae* or their counsel made a monetary contribution to the preparation or submission of this brief. Fed. R. App. P. 29(c)(5).

Muslim Ban”) and defend their religion as a religion of peace on national media outlets and through grassroots efforts.

Linda Sarsour is an American Muslim residing in Kings County, New York. Sarsour is a Palestinian activist and Executive Director of the Arab American Association of New York. In 2016, she served as spokesperson for Presidential Candidate Senator Bernie Sanders, and was one of three national co-chairs for the 2017 Women’s March held the day after the inauguration of Donald Trump as President of the United States. Sarsour has appeared in “The Hijabi Monologues” and has her own show, The Linda Sarsour Show. Sarsour is a plaintiff in *Sarsour v. Trump*, No. 1:17-cv-00120 (E.D. Va. Jan. 30, 2017).

Rashida Tlaib is a Muslim American residing in Wayne County, Michigan. Tlaib is a former Democratic member of the Michigan House of Representatives and an attorney at the Sugar Law Center for Economic and Social Justice. Upon her swearing in on January 1, 2009, Tlaib became the first Muslim-American woman to serve in the Michigan Legislature, and only the second Muslim woman in history to be elected to any state legislature in America. Tlaib is a plaintiff in *Sarsour v. Trump*, No. 1:17-cv-00120 (E.D. Va. Jan. 30, 2017).

Zahra Billoo is a Muslim American residing in Santa Clara County, California. Billoo is a civil rights attorney and the Executive Director of the Council on American-Islamic Relations, San Francisco Bay Area (CAIR-SFBA), a chapter

of the nation's largest Muslim civil rights and civil liberties advocacy organization, and a prominent civil rights activist. Billoo is frequently seen at mosques and universities facilitating trainings and workshops as a part of CAIR's grassroots efforts to empower the American Muslim community and build bridges with allies on civil rights issues. Billoo is a plaintiff in *Sarsour v. Trump*, No. 1:17-cv-00120 (E.D. Va. Jan. 30, 2017).

Basim Elkarra is a Muslim American residing in Sacramento County, California. Elkarra is the Executive Director of the Council on American-Islamic Relations, Sacramento Valley (CAIR-SAC), a chapter of the nation's largest Muslim civil rights and civil liberties advocacy organization, and a prominent civil rights activist. Elkarra is a former board member of the Sacramento chapter of the American Civil Liberties Union, and serves on the Executive Board of the California Democratic Party. He also serves on the City of Sacramento Community Police Commission. In 2011, the United States Embassy in London sent Elkarra to England to meet young British Muslims as part of a strategy to promote civic engagement. Elkarra is a plaintiff in *Sarsour v. Trump*, No. 1:17-cv-00120 (E.D. Va. Jan. 30, 2017).

Hussam Ayloush is a Muslim American residing in Riverside County, California. Ayloush is the Executive Director of the Council on American-Islamic Relations, Los Angeles (CAIR-LA), a chapter of the nation's largest Muslim civil

rights and civil liberties advocacy organization, and a prominent civil rights activist and community organizer. Ayloush is a fourth-term elected Delegate to the California Democratic Party (CDP). He also serves on the board of the Muslim American Homeland Security Congress (MAHSC). Ayloush is a plaintiff in *Sarsour v. Trump*, No. 1:17-cv-00120 (E.D. Va. Jan. 30, 2017).

Alia Salem is a Muslim American residing in Dallas County, Texas. Salem is the former Executive Director of the Council on American-Islamic Relations, Dallas/Fort Worth (CAIR-DFW), a chapter of the nation's largest Muslim civil rights and civil liberties advocacy organization, and a prominent civil rights activist working for social justice, understanding and empowerment in her community. Salem's work with CAIR-DFW has been featured on local, national and international media outlets. Salem is a plaintiff in *Sarsour v. Trump*, No. 1:17-cv-00120 (E.D. Va. Jan. 30, 2017).

Adam Soltani is a Muslim American residing in Oklahoma County, Oklahoma. Soltani is the Executive Director of the Council on American-Islamic Relations, Oklahoma (CAIR-OK), a chapter of the nation's largest Muslim civil rights and civil liberties advocacy organization, and a prominent civil rights activist. Soltani currently serves as the chair of the Oklahoma Conference of Churches' Religions United Committee and planning committee member for OKC's Jewish-Muslim Film Institute. He is also a former member of the Oklahoma Democratic

Party Religious Education Committee, former board member of the Interfaith Alliance of Oklahoma, and a former member of Islamic Society of Greater Oklahoma City Executive Committee. Soltani is a plaintiff in *Sarsour v. Trump*, No. 1:17-cv-00120 (E.D. Va. Jan. 30, 2017).

Imraan Siddiqi is a Muslim American residing in Maricopa County, Arizona. Siddiqi is the Executive Director of the Council on American-Islamic Relations, Oklahoma (CAIR-AZ), a chapter of the nation's largest Muslim civil rights and civil liberties advocacy organization. Siddiqi is a writer and prominent civil rights activist. He has written extensively on Islamophobia, Middle East Affairs, and issues affecting American Muslims. Siddiqi is a plaintiff in *Sarsour v. Trump*, No. 1:17-cv-00120 (E.D. Va. Jan. 30, 2017).

Namira Islam is a Muslim American residing in Oakland County, Michigan. Islam is the Co-Founder and Executive Director of the Muslim Anti-Racism Collaborative (MuslimARC), a faith-based human rights education organization which focuses on racial justice. Islam has worked in the areas of prisoner rights, and on international law and war crimes at the United Nations in The Hague, Netherlands. Islam is a plaintiff in *Sarsour v. Trump*, No. 1:17-cv-00120 (E.D. Va. Jan. 30, 2017).

Karen Dabdoub is a Muslim American residing in Hamilton County, Ohio. Dabdoub is the Executive Director of the Cincinnati chapter of the Council on

American-Islamic Relations, Ohio (CAIR-OH), a chapter of the nation's largest Muslim civil rights and civil liberties advocacy organization, and a prominent civil rights activist. Dabdoub has served the community since 2006 as a commissioner with the Cincinnati Human Relations Commission and was the president of CHRC from 2009 - 2011. She is a founding member of Muslim Mothers Against Violence, a local group founded in 2005 by Muslim women to take a stand against violence, abroad and at home. She has been a member of the Martin Luther King Coalition of Cincinnati since 2006. She is a former member of the FBI Multi-Cultural Advisory Council and the Kentucky Commission on Human Rights Community Advisory Committee. She was a member of Friends of Open House – Cincinnati Chapter, an international organization that worked to bring about peace and understanding between Palestinians and Israelis. Dabdoub appears in the documentary “A Visit to a Mosque in America,” an educational documentary, filmed locally, that has received national recognition and commendation. Dabdoub is a plaintiff in *Sarsour v. Trump*, No. 1:17-cv-00120 (E.D. Va. Jan. 30, 2017).

Jim Sues is a Muslim American residing in Bucks County, Pennsylvania. Sues is the Executive Director of the New Jersey chapter of the Council on American-Islamic Relations, New Jersey (CAIR-NJ), a chapter of the nation's largest Muslim civil rights and civil liberties advocacy organization, and a prominent civil rights and interfaith relations activist. Sues is also a Marketing Professional in

the field of Telecommunications. Besides launching start-ups and acting as a Telecommunications Consultant, he spent 20 years at IBM filling various Marketing roles such as Product Manager, Solutions Manager, and Strategy Team Lead. Sues is guest lecturer for Comparative Religion courses at Drew University and multiple community colleges. He also provides diversity training for corporations and local churches. Sues is a member of the south Orange – Maplewood Clergy Association and has served on the Board of Directors of various Muslim organizations including Majlis Ash-Shoora of New Jersey and the NIA Masjid in Newark, NJ. Sues is a plaintiff in *Sarsour v. Trump*, No. 1:17-cv-00120 (E.D. Va. Jan. 30, 2017).

Hanif Mohebi is a Muslim American residing in San Diego County, California. Mohebi is the Executive Director of the San Diego chapter of the Council on American-Islamic Relations, San Diego (CAIR-SD), a chapter of the nation's largest Muslim civil rights and civil liberties advocacy organization, and a prominent civil rights activist. He has appeared in both local and national media outlets and has worked to bridge the gap between minorities and the American public. He has emerged as a guest speaker at high schools, universities, companies and community events on variety of topics ranging from Concepts of World Citizenship to The Cycle of Love, to History of Anti-Civil Liberties Legislations. Mohebi is a plaintiff in *Sarsour v. Trump*, No. 1:17-cv-00120 (E.D. Va. Jan. 30, 2017).

Jaylani Hussein is a Muslim American residing in Ramsey County, Minnesota. Hussein is the Executive Director of the San Diego chapter of the Council on American-Islamic Relations, Minnesota (CAIR-MN), a chapter of the nation's largest Muslim civil rights and civil liberties advocacy organization, and a prominent civil rights activist. Hussein worked as the Community Liaison Officer at Metro State University and as a Planner for the Minnesota Department of Agriculture. In 2013, he created Zeila Consultants to develop and offer cross-cultural training workshops on East African cultures. He has presented on the Somali Culture to diverse public and private organizations across the US. He specializes in the areas of urban planning, community development, youth development (with over 8 years of experience in working in juvenile treatment centers for court adjudicated youth), legal and civil rights. Hussein is a plaintiff in *Sarsour v. Trump*, No. 1:17-cv-00120 (E.D. Va. Jan. 30, 2017).

INTRODUCTION

This brief is being filed to bring to the Court's attention the 18 United States citizen plaintiffs—all of them Muslim—in *Sarsour v. Trump* who, because they are prominent Muslim activists and community leaders, accentuate the reasons why the Establishment Clause confers Ishmail Elshikh standing. Those reasons, outlined below, can be summarized simply. Because the Establishment Clause protects

against government disfavoring Islam, those who are Muslim are all affected and all Muslim Americans can seek to prevent or end that government action that amounts to disfavor.

ARGUMENT

I. Like Ishmail Elshikh and the *Sarsour* United States citizen plaintiffs, all American Muslims have standing to seek from federal courts a remedy to the Trump Administration’s attempt to disfavor Islam.

For the same reasons that Ishmail Elshikh can bring his claims, all other American Muslims have standing to challenge EO-2, which, in the final analysis, is nothing more than a transparent attempt to disseminate a message that stigmatizes Islam and Muslims. This contention—that all American Muslims are injured by the executive order—is a key pillar upon which more than a dozen United States citizens who are challenging the executive order in *Sarsour v. Trump* rely upon.

This broad conception of standing reflects the shocking scope of the injury inflicted. Because the executive order disavors Islam itself, it affects the practice of Islam in America and impacts the religious life of this country’s Muslim communities. The *State of Hawaii* court, confronted with this situation and the challenge of characterizing the abstract freedoms that the Establishment Clause is aimed to protect, saw that standing for such injuries is “particularly elusive.” Hawaii Court Decision, Dkt. 219 at Page ID 4379. But in actuality, it is not at all elusive: when government action amounts to an endorsement of a particular faith, that action

“sends a message to nonadherents that they are outsiders.” *Lynch v Donnelly*, 465 U.S. 668, 688 (1984) (O’Connor, J., concurring). And when government action broadcasts a message of disapproval of a particular faith, that action “sends the opposite message.” *Id.* The novel question of who has standing to bring this type of stigma-based Establishment Clause claim, then, is merged with the much simpler question of who is affected when a particular faith is disfavored. The question answers itself: because every American Muslim is affected by the status of Islam and Muslims in America, a government-disseminated message disfavoring their faith affects each of them individually as well as the collective life they all, as a religious community share. All American Muslims are injured, so all American Muslims have standing.

The court in *Sarsour* confronted this question more directly. In *Sarsour*, beyond the John and Jane Doe plaintiffs with various visa-related issues, there are 18 United States citizen plaintiffs that sought to challenge the executive order on the basis that the official disfavor that EO-2 broadcasts. The court there reasoned that the “nature of [these types of]... constitutional claims” allows them to base their standing on “subjective, non-economic, or intangible injuries. Order at 9, *Sarsour v. Trump*, No. 1:17-cv-00120 (E.D. Va. Jan. 30, 2017), ECF No. 36. Specifically, *Sarsour* identified as a basis of American Muslim standing the fact that the executive order imposes on Muslims “the need to combat the pernicious effects of [the

executive order] through religious advocacy and outreach.” *Id.* at 10. This “need to combat the pernicious effects” of the Trump Administration’s actions belongs to not only to the prominent American Muslim activists in *Sarsour*, but also to each and every American Muslim across the country.

This jurisprudential outcome highlights a distinctive wrinkle to standing doctrine as it pertains to Establishment Clause claims. Simply put, First Amendment standing is unique. The courts are willing to recognize intangible harms due to the spiritual nature of the claims. In the Fourth Circuit, where a district court judge found standing for the Muslim citizen plaintiffs in *Sarsour*, “plaintiffs have been found to possess standing when they are ‘spiritual[ly] affront[ed]’ as a result of ‘direct’ and ‘unwelcome’ contact with [alleged religious symbolism] within their community.” *Moss v. Spartanburg Cty. Sch. Dist. Seven*, 683 F.3d 599, 605 (4th Cir. 2012) (quoting *Suhre v. Haywood Cty.*, 131 F.3d 1083, 1086–87 (4th Cir. 1997)). The Ninth Circuit’s Establishment Clause precedent, in some ways, is even more expansive. The Ninth Circuit determined that “adherents to a religion have standing to challenge an official condemnation by their government of their religious views.” *Vasquez v. Los Angeles Cty.*, 487 F. 3d 1246, 1250 (9th Cir. 2007). Indeed, even when the legal instrument at issue was a non-binding city council resolution that only expressed disfavor, the Ninth Circuit has found standing. See also, *Catholic League for Religious & Civ. Rights v. City & County of San Francisco*, 567

F.3d 595 (9th Cir. 2009). Thus, there can be no other outcome here, because to construe Establishment Clause standing in some narrower manner would thwart the ability of religious adherents to protect *via* the First Amendment their religious liberty from government disfavor.

The desire to protect the broad constellation of freedoms which underpin religious liberty, while abstract, animates the entirety of the canon of Establishment Clause jurisprudence. “Feelings of marginalization and exclusion are cognizable forms of injury, particularly in the Establishment Clause context, because one of the core objectives of modern Establishment Clause jurisprudence has been to prevent the State from sending a message to non-adherents of a particular religion ‘that they are *outsiders*, not full members of the political community.’” *Moss*, 683 F.3d at 607 (quoting *McCreary Cnty. v. ACLU*, 545 U.S. 844, 860 (2005) (emphasis added)). In the context of alleged Establishment Clause violations, “[t]he injury often occurs when a plaintiff comes into contact with, or is exposed to, a government-promoted expression of religion.” See *Van Orden v. Perry*, 545 U.S. 677, 682 (2005) (plurality op.) (plaintiff challenging a display of the Ten Commandments outside the Texas State Capitol), or in public schools, see *Engel v. Vitale*, 370 U.S. 421, 423 (1962) (plaintiff challenging a state program of daily classroom prayer). The injury in an “expression” case is simply exposure to a state-sponsored religious message. *Cooper v. U.S. Postal Service*, 577 F.3d 479, 489 (2d Cir. 2009). In short, the

abstract injuries alleged by Elshikh and *Sarsour's* citizen plaintiffs are exactly the types of injuries that the Establishment Clause is aimed at eliminating.

And though such injuries are more abstract than money damages, they are still tangible. The United States citizen plaintiffs in *Sarsour*, for instance, are all prominent civil rights activists who have had to spend a significant amount of their time after the First Muslim Ban was issued assisting and advocating on behalf of Muslims targeted by that order and pushing back against the anti-Muslim sentiment that the defendants have fomented and legitimized through their actions. Moreover, some are no longer able to bring their family members from Syria and Iran to visit them in the United States to facilitate relationships between their children and their foreign national relatives, and the Revised Muslim Ban would subject their family to a segregated, more onerous visa process that diminishes the prospects of their children knowing their foreign national relatives. Each of the *Sarsour* citizen plaintiffs have suffered and will continue to suffer an ongoing concrete and irreparable harm, in addition to psychological and spiritual consequences, since the initial announcement of the “Muslim Ban” as a result of the Defendants sending a message of (1) disfavor and condemnation of their religion of Islam, (2) marginalization and exclusion of Muslims, including themselves, based on the false messaging that Muslims are prone to commit terrorism, (3) the endorsement of all religions over their own, (4) Muslims are outsiders, dangerous, and not full members

of the political community, and (5) all non-adherents of Islam are insiders and therefore favored. They have been personally confronted with a government-sponsored religious expression that directly touches their religious sensibilities. It is precisely their interaction with and exposure to Defendants' conduct that gives rise to their injury.

CONCLUSION

For the foregoing reasons, *amici* respectfully request this Honorable Court affirm the District Court's decision.

Respectfully submitted,

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Dated: April 21, 2017

CERTIFICATE OF COMPLIANCE

I certify that the text of this brief, as electronically filed, is identical to the paper copies submitted to the Clerk of the Court.

I further certify that pursuant to Circuit Rule 35-4 that the Brief of Muslim Civil Rights Activists Brief of Muslim Civil Rights Activists Linda Sarsour, Rashida Tlaib, Zahra Billoo, Basim Elkarra, Hussam Ayloush, Alia Salem, Adam Soltani, Imraan Siddiqi, Namira Islam, Karen Dabdoub, Jim Sues, Hanif Mohebi and Jaylani Hussein as Amici Curiae, in Support of Appellees, and in Opposition to Appellants' Motion for a Stay and on the Merits as Amici Curiae, in Support of Appellees, and in Opposition to Appellants' Motion for a Stay and on the Merits is proportionately spaced, has a typeface of 14 points or more, and contains 3,127 words of text.

Dated: April 21, 2017

/s/ Lena Masri

Lena F. Masri, Esq.

CERTIFICATE OF SERVICE

I certify that on April 21, 2017, the foregoing Brief of Muslim Civil Rights Activists as Amici Curiae, in Support of Appellees, and in Opposition to Appellants' Motion for a Stay and on the Merits was filed using the Court's CM/ECF system. All participants in the case are registered CM/ECF users and will be served electronically *via* that system.

Dated: April 21, 2017

/s/ Lena Masri

Lena F. Masri, Esq.