

No. 17-16426

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

STATE OF HAWAI‘I, *et al.*,

Plaintiff-Appellee,

v.

DONALD J. TRUMP, *et al.*,

Defendant-Appellant.

On Appeal from the United States District Court for the District of Hawai‘i,
District Court No. 17-cv-00050-DKW-KSC

**BRIEF OF *AMICI CURIAE* INTERNATIONAL REFUGEE
ASSISTANCE PROJECT AND HIAS, INC. IN SUPPORT OF
PLAINTIFF-APPELLEES**

Karen C. Tumlin
Nicholas Espíritu
Melissa S. Keaney
Esther Sung
Marielena Hincapié
NATIONAL IMMIGRATION LAW CENTER
3435 Wilshire Boulevard, Suite 1600
Los Angeles, CA 90010

Justin B. Cox
NATIONAL IMMIGRATION LAW CENTER
P.O. Box 170208
Atlanta, GA 30317

Omar C. Jadwat
Counsel of Record
Lee Gelernt
Hina Shamsi
Hugh Handeyside
Sarah L. Mehta
Spencer E. Amdur
David K. Hausman
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION
125 Broad Street
New York, NY 10004
(212) 549-2620
ojadwat@aclu.org

Cecillia D. Wang
Cody H. Wofsy
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
39 Drumm Street
San Francisco, CA 94111

Mateo Caballero
ACLU OF HAWAI'I FOUNDATION
10081 P.O. Box 3410
Honolulu, HI 96801

Mariko Hirose
Rebecca Heller
Mark Wasef
INTERNATIONAL REFUGEE ASSISTANCE
PROJECT
40 Rector Street, 9th Floor
New York, NY 10006

David Cole
Daniel Mach
Heather L. Weaver
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION
915 15th Street NW
Washington, DC 20005

CORPORATE DISCLOSURE STATEMENT

In accordance with the Federal Rule of Appellate Procedure 26.1, *amici curiae* make the following disclosures:

1) The parent corporation of *amicus* International Refugee Assistance Project is the Urban Justice Center, Inc.

2) *Amicus* HIAS, Inc. does not have parent corporations.

3) No publicly held company owns ten percent or more of the stock of any *amicus* or its parent corporation.

RULE 29 STATEMENT

The parties have consented to the filing of this brief. The brief was not authored in whole or in part by parties' counsel. No person other than the *amici curiae* and its counsel contributed money that was intended to fund preparing or submitting this brief.

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

INTEREST OF AMICI CURIAE.....1

INTRODUCTION AND SUMMARY JUDGMENT2

FACTUAL BACKGROUND.....5

ARGUMENT10

 I. RESETTLEMENT ENTITIES HAVE BONA FIDE RELATIONSHIPS
 WITH REFUGEES FOR WHOM THEY HAVE PROVIDED FORMAL
 ASSURANCES OF SPONSORSHIP.....10

 A. Resettlement Agencies Experience Concrete Hardships When the
 Government Excludes Refugees for Whom They Have Provided
 Assurances of Sponsorship.....11

 B. The Government’s Role in the Refugee Resettlement Process Does
 Not Undermine the Relationship Between the Resettlement Agency
 and the Refugee It Sponsors.....15

 C. The Government May Still Apply the Ban to Refugees Without Bona
 Fide Relationships with Individuals or Entities in the United States..18

 II. THIS COURT SHOULD EXPEDITE THE DECISION AND MANDATE
 IN THIS APPEAL.20

CONCLUSION22

TABLE OF AUTHORITIES

Cases

<i>Doe v. Trump</i> , No. 17-cv-00178 (W.D. Wash. May 8, 2017)	12
<i>Exodus Refugee Immigration, Inc. v. Pence</i> , 165 F. Supp. 3d 718 (S.D. Ind. 2016), <i>aff'd</i> , 838 F.3d 902 (7th Cir. 2016).....	11, 14
<i>Trump v. Int’l Refugee Assistance Project</i> , 137 S. Ct. 2080 (2017).....	passim
<i>Vill. of Arlington Heights v. Metro. Housing Dev. Corp.</i> , 429 U.S. 252 (1977).....	11

Other Authorities

American Program Bureau: Speaking to the World	17
The Common Application, Inc., <i>Fact Sheet</i> (2016).....	17
Connor, Phillip et al., <i>U.S. on Track to Reach Obama Administration’s Goal of Resettling 110,000 Refugees This Year</i> , Pew Research Center (Jan. 20, 2017), http://pewrsr.ch/2jwYQvg	20
Demirjian, Karoun et al., “ <i>Refugee Processing Has Ground to a Halt</i> ”: <i>A Group of Senators Wants to Know Why</i> , Washington Post (May 4, 2017)	20
Episcopal Migration Ministries, <i>Our Mission</i>	6
Executive Order No. 13780 (Mar. 6, 2017).....	19
Gillespie, Andrea, <i>Left Behind: Refugee Ban Abandons Vulnerable Orphans</i> , <i>Human Rights First</i> (Aug. 2, 2017)	13
H.R. Rep. No. 608, 96th Cong., 1st Sess. 6 (1979)	18
Kingsley, Patrick et al., <i>For Abused, Gay Iraqi in Turkey, U.S. Refugee Freeze Is Cruellest Hit</i> , N.Y. Times (Jul. 1, 2017).....	21

Knickmeyer, Ellen, *Trump’s Travel Ban Keeps Orphan Kids from U.S. Foster Families*, Associated Press, (Jul. 30, 2017).....14

Lind, Dara, *The Americans Waiting to Welcome Refugees Who May Never Come*, Vox (Aug. 1, 2017) 14

United States Conference of Catholic Bishops, Migration & Refugee Services6

U.S. Department of State, *The Reception and Placement Program*.....8, 16

INTEREST OF AMICI CURIAE

Amici are U.S.-based non-profit organizations that provide a variety of services to refugees and other foreign nationals seeking to resettle in the United States. Both are plaintiffs-respondents in *Trump v. International Refugee Assistance Project*, No. 16-1436 (Stay Application No. 16A1190), now pending before the Supreme Court.

HIAS, founded as the Hebrew Immigrant Aid Society, is a non-profit organization whose mission is to rescue people whose lives are in danger and help them resettle in the United States. HIAS is the global refugee organization of the American Jewish community. Its clients include refugees and their families, both in the United States and abroad. HIAS is one of nine non-profit organizations in the United States that serve as resettlement agencies for the U.S. Refugee Admissions Program (“USRAP”). HIAS has been providing resettlement services to refugees since 1881.

The International Refugee Assistance Project (“IRAP”) is a non-profit organization that provides direct legal services to refugees and others seeking to escape violence and persecution, as well as to their U.S.-based family members. Its staff and pro bono volunteers represent and work directly with individuals abroad throughout their application, travel, and resettlement processes.

INTRODUCTION AND SUMMARY OF ARGUMENT

This appeal is of vital importance to approximately 24,000 fully-vetted refugees awaiting travel to the United States, and to the nine U.S. non-profit entities known as “resettlement agencies,” including *amicus* HIAS, that have agreed to welcome these refugees at the airport, arrange for their housing, and assist them in myriad ways to build new lives in this country. Executive Order No. 13780 threatens the finances, community relationships, religious exercise, and core mission of these organizations, despite the Supreme Court’s ruling that the ban can only be applied to refugees “who have no connection to the United States at all,” and whose exclusion would therefore “not burden any American party by reason of that party’s relationship with the foreign national.” *Trump v. Int’l Refugee Assistance Project (“IRAP”)*, 137 S. Ct. 2080, 2088 (2017).

The Executive Order imperils the future of over 200,000 refugees currently seeking resettlement in the United States by suspending aspects of the USRAP for 120 days (Section 6(a)) and reducing the maximum number of refugees who can be admitted in the current fiscal year (Section 6(b)). The district court held these provisions of the Order unlawful and preliminarily enjoined their implementation before they could take effect. On June 12, 2017, this Court affirmed the injunction in relevant part. *Hawai‘i v. Trump*, 859 F.3d 741, 756 (9th Cir. 2017).

On June 26, the United States Supreme Court granted a partial stay in this case and *Trump v. International Refugee Assistance Project*, No. 16-1436, in which *amici* are among the parties. *IRAP*, 137 S. Ct. 2087. The partial stay lifted the injunctions as to “foreign nationals abroad who have no connection to the United States at all,” but left the injunction in place as to refugees and other non-citizens who have a “bona fide relationship” with a U.S. person or entity. *Id.* at 2088. The Court held that to qualify for protection, a relationship with a U.S. entity need only be “formal, documented, and formed in the ordinary course, rather than for the purpose of evading” the Executive Order. *Id.*

Ignoring these clear instructions—along with numerous attempts by plaintiffs in this case and *IRAP* to communicate about the scope of the partial stay—the government issued guidance announcing that it would apply the ban even to refugees who had received a formal, documented assurance of sponsorship from a U.S. resettlement entity.¹ Excerpts of Record (“ER”) 180. The district

¹ That guidance has since been repeatedly altered in belated recognition of multiple ways in which the government’s implementation was inconsistent with the Supreme Court’s order (all of which *amici* and the *Hawai‘i* plaintiffs had pointed out to the government shortly after the Court issued its opinion). For example, since it first issued guidance on June 28, the government has (1) reversed its initial position that fiancés are subject to the ban, (2) conceded that certain categories of refugees are categorically protected by the injunction, after initially omitting them from its list of protected categories, and (3) reversed its initial position that clients of legal services organizations categorically lack bona fide relationships with U.S. entities, but without publishing any superseding guidance on that issue.

court enjoined that policy on July 13, 2017, ER 208, and the government appealed. ER 233-35.

Amici, who provide resettlement and other services to refugees, ask this Court to affirm the district court’s ruling that the relationship between a refugee and a resettlement agency that has issued a formal “assurance” of sponsorship is a protected “bona fide relationship” under the June 26 Supreme Court order.

When a resettlement agency issues an assurance near the conclusion of the long and demanding refugee admissions process, it promises to welcome the refugee and his or her family into a local community, find appropriate housing, facilitate access to education and job opportunities, and support the refugee’s new life in this country. The agency makes that commitment only after carefully examining each refugee’s case, assessing the family’s needs, and ensuring that the agency can mobilize a network of affiliates and other partners in a particular community. When the refugee does not arrive in the United States as planned, the agency—which, in reliance on the assurance, has already expended resources preparing for the family’s arrival—experiences significant hardship to its finances, relationships, mission, and operations.

The district court was therefore correct to enjoin the government’s policy of excluding refugees with formal assurances. The post-assurance relationship between a refugee and the resettlement agency is “formal, documented, and formed

in the ordinary course,” and its interruption causes real harm to U.S. entities.

IRAP, 137 S. Ct. at 2088. Accordingly, it is a “bona fide relationship” under the text and the spirit of the Supreme Court order.

Amici also urge this Court to expedite the resolution and issuance of the mandate in the case. There are currently an estimated 24,000 refugees with assurances from resettlement agencies who are awaiting travel. Because the Supreme Court stayed the district court’s ruling with respect to assured refugees until this Court’s resolution of the instant appeal, many of these refugees’ lives are in limbo. Time is of essence because of the dire circumstances they face and because any delay in travel can cause their security and medical clearances to expire and further defer, if not preclude, their chance to start new lives in the safety of this country.

FACTUAL BACKGROUND

When refugees are approved to come to the United States, they are formally connected to one of nine private non-profit organizations, including *amicus curiae* HIAS,² who, along with a range of community partners in the United States, prepare for the refugee’s arrival and provide extensive services from the moment

² The other non-profits designated as resettlement agencies are: the United States Conference of Catholic Bishops, Church World Service, Episcopal Migration Ministries, Lutheran Immigration and Refugee Services, Ethiopian Community Development Council, International Rescue Committee, World Relief Corporation, and U.S. Committee for Refugees and Immigrants. ER 117 (Bartlett Decl. ¶ 14).

the refugee arrives at the airport. ER 118 (Bartlett Decl. ¶ 20). Many of these organizations are driven to do this work by deeply held religious beliefs. *See* D. Ct. Doc. 297-3 (Hetfield Decl. ¶ 4) (explaining that HIAS’s resettlement work is “an expression of[] the organization’s sincere Jewish beliefs,” and that failing to carry out that work “violates HIAS’s deeply held religious convictions”).³ Many have been doing this work for decades, since long before the current U.S. Refugee Admissions Program came into existence with the Refugee Act of 1980. D. Ct. Doc. 297-3 (Hetfield Decl. ¶ 2) (stating that HIAS has been providing refugee resettlement services since 1881); Declaration of Lavinia Limon in support of Emergency Motion to Intervene ¶ 4 (stating that the U.S. Committee for Refugees and Immigrants (“USCRI”) was founded in 1911).

Resettlement agencies become involved in the lives of refugees at the end of the refugees’ long and arduous application and vetting process, which typically lasts eighteen to twenty-four months. D. Ct. Doc. 297-3 (Declaration of Mark

³ *See also, e.g.*, United States Conference of Catholic Bishops, Migration & Refugee Services, <http://www.usccb.org/about/migration-and-refugee-services/> (“Grounded by our belief in Jesus Christ and Catholic teaching, Migration and Refugee Services (MRS) fulfills the commitment of the U.S. Catholic bishops to protect the life and dignity of the human person. We serve and advocate for refugees, asylees, migrants, unaccompanied children, and victims of human trafficking.”); Episcopal Migration Ministries, Our Mission, <https://episcopalmigrationministries.org/our-mission/> (“Episcopal Migration Ministries (EMM) lives the call of welcome by supporting refugees, immigrants, and the communities that embrace them as they walk together in The Episcopal Church’s movement to create loving, liberating, and life-giving relationships rooted in compassion.”).

Hetfield ¶¶ 6-21); D. Ct. Doc. 336-3 (Supplemental Declaration of Mark Hetfield ¶¶ 11-16); ER 115-117 (Declaration of Lawrence E. Bartlett ¶¶ 7-16). The extensive screening process generally starts when the refugee registers with the United Nations High Commissioner for Refugees (“UNHCR”) in the country to which he or she has fled. ER 115 (Bartlett Decl. ¶ 8). After an interview and review of documents, if the UNHCR determines that the applicant meets the United States’ criteria for resettlement consideration and presents no disqualifying information, the UNHCR refers the case to a U.S. embassy. ER 115-16 (*Id.* ¶¶ 8-9). The embassy then transfers the case to one of nine Resettlement Support Centers across the world for further processing. ER 115-16 (*Id.* ¶ 9). These Centers process refugee applications, prepare case files, and initiate security checks. ER 116 (*Id.* ¶ 10). Once the case files are prepared, the applicant interviews with U.S. Citizenship and Immigration Services to establish eligibility for refugee status and resettlement in the United States. ER 116 (*Id.* ¶ 12). If the refugee is eligible for both, the case proceeds through multiple layers of security and medical screening, most of which apply separately to every member of the family in the refugee application, including children. ER 116-17 (*Id.* ¶¶ 12-13); D. Ct. Doc. 336-3 (Hetfield Supp. Decl. ¶¶ 11-16) (detailing the various steps, including background checks involving numerous U.S. intelligence agencies).

Refugee agencies are permitted to sponsor refugees for resettlement through a process called “sponsorship assurance” only after the refugees have cleared these hurdles. ER 117 (Bartlett Decl. ¶ 14); D. Ct. Doc. 297-3 (Hetfield Decl. ¶ 16). On a weekly basis, the resettlement agencies review the case files of specific refugees who are seeking sponsorship assurance to evaluate the fit between the needs of the refugee and the resources of the local communities where the agencies’ affiliates are based. U.S. Dep’t of State, *The Reception and Placement Program*⁴; ER 118 (Bartlett Decl. ¶ 18); D. Ct. Doc. 297-3 (Hetfield Decl. ¶ 16). If, after evaluating the refugee’s needs and the capacity of its own network of affiliates, a resettlement agency decides that one of its affiliates can sponsor the refugee, it provides a written “assurance.” *Id.*; ER 175 (Bartlett Decl. Ex. 3 (attaching sample form of an assurance)). An assurance is a formal, documented commitment by the resettlement agency and its affiliate (together, “resettlement entities”) to arrange for the reception of the refugee and provide individualized, specialized assistance before and after his or her arrival in the United States. D. Ct. Doc. 297-3 (Hetfield Decl. ¶ 16-17).

Once a resettlement agency provides an assurance, information about the agency is communicated to the refugee, *see* U.S. Dep’t of State, *The Reception and Placement Program, supra*, and the resettlement entities begin the process of

⁴ Available at https://www.state.gov/j/prm/ra/reception_placement/index.htm.

preparing for the refugee's arrival. D. Ct. Doc. 297-3 (Hetfield Decl. ¶ 17). Once they receive an assurance, after selling possessions and terminating any leases and employment, refugees typically travel to the United States within two to six weeks. *Id.* ¶ 18.

During that period, resettlement entities complete intensive preparations to welcome the refugee to the United States and ensure a smooth transition. The entities ensure that an arriving refugee is greeted at the airport, transported to furnished living quarters, provided with food and clothing, and connected to necessary medical care. *Id.* ¶¶ 19-21; ER 136-39 (Bartlett Decl. Attach. 2 (outlining entities' obligations for pre-arrival and post-arrival services)).

Resettlement organizations also provide case management services, which may include providing an initial safety orientation, facilitating school enrollment, and assisting with employment and public benefits. D. Ct. Doc. 297-3 (Hetfield Decl. ¶ 20). Preparation for a refugee's arrival thus involves a substantial investment of time and resources by a resettlement agency and its local partners. *See also* Limon Decl. ¶ 15 ("Most, if not all, of the groundwork for the USCRI and/or the local resettlement organization's reception of a refugee into a community is the result of significant investments of money, time, effort, and emotion made after USCRI provides its written assurance to the State Department . . . , but before the refugee arrives in the United States.").

ARGUMENT

I. RESETTLEMENT ENTITIES HAVE BONA FIDE RELATIONSHIPS WITH REFUGEES FOR WHOM THEY HAVE PROVIDED FORMAL ASSURANCES OF SPONSORSHIP.

The district court correctly found that a refugee who has a formal assurance of sponsorship from a resettlement agency has a protected “bona fide relationship with a[n] . . . entity in the United States” under the Supreme Court’s order. ER 221. The Supreme Court defined a “bona fide relationship” as one that is “formal, documented, and formed in the ordinary course, rather than for the purpose of evading [the Executive Order].” *IRAP*, 137 S. Ct. at 2088. The district court ruled, and the government itself does not dispute, that the relationship between the refugee and the sponsoring resettlement agency fits those criteria. *See* ER 223; D. Ct. Doc. 297-3 (Hetfield Decl. ¶ 17) (describing the formation and documentation of the relationship).

The equitable analysis underlying the Court’s “bona fide relationship” test compels the same conclusion. The Court explained that where an entity has a bona fide relationship with a foreign national, it can “legitimately claim concrete hardship” if that person were to be excluded. *IRAP*, 137 S. Ct. at 2089. Contrary to the government’s unsupported assertion that “the exclusion of an assured refugee [cannot] plausibly be thought to ‘burden’ a resettlement agency,” Br. 24, the record demonstrates that resettlement agencies like HIAS and USCRI

experience concrete hardships whenever the government excludes refugees for whom the agency has provided formal assurances and invested resources preparing for resettlement.

A. Resettlement Agencies Experience Concrete Hardships When the Government Excludes Refugees for Whom They Have Provided Assurances of Sponsorship.

As an initial matter, resettlement entities face potentially devastating economic harm when the refugees they assure are prevented from entering the United States. For each refugee a resettlement agency does not resettle, the agency loses the \$950 that is allocated to provide services for that particular person. D. Ct. Doc. 297-3 (Hetfield Decl. ¶ 22); *cf. Exodus Refugee Immigration, Inc. v. Pence*, 165 F. Supp. 3d 718, 730 (S.D. Ind. 2016) (holding that loss of funding to a resettlement non-profit is an injury for Article III purposes), *aff'd*, 838 F.3d 902 (7th Cir. 2016) (Posner, J.). In addition, if the refugee does not arrive in the United States, or is delayed in arriving, the agency loses the money and resources it has already expended preparing for the person's arrival, such as renting housing, buying food and furniture, and arranging for basic necessities such as utilities and medical care. D. Ct. Doc. 297-3 (Hetfield Decl. ¶ 17-22); Limon Decl. ¶¶ 34-35 (describing negative economic consequences to USCRI stemming from the freeze to USRAP); *cf. Vill. of Arlington Heights v. Metro. Housing Dev. Corp.*, 429 U.S.

252, 262 (1977) (recognizing economic injury based on resources already invested in a project).

For example, HIAS had partnered with a synagogue and a church that raised funds to rent and furnish an apartment for a Syrian refugee family that it had assured—only to find out that the family may not arrive because of the government’s interpretation of the Supreme Court’s order. D. Ct. Doc. 336-3 (Hetfield Supp. Decl. ¶ 9). As another example, the Episcopal Diocese of Olympia in Seattle had already made domestic arrangements to welcome over twenty refugee families in January when the original Executive Order was issued, suspending the travel of these families and upending the organization’s work. *See* Second Am. Compl. ¶¶ 90-95, *Doe v. Trump*, No. 17-cv-00178, ECF No. 30 (W.D. Wash. May 8, 2017) (alleging that the Executive Order resulted in the cancellation of travel by refugees whom the Episcopal Diocese had been prepared to welcome, thereby “wasting precious resources and frustrating the activities of the Diocese”).⁵

Resettlement entities also face equally significant non-economic hardships when formally assured refugees are denied entry. Helping refugees find safety is the entities’ very reason for existing. That mission is often rooted in the core religious beliefs of an entity, its employees, and its affiliates. *See supra* note 4. Moreover, the commitments that resettlement entities make to the refugees they

⁵ Available at <https://www.clearinghouse.net/chDocs/public/IM-WA-0030-0003.pdf>.

assure are individualized and meaningful. In order to effectively resettle an assured refugee, the entity must develop an understanding of the particular person or family it is assuring and mobilize a community—which could include entity staff, congregations, volunteers, local or ethnic leaders, school officials, landlords, and others—to receive them. Resettlement entities are thus invested in their assured refugees in both economic and non-economic ways.

For example, as part of the Unaccompanied Refugee Minors program, resettlement organizations recruit U.S. foster parents for minors living abroad without parental support, provide training for those families, and facilitate delivery of a picture and letter of welcome from the family to the refugee child waiting to travel to the United States. *See* Andrea Gillespie, *Left Behind: Refugee Ban Abandons Vulnerable Orphans*, Human Rights First, Aug. 2, 2017.⁶ Notably, refugee children only receive an assurance *after* they have been assigned to a foster family or other placement. *Id.* Their predicament not only leaves them in danger for no conceivable reason, but harms the U.S. families who are waiting to welcome a new family member. For example, Tianna and Todd Rooney are waiting for a 16-year-old refugee from Eritrea who is now stranded by the ban; they are unable to reach him, and describe experiencing “this very unexpected ride of grief in our

⁶ Available at <http://www.humanrightsfirst.org/blog/left-behind-refugee-ban-abandons-vulnerable-orphans>.

family.” Ellen Knickmeyer, *Trump’s Travel Ban Keeps Orphan Kids from U.S. Foster Families*, Associated Press, July 30, 2017.⁷

The many community members and volunteers who support newly arrived volunteers—from storing donated furniture to showing families how to use an American vacuum cleaner—are similarly on a “roller coaster.” Dara Lind, *The Americans Waiting to Welcome Refugees Who May Never Come*, Vox, Aug. 1, 2017.⁸ These volunteers—including, for example, landlords who have made affordable housing available and who now must decide whether to let properties remain vacant while they find out whether refugees will be allowed to travel—are directly harmed by the ban. *Id.*

These relationships are as “bona fide” and as close as the examples the Supreme Court cited as meriting protection—such as those between a university and an admitted student, between a company and a hired employee, or between the organizer of an event and a lecturer. *IRAP*, 137 S. Ct. at 2088; *see also Exodus Refugee Immigration, Inc.*, 165 F. Supp. 3d at 732 (recognizing the “close relationship” between resettlement non-profit and refugees that it had agreed to resettle). In all of these relationships, the U.S. entity has chosen to form a relationship with a particular person, made commitments, and invested resources

⁷ Available at <https://apnews.com/64b2fbf5026d4d1abf6b4eefbc6ec78a>.

⁸ Available at <https://www.vox.com/policy-and-politics/2017/8/1/16036526/refugees-ban-trump-volunteer>.

preparing for the person's arrival. In fact, formal assurances are a deeper and longer-lasting relationship than a one-time invitation to lecture or admission to a short-term academic program.

B. The Government's Role in the Refugee Resettlement Process Does Not Undermine the Relationship Between the Resettlement Agency and the Refugees It Sponsors.

The government does not dispute that if it bans assured refugees, resettlement entities will lose economic resources, waste significant investments of time and resources, and suffer non-economic harms to their mission and community relationships. Instead, the government contends that its own part in the refugee resettlement process means that resettlement entities have *no* relationship with the refugees they select and commit to shepherd through the resettlement process. Br. 26 (arguing that refugees do not have relationships with resettlement agencies independent of the government). That contention fundamentally misunderstands the entities' roles in the resettlement process.

First, the government notes that the assurance itself is technically an agreement between the agency and the federal government. Br. 23. But providing assurances to the government does not diminish the commitment that resettlement entities make to the refugees themselves, the steps they take in anticipation of refugees' arrival once the assurance is issued, or—key to the Supreme Court's analysis—the hardship the entities experience if the refugees they have assured do

not arrive. Besides, it is not the assurance *per se* that is protected from the Executive Order, but the *relationship* that necessarily results from it.

Second, the government finds it “[s]ignificant[.]” that resettlement organizations often do not have any “direct contact” with the refugees prior to their arrival, Br. 23, but this is a red herring. Resettlement organizations may not always interact directly with refugees prior to their arrival, but they do expend significant resources and marshal a host of individualized services prior to arrival based on personal information they receive about each refugee they agree to resettle. *See* U.S. Dep’t of State, *The Reception and Placement Program*, *supra*. Refugees similarly receive information about the non-profit that has agreed to sponsor them. *See id.* This level of interaction is not meaningfully different from that involved in other protected bona fide relationships—for example, a college’s decision to admit a prospective student based solely on written application materials. Indeed, nearly all of the entity relationships recognized by the Supreme Court’s opinion share a similar structure to the assurance relationship: Just as the resettlement entity provides an assurance partly in anticipation of future resettlement activities, an employer makes a job offer in anticipation of the future work relationship, often based solely on the assurances of a third-party recruiter; a university admits a student in anticipation of the future study relationship; and

whoever invites a lecturer does so in anticipation of the future relationship the lecturer will have with his or her as-yet-unformed audience.⁹

Finally, the government insists that in addition to the criteria stated in the Supreme Court’s order, refugees must *also* demonstrate a “freestanding connection to resettlement agencies that is separate and apart from the Refugee Program.” Br. 24. But that requirement is nowhere to be found in the Court’s opinion or its reasoning. The government’s role in facilitating a relationship does not render the relationship any less bona fide, nor does it reduce the harm that U.S. entities or individuals would face if the relationship were severed by the entry ban. Under the government’s theory, if a federal agency helped facilitate an invited lecture or an employment relationship, those relationships would suddenly fall outside the protection of the injunction, no matter the harm to the U.S. audience or employer.

The government’s argument also ignores and inverts the history of refugee resettlement in the United States. Resettlement organizations like HIAS and USCRI were doing resettlement work and forming relationships with individual refugees long before the Refugee Act of 1980. The government cannot be the sole

⁹ Nor is it relevant that the communication is typically handled through a third party prior to the refugee’s arrival. Speaking invitations for lecturers are often handled through third-party speaker bureaus, *see, e.g.*, American Program Bureau: Speaking to the World, <https://www.apbspeakers.com>, and individuals applying to college may do so through a third-party application processor, *see* The Common Application, Inc., *Fact Sheet* (2016) (describing third-party entity through which students can apply to college), <http://www.commonapp.org/about-us/fact-sheets>.

source of relationships that were being formed for a hundred years before the Refugee Act. *See* D. Ct. Doc. 297-3 (Hetfield Decl. ¶ 2) (HIAS founded in 1881); Declaration of Lavinia Limon in support of Emergency Motion to Intervene ¶ 4 (USCRI founded in 1911). By passing the Refugee Act, Congress sought to recognize and support those relationships, *see, e.g.*, H.R. Rep. No. 96-608, at 22 (1979) (“Refugee resettlement in this country has traditionally been carried out by private voluntary resettlement agencies. . . . The Committee recognizes that the efforts of these agencies are vital to successful refugee resettlement.”), not diminish them as the government tries to do here.

C. The Government May Still Apply the Ban to Refugees Without Bona Fide Relationships with Individuals or Entities in the United States.

The government argues that the district court’s order would “largely nullif[y]” the Supreme Court ruling, Br. 2, because the number of people who already have assurances may exceed the number of people that it can schedule for travel before the end of the fiscal year on September 30, or before the end of the 120-day ban. Br. 27-28.

This argument is similarly divorced from the Supreme Court’s order. Even setting aside the fact that the government itself controls the pace of booking travel, the equitable balance the Supreme Court struck did not turn on the number of people who did or did not have bona fide relationships with U.S. entities or

individuals. Where a refugee's connection to an entity is formal, documented, and formed in the ordinary course, the government's desire to apply the ban is "outweigh[ed]" by the harm that the U.S. entity would suffer if its client is excluded. *IRAP*, 137 S. Ct. at 2087.

Moreover, even if the number of assured refugees exceeds the number who can enter the United States this fiscal year, the partial stay is still having a major effect: The government is applying the Executive Order to suspend decisions on applications and travel for refugees who have not yet developed ties to U.S. entities or individuals through the USRAP pipeline. *See* Exec. Order 13780, § 6(a). There are approximately 200,000 refugees currently in the program without assurances. The district court's ruling regarding assurances does *nothing* to disturb the application of Section 6 to these refugees' application decisions and travel prior to the (very late) assurance stage. The government's assertion that the district court's order renders the partial stay a "dead letter," Br. 28, or ensures that it "covers virtually no refugee," Br. 27, is therefore plainly incorrect. The Executive Order still freezes a significant portion of the refugee program to the detriment of hundreds of thousands of people who are fleeing persecution and seeking refuge in this country.

Finally, it should be noted that through its control over the adjudication process and travel bookings, the government has *already* dramatically reduced the

number of refugees who can enter the United States this fiscal year. On January 20, 2017, the United States was on pace to hit the existing admissions cap of 110,000 refugees for this fiscal year—meaning approximately 9,000 refugees were being admitted every month. Phillip Connor et al., *U.S. on Track to Reach Obama Administration’s Goal of Resettling 110,000 Refugees This Year*, Pew Research Center (Jan. 20, 2017).¹⁰ Since then, however, the pace of booking refugees for travel has slowed to between 2,000 and 4,000 admissions per month. Karoun Demirjian & Abigail Hauslohner, “*Refugee Processing Has Ground to a Halt*”: *A Group of Senators Wants to Know Why*, Wash. Post, May 4, 2017.¹¹ As a result, even if all currently assured refugees are admitted this fiscal year, the government will still have admitted *forty thousand fewer refugees* than could have been admitted absent the Executive Order. *Id.* In light of its own success at excluding refugees despite the injunction, and its own efforts to create a backlog of assured refugees, the government cannot be heard to complain that it has been unfairly precluded from preventing the resettlement of even more refugees.

II. THIS COURT SHOULD EXPEDITE THE DECISION AND MANDATE IN THIS APPEAL.

Amici urge the Court to expedite the decision and mandate on this appeal, because the Supreme Court’s stay of the injunction pending this Court’s decision is

¹⁰ Available at <http://pewrsr.ch/2jwYQvg>.

¹¹ Available at <http://wapo.st/2hksKp1>.

already sowing chaos and confusion not only for the resettlement agencies, but also for the refugees who are otherwise ready to start their lives in the United States. These are people who have survived violence and persecution, passed months of rigorous screening and vetting, and seek the safety that this country can offer. They include an Iraqi interpreter who helped the U.S. government rebuild Falluja and survived two assassination attempts and three years of separation from his family, D. Ct. Doc. 336-6; a gay Iraqi engineer whose father repeatedly tortured him, whose refugee application was granted months ago, and who has been waiting in Turkey for a travel date¹²; and over one hundred vulnerable children already assigned to foster families in the United States who nonetheless are not able to travel. Knickmeyer, *supra*.

Time is of the essence for these individuals and the entities sponsoring them. Refugees at this late stage of the process have a set window to complete their travel—if they miss this window, the security and medical checks that they passed will expire. D. Ct. Doc. 336-3 (Hetfield Supp. Decl. ¶¶ 12-16, 18). Once a check expires, it must be re-initiated. *Id.* ¶ 17. But because each security check can take months or even years to complete, the expiration of even one can have a cascading effect, as other clearances expire while the first is being re-processed. *Id.* ¶ 19. As a result, even relatively short delays in the resettlement process, including delays

¹² Patrick Kingsley et al., *For Abused, Gay Iraqi in Turkey, U.S. Refugee Freeze Is Cruellest Hit*, N.Y. Times, July 1, 2017, <http://nyti.ms/2ugoQ1B>.

caused by undertaking a case-by-case determination of connections to a U.S. person or an entity, may reverberate for far longer. This cycle may turn even a temporary delay into a lifetime ban.

CONCLUSION

For these reasons, and the reasons urged by the plaintiffs-appellees, *amici* ask that the Court affirm the district court's injunction prohibiting the government from applying the Executive Order to refugees with assurances of sponsorship from U.S. resettlement agencies.

/s/ Omar Jadwat
Omar C. Jadwat
Lee Gelernt
Hina Shamsi
Hugh Handeyside
Sarah L. Mehta
Spencer E. Amdur
David K. Hausman
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION
125 Broad Street
New York, NY 10004

David Cole
Daniel Mach
Heather L. Weaver
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION
915 15th Street NW
Washington, DC 20005
Cecillia D. Wang
Cody H. Wofsy

AMERICAN CIVIL LIBERTIES UNION
39 Drumm Street
San Francisco, CA 94111

Karen C. Tumlin
Nicholas Espíritu
Melissa S. Keaney
Esther Sung
Marielena Hincapié
NATIONAL IMMIGRATION LAW
CENTER
3435 Wilshire Boulevard, Suite 1600
Los Angeles, CA 90010

Justin B. Cox
NATIONAL IMMIGRATION LAW
CENTER
P.O. Box 170208
Atlanta, GA 30317

Mateo Caballero
ACLU OF HAWAII FOUNDATION
10081 P.O. Box 3410
Honolulu, HI 96801

Mariko Hirose
Rebecca Heller
Mark Wasef
INTERNATIONAL REFUGEE
ASSISTANCE PROJECT
40 Rector Street, 9th Floor
New York, NY 10006

Counsel for Amici Curiae

CERTIFICATE OF COMPLIANCE

I certify that pursuant to Fed. R. App. Proc. 32(c)(2) and Ninth Circuit Rules 35-4 and 40-1(a), this Brief of *Amici Curiae* is double spaced, was printed in a proportionately spaced typeface of 14 points, and contains 5,041 words.

Dated: August 3, 2017

/s/ Omar C. Jadwat
OMAR C. JADWAT

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing 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 August 3, 2017.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

I declare under penalty of perjury that the above is true and correct.

Dated: August 3, 2017

/s/ Omar C. Jadwat
OMAR C. JADWAT