

NO. 17-16426

IN THE

**United States Court of Appeals
for the Ninth Circuit**

STATE OF HAWAII, *et al.*,

Plaintiffs-Appellees,

- v. -

DONALD J. TRUMP, *et al.*,

Defendants-Appellants.

On Appeal from the U.S. District Court for the District of Hawaii,
No. 1:17-cv-00050-DKW-KSC (Derrick K. Watson, J.)

**AMICUS CURIAE BRIEF OF THE U.S. COMMITTEE FOR REFUGEES
AND IMMIGRANTS IN SUPPORT OF PLAINTIFFS-APPELLEES**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1, amicus curiae the U.S. Committee for Refugees and Immigrants states that it is a not-for-profit organization with no parent and no publicly-issued stock.

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The U.S. Committee for Refugees and Immigrants (“USCRI”) respectfully submits this amicus curiae brief in support of the arguments advanced by the plaintiffs-appellees the State of Hawaii and Ismail Elshikh supporting affirmance of the district court’s July 13, 2017 order modifying the preliminary injunction.¹

STATEMENT OF THE INTEREST OF THE AMICUS CURIAE

The U.S. Committee for Refugees and Immigrants is a not-for-profit organization organized under Section § 501(c)(3) of the Internal Revenue Code. Founded in New York City in 1911, USCRI has a 106-year history of protecting the rights and upholding the freedom of individuals who are forcibly or voluntarily uprooted.² To carry out its protective mission, USCRI has created an extensive nationwide network of organizations and individuals covering 43 states, including Hawaii, and 2 United States territories. Its resettlement network includes field

¹ USCRI submits this brief in accordance with this Court’s August 3, 2017 Order. Pursuant to Fed. R. App. P. 29(a)(4)(E), USCRI states that no party’s counsel authored this brief in whole or in part; no party or a party’s counsel contributed money that was intended to fund the preparation or submission of this brief; and no person, other than USCRI, its members, or its counsel, contributed money that was intended to fund the preparation or submission of this brief. Pursuant to Fed. R. App. P. 29(a)(4)(D), the undersigned counsel represents that the President and Chief Executive Officer of USCRI authorized the filing of this brief.

² Historically, the USCRI network springs from the YWCA / Travelers Aid / International Institute movement of the early 1900’s, which served the large influx of legal immigrants from Central, Eastern and Southern Europe.

offices, partner agencies, pro bono attorneys, employers, subcontractors, social service providers, volunteers, and supporters.

Resettlement is the transfer of refugees from a host country (or “transit country”) to a country that has agreed to admit them and ultimately grant them permanent settlement. It is a lengthy and difficult process. To receive official refugee status, an individual has to have left his or her home country due to persecution or a well-founded fear of persecution for reason of race, religion, nationality, membership in a particular social group, or political opinion. The extensive vetting process a refugee must go through before arriving in the United States is carefully regulated by statute.

Through its network, since fiscal year 2011, USCRI has resettled 50,553 individuals, including 11,127 in the fiscal year ending September 30, 2016. Many of the refugees who were resettled in 2016 were victims of the ongoing violence in Syria and Iraq.

FY2016	11,127
FY2015	8,687
FY2014	8,542
FY2013	8,283
FY2012	6,845
FY2011	7,069
Total	50,553

USCRI has a direct and concrete interest in the controversy before this Court. USCRI is one of nine refugee resettlement organizations in the United States that contracts with the U.S. Department of State to resettle pre-screened refugees in the United States. As part of this process, USCRI gives the State Department written assurances that it will provide resettlement assistance to specific individuals who have been carefully screened and approved for resettlement in the United States. USCRI currently has approximately 3,400 active assurances outstanding.

In the opinion it issued June 26, 2017, the U.S. Supreme Court made clear that the district court's preliminary injunction against enforcement of Executive Order No. 13780 continues to apply in instances where a foreign national has a "credible claim of a bona fide relationship with a person or entity in the United States." *Trump v. Int'l Refugee Assistance Project ("IRAP")*, 137 S. Ct. 2080, 2088 (U.S. June 26, 2017) (per curiam). On July 13, 2017, the district court, in response to a motion by plaintiffs-appellees, held that the injunction barred applying sections 6(a) and 6(b) of the Executive Order to exclude refugees who "have a formal assurance from an agency within the United States that the agency will provide, or ensure the provision of, reception and placement services to that

refugee” Then, on July 19, 2017, the Supreme Court stayed that aspect of the district court’s July 13 order pending the government’s appeal to this Court.

One of the critical issues in this appeal is whether a refugee who has received a formal assurance of services from a resettlement agency has “a bona fide relationship with a person or entity in the United States” for purposes of the Supreme Court’s June 26 Opinion. USCRI believes that the answer to that question plainly is “yes.” If this Court holds to the contrary, however, it would have a material deleterious impact on USCRI, its network, and its mission.

Accordingly, USCRI submits this amicus brief in support of plaintiffs-appellees and urges the Court to affirm the district court’s July 13 preliminary injunction order.

FACTUAL BACKGROUND

A. USCRI leads an extensive network of non-profit organizations that help USCRI carry out its 106-year mission of assisting and resettling highly vulnerable refugees.

USCRI’s refugee resettlement network includes 25 non-profit partner agencies, many of whom (like USCRI) have served their local communities for a hundred years. USCRI also has 8 field offices in United States cities, where it works directly to resettle refugees and provide services to immigrants. USCRI’s refugee resettlement network has physical presences in California, Connecticut, Florida, Hawaii, Iowa, Idaho, Illinois, Kentucky, Massachusetts, Michigan,

Minnesota, Missouri, North Carolina, New Hampshire, New Jersey, Nevada, New York, Ohio, Pennsylvania, Rhode Island, Texas, Vermont, and Wisconsin.

USCRI employs approximately 230 people full-time, and has an additional 268 people “on call.” Its network agencies, in turn, collectively employ well over 1,500 people full-time, with another 3,000 volunteer staffers. These partnering agencies sign a Memorandum of Understanding (“MOU”) with USCRI, in which they agree to perform all services outlined in the U.S. Department of State, Bureau of Population, Refugees, and Migration (“PRM”) Cooperative Agreement (discussed below). The MOUs set forth USCRI’s commitment to remit funding it receives from the State Department, among others, to its partner agencies. In addition to lending its name and credentials to their work, USCRI provides extensive program training and oversight to ensure that its partner agencies comply with State Department PRM requirements.

The refugees who are part of USCRI’s resettlement process are some of the most vulnerable members of already marginalized populations throughout the world. They are primarily female heads of households, disabled individuals, children, individuals who identify as homosexual, bi-sexual, or transsexual, victims of torture, the elderly, and refugees seeking to join family members who left the country before them.

USCRI and its network of agencies and volunteers help introduce these highly-vulnerable individuals to the community, teach them to read and write English and about American culture, and help them acquire skills essential to becoming a productive member of the community. To that end, the resettlement office in the community where the refugee (or refugee family or group of families) will be located provides initial services to the refugee for 30-90 days, including: obtaining decent, safe and sanitary housing and essential furnishings; securing culturally-appropriate food or a food allowance and other basic necessities; making referrals to appropriate health programs and screening; providing assistance in applying for Social Security cards; helping register children for school; providing transportation to job interviews and job training; giving orientations to the local community and life in the United States; and rendering general case management services.

Thereafter, the USCRI field offices and the local agencies each meet quarterly with their respective extended networks of social service organizations and volunteers, as well as the state refugee coordinator, the state refugee health coordinator, representatives of local government (city and/or county, as applicable), local and/or county public health officials, representatives of welfare and social services agencies, public safety officials (fire, police), and representatives of the public school system to ensure that these relationships

remain strong and that the community is well-situated to continue accepting refugees.

Most of the groundwork USCRI and the local agency perform in integrating a refugee into a community is the result of significant investments of money, time, effort, and emotion made after USCRI provides its written assurance of services to the State Department, but before the refugee arrives here. Once the members of the USCRI network are aware that a refugee or a refugee family has been accepted for resettlement in their community, those resources begin to mobilize.³

USCRI receives a significant portion of its funding from the State Department PRM, in the form of a per capita payment of \$2,075 per individual resettled. USCRI and/or its partner agencies advance those funds (to, *e.g.*, secure lodging and purchase furniture, clothing and other necessities) and receive reimbursement from the State Department the month following the refugee's arrival in the United States. For the fiscal year ending September 30, 2016, USCRI received nearly 43% of its total revenue – over \$25 million – from the State Department in the form of these per capita payments. Where one of USCRI's

³ These investments of capital and effort are heightened in instances where a refugee does not have family ties in the United States. In those instances, USCRI and/or its agency partner need to arrange for literally every aspect of a new life in the U.S. – from transportation to lodging to the purchase of food, furniture, and clothing – without being able to rely on financial or logistical help from a refugee's family member.

network agencies is performing the resettlement work, USCRI makes these State Department funds available to that agency.

The balance of USCRI's budget is comprised of funds received from the U.S. Department of Health and Human Services (approximately \$28 million in fiscal year 2016), much of which is for the longer-term needs of refugees, as well as private cash and in-kind contributions from individuals and foundations that support USCRI's mission.⁴

B. As part of the resettlement process, USCRI issues a formal assurance of services, of which the individual refugee is the intended and specific beneficiary.

USCRI has participated in the U.S. Refugee Admissions Program (“USRAP”) since 1977. The USRAP is a program established by the Refugee Act of 1980, which established permanent and systematic procedures for the admission of refugees of special humanitarian concern to the United States, and the effective resettlement of refugees who are admitted under the auspices of the program. A schematic diagram depicting this resettlement program, which appears on USCRI's website, is attached to this brief as Exhibit 1. The State Department relies upon Resettlement Support Centers (“RSCs”) overseas and the nine refugee resettlement agencies, including USCRI, in the United States, to resettle pre-screened refugees.

⁴ USCRI is very efficient. For the fiscal year ending September 30, 2016, 96.6% of USCRI's expenses were for program delivery; only 2.8% went toward management and general expenses, and only 0.6% was devoted to fundraising.

Only a few countries take part in the United Nations High Commissioner on Refugees (“UNHCR”) resettlement program, with the United States being the world’s top resettlement country. In 2013, 2014, and 2015, the United States offered 70,000 refugees resettlement. In 2016, the United States resettled 84,995 refugees. Seventy-two percent of the individuals who were resettled during that period were women and children. From 2013 to 2016, USCRI has been responsible for resettling approximately 12.5% of those refugees in communities throughout the United States.⁵

The resettlement process starts with the screening of refugee candidates, in most instances by the UNHCR. UNHCR interviews refugee applications, collects identifying documents, and makes a preliminary determination whether the individual meets the legal definition of a refugee under the 1951 Convention relating to the Status of Refugees. After this initial evaluation, UNHCR refers only about one percent of all refugees it screens for resettlement in another country.

As for that one percent, UNHCR prioritizes individuals who have protective needs, medical needs, unaccompanied children, victims of torture, and others who are deemed most vulnerable. Then, when looking at the United States in particular, UNHCR takes into account U.S. law and security protocols, and refers

⁵ Presently (for the fiscal year ending September 30, 2017), USCRI’s contract with the State Department authorizes it to resettle 12.8% of all refugees that are admitted to the United States.

only the strongest candidates (individuals unlikely to be deemed inadmissible based on criminal, security, or public health grounds) for resettlement.

Once the UNHCR has determined that a candidate is eligible for resettlement, it refers the candidate to one of the overseas RSCs. The RSC collects biographic and other information from the applicant to prepare for the adjudication interview and security screening. Officers from the Department of Homeland Security's U.S. Citizenship and Immigration Services ("USCIS") review the information the RSC has collected and conduct an in-person interview with each refugee applicant in his/her transit country before deciding whether to approve him/her for resettlement in the United States. The USCIS officer decides whether the applicant is a refugee as defined under U.S. law and is otherwise admissible to the United States. Refugees can be cleared to travel to the United States only if all members of the group (typically a family unit) pass all applicable security checks. If even one member of the family unit fails to pass even one check, the entire household is placed on hold.

After this intensive screening process, the candidate receives his or her security and medical clearances. At that point, the RSC refers the candidate's file to a group of nine domestic nongovernmental organizations in the United States (sometimes referred to as voluntary agencies, or "volags") devoted to refugee

reception and placement. USCRI is one of those volags. USCRI does not independently solicit refugees to sponsor for resettlement in the United States.

The State Department requires the resettlement volags, including USCRI, to provide it with a “formal assurance” that it will sponsor a refugee candidate (or refugee family) that has been referred to it. This assurance is a written guarantee that various basic services will be provided to the refugee and any accompanying family members who have been pre-cleared for resettlement. Before issuing a formal assurance of services, USCRI examines the refugee’s file and considers a number of factors—including whether the refugee has family ties in the United States, whether there are others from the refugee’s country or ethnic group living in the local community, and whether the refugee has special needs that some local communities are better situated than others to address (*e.g.*, specialized support services for victims of torture)—and approaches one of its partner agencies with a request that it accept the refugee. When a partner agency agrees to accept a candidate for resettlement, USCRI submits a formal Assurance Form to the State Department.

This Assurance Form includes information about the individual(s) being assured, the identity of the local agency, and it bears the signature of Lavinia Limon, USCRI’s president and chief executive officer. Of direct relevance here,

an assurance of services agreement is tied specifically to a refugee case (which could be an individual or a family); it is not transferrable.

C. USCRI and its network members are being, and would continue to be, adversely impacted by the government’s position that a formal assurance does not constitute a “bona fide relationship” with a U.S. entity.

The government’s position that a formal assurance between a resettlement agency and the State Department to provide services to a specifically-identified refugee is not a “bona fide relationship” with a U.S. entity for purposes of the district court’s injunction is adversely affecting, and will continue to adversely affect, USCRI and its network members. USCRI and its network agencies cannot provide the extensive services required to acclimate newly-arrived refugees to their new community or to become self-sufficient and productive unless it makes ongoing, up-front investments in the resettlement “infrastructure.” These investments are only partially covered by State Department funds; network agencies must solicit private contributions to fill the gap.

USCRI, as well as each network agency, also invests in hiring and retaining experienced language-appropriate staff that can provide case management services to the refugees it has assured. USCRI field officers and partner agencies likewise invest financial, human, and emotional capital in building, nurturing, and expanding partnerships and other relationships with service providers in their communities (*e.g.*, landlords, employers, faith-based groups, volunteers, and pro

bono attorneys). Those investments are based directly on the caseload of refugees expected to arrive, which, in turn, is determined by the number of formal assurances USCRI has extended.

Because of the government's position on Executive Order 13780, as of mid-June 2017, USCRI and its resettlement partners were forced to reduce staff significantly as a result of the government's position squeezing or freezing the pipeline of pre-screened refugees permitted to enter the United States:

- * USCRI has laid off 17 full-time employees, and its affiliates have laid off at least an additional 70 full-time employees;
- * USCRI's staff has shrunk by an additional 8 full-time positions as the result of individuals resigning and not being replaced, and its affiliates have similarly refrained from replacing at least 9 full-time employees; and
- * at least 24 full-time members of affiliated agencies have been placed on reduced schedules.

Moreover, as the direct result of pressures being exerted by the government's interpretation of the preliminary injunction, USCRI is planning to lay off an additional 6 full-time employees within the next 45-60 days. USCRI is undertaking additional austerity measures, including decreasing benefits to all of its employees in an amount in excess of \$1 million, ceasing pension contributions, and divesting office space, among other measures. It is worth noting that many of the USCRI network staff who are being adversely impacted by the government's interpretation of the injunction are former USCRI clients (refugees).

Volunteer participation and private contributions to USCRI and its network agencies likewise are being adversely affected. At the local level, the USCRI network saw a significant uptick in community interest and support right after the first travel ban via Executive Order was issued in January 2017. This took the form of increases in individual financial donors and volunteers who want to donate their services to help refugees in their communities.

But volunteers require support and engagement to stay committed. People who are eager to help can quickly become – and are becoming – frustrated by the lack of client interaction caused by the government’s interpretation of the injunction. USCRI and its network agencies must devote resources to allay these frustrations and keep their volunteer networks intact. It also poses a significant reputational risk. Disappointed volunteers’ impressions of the local agency and USCRI change from excitement to dismay when the agency cannot engage them due to a lack of incoming clientele.

ARGUMENT

A. The district court correctly concluded that the existence of a formal assurance of services from a refugee resettlement agency is a type of “bona fide relationship” with a foreign national.

In its June 26 Opinion, the Supreme Court narrowed the scope of the stay of the preliminary injunction against enforcement of Executive Order 13780. In doing so, the Supreme Court was critical of the injunction to the extent it “bar[s]

enforcement of § 2(c) [of the Executive Order] against foreign nationals abroad *who have no connection to the United States at all.*” *IRAP*, 137 S. Ct. at 2088 (emphasis added). The Supreme Court expressly held, however, that § 2(c) of the Executive Order “may not be enforced against foreign nationals who have a credible claim of a bona fide relationship with a person or entity in the United States.” *Id.* To qualify, the relationship with the U.S. entity “must be formal, documented, and formed in the ordinary course, rather than for the purpose of evading [the Executive Order].” *Id.*

As examples of “bona fide relationships,” the Supreme Court cited the relationship between a prospective university student and the university, the relationship between a worker who accepted an offer of employment from an American company and the company, and the relationship between a lecturer “to address an American audience” and the entity that presumably extended the invitation. *Id.* Conversely, the Court also made clear that a relationship entered into “simply to avoid § 2(c)” of the Executive Order is *not* a “bona fide relationship.” The example given was that of “a nonprofit group devoted to immigration issues” that “contact[s] foreign nationals from the designated countries, add[s] them to client lists, and then secure[s] their entry by claiming injury from their exclusion.” *Id.* These examples, which reflect the “equitable

balance struck” with respect to § 2(c) of the Executive Order, also apply to § 6(a) and § 6(b). *Id.* at 2089.

Here, the district court’s conclusion that a refugee who is the beneficiary of a formal assurance from a refugee resettlement agency like USCRI has the requisite “bona fide relationship” with a U.S. entity is a faithful and accurate application of the Supreme Court’s June 26 ruling. As the district court reasoned, such an assurance is “formal,” it is “a documented contract,” it is “binding,” and it is “issued in the ordinary course.” E.R. 223.

Given the levels of intensive evaluation in the vetting process, it defies all logic to claim, as the government does now, that a refugee: who has sat for an in-person interview with USCIS; who was determined by USCIS to meet the statutory definition of a refugee; whose file was transmitted from USCIS to an agency like USCRI; and who is the beneficiary of a written formal assurance from that agency, has “no connection to the United States at all.” *IRAP*, 137 S. Ct. at 2088.

Moreover, the relationship between USCRI and the refugees it serves once it has extended a formal and binding assurance of resettlement assistance also meets the definition of “bona fide” under any fair construction of the term. Merriam-Webster defines “bona fide” as: “1: law: made in good faith without fraud or deceit •a bona fide offer to buy a farm; 2: made with earnest intent; sincere •a bona fide proposal; 3: neither specious nor counterfeit.” *Merriam-Webster Online*

Dictionary, bona fide, <https://www.merriam-webster.com/dictionary/bona%20fide> (last accessed Aug. 7, 2017). This Court also has noted that Black's Law Dictionary defines “bona fide” as: “1. Made in good faith; without fraud or deceit. 2. Sincere; genuine.” *Electro Source, LLC v. Brandess-Kalt-Aetna Grp., Inc.*, 458 F.3d 931, 936 n.3 (9th Cir. 2006) (citing Black’s Law Dictionary 186 (8th ed. 2004)). These definitions are unsurprising, as the term “bona fide” in common parlance means “made or carried out in good faith; sincere.” *Nike, Inc. v. McCarthy*, 379 F.3d 576, 582 (9th Cir. 2004) (quoting The American Heritage College Dictionary 158 (3d ed. 2000)).

Simply put, the formal assurance USCRI provides on behalf of a refugee amply satisfies these criteria. The entire point of the 40-year public-private partnership between the State Department and private refugee resettlement organizations like USCRI is to facilitate the crucial relationship between the private agency and the refugee. Once USCRI issues a formal assurance that it will resettle a refugee, USCRI and its network agencies undertake full responsibility for providing the services needed for resettling that refugee; through that process, the agency and the refugee and her family are linked as a matter of statute and fact.

The relationship created between USCRI and the refugee during the process of resettlement is at least as much a “bona fide relationship” as the relationship that is created when a U.S. university accepts a foreign national’s application for

admission. In that context, the university agrees only to accept the prospective student's tuition money and provide him or her with an education. By comparison, the work USCRI and its network members perform on behalf of their refugee clientele is far more extensive, much more personal, and evokes a much deeper level of commitment.

Finally, there is not, and could not be, any suggestion that the relationship between USCRI and a refugee that is established by the issuance of a formal assurance is an attempt to evade Executive Order 13780. To the contrary, the formal assurance protocol that is at issue in this appeal has been in place for over 40 years; it is aimed at protecting highly-vulnerable individuals; and it is the culmination of a lengthy vetting and referral process that results in the creation of a relationship between USCRI and the refugee. The district court plainly had it right when it found that "[b]ona fide does not get any more bona fide than that." E.R. 223.

B. The government's position that a formal assurance of services does not constitute a bona fide relationship has no support in the Supreme Court's order or the record.

It is the government that is attempting to re-write the Supreme Court's June 26 Opinion, not the district court. Specifically, the government attempts to import into that opinion requirements that do not appear.

First, the government argues that, in order to be bona fide, the relationship between the U.S. entity and the refugee must be “direct.” *See, e.g.*, Govt’s Opening Brf. p. 23. Tellingly, however, that word does not appear anywhere in the Supreme Court’s formulation of the test. The notion that the relevant inquiry is whether the relationship is “direct” or “indirect” also is belied by the example the Supreme Court gave of a relationship that *is not bona fide*: a charity that solicits a refugee to travel to the United States, thereby manufacturing a “relationship” in an effort to evade the Executive Order. In such an instance, the relationship would surely be a direct one (the Supreme Court’s example presumes direct agency contact with the refugee), but it would not be bona fide, because it is a ruse calculated to make an end-run around the Executive Order.

Second, the government makes the related argument that the issuance of a formal assurance does not create a relationship “that is independent of the refugee-admission process itself.” *See* Govt. Brf. p. 25. Here, too, no such requirement appears in the Supreme Court’s June 26 Opinion. What is more, the government’s distinction makes no sense. It is the refugee admission and assurance process that is under scrutiny, and it is that process, as noted, that cements the bona fides of the relationship between the refugee and USCRI.

Third, the government argues that a relationship is not “bona fide” for purposes of the June 26 Opinion if the resettlement organization has not had

“contact” with the refugee until he or she arrived in the United States. Here, too, no such requirement appears in the Supreme Court’s opinion.

Equally importantly, the government’s factual premise--that the refugee is a complete stranger to the resettlement organization until she arrives at the airport in the United States—is false. Although representatives of USCRI or one of its partner agencies only meet the refugee and her family in person when they arrive, the refugees are, in a very real sense, already well-known to them. USCRI receives a dossier on the refugee and all family members travelling with her, typically months before she is cleared to fly to the United States. Because resettlement is not a “one size fits all” proposition, USCRI and the member agency to which the file is referred reviews those files, considering: whether the refugee has family members or friends living in the United States; the refugee’s religion, ethnic group, and social group; the refugee’s physical and mental health needs; the nature and size of the family unit, so as to secure appropriate housing, furnishings, and age-appropriate and weather-appropriate clothing; and the educational needs of the children. If the file indicates that the individual has family members or friends already living in the United States, USCRI or one of its member agencies works closely with those individuals to coordinate the provision of services long before the refugee arrives. Indeed, USCRI respectfully submits that it has more of a relationship with the refugees it resettles before they arrive in the United States

than a university typically will have with a prospective student before he or she arrives on campus.

Fourth, the government’s argument that treating a formal assurance as creating a qualifying bona fide relationship would “nullif[y]” the Supreme Court’s June 26 Opinion is equally unfounded. *See* Govt. Brf. pp. 2, 27 (arguing that adopting the district court’s interpretation of the Supreme Court’s June 26 Opinion “would mean that the stay crafted by the Supreme Court after carefully balancing the equities covers virtually no refugee”). That argument rests on the false premise that the Supreme Court somehow signaled an intent *not* to stay the preliminary injunction as it affects refugees with written assurances. Quite to the contrary, the Supreme Court *rejected* the government’s request to stay the entire injunction, as modified, and stayed it *only* as to refugees who have “no connection to the United States at all,” and whose exclusion would cause no obvious hardship to anyone else. *IRAP*, 137 S Ct. at 2088. Refugees with formal assurances do not fall into either category.

C. The exclusion of refugees who are the beneficiaries of formal assurances is causing concrete harm to USCRI and the agencies in its network.

The government’s interpretation of the Supreme Court’s June 26 Opinion as not barring enforcement of the injunction against refugees who are intended beneficiaries of formal assurances of services is causing USCRI to suffer concrete

harm--harm which is rippling through USCRI's network and the communities it serves.

In deciding whether to affirm the entry of a preliminary injunction, this Court must consider the equities of the case as well as the substance of the legal issues it presents. *See Winter v. National Resources Defense Council, Inc.*, 555 U.S. 7, 20, 24 (2008); 11A Charles Alan Wright, Arthur R. Miller, & Mary Kay Kane, *Federal Practice and Procedure* § 2948 (3d ed. 2013). Indeed, the very purpose of interim equitable relief is to balance the equities, including the overall “public interest,” *Winter*, 555 U.S. at 20, with (in this case) the question of whether an agency like USCRI can “legitimately claim concrete hardship” as a result of the government’s interpretation of the Supreme Court’s June 26 Opinion. *IRAP*, 137 S. Ct. at 2089. Here, the balance tips sharply in favor of affirmance.

In pursuing its mission, USCRI has spent over a century developing relationships with its network of agencies and other organizations and individuals at the local level. Those agencies, in turn, have invested significant financial, human, and emotional capital in building, nurturing, and expanding relationships with landlords, employers, schools, local government officials, volunteers, pro bono attorneys, and others who provide support services. This infrastructure, with USCRI at its core, bridges the gap between the refugees in individual communities

and the nationwide refugee resettlement program overseen by the State Department's PRM.

Throughout its history, USCRI has fostered relationships with its network of local agencies by delivering on its commitment to resettle refugees in those communities. As noted above, if this Court were to reverse the aspect of the injunction that applies to refugees with written assurances, harm will continue to befall USCRI and the communities it serves. The resettlement infrastructure will loosen and scatter, talents and institutional knowledge will be wasted, and investments will be squandered. Separated employees and volunteers alike will move on to other endeavors.

As also noted, USCRI is suffering and will continue to suffer substantial financial and organizational harm that will, in turn, greatly impair its ability to fulfill its mission and serve the refugees it has helped to resettle in the United States. *See Exodus Refugee Immigration, Inc. v. Pence*, 165 F. Supp. 3d 718, 739 (S.D. Ind. 2016) (recognizing that, although funding to a refugee resettlement organization could be repaid, "in the interim, its organizational objectives would be irreparably damaged by its inability to provide adequate social services to its clients").

In that regard, the financial and operational harms facing USCRI are directly analogous to the "injury in fact" needed to demonstrate a "concrete harm" in the

context of Article III standing. *E.g. Ass’n of Public Agency Customers v. Bonneville Power Admin.*, 733 F.3d 939, 950-53 (9th Cir. 2013) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). In both instances, concrete harm lies at the heart of this Court’s inquiry, and that standard is satisfied upon a showing of economic harm (*Nozzi v. Housing Authority of City of Los Angeles*, 806 F.3d 1178, 1190 (9th Cir. 2015)) or harm to an agency’s operations (*Atay v. County of Maui*, 842 F.3d 688, 696-97 (9th Cir. 2017) (establishing standing, in part, because plaintiffs “had to change their conduct” in light of the challenged actions)).

Moreover, the concrete harm that would result from striking down this component of the preliminary injunction far outweighs any countervailing interest. The thousands (nationwide, among all nine resettlement agencies, tens of thousands) of affected refugees are among the most intensely-screened individuals on the planet. *E.g.*, E.R. 115-118, Declaration of Lawrence Bartlett, (Dist. Ct. Dkt. No. 303-1 at ¶¶ 7-18). They are screened by the UNHCR, the RSC, and Homeland Security’s USCIS, in processes that result in an average wait time of one to two years—and, sometimes, much longer—before a refugee receives permission to enter the United States. And, as noted above, many of the affected individuals are some of the most vulnerable people in the world, including: female heads of households, disabled individuals, children, individuals who identify as

homosexual, bi-sexual, or transsexual, victims of torture, and the elderly. Shutting them out poses a greater risk to the public good by sullyng the United States' reputation as a humanitarian leader in the world.

SUMMARY

Viewing these facts in the context of the underlying preliminary injunctive relief, the plaintiffs have made a strong showing that agencies like USCRI have a “bona fide relationship” with those refugees for whom they have issued formal assurances. The hardships imposed on such agencies by the government’s interpretation of the Supreme Court’s June 26 Opinion tip the equities sharply in favor of permitting such refugees to continue entering the United States while the merits of the challenge to the Executive Order are being resolved by the courts. Collectively, the facts of this case point to only one just and fair result: affirm the district court’s injunction and allow USCRI’s important work—which it has facilitated for over a century—to continue uninterrupted.

For all of these reasons, USCRI joins the plaintiffs-appellees in urging this Court to affirm the district court’s July 13, 2017 preliminary injunction order. It also joins the International Refugee Assistance Project in urging this Court to expedite the resolution of this appeal and the issuance of the mandate.

Respectfully submitted,

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THE U.S. RESETTLEMENT PROGRAM: THE REFUGEE JOURNEY

Becoming a Refugee

Refugees flee their country seeking safety and protection. In most cases, the UN High Commissioner for Refugees (UNHCR) determines that the individual qualifies as a refugee under international law. A refugee is defined as someone who has fled his or her home country and cannot return because he or she has a well-founded fear of persecution based on religion, race, nationality, political opinion, or membership in a particular social group.



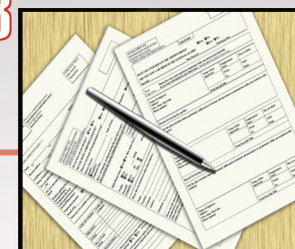
Referral to the U.S. for Resettlement

A refugee that meets one of the criteria for resettlement in the United States could be referred to the U.S. Government by UNHCR, a U.S. Embassy, or trained Non-Governmental Organizations. Less than one percent of refugees worldwide gain access to the program.



Resettlement Processing Begins

The Resettlement Support Center (RSC) meets with refugees to compile their personal data and background information for the security clearance process and the U.S. Department of Homeland Security's in-person interview.



SECURITY
CLEARANCE



APPROVED



SECURITY
CLEARANCE



In-Person Interview

All refugees must undergo an interview with a refugee officer from the DHS' United States Citizenship and Immigration Services (USCIS). A trained refugee officer travels to the host country to conduct a detailed, face-to-face interview with each refugee being considered for resettlement.

Post Approval: Orientation and Medical Screening

An approved refugee undergoes a medical screening, is offered cultural orientation, and supplied with a travel loan that must be repaid. The refugee may also undergo final security checks.

Travel and Preparations

Every refugee is assigned to a Voluntary Agency in the United States, such as the U.S. Committee for Refugees and Immigrants (USCRI). USCRI places refugees with a local partner agency or office that will assist refugees upon their arrival to the U.S.

Arrival and Reception

Upon arrival to the U.S. at a designated airport, a Customs and Border Protection (CBP) officer reviews the refugee documentation. Refugees are met by local resettlement staff and/or family to start a new life in America.

CERTIFICATE OF SERVICE

I hereby certify that on August 9, 2017, I filed the Amicus Curiae Brief of the U.S. Committee for Refugees and Immigrants in Support of Plaintiffs-Appellees with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

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.

/s/ Donna M. Doblick

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Amicus Curiae Brief complies with the typeface and type styles requirements as set forth in Fed. R. App. P. 32(a), in that it contains 5,718 words, as permitted by Fed. R. App. P. 29(a)(5).

/s/ Donna M. Doblick