No. 17-17168

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 United States District Court
for the District of Hawaii, No. 1:17-cv-00050-DKW-KSC
District Judge Derrick K. Watson

BRIEF OF INTERNATIONAL LAW SCHOLARS AND NONGOVERNMENTAL ORGANIZATIONS AS *AMICI CURIAE* IN SUPPORT OF APPELLEES

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 26.1 and 29(a)(4)(A), *amici curiae* certify that they have no parent corporations or any publicly held corporations owning 10% or more of their stock.

DATED this 21st day of November, 2017.

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I. INTEREST OF *AMICI CURIAE*[1]

The individual *amici* whose views are presented here are international law scholars specializing in public international law and international human rights law. They include members of the International Human Rights Committee of the International Law Association, American Branch[2] as well as university professors and practicing lawyers with expertise in these subjects. *Amici* also include nongovernmental organizations with expertise in civil rights law, immigration law, or international human rights law. *Amici* submit this brief to vindicate the public interest in ensuring a proper understanding and application of the international human rights law relevant to this case. The nongovernmental organizations and individual scholars are listed in the Appendix.

Pursuant to Federal Rule of Appellate Procedure 29(a), *amici* submit this brief without an accompanying motion for leave to file or leave of court because all parties have consented to its filing.

[1] No counsel for a party has authored this brief in whole or in part, and no party or counsel for a party has made a monetary contribution intended to fund the preparation or submission of the brief. No person other than *amici* or their counsel has made a monetary contribution to the preparation or submission of this brief. Fed. R. App. P. 29(a)(4)(E).

[2] This brief represents the opinion of the individual Committee member signatories, but not necessarily that of the International Law Association ("ILA") or the ILA American Branch.

II. INTRODUCTION

The purpose of this brief is to bring to the Court's attention U.S. treaty provisions and customary international law principles that bear on the legality of the Presidential Proclamation Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats of September 24, 2017 ("Proclamation"),[3] apparently superseding Executive Order 13780 of March 6, 2017 ("EO"), which replaced the now-rescinded Executive Order 13769 dated January 27, 2017.

International law, which includes treaties ratified by the United States as well as customary international law, is part of U.S. law and must be faithfully executed by the President and enforced by U.S. courts except when clearly inconsistent with the U.S. Constitution or subsequent acts of Congress. The United States is a party to and bound by several international human rights treaties relevant to the subject matter of the Proclamation. In assessing the legality of the Proclamation, the Court should be cognizant of those treaty obligations, and of customary international law, which should influence constructions of the U.S. Constitution and statutes that prohibit discrimination based on religion or national origin.

In addition, the Immigration and Nationality Act and other statutes must be read in harmony with these international legal obligations pursuant to the

[3] *See* Proclamation No. 9645, 82 Fed. Reg. 45,161 (Sept. 27, 2017).

Supremacy Clause of the Constitution and long established principles of statutory construction requiring acts of Congress to be interpreted in a manner consistent with international law, whenever such a construction is reasonably possible. In this case, the international law obligations described below reinforce interpretations of those statutes forbidding discrimination of the type threatened by Section 2 of the Proclamation.[4]

III. ARGUMENT

A. International Law Is Relevant to Assessing the Legality of the Proclamation

International law is relevant to this case because the U.S. Constitution makes treaties part of U.S. law. Customary international law is also part of U.S. law and is enforceable by U.S. courts. Under the Supremacy Clause of the Constitution, "Treaties made . . . under the authority of the United States, shall be the supreme Law of the Land; and the Judges of every State shall be bound thereby."[5] Although the Constitution does not require legislation prior to treaties taking legal effect, the Supreme Court distinguishes between self-executing and non-self-executing treaties.[6] The Senate or the President has declared that the relevant

[4] The relevant provisions of the Proclamation, the Constitution, treaties, and international declarations are set forth below in the Addendum to this brief.
[5] U.S. Const. art. VI, cl. 2 (capitalization in original).
[6] *See* Restatement (Third) of Foreign Relations Law § 111(3)–(4) (Am. Law Inst. 1987).

human rights treaties to which the United States is a party are non-self-executing.[7] Nevertheless, by ratifying those treaties, the United States bound itself to provide judicial or other remedies for violations of treaty obligations.[8] Thus, even if the treaty provisions themselves are not directly enforceable in U.S. courts, the rights they grant should be protected by courts through their interpretation of constitutional provisions and statutes addressing the same or similar subject matter.

This is consistent with the positions taken by both the Executive Branch and Congress in those cases in which Congress has not passed implementing legislation.[9] When submitting human rights treaties to the Senate for its advice and consent, both Presidents George H.W. Bush and William Clinton assured the Senate that the United States could and would fulfill its treaty commitments by applying existing federal constitutional and statutory law.[10] Courts generally

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[7] *See, e.g.*, 138 Cong. Rec. S4781-01 (daily ed. Apr. 2, 1992) (Covenant on Civil and Political Rights).

[8] *See, e.g.*, International Covenant on Civil and Political Rights art. 2(2), Dec. 19, 1966, 999 U.N.T.S. 171 [hereinafter "CCPR"].

[9] *See, e.g.*, Report of the Comm. Against Torture, ¶¶ 58–60, U.N. Doc. CAT/C/28/Add.5 (Feb. 9, 2000) ("Where domestic law already makes adequate provision for the requirements of the treaty and is sufficient to enable the United States to meet its international obligations, the United States does not generally believe it necessary to adopt implementing legislation.").

[10] For example, during Senate hearings on the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT"), Dec. 10, 1984, 1465 U.N.T.S. 113, the State Department Legal Advisor told the Senate: "Any Public official in the United States, at any level of government, who inflicts torture . . . would be subject to an effective system of control and punishment in the U.S. legal system." Hearing Before the S. Comm. on Foreign Relations, 101st

construe federal constitutional and statutory law to be consistent with human rights treaties in part because the Senate has relied on such assurances as a basis for its consent to ratification.[11] The United States acknowledged this principle in its comments to the U.N. Committee Against Torture: "Even where a treaty is 'non-self-executing', courts may nonetheless take notice of the obligations of the United States thereunder in an appropriate case and may refer to the principles and objectives thereof, as well as to the stated policy reasons for ratification."[12] "Taking notice" of treaty obligations comports with a core principle of statutory construction announced by the Supreme Court in *Murray v. Schooner Charming Betsy*: "[A]n act of Congress ought never to be construed to violate the law of

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Cong. 8 (1990) (statement of Abraham Sofaer). Similarly, with respect to G.A. Res. 2106 (XX), annex, International Convention on the Elimination of All Forms of Racial Discrimination ("CERD") (Dec. 21, 1965), the Clinton Administration told the Senate: "As was the case with the prior treaties, existing U.S. law provides extensive protections and remedies sufficient to satisfy the requirements of the present Convention." S. Comm. on Foreign Relations, Report on International Convention on the Elimination of All Forms of Racial Discrimination, S. Exec. Rep. No. 103-29, at 25–26 (1994).

[11] *See, e.g.*, *Immigration & Naturalization Serv. v. Stevic*, 467 U.S. 407, 426 (1984).

[12] Report of the Comm. Against Torture, *supra* note 9, ¶ 57 (citing *Sale v. Haitian Ctrs. Council, Inc.*, 509 U.S. 155 (1993)).

nations if any other possible construction remains."[13] That doctrine has been consistently and recently reaffirmed by the Supreme Court.[14]

Moreover, in *Filartiga v. Pena-Irala*, the U.S. Court of Appeals for the Second Circuit observed that a treaty that is not self-executing may provide evidence of customary international law.[15] Customary international law must be enforced in U.S. courts even in the absence of implementing legislation, regardless of whether customary rules appear in a treaty.[16] In *The Paquete Habana*, the Supreme Court held that customary international law is "part of our law" and directly enforceable in courts when no conflicting treaty, legislative act, or judicial decision controls.[17] As discussed below, several human rights treaty rules applicable in this case are also customary international law.

The President is also obligated to respect international law pursuant to his constitutional duty faithfully to execute the law.[18] Because Article VI of the

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[13] 6 U.S. (2 Cranch) 64, 118 (1804); *accord Talbot v. Seeman*, 5 U.S. (1 Cranch) 1, 43 (1801).
[14] *See, e.g.*, *F. Hoffmann-La Roche Ltd. v. Empagran S.A.*, 542 U.S. 155, 164 (2004).
[15] 630 F.2d 876, 882 n.9 (2d Cir. 1980).
[16] Restatement (Third) of Foreign Relations Law, *supra* note 6 § 111(3) (Am. Law Inst. 1987).
[17] 175 U.S. 677, 700 (1900); *see also Filartiga*, 603 F.2d at 886 ("Appellees . . . advance the proposition that the law of nations forms a part of the laws of the United States only to the extent that Congress has acted to define it. This extravagant claim is amply refuted by the numerous decisions applying rules of international law uncodified by any act of Congress.").
[18] U.S. Const. art. II, § 3.

Constitution makes treaties the supreme law of the land, the President is constitutionally required to comply with U.S. treaty obligations as well as with customary international law. This was the intent of the Framers.[19] Courts therefore have a duty to restrain federal executive action that conflicts with a duly ratified treaty. As the Supreme Court wrote in ordering the President to restore a French merchant ship to its owner pursuant to a treaty obligation: "The constitution of the United States declares a treaty to be the supreme law of the land. Of consequence its obligation on the courts of the United States must be admitted."[20]

Even if the President were not directly bound by international law, however, he is still obligated to comply with the Constitution itself and all applicable legislation enacted by Congress within its authority, which (as noted) must be interpreted in a manner consistent with international law whenever possible.

The following sections identify the treaties and customary international law relevant to the legality of the Proclamation.

[19] Alexander Hamilton, *Pacificus No. 1* (June 29, 1793), *reprinted in* 15 *The Papers of Alexander Hamilton* 33, 33–43 (Harold C. Syrett et al. eds. 1969).
[20] *United States v. Schooner Peggy*, 5 U.S. (1 Cranch) 103, 109 (1801).

B. International Law Regarding Discrimination on the Basis of Religion and National Origin

1. The International Covenant on Civil and Political Rights

Discrimination based on religion or national origin is prohibited by the International Covenant on Civil and Political Rights ("CCPR"). The United States ratified the CCPR in 1992.[21]

Article 2 of the CCPR states in relevant part:

> 1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, . . . religion, . . . national or social origin, . . . or other status.
>
> 3. Each State Party to the present Covenant undertakes:
>
> (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
>
> (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
>
> (c) To ensure that the competent authorities shall enforce such remedies when granted.

The United Nations Human Rights Committee ("HRC") is charged by the CCPR to monitor implementation by state parties and to issue guidance on its proper interpretation. The HRC interprets article 2 to prohibit "any distinction,

[21] 138 Cong. Rec. S4781-01, *supra* note 7.

exclusion, restriction or preference" based on a prohibited ground, and which has "the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms" protected by the treaty.[22] To justify a limitation on the nondiscrimination (or any other human rights) right, a measure must pursue a legitimate aim and be proportionate to that aim.[23] A "proportionate" measure is one effective at achieving the aim and narrowly tailored (or "necessary") to it.[24]

The substantive rights guaranteed by the CCPR, which must be protected without discrimination based on religion or national origin under article 2, include the protection of the family. Article 23 provides in relevant part: "The family is the natural and fundamental group unit of society and is entitled to protection by society and the State."[25] The HRC has interpreted this right to include living together, which in turn obligates the state to adopt appropriate measures "to ensure the unity or reunification of families, particularly when their members are separated for political, economic or similar reasons."[26]

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[22] Human Rights Comm., General Comment No. 18, ¶ 6, U.N. Doc. HRI/GEN/1/Rev.1 (July 29, 1994).
[23] Comm. on the Elimination of Racial Discrimination, General Recommendation 30: Discrimination against non-citizens, U.N. Doc. CERD/C/64/Misc.11/rev.3, at 2 (2004).
[24] *See* Aaron Xavier Fellmeth, *Paradigms of International Human Rights Law* 119–21 (2016).
[25] CCPR, *supra* note 8, art. 23(1).
[26] Human Rights Comm., *supra* note 22, General Comment No. 19, ¶ 5.

Restrictions on travel and entry caused by the Proclamation that impose disparate and unreasonable burdens on the exercise of this right violate CCPR article 2. The HRC has explained that, although the CCPR does not generally

> recognize the right of aliens to enter or reside in the territory of a State party . . . , in certain circumstances an alien may enjoy the protection of the Covenant even in relation to entry or residence, for example, when considerations of non-discrimination, prohibition of inhuman treatment and respect for family life arise.[27]

Thus, the right of entry is not beyond the scope of the CCPR. On the contrary, the CCPR's nondiscrimination principles and protections for family life should be considered by courts in interpreting government measures affecting family unification. This treaty-based protection for family life is consistent with Supreme Court jurisprudence respecting the role of due process of law in governmental decisions affecting family unity.[28]

More generally, article 26 of the CCPR prohibits discrimination in any government measure, regardless of whether the measure violates a Covenant right:

> All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

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[27] *Id*. at 9, General Comment No. 15, ¶ 5.
[28] *See Landon v. Plasencia*, 459 U.S. 21, 34, 37 (1982); *Kerry v. Din*, 135 S. Ct. 2128, 2140–41 (2015) (Kennedy, J., concurring).

As interpreted by the HRC and consistent with its wording, this provision "prohibits discrimination in law or in fact in *any field* regulated" by the government.[29] Notably, unlike CCPR article 2, the equal protection provisions of CCPR article 26 lack article 2's limitation to "all individuals within [the state party's] territory and subject to its jurisdiction."

The nondiscrimination provisions of the CCPR are also customary international law binding on the United States, forming part of U.S. law unless contrary to the Constitution or a statute. The Universal Declaration of Human Rights, which the United States approved in 1948, mandates nondiscrimination in religion and national origin, equal protection of the law, and protection from arbitrary interference in family life.[30] The American Declaration of the Rights and Duties of Man, which the United States approved when it signed and ratified the Charter of the Organization of American States the same year, has similar provisions in articles 6 and 17.[31] These nondiscrimination principles and the right to family unity have become sufficiently widespread and accepted by the

[29] Human Rights Comm., *supra* note 22, General Comment No. 18, ¶ 12 (emphasis added).
[30] G.A. Res. 217 A (III), Universal Declaration of Human Rights arts. 2, 7, 12 (Dec. 10, 1948).
[31] O.A.S. Res. XXX (1948), *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L/V/I.4 rev. 13, at 13 (2010).

international community that they have entered into customary international law in the present day.[32]

2. The International Convention on the Elimination of All Forms of Racial Discrimination

The International Convention on the Elimination of All Forms of Racial Discrimination ("CERD") also bars discrimination based on national origin. The United States has been a party to the CERD since 1994.[33] Under article 2, paragraph (1)(a), each state party commits to refraining from and prohibiting all forms of racial discrimination, and each further undertakes "to engage in no act or practice of racial discrimination . . . and to ensure that all public authorities and public institutions, national or local, shall act in conformity with this obligation." CERD defines "racial discrimination" to include distinctions and restrictions based on national origin.[34] With regard to immigration practices, CERD makes clear that states are free to adopt only such "nationality, citizenship or naturalization" policies that "do not discriminate against any particular nationality."[35] Like the nondiscrimination provisions of CCPR article 26, CERD article 2 does not limit its application to citizens or resident noncitizens. While CERD does not speak specifically to restrictions on entry of nonresident aliens, the general language of

[32] *See* Hurst Hannum, *The Status of the Universal Declaration of Human Rights in National and International Law*, 25 GA. J. INT'L & COMP. L. 287, 329 (1995/96).
[33] *See* 140 Cong. Rec. S7634-02 (daily ed. June 24, 1994).
[34] CERD, *supra* note 10, art. 2(1)(a).
[35] *Id.* art. 1(3).

CERD expresses a clear intention to eliminate discrimination based on race or national origin from all areas of government activity: "States Parties undertake to prohibit and to eliminate racial discrimination in all its forms . . . without distinction as to race, colour, or national or ethnic origin . . . ."[36]

Article 4 of CERD further provides that state parties "[s]hall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination," which (as noted) includes discrimination based on national origin. The Committee on the Elimination of Racial Discrimination, the body of independent experts appointed to monitor CERD's implementation, interprets article 4 to require states to combat speech stigmatizing or stereotyping non-citizens generally, immigrants, refugees, and asylum seekers,[37] with statements by high-ranking officials causing "particular concern."[38] In *TBB-Turkish Union in Berlin/Brandenburg v. Germany*, for example, the Committee specifically determined that Germany violated the Convention when it failed to discipline or punish a minor government official who had *inter alia* drawn attention to low employment rates of Turkish and Arab populations in Germany, suggested their unwillingness to integrate into German society, and proposed that their

[36] *Id.* art. 5.
[37] Comm. on the Elimination of Racial Discrimination, General Recommendation No. 35: Combating Racist Hate Speech, ¶ 6, U.N. Doc. CERD/C/GC/35 (2013).
[38] *Id.* ¶ 22.

immigration should be discouraged.[39] These statements, the Committee determined, implied "generalized negative characteristics of the Turkish population" and incited racial discrimination.[40]

The legality of the Proclamation in this case, and the proper interpretation of the statutes and constitutional provisions cited by the parties, should be assessed with those proscriptions in mind. Those international law principles require courts to reject any attempt by the President to define classes based on national origin or religion, and then to impose on those classes disparate treatment, except to the extent necessary to achieve a legitimate government purpose.

C. Relevant Provisions of the Proclamation

The Proclamation suspends immigration from, and the grant of nonimmigrant visas to, seven countries and certain government officials of an eighth country, Venezuela.[41] It differs from the second, March 6, 2017, EO primarily by adding Chad, North Korea, and the Venezuelan officials to the ban, removing Sudan from the list of banned countries, and limiting the ban in certain cases to specific classes of visas and not to others.[42]

The Proclamation thus makes an explicit distinction based on national origin that, unless necessary and narrowly tailored to achieve a legitimate government

[39] Comm. on the Elimination of Racial Discrimination, Commc'n No. 48/2010, U.N. Doc. CERD/C/82/D/48/2010 (2013).
[40] *Id.* ¶ 12.6.
[41] *See* Proclamation No. 9645, *supra* note 3.
[42] *See id.*

aim, would violate U.S. obligations under international law. In effect, the Proclamation also makes a distinction based on religion, as Appellees have argued. Notably, every one of the designated countries, except for North Korea, has a population that is majority Muslim.[43] Unlike the previous two EOs, which did not suspend immigration from any state without an overwhelmingly Muslim majority, the Proclamation adds one non-Muslim country and a few (presumably non-Muslim) government officials. The *amici* do not challenge the suspension of visas to certain Venezuelan government officials, because that suspension is not based directly or indirectly on religion, and it appears sufficiently narrowly tailored not to constitute discrimination based on national origin.

D. Legitimate Aim and Proportionality

To comply with U.S. obligations under international law and corresponding domestic constitutional and statutory requirements, the Proclamation must pursue a legitimate aim and be proportionate to that aim.[44]

The *amici* concede that the stated aim of the Proclamation—protecting the United States from the entry of terrorists and other public safety threats—is a legitimate one. However, all evidence strongly indicates that the stated aim does not reflect the real aim of the Proclamation. As extensively briefed by the

[43] *See* Central Intelligence Agency, The World Factbook, https://www.cia.gov/library/publications/resources/the-world-factbook/index.html (last visited Nov. 14, 2017).
[44] Human Rights Comm., *supra* note 22, General Comment No. 18, ¶ 6.

Appellees and other *amici* in this case and those preceding it, the Trump campaign and, later the Trump Administration, have made clear their intent to issue a blanket ban on the entry of Muslims into the United States. Discriminatory intent based on religion violates U.S. obligations under international law regardless of whether the intent is accompanied by discriminatory effect (which, in this case, it is).

Even if the Proclamation pursues a legitimate aim, it does not use proportionate means. To be proportionate, a measure must be "necessary in a democratic society,"[45] meaning that it satisfies three criteria. The measure must: (1) be appropriate to and effective at achieving the aim, (2) be narrowly tailored to achieve the aim so that human rights are infringed no more than strictly necessary, and (3) not unduly burden the exercise of the relevant human rights in relation to the benefit achieved.[46]

The Proclamation does not satisfy either of the first two conditions of proportionality. The Proclamation is not appropriate and effective at protecting national security because it is both overinclusive and underinclusive. It is overinclusive because, like the means of the EO, the means in the Proclamation to protect the United States do not actually correspond to any reasoned basis. As discussed in the briefs of Appellees and other *amici*, none of the countries

[45] Human Rights Comm., General Comment No. 27, ¶ 11, U.N. Doc. No. CCPR/C/21/Rev.1/Add.9 (Nov. 1, 1999).
[46] Fellmeth, *supra* note 24, at 119–21.

designated in the Proclamation have a history of exporting terrorists to the United States. Moreover, the Appellants have offered no evidence that the purported rationale for the choice of countries, which rests primarily on information sharing and the presence of terrorist groups in the country, actually corresponds to the risk of terrorism by immigrants or visa applicants. The means are underinclusive because none of the countries with the most active history of terrorist immigration to the United States, such as Saudi Arabia, the United Arab Emirates, Egypt, and Pakistan,[47] are included in the Proclamation.

As for North Korea: Considering that before the Proclamation, the United States issued only a few dozen entry visas to North Koreans every year,[48] and the Appellants have cited no evidence that a North Korean has ever been convicted of terrorism in the United States, the inclusion of North Korea in the Proclamation appears to be arbitrary from the perspective of national origin discrimination.

The Proclamation is also not narrowly tailored for its stated aim. It infringes the human right against discrimination of a large class of persons based on two prohibited grounds, national origin and religion, and it further threatens the human

[47] *See* Alex Nowrasteh, *Guide to Trump's Executive Order to Limit Migration for "National Security" Reasons*, Cato Institute: Cato at Liberty, Jan. 26, 2017, *at* https://www.cato.org/blog/guide-trumps-executive-order-limit-migration-national-security-reasons.

[48] *See* U.S. State Dep't, Report of the Visa Office 2016, Table XIV: Immigrant Visas Issued at Foreign Service Posts, Fiscal Years 2007–2016, *at* https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2016AnnualReport/FY16AnnualReport-TableXIV.pdf.

right to family life of numerous visa applicants, while offering little or no compensating benefit to national security. Enhanced vetting procedures could, under some circumstances, be a proportionate means for protecting national security; a blanket freeze or ban on immigration based on national origin or religion is flatly disproportionate.

IV. CONCLUSION

For the foregoing reasons, *amici* request that the Court consider U.S. obligations under international law, which forms part of U.S. law, in evaluating the legality of the Proclamation.

RESPECTFULLY SUBMITTED this 21st day of November, 2017.

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ADDENDUM

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I. PROCLAMATION 9645 OF SEPTEMBER 24, 2017

In Executive Order 13780 of March 6, 2017 (Protecting the Nation from Foreign Terrorist Entry into the United States), on the recommendations of the Secretary of Homeland Security and the Attorney General, I ordered a worldwide review of whether, and if so what, additional information would be needed from each foreign country to assess adequately whether their nationals seeking to enter the United States pose a security or safety threat. This was the first such review of its kind in United States history. As part of the review, the Secretary of Homeland Security established global requirements for information sharing in support of immigration screening and vetting. The Secretary of Homeland Security developed a comprehensive set of criteria and applied it to the information-sharing practices, policies, and capabilities of foreign governments. The Secretary of State thereafter engaged with the countries reviewed in an effort to address deficiencies and achieve improvements. In many instances, those efforts produced positive results. By obtaining additional information and formal commitments from foreign governments, the United States Government has improved its capacity and ability to assess whether foreign nationals attempting to enter the United States pose a security or safety threat. Our Nation is safer as a result of this work.

Despite those efforts, the Secretary of Homeland Security, in consultation with the Secretary of State and the Attorney General, has determined that a small number of countries -- out of nearly 200 evaluated -- remain deficient at this time with respect to their identity-management and information-sharing capabilities, protocols, and practices. In some cases, these countries also have a significant terrorist presence within their territory.

As President, I must act to protect the security and interests of the United States and its people. I am committed to our ongoing efforts to engage those countries willing to cooperate, improve information-sharing and identity-management protocols and procedures, and address both terrorism-related and public-safety risks. Some of the countries with remaining inadequacies face significant challenges. Others have made strides to improve their protocols and procedures, and I commend them for these efforts. But until they satisfactorily address the identified inadequacies, I have determined, on the basis of recommendations from the Secretary of Homeland Security and other members of my Cabinet, to impose certain conditional restrictions and limitations, as set forth more fully below, on entry into the United States of nationals of the countries identified in section 2 of this proclamation.

NOW, THEREFORE, I, DONALD J. TRUMP, by the authority vested in me by the Constitution and the laws of the United States of America, including sections 212(f) and 215(a) of the Immigration and Nationality Act (INA), 8 U.S.C. 1182(f) and 1185(a), and section 301 of title 3, United States Code, hereby find that, absent the measures set forth in this proclamation, the immigrant and nonimmigrant entry into the United States of persons described in section 2 of this proclamation would be detrimental to the interests of the United States, and that their entry should be subject to certain restrictions, limitations, and exceptions. I therefore hereby proclaim the following:

A. Section 1. Policy and Purpose.

(a) It is the policy of the United States to protect its citizens from terrorist attacks and other public-safety threats. Screening and vetting protocols and procedures associated with visa adjudications and other immigration processes play a critical role in implementing that policy. They enhance our ability to detect foreign nationals who may commit, aid, or support acts of terrorism, or otherwise pose a safety threat, and they aid our efforts to prevent such individuals from entering the United States.

(b) Information-sharing and identity-management protocols and practices of foreign governments are important for the effectiveness of the screening and vetting protocols and procedures of the United States. Governments manage the identity and travel documents of their nationals and residents. They also control the circumstances under which they provide information about their nationals to other governments, including information about known or suspected terrorists and criminal-history information. It is, therefore, the policy of the United States to take all necessary and appropriate steps to encourage foreign governments to improve their information-sharing and identity-management protocols and practices and to regularly share identity and threat information with our immigration screening and vetting systems.

(c) Section 2(a) of Executive Order 13780 directed a "worldwide review to identify whether, and if so what, additional information will be needed from each foreign country to adjudicate an application by a national of that country for a visa, admission, or other benefit under the INA (adjudications) in order to determine that the individual is not

a security or public-safety threat." That review culminated in a report submitted to the President by the Secretary of Homeland Security on July 9, 2017. In that review, the Secretary of Homeland Security, in consultation with the Secretary of State and the Director of National Intelligence, developed a baseline for the kinds of information required from foreign governments to support the United States Government's ability to confirm the identity of individuals seeking entry into the United States as immigrants and nonimmigrants, as well as individuals applying for any other benefit under the immigration laws, and to assess whether they are a security or public-safety threat. That baseline incorporates three categories of criteria:

(i) Identity-management information. The United States expects foreign governments to provide the information needed to determine whether individuals seeking benefits under the immigration laws are who they claim to be. The identity-management information category focuses on the integrity of documents required for travel to the United States. The criteria assessed in this category include whether the country issues electronic passports embedded with data to enable confirmation of identity, reports lost and stolen passports to appropriate entities, and makes available upon request identity-related information not included in its passports.

(ii) National security and public-safety information. The United States expects foreign governments to provide information about whether persons who seek entry to this country pose national security or public-safety risks. The criteria assessed in this category include whether the country makes available, directly or indirectly, known or suspected terrorist and criminal-history information upon request, whether the country provides passport and national-identity document exemplars, and whether the country impedes the United States Government's receipt of information about passengers and crew traveling to the United States.

(iii) National security and public-safety risk assessment. The national security and public-safety risk assessment category focuses on national security risk indicators. The criteria assessed in this category include whether the country is a

> known or potential terrorist safe haven, whether it is a participant in the Visa Waiver Program established under section 217 of the INA, 8 U.S.C. 1187, that meets all of its requirements, and whether it regularly fails to receive its nationals subject to final orders of removal from the United States.

(d) The Department of Homeland Security, in coordination with the Department of State, collected data on the performance of all foreign governments and assessed each country against the baseline described in subsection (c) of this section. The assessment focused, in particular, on identity management, security and public-safety threats, and national security risks. Through this assessment, the agencies measured each country's performance with respect to issuing reliable travel documents and implementing adequate identity-management and information-sharing protocols and procedures, and evaluated terrorism-related and public-safety risks associated with foreign nationals seeking entry into the United States from each country.

(e) The Department of Homeland Security evaluated each country against the baseline described in subsection (c) of this section. The Secretary of Homeland Security identified 16 countries as being "inadequate" based on an analysis of their identity-management protocols, information-sharing practices, and risk factors. Thirty-one additional countries were classified "at risk" of becoming "inadequate" based on those criteria.

(f) As required by section 2(d) of Executive Order 13780, the Department of State conducted a 50-day engagement period to encourage all foreign governments, not just the 47 identified as either "inadequate" or "at risk," to improve their performance with respect to the baseline described in subsection (c) of this section. Those engagements yielded significant improvements in many countries. Twenty-nine countries, for example, provided travel document exemplars for use by Department of Homeland Security officials to combat fraud. Eleven countries agreed to share information on known or suspected terrorists.

(g) The Secretary of Homeland Security assesses that the following countries continue to have "inadequate" identity-management

protocols, information-sharing practices, and risk factors, with respect to the baseline described in subsection (c) of this section, such that entry restrictions and limitations are recommended: Chad, Iran, Libya, North Korea, Syria, Venezuela, and Yemen. The Secretary of Homeland Security also assesses that Iraq did not meet the baseline, but that entry restrictions and limitations under a Presidential proclamation are not warranted. The Secretary of Homeland Security recommends, however, that nationals of Iraq who seek to enter the United States be subject to additional scrutiny to determine if they pose risks to the national security or public safety of the United States. In reaching these conclusions, the Secretary of Homeland Security considered the close cooperative relationship between the United States and the democratically elected government of Iraq, the strong United States diplomatic presence in Iraq, the significant presence of United States forces in Iraq, and Iraq's commitment to combating the Islamic State of Iraq and Syria (ISIS).

(h) Section 2(e) of Executive Order 13780 directed the Secretary of Homeland Security to "submit to the President a list of countries recommended for inclusion in a Presidential proclamation that would prohibit the entry of appropriate categories of foreign nationals of countries that have not provided the information requested until they do so or until the Secretary of Homeland Security certifies that the country has an adequate plan to do so, or has adequately shared information through other means." On September 15, 2017, the Secretary of Homeland Security submitted a report to me recommending entry restrictions and limitations on certain nationals of 7 countries determined to be "inadequate" in providing such information and in light of other factors discussed in the report. According to the report, the recommended restrictions would help address the threats that the countries' identity-management protocols, information-sharing inadequacies, and other risk factors pose to the security and welfare of the United States. The restrictions also encourage the countries to work with the United States to address those inadequacies and risks so that the restrictions and limitations imposed by this proclamation may be relaxed or removed as soon as possible.

(i) In evaluating the recommendations of the Secretary of Homeland Security and in determining what restrictions to

impose for each country, I consulted with appropriate Assistants to the President and members of the Cabinet, including the Secretaries of State, Defense, and Homeland Security, and the Attorney General. I considered several factors, including each country's capacity, ability, and willingness to cooperate with our identity-management and information-sharing policies and each country's risk factors, such as whether it has a significant terrorist presence within its territory. I also considered foreign policy, national security, and counterterrorism goals. I reviewed these factors and assessed these goals, with a particular focus on crafting those country-specific restrictions that would be most likely to encourage cooperation given each country's distinct circumstances, and that would, at the same time, protect the United States until such time as improvements occur. The restrictions and limitations imposed by this proclamation are, in my judgment, necessary to prevent the entry of those foreign nationals about whom the United States Government lacks sufficient information to assess the risks they pose to the United States. These restrictions and limitations are also needed to elicit improved identity-management and information-sharing protocols and practices from foreign governments; and to advance foreign policy, national security, and counterterrorism objectives.

(ii) After reviewing the Secretary of Homeland Security's report of September 15, 2017, and accounting for the foreign policy, national security, and counterterrorism objectives of the United States, I have determined to restrict and limit the entry of nationals of 7 countries found to be "inadequate" with respect to the baseline described in subsection (c) of this section: Chad, Iran, Libya, North Korea, Syria, Venezuela, and Yemen. These restrictions distinguish between the entry of immigrants and nonimmigrants. Persons admitted on immigrant visas become lawful permanent residents of the United States. Such persons may present national security or public-safety concerns that may be distinct from those admitted as nonimmigrants. The United States affords lawful permanent residents more enduring rights than it does to nonimmigrants. Lawful permanent residents are more difficult to remove than

nonimmigrants even after national security concerns arise, which heightens the costs and dangers of errors associated with admitting such individuals. And although immigrants generally receive more extensive vetting than nonimmigrants, such vetting is less reliable when the country from which someone seeks to emigrate exhibits significant gaps in its identity-management or information-sharing policies, or presents risks to the national security of the United States. For all but one of those 7 countries, therefore, I am restricting the entry of all immigrants.

(iii) I am adopting a more tailored approach with respect to nonimmigrants, in accordance with the recommendations of the Secretary of Homeland Security. For some countries found to be "inadequate" with respect to the baseline described in subsection (c) of this section, I am restricting the entry of all nonimmigrants. For countries with certain mitigating factors, such as a willingness to cooperate or play a substantial role in combatting terrorism, I am restricting the entry only of certain categories of nonimmigrants, which will mitigate the security threats presented by their entry into the United States. In those cases in which future cooperation seems reasonably likely, and accounting for foreign policy, national security, and counterterrorism objectives, I have tailored the restrictions to encourage such improvements.

(i) Section 2(e) of Executive Order 13780 also provided that the "Secretary of State, the Attorney General, or the Secretary of Homeland Security may also submit to the President the names of additional countries for which any of them recommends other lawful restrictions or limitations deemed necessary for the security or welfare of the United States." The Secretary of Homeland Security determined that Somalia generally satisfies the information-sharing requirements of the baseline described in subsection (c) of this section, but its government's inability to effectively and consistently cooperate, combined with the terrorist threat that emanates from its territory, present special circumstances that warrant restrictions and limitations on the entry of its nationals into the United States. Somalia's identity-management deficiencies and the significant terrorist presence within its territory make it a source of particular

risks to the national security and public safety of the United States. Based on the considerations mentioned above, and as described further in section 2(h) of this proclamation, I have determined that entry restrictions, limitations, and other measures designed to ensure proper screening and vetting for nationals of Somalia are necessary for the security and welfare of the United States.

(j) Section 2 of this proclamation describes some of the inadequacies that led me to impose restrictions on the specified countries. Describing all of those reasons publicly, however, would cause serious damage to the national security of the United States, and many such descriptions are classified.

B. Section 2. Suspension of Entry of Nationals of Countries of Identified Concern.

The entry into the United States of nationals of the following countries is hereby suspended and limited, as follows, subject to categorical exceptions and case by-case waivers, as described in sections 3 and 6 of this proclamation:

(a) Chad.

(i) The government of Chad is an important and valuable counterterrorism partner of the United States, and the United States Government looks forward to expanding that cooperation, including in the areas of immigration and border management. Chad has shown a clear willingness to improve in these areas. Nonetheless, Chad does not adequately share public-safety and terrorism-related information and fails to satisfy at least one key risk criterion. Additionally, several terrorist groups are active within Chad or in the surrounding region, including elements of Boko Haram, ISIS-West Africa, and al-Qa'ida in the Islamic Maghreb. At this time, additional information sharing to identify those foreign nationals applying for visas or seeking entry into the United States who represent national security and public-safety threats is necessary given the significant terrorism-related risk from this country.

(ii) The entry into the United States of nationals of Chad, as immigrants, and as nonimmigrants on business (B-1), tourist

(B-2), and business/tourist (B-1/B-2) visas, is hereby suspended.

(b) Iran.

(i) Iran regularly fails to cooperate with the United States Government in identifying security risks, fails to satisfy at least one key risk criterion, is the source of significant terrorist threats, and fails to receive its nationals subject to final orders of removal from the United States. The Department of State has also designated Iran as a state sponsor of terrorism.

(ii) The entry into the United States of nationals of Iran as immigrants and as nonimmigrants is hereby suspended, except that entry by such nationals under valid student (F and M) and exchange visitor (J) visas is not suspended, although such individuals should be subject to enhanced screening and vetting requirements.

(c) Libya.

(i) The government of Libya is an important and valuable counterterrorism partner of the United States, and the United States Government looks forward to expanding on that cooperation, including in the areas of immigration and border management. Libya, nonetheless, faces significant challenges in sharing several types of information, including public-safety and terrorism-related information necessary for the protection of the national security and public safety of the United States. Libya also has significant inadequacies in its identity-management protocols. Further, Libya fails to satisfy at least one key risk criterion and has been assessed to be not fully cooperative with respect to receiving its nationals subject to final orders of removal from the United States. The substantial terrorist presence within Libya's territory amplifies the risks posed by the entry into the United States of its nationals.

(ii) The entry into the United States of nationals of Libya, as immigrants, and as nonimmigrants on business (B-1), tourist

(B-2), and business/tourist (B-1/B-2) visas, is hereby suspended.

(d) North Korea.

(i) North Korea does not cooperate with the United States Government in any respect and fails to satisfy all information-sharing requirements.

(ii) The entry into the United States of nationals of North Korea as immigrants and nonimmigrants is hereby suspended.

(e) Syria.

(i) Syria regularly fails to cooperate with the United States Government in identifying security risks, is the source of significant terrorist threats, and has been designated by the Department of State as a state sponsor of terrorism. Syria has significant inadequacies in identity-management protocols, fails to share public-safety and terrorism information, and fails to satisfy at least one key risk criterion.

(ii) The entry into the United States of nationals of Syria as immigrants and nonimmigrants is hereby suspended.

(f) Venezuela.

(i) Venezuela has adopted many of the baseline standards identified by the Secretary of Homeland Security and in section 1 of this proclamation, but its government is uncooperative in verifying whether its citizens pose national security or public-safety threats. Venezuela's government fails to share public-safety and terrorism-related information adequately, fails to satisfy at least one key risk criterion, and has been assessed to be not fully cooperative with respect to receiving its nationals subject to final orders of removal from the United States. There are, however, alternative sources for obtaining information to verify the citizenship and identity of nationals from Venezuela. As a result, the restrictions imposed by this proclamation focus

on government officials of Venezuela who are responsible for the identified inadequacies.

(ii) Notwithstanding section 3(b)(v) of this proclamation, the entry into the United States of officials of government agencies of Venezuela involved in screening and vetting procedures -- including the Ministry of the Popular Power for Interior, Justice and Peace; the Administrative Service of Identification, Migration and Immigration; the Scientific, Penal and Criminal Investigation Service Corps; the Bolivarian National Intelligence Service; and the Ministry of the Popular Power for Foreign Relations -- and their immediate family members, as nonimmigrants on business (B-1), tourist (B-2), and business/tourist (B-1/B-2) visas, is hereby suspended. Further, nationals of Venezuela who are visa holders should be subject to appropriate additional measures to ensure traveler information remains current.

(g) Yemen.

(i) The government of Yemen is an important and valuable counterterrorism partner, and the United States Government looks forward to expanding that cooperation, including in the areas of immigration and border management. Yemen, nonetheless, faces significant identity-management challenges, which are amplified by the notable terrorist presence within its territory. The government of Yemen fails to satisfy critical identity-management requirements, does not share public-safety and terrorism-related information adequately, and fails to satisfy at least one key risk criterion.

(ii) The entry into the United States of nationals of Yemen as immigrants, and as nonimmigrants on business (B-1), tourist (B-2), and business/tourist (B-1/B-2) visas, is hereby suspended.

(h) Somalia.

(i) The Secretary of Homeland Security's report of September 15, 2017, determined that Somalia satisfies the information-sharing

requirements of the baseline described in section 1(c) of this proclamation. But several other considerations support imposing entry restrictions and limitations on Somalia. Somalia has significant identity-management deficiencies. For example, while Somalia issues an electronic passport, the United States and many other countries do not recognize it. A persistent terrorist threat also emanates from Somalia's territory. The United States Government has identified Somalia as a terrorist safe haven. Somalia stands apart from other countries in the degree to which its government lacks command and control of its territory, which greatly limits the effectiveness of its national capabilities in a variety of respects. Terrorists use under-governed areas in northern, central, and southern Somalia as safe havens from which to plan, facilitate, and conduct their operations. Somalia also remains a destination for individuals attempting to join terrorist groups that threaten the national security of the United States. The State Department's 2016 Country Reports on Terrorism observed that Somalia has not sufficiently degraded the ability of terrorist groups to plan and mount attacks from its territory. Further, despite having made significant progress toward formally federating its member states, and its willingness to fight terrorism, Somalia continues to struggle to provide the governance needed to limit terrorists' freedom of movement, access to resources, and capacity to operate. The government of Somalia's lack of territorial control also compromises Somalia's ability, already limited because of poor recordkeeping, to share information about its nationals who pose criminal or terrorist risks. As a result of these and other factors, Somalia presents special concerns that distinguish it from other countries.

(ii) The entry into the United States of nationals of Somalia as immigrants is hereby suspended. Additionally, visa adjudications for nationals of Somalia and decisions regarding their entry as nonimmigrants should be subject to additional scrutiny to determine if applicants are connected to terrorist organizations or otherwise pose a threat to the national security or public safety of the United States.

II. UNITED STATES CONSTITUTION

A. Article II § 3. Messages; Convene and Adjourn Congress; Receive Ambassadors; Execute Laws; Commission Officers.

He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

B. Article VI. Cl. 2. Supreme Law of Land.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

III. RELEVANT TREATIES

A. International Convention on the Elimination of All Forms of Racial Discrimination

1. Article 2

(1) States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:

(a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;

(b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;

(c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists[.]

2. Article 4

States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, inter alia:

(a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;

(b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;

(c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.

3. Article 5

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without

distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

(a) The right to equal treatment before the tribunals and all other organs administering justice;

(b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual, group or institution;

(c) Political rights, in particular the rights to participate in elections to vote and to stand for election on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;

(d) Other civil rights, in particular:

(i) The right to freedom of movement and residence within the border of the State;
(ii) The right to leave any country, including one's own, and to return to one's country;
(iii) The right to nationality;
(iv) The right to marriage and choice of spouse;
(v) The right to own property alone as well as in association with others;
(vi) The right to inherit;
(vii) The right to freedom of thought, conscience and religion;
(viii) The right to freedom of opinion and expression;
(ix) The right to freedom of peaceful assembly and association;

(e) Economic, social and cultural rights, in particular:

(i) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration;
(ii) The right to form and join trade unions;
(iii) The right to housing;
(iv) The right to public health, medical care, social security and social services;

(v) The right to education and training;
(vi) The right to equal participation in cultural activities;

(f) The right of access to any place or service intended for use by the general public, such as transport, hotels, restaurants, cafes, theatres and parks.

B. International Covenant on Civil and Political Rights

1. Article 2

(1) Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

(2) Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

(3) Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

2. Article 23

(1) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

3. Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

IV. RELEVANT INTERNATIONAL DECLARATIONS

A. Universal Declaration of Human Rights

1. Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

2. Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

3. Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

B. American Declaration of the Rights and Duties of Man

1. Article 6

Every person has the right to establish a family, the basic element of society, and to receive protection therefore.

2. Article 17

Every person has the right to be recognized everywhere as a person having rights and obligations, and to enjoy the basic civil rights.

APPENDIX

The *amici* are nongovernmental organizations and legal scholars specializing in public international law and international human rights law. They have substantial expertise in issues directly affecting the outcome of this case. These *amici* are identified below.

Organizations

Amnesty International

Center for Justice & Accountability (San Francisco)

Global Justice Center

Human Rights Advocates

Human Rights & Gender Justice Clinic, City University of New York School of Law

International Association of Democratic Lawyers

International Center for Advocates Against Discrimination

International Justice Project

International Justice Resource Center

Legal Aid Society (New York)

MADRE

National Law Center on Homelessness & Poverty

National Lawyers Guild

Secular Communities of Arizona

T'ruah: The Rabbinic Call for Human Rights

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84. Matthew Zagor, Associate Professor, Australia National University College of Law

85. Katja Ziegler, Sir Robert Jennings Professor International Law, Director, Centre of European Law and Internationalisation, University of Leicester School of Law, U.K.

Form 8. Certificate of Compliance Pursuant to 9th Circuit Rules 28.1-1(f), 29-2(c)(2) and (3), 32-1, 32-2 or 32-4 for Case Number 17-17168

Note: This form must be signed by the attorney or unrepresented litigant *and attached to the end of the brief.*

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The brief is [ ] words or [ ] pages, excluding the portions exempted by Fed. R. App. P. 32(f), if applicable. The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6).

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Signature of Attorney or Unrepresented Litigant: s/ Joseph M. McMillan

Date: Nov 21, 2017

("s/" plus typed name is acceptable for electronically-filed documents)

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 November 21, 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 certify under penalty of perjury that the foregoing is true and correct.

DATED this 21st day of November, 2017.

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