

No. 17-15589

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 *AMICI CURIAE* COLLEGES AND UNIVERSITIES IN SUPPORT OF PLAINTIFFS-APPELLEES

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, counsel for *amici curiae* Boston University, Brandeis University, Brown University, Bucknell University, Carnegie Mellon University, Case Western Reserve University, Columbia University, Cornell University, Dartmouth College, Duke University, Emory University, George Washington University, Georgetown University, Harvard University, Johns Hopkins University, Massachusetts Institute of Technology, Middlebury College, Northeastern University, Northwestern University, Princeton University, Rice University, Stanford University, Tufts University, University of Chicago, University of Michigan, University of Pennsylvania, University of Southern California, Vanderbilt University, Washington University, Worcester Polytechnic Institute, and Yale University certifies that *amici*, respectively, are not publicly held corporations, that *amici*, respectively, do not have a parent corporation, and that no publicly held corporation owns 10 percent or more of *amici*'s respective stock.

Dated: April 20, 2017

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INTERESTS OF *AMICI*

Amici are Boston University, Brandeis University, Brown University, Bucknell University, Carnegie Mellon University, Case Western Reserve University, Columbia University, Cornell University, Dartmouth College, Duke University, Emory University, George Washington University, Georgetown University, Harvard University, Johns Hopkins University, Massachusetts Institute of Technology, Middlebury College, Northeastern University, Northwestern University, Princeton University, Rice University, Stanford University, Tufts University, University of Chicago, University of Michigan, University of Pennsylvania, University of Southern California, Vanderbilt University, Washington University, Worcester Polytechnic Institute, and Yale University.

Each *amicus* has a global mission and benefits from the contributions of diverse students, faculty, staff, and scholars from around the world. Because *amici* seek to educate future world leaders, attract the world's best scholars, faculty, and students, and work across international borders, they rely on their ability to welcome international students, faculty, and scholars into their communities. In light of their educational missions, *amici* have a strong interest in ensuring that individuals from around the globe can continue to enter the U.S. and share their unique skills and

perspectives. *Amici* therefore submit this brief in support of Appellees on the merits of the government’s appeal regarding the district court’s preliminary injunction.¹

SUMMARY OF ARGUMENT

While each *amicus* is located in the U.S., *amici*’s missions and reach are truly global: they educate, employ, conduct research, and collaborate with students, faculty, and scholars from all over the world—individuals who speak different languages, practice different religions, and have wide-ranging life experiences that illuminate *amici*’s campuses and support their academic missions. These individuals make significant contributions to their fields of study and to campus life by bringing their unique perspectives and talents to *amici*’s classrooms, laboratories, and performance spaces. These individuals also contribute to the U.S. and the world more generally by making scientific discoveries, starting businesses, and creating literature and art that redound to the benefit of others far beyond *amici*’s campuses. So too, by studying in the U.S., they gain a greater understanding of and appreciation for the values we hold dear, including democratic principles and respect for the rule of law, tolerance, and human rights, values which they may then share with citizens of their home countries. Recognizing the invaluable contributions of international

¹ *Amici* hereby certify that no party’s counsel authored the brief in whole or in part, no party or party’s counsel contributed money intended to fund preparation or submission of this brief, and no person other than *amici* and their counsel contributed money intended to fund preparation or submission of the brief. The parties have consented to the filing of this *amicus* brief.

students, faculty, staff, and scholars, *amici* make significant efforts to attract the most talented individuals from around the globe.

The Executive Order at issue here, like its predecessor, threatens *amici*'s ability to continue to attract these individuals and thus to meet their goals of educating tomorrow's leaders. The Order issued by the President on March 6, 2017, titled "Protecting the Nation from Foreign Terrorist Entry into the United States" (the "Executive Order" or "Order"), suspends for 90 days the entry into the U.S. of nationals of six Muslim-majority countries—Iran, Libya, Somalia, Sudan, Syria, and Yemen. Executive Order § 2(c). Although the Order excludes certain visa-holders, it would bar entry of individuals from the six affected countries who seek the categories of visas most commonly relied upon by *amici*'s international students, faculty, staff, and scholars. *Id.* §§ 2(c), 3(a) & (b).

Even though the Executive Order is currently limited to six countries, American universities are already feeling its damaging effects. The Order threatens *amici*'s ability to attract the best students, faculty, staff, and scholars from around the world, and thus directly affects *amici*'s ability to pursue their missions. The Order was issued in the same time period that *amici* sent some admissions offers to prospective international students; given the looming deadline for those individuals to accept or decline *amici*'s offers, and their possible inability to obtain visas before the fall semester begins, many of them may choose to pursue their education in other

countries, rather than in the U.S. *Amici* are experiencing the Order’s costs absent any evidence that all or even an appreciable number of nationals from these six countries—all of whom the government already significantly vets before permitting them to study or work here—pose any threat to the safety or security of the U.S. or *amici*’s campuses.

The presidents of 48 leading American colleges and universities explained that the predecessor Executive Order “threaten[ed] both American higher education and the defining principles of our country.”² Because this Order risks the same damage, *amici* respectfully submit this brief in support of Appellees on the merits of the government’s appeal regarding the district court’s preliminary injunction.

ARGUMENT

I. International Students, Faculty, and Scholars Are Vital to *Amici*, the U.S., and the World More Generally.

Amici’s ability to foster rich educational environments depends in part on their ability to attract students, faculty, and scholars from around the globe. The international members of *amici*’s communities contribute to the vibrant campus life, world-class educational offerings, and research discoveries for which *amici* are well

² See Letter from College and University Presidents to President Trump (Feb. 2, 2017), <http://www.princeton.edu/president/eisgruber/docs/Presidents-Letter-Immigration.pdf>; see also Letter from the President and Provost of the University of Chicago to President Trump (Jan. 30, 2017), <https://news.uchicago.edu/article/2017/01/30/letter-president-trump>.

known. These individuals' contributions redound to the benefit of the other members of *amici*'s campus communities, the U.S., and the world.

A. Each *Amicus* Is Home to a Significant Number of Students, Faculty, and Scholars Who Are Citizens of Other Nations.

In the 2015-16 academic year, U.S. universities welcomed more than one million international students.³ Such students now account for more than 5% of enrollment at U.S. institutions of higher learning.⁴

Amici's campuses reflect this trend. Each is home to a large number of international undergraduates, graduate students, faculty, and scholars—including nationals of the six countries affected by the Executive Order. In fall 2016, Columbia University enrolled 1,416 international undergraduates, 16% of Columbia's undergraduate population.⁵ Also last fall, Columbia had 19,549 students enrolled in its graduate and professional schools, of whom 7,571 (38.7%) are non-resident aliens. At Duke, out of 6,449 undergraduate students, 10% are international,

³ Sara Custer, *Open Doors: U.S. Surpasses 1 Million International Students*, The Pie News (Nov. 14, 2016), <https://thepienews.com/news/open-doors-us-surpasses-1-million-international-students/>; see also Molly Land & Kathryn Libal, *Trump is Undermining Higher Education as a Global Enterprise*, The Chronicle of Higher Education (Jan. 31, 2017), <http://www.chronicle.com/article/Trump-Is-Undermining-Higher/239060>.

⁴ Sara Custer, *Open Doors*, *supra*.

⁵ http://www.columbia.edu/cu/opir/abstract/opir_enrollment_ethnicity_1.htm.

and out of 8,383 graduate students, 47% are international.⁶ Princeton's numbers are similar: in the 2016-17 academic year, 640 or 12.2% of Princeton's undergraduates are international, as are 1,168, or 42%, of its graduate students.⁷ So too for the University of Pennsylvania: there, 4,859 international students were enrolled at all levels in fall 2016, including 13% of the incoming freshman class⁸ and more than a quarter of the university's graduate students; 11% of Penn's undergraduate international students are from the Middle East or Africa.⁹ As of October 2016, Stanford University enrolled 4,164 international students, comprising 24% of the student population.¹⁰ In fall 2016, 471 of 3,879, or 12%, of Rice's undergraduates, and 1,133 of 2,891, or 39.6%, of its graduate students, were international students.¹¹ Other *amici*'s enrollment numbers similarly reflect the importance of international students to their campuses.

Amici also benefit from the contributions of international faculty and scholars. At Princeton, an astonishing 343 (or 30%) of 1,152 faculty appointees are

⁶https://visaservices.duke.edu/forms_and_documents/document_files/statistics/scholars/Scholars_OpenDoors2015-2016.pdf; *see also* https://duke.edu/about/duke_at_glance.pdf.

⁷ https://registrar.princeton.edu/university_enrollment_sta/opening_enrollment.pdf.

⁸ <http://www.upenn.edu/about/facts>.

⁹ http://diversity.upenn.edu/diversity_at_penn/facts_figures/;
<http://www.upenn.edu/about/facts>.

¹⁰ <http://facts.stanford.edu/academics/undergraduate-profile>;
<http://facts.stanford.edu/academics/graduate-profile>.

¹¹ http://oir.rice.edu/Factbook/Students/Enrollment/Enrolled_Students/.

international (including 245 lawful permanent residents); 50% of Princeton's academic professionals (550 of 1,102 professional researchers, specialists, librarians, and postdoctoral fellows), and 50% of Princeton's visiting faculty and researchers (221 of 441) are international (including lawful permanent residents). More than 40% of MIT's faculty is international.¹² The University of Chicago counts as international (including lawful permanent residents) 24% of its faculty and other academic appointees, as well as 65% of its postdoctoral researchers and 10% of its staff members. Columbia employs nearly 4,000 full-time faculty, of whom 188 (4.7%) are non-resident aliens.¹³ Almost 1,000 members of Columbia's non-instructional staff, or approximately 8%, are non-resident aliens.¹⁴ At Cornell, 5.1% of faculty are international, as are 26.4% of other academic employees and postdocs.¹⁵ Brown counts more than 3% of its faculty as international.¹⁶ Yale's faculty is 10% international, as is approximately 65% of its postdoctoral research community. Northwestern is home to 1,534 international scholars, in positions from postdoctoral scholars to researchers and faculty.¹⁷ Carnegie Mellon counts a full 14.8% of its faculty as international, with 20 faculty members from the Middle East.

¹² <http://president.mit.edu/speeches-writing/best-serve-nation-and-world>.

¹³ http://www.columbia.edu/cu/opir/abstract/opir_faculty_ethnicity_1.htm.

¹⁴ http://www.columbia.edu/cu/opir/abstract/opir_fulltime_employee_1.htm.

¹⁵ http://irp.dpb.cornell.edu/tableau_visual/diversity-composition-dashboard.

¹⁶ <https://www.brown.edu/about/administration/institutional-diversity/progress-and-data-analysis/data-and-analysis/representation-faculty-color>.

¹⁷ <https://issuu.com/interoff/docs/2016iostatsfinal>.

Emory employs over 2,000 full-time instructional staff, of whom 5% are non-resident aliens; in addition, 34% of Emory's 944 full-time research staff are nonresident aliens. At Duke, 8% of the faculty are international.¹⁸

Amici's international students, faculty, and scholars include persons from the six countries affected by the Executive Order. Princeton has more than 50 students and employees from the six affected countries, and its graduate school received approximately 150 applications for fall 2017 (and more than 700 applications in the past five years) from students from those nations. Brown has more than 20 students and scholars from the countries affected by the Order. Penn has three undergraduate students, 32 graduate and professional students, and two students admitted for fall 2017 from the countries covered by the Order. The University of Chicago has 23 students from Iran, as well as one student from Syria and a recent graduate from Syria who is employed under Optional Practical Training and University sponsorship.¹⁹ Northwestern is home to 45 students and 22 scholars from Iran, as

¹⁸https://visaservices.duke.edu/forms_and_documents/document_files/statistics/scholars/Scholars_OpenDoors2015-2016.pdf.

¹⁹ "Optional Practical Training (OPT) is temporary employment that is directly related to an F-1 student's major area of study." U.S. Customs & Immigration Enforcement, *Optional Practical Training (OPT) for F-1 Students* (last updated Feb. 1, 2017), <https://www.uscis.gov/working-united-states/students-and-exchange-visitors/students-and-employment/optional-practical-training>. Although most students can apply for 12 months of OPT employment authorization before or after completing their academic studies, certain students with degrees in science, technology, engineering, and math ("STEM") fields may apply for a 24-month extension of post-completion OPT. *Id.*

well as two students from Syria, one from Sudan, and one from Yemen. Rice has 44 students and scholars from Iran alone. Carnegie Mellon has 31 students and 10 faculty and scholars from the six affected countries at its U.S. locations. And Duke currently has 37 individuals—enrolled as students or employed as postdoctoral fellows or faculty—from the countries affected by the Order. Harvard University counts 45 students and 63 scholars present on nonimmigrant visas from the six countries named in the Order, along with 77 dependents from those countries, and has admitted 23 students from the six countries for fall 2017. MIT counts 56 degree and non-degree students from the six countries identified in the Order. These are just a few of the universities where students, faculty, and scholars from the six affected countries make invaluable contributions to *amici*'s communities.

Many international students studying at the *amici* universities, and the faculty and scholars teaching and conducting research there, are present on J-1 visas. This longstanding non-immigrant visa program “fosters global understanding through educational and cultural exchanges.”²⁰ Indeed, the State Department’s website expressly instructs J-1 visa recipients to “return to their home country . . . to share their exchange experiences.”²¹ As discussed below, many do—and the U.S. and the

²⁰ <https://j1visa.state.gov/basics/common-questions/>.

²¹ *Id.* The importance of the J-1 Visa Program is underscored by the existence of J-2 visas, which permit “spouses and dependents . . . of J-1 exchange visitors [to] accompany or later join the J-1 holder in the United States.” <https://j1visa.state.gov/basics/j2-visa/>.

world reap wide-ranging benefits from their return, including advances in medicine and science, equal treatment for women and religious minorities, and respect for democracy and the rule of law.

The U.S. offers other types of visas to international students, faculty, and scholars as well. Many students attending full-time degree programs rely on F-1 visas, which allow them to remain in the U.S. for as long as it takes to complete their courses of study.²² In addition, some university faculty, research scholars, and staff hold H-1B visas, which allow U.S. employers to fill gaps in the existing labor force with highly-skilled, temporary workers from other countries.²³ A significant number of researchers are employed through H-1B visas, most notably for positions in technology and the sciences.²⁴ Some universities also use the O-1 Visa Program, which enables professors or researchers with extraordinary demonstrated ability in the arts, sciences, education, business or athletics to enter the U.S. temporarily to work in their specified field.²⁵

²²<https://travel.state.gov/content/visas/en/study-exchange/student.html>;
<https://www.ice.gov/sevis/employment>.

²³ <https://travel.state.gov/content/visas/en/employment/temporary.html>.

²⁴ See, e.g., American Immigration Council, *Fact Sheet: The H-1B Visa Program: A Primer on the Program and Its Impact on Jobs, Wages, and the Economy* (Apr. 1, 2016), <https://www.americanimmigrationcouncil.org/research/h1b-visa-program-fact-sheet> (reporting that “the presence of research universities accounts for H-1B demand” in many metro areas, and that “[n]early two-thirds of requests for H-1B workers are for STEM occupations. There is also high demand for workers in healthcare, business, finance, and life sciences industries.”).

²⁵ <https://travel.state.gov/content/visas/en/employment/temporary.html>.

Through these visa programs, the many international students, faculty, and scholars who make *amici*'s campuses their homes have been thoroughly vetted by the U.S. using existing procedures. As ten former high-ranking national security, foreign policy, and intelligence officials explained, “[s]ince the 9/11 attacks, the United States has developed a rigorous system of security vetting, leveraging the full capabilities of the law enforcement and intelligence communities”; “[t]his vetting is applied to travelers not once, but multiple times.”²⁶ Despite this extensive vetting, the Order bars persons from the six affected countries from prospectively utilizing the visa programs that so enrich *amici*'s campus communities.

B. International Students, Faculty, and Scholars Contribute to *Amici*'s Campuses in a Variety of Ways.

International students, faculty, and scholars make significant contributions to *amici*'s campuses. International diversity benefits *amici* by facilitating regular interactions between individuals from different cultures with varied life experiences: a Muslim student from Iran brings something different to the seminar table than a Jewish professor from the Midwestern U.S. or a Christian graduate student from Western Europe. This diversity promotes the free exchange of ideas, encouraging

²⁶ Joint Decl. of Madeline K. Albright, Avril D. Haines, Michael V. Hayden, John F. Kerry, John E. McLaughlin, Lisa O. Monaco, Michael J. Morell, Janet A. Napolitano, Leon E. Panetta, and Susan E. Rice ¶ 6, *Washington v. Trump*, No. 17-35105 (9th Cir. Feb. 6, 2017), ECF No. 28-2 (hereinafter “Government Officials Declaration”).

individuals to consider issues from different perspectives and giving students and faculty a greater understanding of our global, pluralistic society. Moreover, when individuals from different backgrounds with unique life experiences live and study together on the same campus, this diversity increases understanding of all parts of the world.

It is for these reasons that the Supreme Court has held that universities have a compelling interest in obtaining the “educational benefits that flow from student body diversity.” *Fisher v. Univ. of Texas at Austin*, 133 S. Ct. 2411, 2419 (2013) (quoting *Grutter v. Bollinger*, 539 U.S. 306, 330 (2003)). As this case law makes clear, “[t]he academic mission of a university is a special concern of the First Amendment,” and “[p]art of the business of a university [is] to provide that atmosphere which is most conducive to speculation, experiment, and creation.” *Id.* at 2418 (internal quotation marks omitted). A diverse student body contributes to this atmosphere by fostering “enhanced classroom dialogue” and “lessening . . . isolation and stereotypes.” *Id.* The Supreme Court has thus recognized that to “fulfill[] [their] mission[s],” universities must be able to recruit students (and, by extension, faculty and scholars) who will “contribute the most to the robust exchange of ideas.” *Grutter v. Bollinger*, 539 U.S. 306, 324 (2003) (quoting *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 313 (1978)).

International diversity is uniquely valuable. For many of *amici*'s students, enrollment in the university will be their first exposure to students, faculty, and scholars from other nations or who practice particular religions. Such exposure both in and outside of the classroom enriches students' experiences and teaches them how to collaborate across ethnic and religious differences. Moreover, international students, faculty, and scholars provide insight into the world's current problems and potential solutions. For example, a Syrian student who has lived through the country's ongoing civil war necessarily will have a unique perspective on the causes of that conflict and on how the rest of the world might help alleviate it. These opportunities for cross-cultural understanding are integral to *amici*'s ability to provide some of the best educational programs in the world.

International students, faculty, and scholars also contribute to *amici*'s campuses through their academic interests and achievements. For example, many study, teach, and research in fields that are underpopulated by American-born students, faculty, and scholars, such as the sciences, technology, engineering, and mathematics ("STEM"). By one account, more than one third of international students during the 2015-16 year studied engineering, math or computer science, and 14% participated in F-1 Optional Practical Training, including "many" in STEM fields.²⁷ Continuing to permit international students and faculty to study and work

²⁷ Sara Custer, *Open Doors, supra*.

at *amici* universities is particularly important given the pressing need for scholarship and research in these fields.

C. The Enrollment and Employment of International Students, Faculty, and Scholars at *Amici* Universities Benefit the U.S. and the World.

International students, faculty, and scholars make significant scientific, technological, social, and political contributions to the U.S. and the world, above and beyond the benefits to *amici*'s campus communities.

To begin, international students make significant contributions to the U.S. economy. One estimate provides that international students directly contributed \$32.8 billion to the U.S. economy and supported or contributed to the creation of 400,000 American jobs in the 2015-16 academic year;²⁸ others suggest that international students “inject hundreds of billions into the U.S. economy” and “support[] well over a million U.S. jobs.”²⁹

Those numbers are just the start, as many international students, faculty, and scholars who choose to remain in the U.S. become leading innovators, entrepreneurs, artists, and thought-leaders. One study found that more than one third of U.S. innovators were born outside the country, and another ten percent have at least one

²⁸NAFSA, NAFSA International Student Economic Value Tool, http://www.nafsa.org/Policy_and_Advocacy/Policy_Resources/Policy_Trends_and_Data/NAFSA_International_Student_Economic_Value_Tool/.

²⁹ Government Officials Declaration ¶ 5(g) (“The Order will affect many foreign travelers, particularly students, who annually inject hundreds of billions into the U.S. economy, supporting well over a million U.S. jobs.”).

foreign-born parent.³⁰ Another analysis concluded that “[i]mmigrants have started more than one half (44 of 87) of America’s startup companies valued at \$1 billion or more and are key members of management or product development teams in over 70 percent (62 of 87) of these companies.”³¹ The Brief of Technology Companies and Other Businesses in litigation regarding the predecessor Executive Order conveys the compelling economic contributions of immigrants in this country.³²

The benefits from international students, faculty, and scholars at American universities are not just economic. As noted above, these individuals make significant discoveries and contributions in their fields. Since 2000, forty percent of all American Nobel prize winners in Chemistry, Medicine, and Physics have been immigrants—and in 2016, *all six* American winners of the Nobel Prize in economics and scientific fields were immigrants.³³ These awards “represent great individual

³⁰ See, e.g., Adams Nager, et al., Information Technology & Innovation Found., *The Demographics of Innovation in the United States* (Feb. 24, 2016), <https://itif.org/publications/2016/02/24/demographics-innovation-united-states>.

³¹ Stuart Anderson, Nat’l Found. for American Policy, *Immigrants and Billion Dollar Startups*, <http://nfap.com/wp-content/uploads/2016/03/Immigrants-and-Billion-Dollar-Startups.NFAP-Policy-Brief.March-2016.pdf>.

³² See Brief of Technology Companies and Other Businesses As *Amici Curiae* in Support of Appellees, *Washington v. Trump*, No. 17-35105 (9th Cir. Feb. 5, 2017), ECF No. 19-1.

³³ Stuart Anderson, *Immigrants Flooding America with Nobel Prizes*, Forbes (Oct. 16, 2016, 10:48 AM), <http://www.forbes.com/sites/stuartanderson/2016/10/16/immigrants-flooding-america-with-nobel-prizes/#3de213817f5f>.

achievement but also reflect the state of research, openness and scientific advancement within [American] society.”³⁴

Amici have seen these successes up close. For example, in 2014, Maryam Mirzakhani was the first woman to win the Fields Medal, known as the “Nobel Prize of Mathematics.” Mirzakhani grew up in Iran before earning her Ph.D. at Harvard and becoming a professor at Princeton and then Stanford.³⁵ Professor Muawia Barazangi came to the U.S. from Syria for graduate study after earning his undergraduate degree from the University of Damascus; he earned a Ph.D. from Columbia before joining the faculty at Cornell, where he became a U.S. citizen and had a long and distinguished research and teaching career in the field of Earth Sciences. Syrian-born Dina Katabi, a professor at MIT, came to the U.S. for graduate study at MIT, and has since won a MacArthur “Genius” grant for her work on improving wireless network efficiency and security.³⁶ Carnegie Mellon’s current President, Subra Suresh, is an immigrant (as was its founder, Andrew Carnegie); President Suresh came to the U.S. “at age 21 with a partially filled suitcase, less than

³⁴ *Id.*

³⁵ See Katie Rose Qunadt, *Meet the First Woman to Win the “Nobel Prize of Mathematics,”* Mother Jones (Aug. 14, 2014, 12:29 PM), <http://m.motherjones.com/mixed-media/2014/08/maryam-mirzakhani-first-woman-fields-medal-mathematics>.

³⁶ Larry Hardesty, *Signal Intelligence*, MIT Tech. Rev. (Oct. 20, 2015), <https://www.technologyreview.com/s/542131/signal-intelligence/>.

\$100 in cash, and a one-way airplane ticket purchased with a loan.”³⁷ President Suresh went on to study at several U.S. universities, to join the faculty at Brown and the Massachusetts Institute of Technology, and, before joining Carnegie Mellon, to be nominated by the President and unanimously confirmed by the Senate as the Director of the National Science Foundation.³⁸

The education of international students at leading American universities, as well as their employment of international faculty and researchers, also provide opportunities for those individuals to experience life in the U.S. and to gain a greater appreciation for American social, political, and cultural norms and ideas. These include democratic governance, respect for the rule of law and human rights, and tolerance of cultural, religious, and other differences. These individuals return to their home countries with a deeper understanding of and appreciation for the U.S. and its values—and, hopefully, a greater desire to engage in continuing discourse and exchange with the U.S. International students, faculty, and scholars also return to their home countries with the tools necessary to improve conditions on the ground, such as through public health initiatives and good governance. This, in turn,

³⁷ <http://www.cmu.edu/leadership/president-suresh/campus-comms/2017/2017-01-31.html>.

³⁸ *Id.*; see <http://www.cmu.edu/leadership/president-suresh/bio/index.html>.

promotes the economies of developing nations, and may help to stymie radicalization.³⁹

Some international students, faculty, and scholars, including many of *amici*'s alumni, become leaders in their home countries. Yale counts among its distinguished alumni many foreign leaders, including Valdis Zatlers, President of Latvia; Abd al-Karim al-Iryani, former Prime Minister of the Republic of Yemen; and Ernesto Zedillo, former President of Mexico. Alumni from MIT include Benjamin Netanyahu, Prime Minister of Israel; Kofi Annan, former Secretary-General of the United Nations; and Lucas Papademos, former Prime Minister of Greece. Likewise, Pedro Kuczynski, President of Peru, attended Princeton. Dartmouth's alumni include Kul Gautam, a citizen of Nepal and the former Assistant Secretary General of the United Nations; Paavo Lipponen, former Prime Minister of Finland; and Gordon Campbell, former Premier of British Columbia. And Georgetown counts among its alumni Abdullah II bin al-Hussein, the King of Jordan; Felipe VI, the King of Spain; Gloria Macapagal Arroyo, former President of the Philippines and a current member of the Philippines House of Representatives; José Manuel Barroso, former President of the European Commission and former

³⁹ See, e.g., Omer Taspinar, *The Problem With Radicalism*, 19 Cairo Rev. 76, 80 (2015) (noting that “[a]n agenda based on human development with equal emphasis on education reform, democratic reforms, and socioeconomic advancement can address the ideological as well as economic root causes of radicalization.”), <https://www.thecairoreview.com/wp-content/uploads/2015/10/CR19-Taspinar.pdf>.

Prime Minister of Portugal; Laura Chinchilla, former President of Costa Rica; Saad Hariri, former Prime Minister of Lebanon; Nasser Judeh, former Deputy Prime Minister and Minister of Foreign Affairs of Jordan; and Željko Komšić, former Tripartite President of Bosnia, among many other foreign leaders.

D. *Amici* Endeavor to Attract the Best Students, Faculty, and Scholars from around the World.

Given the significant contributions of international students, faculty, and scholars, *amici* are firmly committed to attracting the most exceptional individuals from all nations. To this end, *amici* are home to many globally-focused programs and centers, and engage in significant international outreach and recruiting. For these endeavors to succeed, however, *amici* must be able to assure current and prospective international students, faculty, and scholars that once they have been cleared through standard vetting procedures, they may enter the U.S. to pursue freely their studies and scholarship.

Amici have invested significant time and resources to attract international students, faculty, and scholars. For example, *amici* have established many programs and centers focused on specific subject matter areas like archaeology and the ancient world, including the Joukowsky Institute for Archaeology and the Ancient World at Brown⁴⁰ and the University of Chicago's Oriental Institute for the study of ancient

⁴⁰ https://brown.edu/Departments/Joukowsky_Institute/.

Near Eastern civilizations;⁴¹ schools dedicated to international relations like the School of International and Public Affairs at Columbia;⁴² residential communities focusing on cross-cultural collaboration like the Global Village at Dartmouth;⁴³ and centers that serve as the focal point for international students, faculty, and scholars, like the Davis International Center,⁴⁴ Mamdouha S. Bobst Center for Peace and Justice,⁴⁵ and Princeton Institute for International and Regional Studies⁴⁶ at Princeton, the Bechtel International Center at Stanford,⁴⁷ the McDonnell International Scholars Academy at Washington University,⁴⁸ and the World Fellows Program, Jackson Institute for Global Affairs, and MacMillan Center for International and Area Studies at Yale.⁴⁹ Other programs focus on educating foreign ministers, including those from the six countries affected by the Executive Order. For example, Harvard Kennedy School (“HKS”) and Harvard’s T.H. Chan School of Public Health offer an annual Harvard Ministerial Leadership Program, in which ten to twelve “serving education, health, and finance ministers from Africa,

⁴¹ <https://oi.uchicago.edu/research>.

⁴² <https://sipa.columbia.edu>.

⁴³ <http://global.dartmouth.edu/global-learning/global-village>.

⁴⁴ <http://www.princeton.edu/intlctr/davis-ic-home/about-davis-ic/>.

⁴⁵ <http://bobstcenter.princeton.edu/>.

⁴⁶ <http://piirs.princeton.edu/>.

⁴⁷ <https://bechtel.stanford.edu/>.

⁴⁸ <https://global.wustl.edu/mcdonnell-academy/>.

⁴⁹ <http://macmillan.yale.edu/about>; <http://worldfellows.yale.edu/>;
<http://jackson.yale.edu/>.

Southeast Asia, and Latin America” are invited to a rigorous summer course in Cambridge for leadership enhancement.⁵⁰

These centers, programs, and offerings all depend on the ability of international students, scholars, and faculty to travel freely to *amici*’s campuses. Without that ability, these individuals cannot fully benefit from the programs *amici* provide. *Amici*’s ability to fully accomplish their educational missions thus necessarily depends on American immigration and visa policies.

II. The Executive Order Harms Students, Faculty, Scholars, and Universities.

The Executive Order has serious and chilling implications for *amici*’s students, faculty, and scholars. By prohibiting entry by persons from the six affected countries, the Order divides current students and their families, impairs the ability of American universities to draw the finest international talent, and inhibits the free exchange of ideas. *See Washington v. Trump*, 847 F.3d 1151, 1168-69 (9th Cir. 2017) (referring to these effects as “substantial injuries” with respect to the predecessor Executive Order). Because of these effects, the Order and its predecessor have drawn staggering opposition from the academic world. More than 43,000 scholars—including 62 Nobel Laureates, 521 Members of the National Academies of Sciences, Engineering, and Arts, and 146 recipients of prestigious

⁵⁰ <https://ministerialleadership.harvard.edu/the-program/>.

awards like the Fields Medal and Pulitzer Prize—explained their opposition to the predecessor Order:

The EO significantly damages American leadership in higher education and research. US research institutes host a significant number of researchers from the nations subjected to the upcoming restrictions. From Iran alone, more than 3000 students have received PhDs from American universities in the past 3 years. The proposed EO limits collaborations with researchers from these nations by restricting entry of these researchers to the US and can potentially lead to departure of many talented individuals who are current and future researchers and entrepreneurs in the US. We strongly believe the immediate and long term consequences of this EO do not serve our national interests.⁵¹

It is imperative to *amici* that the Court consider these and other detrimental effects of the Order.

First, the Executive Order hurts American universities by prohibiting or deterring international students, faculty, and scholars from studying here. *Amici*, like other American universities, aim to attract the brightest, most talented students, faculty, and scholars from around the globe. The Order hampers *amici*'s ability to do so by arbitrarily excluding persons from six majority-Muslim countries and contemplating further categorical entry bans based on national origin. The exclusion of those persons diminishes the experience of studying at *amici* universities for everyone, and inevitably will deter persons from countries other than the six identified in the Order from wanting to study or work here.

⁵¹ *Academics Against Immigration Executive Order*, <https://notoimmigrationban.com/> (last visited Mar. 30, 2017).

Reducing the international presence on *amici*'s campuses will diminish the academic experience in this country. As discussed *supra*, the benefits of international diversity to American universities are manifold. And it is not merely the classroom experience that will suffer. American laboratories, which are a major driver of our economy, depend on their ability to attract the best trainees and postdoctoral fellows from around the world, as well as their collaborations with foreign scientists in areas of science that have no defense or security implications. The Order diminishes *amici*'s ability to attract these scientists, who will otherwise go to foreign laboratories.

Indeed, international universities have noted this effect and issued statements criticizing the Executive Order and its predecessor and touting their own opportunities for international students and scholars.⁵² Regarding the prior Executive Order, the Vice-Chancellor of the University of Cambridge, UK stated: "While we acknowledge that a country must have the right to manage its own borders, this ban is fundamentally at odds with the values of openness, tolerance and evidence-based decision-making that the University of Cambridge stands for."⁵³ He added: "We are determined to champion openness, and the free exchange of

⁵² Chris Parr, *Response: international universities speak out against Trump ban*, The Times Higher Education (Jan. 31, 2017), <https://www.timeshighereducation.com/blog/response-international-universities-speak-out-against-trump-ban>.

⁵³ *Id.*

knowledge across borders. Even as governments around the world seek to curb freedom of movement, the University of Cambridge remains committed to welcoming the best and brightest students and staff – irrespective of their nationality.”⁵⁴

Amici are already experiencing these effects. The Executive Order’s ban on entry falls at a critical time for *amici*. Many admissions letters for fall 2017 have been sent out in recent months, and prospective international students have a short window (often closing on May 1, 2017) to decide whether to attend a U.S. college or university. Faced with the prospect that, given the Order, they may not be able to obtain visas before the fall semester begins, many of these students may choose to enroll in universities in other countries, rather than pursue their education in the U.S. Thus, contrary to the Government’s suggestion, *see* Gov’t Br. 22–23, the effect of the Order on prospective international students is not speculative. Moreover, these difficulties affect not only prospective students, but also faculty and scholars.

For example, an accepted student at Yale’s School of Management from Iran is now rethinking his options because of the uncertainty the Executive Order has created. Similarly, Yale’s MacMillan Center Council on Middle East Studies and its Program on Iranian Studies are currently conducting searches for post-doctoral fellows and visiting scholars, with the most promising candidates being Iranian

⁵⁴ *Id.*

nationals who are currently abroad. The uncertainty of securing visas will affect acceptances of offers. The University of Pennsylvania has similar concerns, with three faculty recruits whose opportunities may be eliminated by the Order. Princeton and MIT, too, have received numerous inquiries from academic departments about how to handle the questions and concerns of faculty and scholar recruits who have expressed hesitance about coming to the U.S. in light of the Order. Notably, a postdoctoral fellow from Iran who had been hired to work in a Princeton professor's lab was prevented from entering the country after the predecessor Order took effect.

Second, the Executive Order harms the current members of *amici*'s campuses from the six affected countries. Even if this Order does not prematurely cancel their visas like its predecessor did, the current Order still separates members of *amici*'s communities from their family members living abroad. For instance, the spouses and children of scholars and researchers at *amici* universities may be unable to enter the U.S. even for a short-term visit, creating a traumatic separation as a result of a person's decision to study and work here. Furthermore, given the arguments made to justify the Order, the review of other countries directed by the Order, and the possibility that other countries will be added to the Order's scope, students, faculty, and scholars from countries affected by the Order and from many others are now hesitant to leave the U.S., because they fear their re-entry may be barred or made more difficult by immigration authorities. As a result, these individuals are deterred

from conducting field research, attending academic conferences, or participating in international meetings in foreign nations; for some, the hesitance to travel will force them to set aside projects that simply cannot be completed without travel abroad. The Order also takes a personal toll because they must cancel any plans to visit family and friends abroad: fly home to attend the wedding or funeral of a family member, and one risks the loss of one's visa, separation from family and friends here in the U.S., and the loss of a job, an academic degree, and years of hard work and research.

Third, the Executive Order will impede successful academic collaboration in the U.S. American universities host thousands of conferences and symposia each year. These academic meetings are incubators for innovation and thrive on the free flow of information and ideas. By hosting these events, *amici* ensure that their scholars participate in them. Such collaborations are essential to addressing problems that are global in scope, such as geopolitical conflict, terrorism, and the spread of communicable diseases.

The Executive Order threatens the success of these efforts both by prohibiting certain academics from traveling to the U.S. and by risking a backlash from others who are not subject to the ban. Indeed, international universities have observed that the Order and its predecessor will impede collaborative partnerships with American

universities.⁵⁵ And these effects are already being felt. For example, the University of Pennsylvania had planned to invite three Iranian human rights activists to a conference in March, but with the Order in effect, their participation would be barred. Similarly, a faculty member at Dartmouth planning a conference for next fall has expressed concern that participants may not be able or willing to travel to the U.S., and one keynote speaker has wondered whether it “sends the wrong message” to attend a conference in the U.S. at this time. Participants in a conference at the Harvard Center for Middle Eastern Studies are voluntarily withdrawing due to current U.S. immigration policies or perceptions thereof. The Sharmin & Bijan Mossavar-Rahmani Center for Iran and Persian Gulf Studies at Princeton expressly aims to advance understanding of Iran and the Persian Gulf; if the Center cannot

⁵⁵ Parr, *supra* (quoting the President of McMaster University, Canada, as stating “This is a misguided and harmful step that is unnecessarily disruptive for students, faculty members and other partners. . . . As an internationally engaged research intensive university, this abrupt change in policy has a chilling impact on individual scholars and their families, and on the important relationships we have carefully built over the years. Our collaborative partnerships allow us to forge important research and educational programs and activities, which are threatened by arbitrary measures such as the one announced last week.”); *id.* (quoting the Vice-Chancellor of the University of Exeter, UK, as stating, “At Exeter, we collaborate widely with institutions abroad, including in the United States, and we cannot condone a policy that restricts these freedoms, curtails intellectual partnerships or impedes research. . . . We will continue to be a collaborative and diverse community that welcomes people from around the world, regardless of their nationality, and will be actively supporting any staff and students who are affected by the ban.”).

invite Iranian guest speakers, the Center obviously will be impeded in serving its mission.

What is more, faculty members from around the world already have called for a boycott of academic conferences in the U.S. in response to the Executive Order and its predecessor.⁵⁶ A petition circulating online has drawn thousands of signatures from scholars in the U.S. and abroad pledging not to attend international conferences in the U.S. while the travel ban persists; it continues to garner new signatures under the revised Order.⁵⁷ Thus, the Order threatens collaboration well beyond scholars from and institutions in the six affected countries.

Academic conferences and meetings facilitate major breakthroughs and discoveries, candid discussion and debate, and face-to-face meetings that generate future collaborations and partnerships. Excluding scholars from the six affected countries—and other scholars who choose not to participate because of the

⁵⁶ See Shannon Najmabadi, *Academics Mull Boycott of U.S. Conferences as a Way of Fighting Travel Ban*, *The Chronicle of Higher Education* (Jan. 30, 2017), http://www.chronicle.com/article/Academics-Mull-Boycott-of-US/239047?cid=pm&utm_source=pm&utm_medium=en&elqTrackId=e9a82fa115e24765bc019b2dfc9d480e&elq=ef21be06f46043e287aeedd6a611eb6e&elqaid=12357&elqat=1&elqCampaignId=5023; Elizabeth Redden, *Boycotting the U.S.*, *Inside Higher Ed* (Jan. 31, 2017), <https://www.insidehighered.com/news/2017/01/31/protest-trump-entry-ban-some-scholars-areboycotting-us-based-conferences>.

⁵⁷https://docs.google.com/forms/d/e/1FAIpQLSeNN_2HHREt1h-dm_CgWpFHw8NDPGLCkOwB4ILRFtKFJqI25w/viewform?c=0&w=1&fbzx=2104368019732744200 (last visited Mar. 30, 2017).

Executive Order—will hamper the success of these collaborations. Moreover, American universities, students, and faculty will inevitably suffer when these meetings are shifted outside the U.S. to avoid the Order’s effects.

Finally, as *amici* have explained, they strive to foster a culture of diversity, inclusion, and tolerance on their campuses. *Supra* Part I. The Executive Order undercuts those important efforts by making many of *amici*’s students, faculty, and scholars feel “less than,” and signaling, from the highest levels of government, that discrimination is not only acceptable but appropriate. Rather than securing American universities, this thwarts *amici*’s ability to foster a diverse environment in which individuals feel comfortable contributing to a robust exchange of ideas.

CONCLUSION

Amici take extremely seriously the safety and security of their campuses and the nation: if *amici*’s campuses were not safe, or the towns and cities in which they are located were not secure, *amici* could not maintain their world-renowned learning environments. *Amici*, however, believe that safety and security concerns can be addressed in a manner that is consistent with the values America has always stood for, including the free flow of ideas across borders and the welcoming of immigrants to our universities. As this Court recently explained, although ““the Government’s interest in combating terrorism is an urgent objective of the highest order,”” the Government must do “more than reiterate that fact.” *Trump*, 847 F.3d at 1168

(quoting *Holder v. Humanitarian Law Project*, 561 U.S. 1, 28 (2010)). Despite that ruling, the second Executive Order falls far short of justifying the ban on individuals from the specified countries. Given this, and given the significant burdens the Order inflicts on *amici*'s current and potential students, faculty, and scholars, as well as the substantial impediments it poses to *amici*'s ability to fulfill their educational missions, *amici* support Appellees on the merits of the government's appeal regarding the district court's preliminary injunction.

Dated: April 20, 2017

Respectfully submitted,

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Counsel for *amici curiae* certifies that this brief contains 6,483 words, based on the “Word Count” feature of Microsoft Word 2016. Pursuant to Federal Rule of Appellate Procedure 32(a)(7)(B)(iii), this word count does not include the words contained in the Corporate Disclosure Statement, Table of Contents, Table of Authorities, and Certificates of Counsel. Counsel also certifies that this document has been prepared in a proportionally spaced typeface using 14-point Times New Roman in Microsoft Word 2016.

Dated: April 20, 2017

By: /s/ Lindsay C. Harrison
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