No. 17-965

# In the Supreme Court of the United States

DONALD J. TRUMP, *ET AL.*, Petitioners,

*v.*

STATE OF HAWAII, *ET AL.*, Respondents.

*ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT*

## BRIEF OF *AMICUS CURIAE* AMERICAN CENTER FOR LAW AND JUSTICE IN SUPPORT OF PETITIONERS AND URGING REVERSAL


EDWARD L. WHITE III
ERIK M. ZIMMERMAN
AMERICAN CENTER FOR LAW AND JUSTICE
3001 Plymouth Rd., Ste. 203
Ann Arbor, MI 48105

FRANCIS J. MANION
GEOFFREY R. SURTEES
AMERICAN CENTER FOR LAW AND JUSTICE
6375 New Hope Rd.
New Hope, KY 40052

JAY ALAN SEKULOW
*Counsel of Record*
STUART J. ROTH
COLBY M. MAY
ANDREW J. EKONOMOU
JORDAN SEKULOW
CRAIG L. PARSHALL
MATTHEW R. CLARK
BENJAMIN P. SISNEY
AMERICAN CENTER FOR LAW AND JUSTICE
201 Maryland Ave., NE
Washington, DC 20002
Tel.: 202-546-8890
Email: sekulow@aclj.org

*Counsel for amicus curiae*


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## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

### Supreme Court Cases

**Other Cases**

**Constitutions, Statutes, Executive Orders, and Regulations**



**Other Authorities**

## *AMICUS CURIAE* BRIEF IN SUPPORT OF PETITIONERS AND URGING REVERSAL OF THE DECISION BELOW AND VACATION OF THE PRELIMINARY INJUNCTION

In this brief, *amicus curiae*, the American Center for Law and Justice ("ACLJ"), addresses the President's broad discretion over immigration matters and demonstrates how the Proclamation challenged in this case does not violate the Establishment Clause. Counsel for the parties consent to the filing of this brief.[1]

## STATEMENT OF INTEREST

The ACLJ is an organization dedicated to the defense of constitutional liberties secured by law. Counsel for the ACLJ have presented oral argument, represented parties, and submitted *amicus curiae* briefs before this Court and other courts around the country in cases involving the Establishment Clause and immigration law. *See, e.g.*, *Trump v. Hawaii*, No. 16-1540, 2017 U.S. LEXIS 4322 (U.S. July 19, 2017); *Trump v. Int'l Refugee Assistance Project*, 137 S. Ct. 2080 (2017); *United States v. Texas*, 136 S. Ct. 2271 (2016); *Pleasant Grove City v. Summum*, 555 U.S. 460 (2009); *FEC v. Wis. Right to Life*, 551 U.S. 449 (2007); *McConnell v. FEC*, 540 U.S. 93 (2003); *Lamb's Chapel v. Ctr. Moriches Union Free Sch.*

[1] No counsel for any party authored this brief in whole or in part, and no entity or person, aside from *amicus curiae*, its members, and its counsel, made any monetary contribution toward the preparation or submission of this brief.

*Dist.*, 508 U.S. 384 (1993); *Bd. of Educ. v. Mergens*, 496 U.S. 226 (1990); *Washington v. Trump*, 847 F.3d 1151 (9th Cir. 2017); *Int'l Refugee Assistance Project v. Trump*, 857 F.3d 554 (4th Cir. 2017).

The ACLJ has actively defended, through advocacy and litigation, common sense immigration-related policies that protect American citizens. This brief is supported by members of the ACLJ's Committee to Defend Our National Security from Terror. The Committee represents more than 280,000 Americans who support the President's efforts to protect our national security, which are at issue in this case.

## SUMMARY OF THE ARGUMENT

The federal government's primary job is to keep this nation safe. The Presidential Proclamation at issue here is designed to do just that. *See* Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats, Proclamation No. 9645, 82 Fed. Reg. 45,161 (Sept. 27, 2017) ("Procl.").

As directed by the President, the Department of Homeland Security ("DHS"), the Department of State, and the Office of the Director of National Intelligence conducted a thorough review to determine which foreign governments provide sufficient information to allow for proper screening of aliens seeking entry into the United States and, also, which countries are known or potential terrorist safe havens. After DHS identified 16 countries having

significant risk factors and/or inadequate information-sharing practices, in addition to 31 other countries posing similar security concerns, the State Department engaged in discussions with numerous governments concerning these issues, and many countries made substantial improvements.

DHS then recommended entry restrictions for certain nationals of eight countries: Chad, Iran, Libya, North Korea, Somalia, Syria, Venezuela, and Yemen. The President subsequently issued the Proclamation, which suspended entry into the United States of some foreign nationals from these eight countries (subject to waivers and certain exceptions).

The district court below entered a nationwide injunction barring enforcement of the Proclamation, except as to aliens from two countries. The United States Court of Appeals for the Ninth Circuit affirmed except with respect to persons who lack a credible claim of a bona fide relationship with a person or entity in the United States.[2]

The Proclamation is valid and should be upheld in its entirety. Under the Constitution and federal statutes, the President has broad power to exclude aliens from this country for national security

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[2] This Court stayed the injunctions against the Proclamation imposed by the Hawaii and Maryland federal courts and has allowed the Proclamation to go into effect pending the outcome of the litigation. *Trump v. Hawaii*, No. 17A550, 2017 U.S. LEXIS 7357 (U.S. Dec. 7, 2017); *Trump v. Int'l Refugee Assistance Project*, No. 17A560, 2017 U.S. LEXIS 7358 (U.S. Dec. 4, 2017).

reasons. Courts generally defer to the exercise of the President's power in this area (for good reason), which is what the lower courts should have done here. The Proclamation is a valid exercise of executive authority that should be upheld.

Moreover, suggestions of possible religious or anti-religious motives, mined from past comments of a political candidate or his supporters uttered on the campaign trail as private citizens, is not enough to defeat the Proclamation. Even under *Lemon*'s purpose prong (which should not apply in this case), all that is needed to establish the constitutionality of a government action is that it has *a* secular purpose and was not motivated *wholly* by religious or anti-religious considerations. The Proclamation clearly serves a genuine secular purpose—protecting our national security—and is not motivated by anti-religious considerations.

The decision below should be reversed and the preliminary injunction vacated to permit the Proclamation to be enforced in full to protect our nation from foreign terrorists.

## ARGUMENT

### I. The Proclamation meets the deferential standards applicable to the immigration policymaking and enforcement decisions of the political branches.

This case involves the special context of a proclamation, enacted pursuant to the President's constitutional and statutory authority, that limits

entry into the United States of certain nationals of eight countries that raise significant national security concerns due to their practice of being terrorist safe havens and/or their inadequate information-sharing practices. Procl. § 1.

When this Court has considered constitutional challenges to immigration-related actions of this sort, it has declined to subject those actions to the same level of scrutiny applied to non-immigration-related actions, choosing instead to take a considerably more deferential approach. That is what the lower courts should have done here.

### A. Judicial review of the immigration-related actions of the political branches is deferential.

This Court has "long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control." *Fiallo v. Bell*, 430 U.S. 787, 792 (1977) (quoting *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 210 (1953)). Indeed, "an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative." *Landon v. Plasencia*, 459 U.S. 21, 32 (1982). Moreover, the Constitution "is not a suicide pact," *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 160 (1963), and the President has broad national security powers that may be exercised through immigration restrictions. *See Harisiades v. Shaughnessy*, 342 U.S. 580, 588–89 (1952).

Not only do the decisions below undermine the President's national security authority, they also undercut the considered judgment of Congress (in bolstering the President's broad discretion) that

> [*w*]*henever the President finds* that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, *he may* by proclamation, and for such period *as he shall deem necessary*, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions *he may deem to be appropriate*.

8 U.S.C. § 1182(f) (2012) (emphasis added).

Where, as here, the President's action is authorized by Congress, "his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate." *Zivotofsky ex rel. Zivotofsky v. Kerry*, 135 S. Ct. 2076, 2085–84 (2015) (quoting *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635 (1952) (Frankfurter, J., concurring)). The Proclamation falls squarely within the President's constitutional and statutory authority and should be upheld in full. As this Court recently noted,

> [n]ational-security policy is the prerogative of the Congress and President. Judicial inquiry into the national-security realm raises concerns for the separation of powers in trenching on matters committed to other branches. . . . For these and other reasons, courts have shown [that] deference

> to what the Executive Branch has determined . . . is essential to national security. Indeed, courts traditionally have been reluctant to intrude upon the authority of the Executive in military and national security affairs unless Congress specifically has provided otherwise. Congress has not provided otherwise here.

*Ziglar v. Abbasi*, 137 S. Ct. 1843, 1861 (2017) (citation and internal quotation marks omitted).

### B. The Proclamation is constitutional under this Court's deferential standards applicable to challenges to the political branches' immigration-related actions.

In *Kleindienst v. Mandel*, 408 U.S. 753, 770 (1972), the Court rejected a First Amendment challenge to the Attorney General's decision to decline to grant a waiver that would have allowed a Belgian scholar to enter the country on a visa in order to speak to American professors and students. The Court held that "the power to exclude aliens is 'inherent in sovereignty, necessary for maintaining normal international relations and defending the country against foreign encroachments and dangers—a power to be exercised exclusively by the political branches of government.'" *Id.* at 765 (citations omitted). The Court concluded by stating that

> plenary congressional power to make policies and rules for exclusion of aliens has long been firmly established. In the case of an alien excludable under § 212(a)(28), Congress has delegated

> conditional exercise of this power to the Executive. We hold that when the Executive exercises this power negatively on the basis of a facially legitimate and bona fide reason, the courts will neither look behind the exercise of that discretion, nor test it by balancing its justification against the First Amendment interests of those who seek personal communication with the applicant.

*Id.* at 769–70; *see also Kerry v. Din*, 135 S. Ct. 2128, 2139–41 (2015) (Kennedy, J., concurring) (the government's statement that a visa application was denied due to suspected involvement with terrorist activities "satisf[ied] *Mandel*'s 'facially legitimate and bona fide' standard").

Similarly, in *Fiallo*, this Court rejected a challenge to statutory provisions that granted preferred immigration status to most aliens who are the children or parents of United States citizens or lawful permanent residents, except for illegitimate children seeking that status by virtue of their biological fathers, and the fathers themselves. 430 U.S. at 788–90. The Court stated:

> At the outset, it is important to underscore the limited scope of judicial inquiry into immigration legislation. This Court has repeatedly emphasized that "over no conceivable subject is the legislative power of Congress more complete than it is over" the admission of aliens.

*Id.* at 792 (citation omitted).

The Court noted that it had previously "resolved similar challenges to immigration legislation based on other constitutional rights of citizens, and has rejected the suggestion that more searching judicial scrutiny is required." *Id.* at 794. Additionally, the Court stated, "[w]e can see no reason to review the broad congressional policy choice at issue here under a more exacting standard than was applied in *Kleindienst v. Mandel*, a First Amendment case." *Id.* at 795. Furthermore, the Court emphasized that "it is not the judicial role in cases of this sort to probe and test the justifications for the legislative decision," *id.* at 799, and concluded that the plaintiffs raised "policy questions entrusted exclusively to the political branches of our Government." *Id.* at 798.

The legality of proclamations or executive orders related to immigration does not turn on a judicial guessing game of what the President's subjective motives were at the time the order was issued. Instead, *Mandel*, *Fiallo*, and other cases dictate that courts should rarely look past the face of such orders. *See Int'l Refugee Assistance Project v. Trump*, No. 17-2231, 2018 U.S. App. LEXIS 3513 at *320-35, 353-60 (4th Cir. Feb. 15, 2018) (en banc) (Niemeyer, J., dissenting) (noting that this Court's cases counsel against looking behind the text of the Proclamation); *Washington v. Trump*, 853 F.3d 933, 939 n.6 (9th Cir. 2017) (Bybee, J., dissenting from denial of reconsideration en banc) (the panel's "unreasoned assumption that courts should simply plop Establishment Clause cases from the domestic context over to the foreign affairs context ignores the realities of our world").

The Proclamation is closely tethered to well-established discretionary powers vested in the Executive Branch by the Constitution and statute. The global review conducted by DHS, the Department of State, and the Office of the Director of National Intelligence was comprehensive. Their determination of which foreign governments provide sufficient information to allow for proper screening of aliens seeking entry into the United States, and also which countries are known or potential terrorist safe havens—which the President relied upon in issuing the Proclamation—must be afforded significant deference.

Such deference is particularly critical where, as here, it involves "the evaluation of the facts by the Executive" regarding the risks to the American homeland from terrorism, as that implicates "sensitive and weighty interests of national security and foreign affairs." *See Holder v. Humanitarian Law Project*, 561 U.S. 1, 33-34 (2010) (broadly outlawing the provision of material support to foreign terrorist organizations was upheld against claim of First Amendment violation). This Court has noted that "'neither the Members of this Court nor most federal judges begin the day with briefings that may describe new and serious threats to our Nation and its people.'" *Id.* at 34 (quoting *Boumediene v. Bush*, 553 U.S. 723, 797 (2008)). Furthermore, "demanding hard proof—with 'detail,' 'specific facts,' and 'specific evidence' [delineating the risk of terror attacks] . . . would be a dangerous requirement. In this context, conclusions must often be based on informed judgment rather than concrete evidence. . . ." *Id.* at 34-35.

Notably, the Proclamation does *not* single out Muslims for disfavored treatment. The countless millions of non-American Muslims who live outside the eight countries of particular concern are not restricted by the Proclamation. Neither does the Proclamation limit its application to Muslims in the designated countries; instead, it applies irrespective of an individual's religion. There is ample justification for the determination of multiple administrations that the designated countries pose a particular risk to American national security. Respondents' objection to the Proclamation is a policy dispute that should be resolved by petitioning the political branches, not by asking the federal courts to overturn the reasoned decision-making of the political branches.

The Proclamation is similar in some respects to the National Security Entry Exit Registration System ("NSEERS") implemented after the terrorist attacks of September 11, 2001, which was upheld by numerous federal courts. *Rajah v. Mukasey*, 544 F.3d 427, 438–39 (2d Cir. 2008) (citing cases). Under this system, the Attorney General imposed special requirements upon foreign nationals present in the United States who were from specified countries. A total of twenty-four Muslim majority countries and North Korea were eventually designated. *Id.* at 433 n.3.

In one illustrative NSEERS case, the United States Court of Appeals for the Second Circuit rejected arguments that are strikingly similar to the arguments offered by Respondents here:

> There was a rational national security basis for the Program. The terrorist attacks on September 11, 2001 *were facilitated by the lax enforcement of immigration laws*. The Program was [rationally] designed to monitor more closely aliens from *certain countries selected on the basis of national security criteria*. . . .
>
> To be sure, the Program did select countries that were, with the exception of North Korea, predominantly Muslim. . . . However, one major threat of terrorist attacks comes from radical Islamic groups. The September 11 attacks were facilitated by violations of immigration laws by aliens from predominantly Muslim nations. The Program was clearly tailored to those facts. . . . The program did not target only Muslims: non-Muslims from the designated countries were subject to registration. There is therefore no basis for petitioners' claim.

*Id.* at 438–49 (emphasis added) (citation omitted). Similarly, the Proclamation at issue here is constitutional.

## II. The Proclamation is constitutional even under a traditional Establishment Clause analysis.

As noted previously, consideration of the Proclamation must take into account the deferential nature of judicial review of immigration-related actions. Nevertheless, the Proclamation is constitutional even under traditional Establishment Clause jurisprudence, something this Court has

never applied "to matters of national security, foreign affairs, and immigration. . . ." *Int'l Refugee Assistance Project*, No. 17-2231, 2018 U.S. App. LEXIS 3513 at *360 (Niemeyer, J., dissenting).

Assuming the "purpose prong" of the *Lemon v. Kurtzman*, 403 U.S. 602 (1971), test applies, the Proclamation clearly satisfies it.[3] The Proclamation's predominant purpose is its stated objective, namely, protecting national security, and, therefore, the government action here has a "secular legislative purpose." *Id.* at 612–13.

Those who oppose the Proclamation sidestep its obvious secular purposes by focusing primarily on miscellaneous comments made by then-candidate Trump, or his campaign advisors, despite the subsequent well-founded statements provided by the Trump Administration concerning its efforts to protect this country from the entry of foreign terrorists. This approach is flawed for at least four reasons.

First, this Court has stated that the primary purpose inquiry concerning statutes may include consideration of the "plain meaning of the statute's

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[3] The suggestion that the Proclamation should be reviewed under *Lemon*'s purpose prong is particularly troubling given the flawed and inconsistent nature of the test. *See* Jay A. Sekulow & Erik M. Zimmerman, *Posting the Ten Commandments is a "Law Respecting an Establishment of Religion"?: How* McCreary County v. ACLU *Illustrates the Need to Reexamine the* Lemon *Test and Its Purpose Prong*, 23 T.M. Cooley L. Rev. 25 (2006) (discussing the irrational and inconsistent results produced by application of the *Lemon* test, especially the purpose prong).

words, enlightened by their context and the contemporaneous legislative history [and] the historical context of the statute, . . . and the specific sequence of events leading to [its] passage." *McCreary Cnty. v. ACLU of Ky.*, 545 U.S. 844, 862 (2005) (citation and internal quotation marks omitted); *see also id.* (noting that the primary purpose inquiry is limited to consideration of "the 'text, legislative history, and implementation of the statute,' or comparable *official act*") (citation omitted and emphasis added).

Respondents rely upon several quotes, made as long ago as 2015, by then-candidate Trump and/or individuals holding some non-governmental position within his political campaign. Clearly, comments made, or actions taken, by a private citizen while a candidate for public office (or his or her advisors) *while on the campaign trail* are not "official" *government* acts, and do not constitute "*contemporaneous* legislative history." *Id.* at 862; *cf. Clinton v. Jones*, 520 U.S. 681, 686 (1997) (alleged misconduct occurring before Bill Clinton became President was not an "official" act).

Indeed, "one would be naive not to recognize that campaign promises are—by long democratic tradition—the least binding form of human commitment." *Republican Party of Minn. v. White*, 536 U.S. 765, 780 (2002). This Court should limit its inquiry to *official* acts or statements in conducting its Establishment Clause analysis. Presidential campaign rhetoric is inherently unofficial and unreliable and should not be considered. *See Int'l Refugee Assistance Project*, No. 17-2231, 2018 U.S.

App. LEXIS 3513 at *357 (Niemeyer, J., dissenting) (noting that this Court "has never, 'in evaluating the legality of executive action, deferred to comments made by such officials to the media.' The Court's reluctance to consider statements made in the course of campaigning derives from good sense and a recognition of the pitfalls that would accompany such an inquiry." (quoting *Hamdan v. Rumsfeld*, 548 U.S. 557, 623-24 n.52 (2006))).

Limiting the inquiry to official acts or statements is especially advisable when dealing with comments made to the media. If media statements by Executive Branch officials, unartful as they may have been, become the means by which orders and decisions by the Executive Branch that are religiously neutral on their face are attacked on Establishment Clause grounds, three dangerous consequences would result: (1) Presidents and Executive Branch staff will be *chilled* in their dealings with the press, resulting in their unwillingness to make public statements and engage in interviews for fear that, like here, the statements will be taken out of context by courts; (2) it will decrease the amount of information given by the Executive Branch to the public, clearly a detriment in a constitutional republic, and (3) it will make less information available to the press about the activities of the Executive Branch, which will limit, rather than expand, the freedom of the press and its obligation to hold the government publicly accountable.

Second, Respondents' extensive reliance upon purported evidence of a subjective, personal anti-Muslim bias of the President and some of his

advisors is improper because "what is relevant is the legislative purpose of *the statute*, not the possibly religious motives of *the legislators* who enacted the law." *Mergens*, 496 U.S. at 249 (plurality opinion) (emphasis added). In short, this Court should decline Respondents' invitation to engage in the kind of "judicial psychoanalysis of a drafter's heart of hearts" that is foreclosed by this Court's precedent. *McCreary Cnty.*, 545 U.S. at 862.

The Proclamation, on its face, serves multiple secular purposes, and no amount of rehashing of miscellaneous commentary can change that. A foray into the malleable arena of legislative history is not a *requirement* in all Establishment Clause cases. *See Mueller v. Allen*, 463 U.S. 388, 394–95 (1983) (noting this Court's "reluctance to attribute unconstitutional motives to the [government] particularly when a plausible secular purpose . . . may be discerned from the face of the statute"); *see also Wallace v. Jaffree*, 472 U.S. 38, 74 (1985) (O'Connor, J., concurring) (explaining that inquiry into the government's purpose should be "deferential and limited").

As Judge Niemeyer correctly explained in his dissenting opinion from the en banc decision in *International Refugee Assistance Project v. Trump*, this Court "has never applied the Establishment Clause to matters of national security and foreign affairs." 857 F.3d 554, 651 (4th Cir. 2017) (en banc) (Niemeyer, J., dissenting), *vacated by* No. 16-1436, 2017 U.S. LEXIS 6265 (U.S. Oct. 10, 2017). In the few cases in which the Court has invalidated government actions based on a religious purpose, for example, *Edwards v. Aguillard*, 482 U.S. 578 (1987),

"the Court found the government action inexplicable *but for* a religious purpose, and it looked to extrinsic evidence only to confirm its suspicion, prompted by the face of the action, that it had religious origins." *Int'l Refugee Assistance Project*, 857 F.3d at 652 (Niemeyer, J., dissenting) (emphasis in original); *accord Int'l Refugee Assistance Project*, No. 17-2231, 2018 U.S. App. LEXIS 3513 at *360-65 (Niemeyer, J., dissenting). The official government acts in those cases are manifestly distinguishable from the Proclamation, which was drafted without reference to religion and which was based upon the reasoned determination of senior government officials after an extensive worldwide review.

Third, the mere suggestion of a possible religious or anti-religious motive, mined from past comments of a political candidate or his supporters, and intermixed with various secular purposes, is not enough to doom government action (along with all subsequent attempts to address the same subject matter). "[A]ll that *Lemon* requires" is that government action have "*a* secular purpose," not that its purpose be "*exclusively* secular," *Lynch v. Donnelly*, 465 U.S. 668, 681 n.6, 700 (1984) (citation omitted and emphasis added), and a policy is invalid under this test only if "the government acts with the ostensible and *predominant* purpose of advancing religion." *McCreary Cnty.*, 545 U.S. at 860 (emphasis added); *see also Van Orden v. Perry*, 545 U.S. 677, 703 (2005) (Breyer, J., concurring) (upholding government action that "serv[ed] a mixed but primarily nonreligious purpose"); *Bowen v. Kendrick*, 487 U.S. 589, 602 (1988) ("[A] court may invalidate a

statute only if it is motivated *wholly* by an impermissible purpose.") (emphasis added).

The Proclamation clearly serves secular purposes and, therefore, it satisfies *Lemon*'s purpose test. *See Sarsour v. Trump*, 245 F. Supp. 3d 719, 733–38 (E.D. Va. 2017) (rejecting the claim that the executive order (EO-2), which directed that the worldwide review be conducted, violated the purpose prong of *Lemon*, and noting that the order was a facially lawful exercise of the President's authority and that the stated national security purpose was not a pretext for discrimination against Muslims).

Lastly, under Respondents' incorrect view of the Establishment Clause, any hypothetical future immigration-related orders issued by the current President will be irredeemably tainted by the alleged subjective, predominantly anti-Muslim intent of the President and his surrogates, which runs contrary to this Court's admonition that the government's "past actions" do not "forever taint any effort . . . to deal with the subject matter." *McCreary Cnty.*, 545 U.S. at 874; *see also ACLU of N.J. ex rel. Lander v. Schundler*, 168 F.3d 92, 105 (3d Cir. 1999) (Alito, J.) ("The mere fact that Jersey City's first display was held to violate the Establishment Clause is plainly insufficient to show that the second display lacked 'a secular legislative purpose,' or that it was 'intended to convey a message of endorsement or disapproval of religion.'") (citation omitted); *Roark v. S. Iron R-1 Sch. Dist.*, 573 F.3d 556, 564 (8th Cir. 2009) ("Another reason we reject the district court's *Lemon* analysis is that . . . [it] would preclude the District from *ever* creating a limited public forum in which

religious materials may be distributed in a constitutionally neutral manner.").

Moreover, the many substantive differences between the original executive order and the Proclamation reveal genuine changes in constitutionally significant conditions that have cured any actual or perceived Establishment Clause deficiencies. *See Int'l Refugee Assistance Project*, No. 17-2231, 2018 U.S. App. LEXIS 3513 at *366-68 (Traxler, J., dissenting) (explaining that although he voted to affirm the preliminary injunction against the second executive order (EO-2) on Establishment Clause grounds, he voted to vacate the preliminary injunction against the Proclamation because it addressed his previous Establishment Clause concerns); *see also Sarsour*, 245 F. Supp. 3d at 737–38 ("[T]he substantive revisions reflected in [the second executive order (EO-2)] have reduced the probative value of the President's statements to the point that it is no longer likely that Plaintiffs can succeed on their claim that the predominant purpose of [the order] is to discriminate against Muslims based on their religion. . . .").

In sum, the Proclamation does not violate the Establishment Clause. Enjoining the Proclamation jeopardizes our national security and improperly obstructs the President from exercising his constitutional and statutory duty to protect our country. The Proclamation should be enforced in full.

## CONCLUSION

This Court should reverse the decision below and vacate the preliminary injunction.

Respectfully submitted,

EDWARD L. WHITE III
ERIK M. ZIMMERMAN
AMERICAN CENTER FOR LAW AND JUSTICE
3001 Plymouth Rd.,
Ste. 203
Ann Arbor, MI 48105

FRANCIS J. MANION
GEOFFREY R. SURTEES
AMERICAN CENTER FOR LAW AND JUSTICE
6375 New Hope Rd.
New Hope, KY 40052

JAY ALAN SEKULOW
*Counsel of Record*
STUART J. ROTH
COLBY M. MAY
ANDREW J. EKONOMOU
JORDAN SEKULOW
CRAIG L. PARSHALL
MATTHEW R. CLARK
BENJAMIN P. SISNEY
AMERICAN CENTER FOR LAW AND JUSTICE
201 Maryland Ave., NE
Washington, DC 20002
Tel.: 202-546-8890
Email: sekulow@aclj.org

*Counsel for amicus curiae*

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