

United States Court of Appeals

FOR THE

Fourth Circuit

Donald J. Trump, in his official capacity as President of the United States; Department of Homeland Security; Department of State; Office of the Director of National Intelligence; John F. Kelly, in his official capacity as Secretary of Homeland Security; Rex W. Tillerson, in his official capacity as Secretary of State; and Daniel R. Coats, in his official capacity as Director of National Intelligence,

Defendants-Appellants,

v.

International Refugee Assistance Project, a project of the Urban Justice Center, Inc., on behalf of itself; HIAS, Inc., on behalf of itself and its clients; Middle East Studies Association of North America, Inc., on behalf of itself and its members; Muhammed Meteab; Paul Harrison; Ibrahim Ahmed Mohamed; John Does 1 & 3; Jane Doe 2,

Plaintiffs-Appellees.

On Appeal from the United States District Court, District of Maryland,
The Honorable Theodore D. Chuang, United States District Judge
Case No. 8:17-cv-00361-TDC

BRIEF OF *AMICI CURIAE* COLLEGES AND UNIVERSITIES IN SUPPORT OF 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: March 31, 2017

By: /s/ Lindsay C. Harrison
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Molly Land & Kathryn Libal, *Trump is Undermining Higher Education as a Global Enterprise*

merits of the government's appeal regarding the district court's preliminary injunction.¹ r s t

Recognizing the invaluable contributions of international 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"), suspends for a period of 90 days the entry into the United States of nationals of six Muslim-majority countries—Iran, Libya, Somalia, Sudan, Syria, and Yemen. Executive Order §

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, United States universities welcomed more than one million international students.³ Such students now account for more than 5% of enrollment at United States 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. For example, 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, and out of 8,383 graduate students, 47% are international.⁶ The numbers at Princeton are similar: in the 2016-17 academic year, 640 or 12.2% of Princeton's

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.

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

undergraduates are international, as are 1,168, or 42%, of its graduate students.⁷ So

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, and approximately 65% of its postdoctoral research community is from outside of the United States. 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. Emory employs over 2,000 full-time instructional staff, of whom 5% are non-resident aliens; in addition, 34% of Emory's

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

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. For example, Princeton has more than 50 students and employees from the six affected countries, and its graduate school received approximately 150 applications for fall 2017 alone (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 the fall of 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 well as two students from Syria, one from Sudan, and one from Yemen.

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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.

advances in medicine and science, equal treatment for women and religious minorities, and respect for democracy and the rule of law.

The United States 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 United States for as long as it takes to

Through these visa programs, the many international students, faculty, and scholars who make *amici*'s campuses their homes have been thoroughly vetted by the United States 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

from Western Europe. This diversity promotes the free exchange of ideas, encouraging 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.*

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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 United States and the World.

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

To begin, international students make significant contributions to the United States economy. One estimate provides that international students directly contributed \$32.8 billion to the United States 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

of United States innovators were born outside the country, and another ten percent have at least one 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

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 United States 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 United States 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 United States 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 United States “at age 21 with a

<http://www.forbes.com/sites/stuartanderson/2016/10/16/immigrants-flooding-america-with-nobel-prizes/#3de213817f5f>.

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/>.

partially filled suitcase, less than \$100 in cash, and a one-way airplane ticket purchased with a loan.”³⁷ President Suresh went on to study at several United States 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 United States 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 United States and its values—and, hopefully, a greater desire to engage in continuing discourse and exchange with the United States. 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, 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

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

Reducing the international presence on *amici*'s campuses will diminish the academic experience in this country. As discussed *supra*, the benefits of

knowledge across borders. Even as governments around the world seek to curb freedom of movement, the University of Cambridge

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 United States, 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 United States. 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 United States and by risking a backlash from others who are not subject to the ban. Indeed, international universities have observed that the Executive 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 Executive 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 United States, and one keynote speaker has wondered whether it “sends the wrong message” to attend a conference in the United States at this time. Participants in a conference at the Harvard Center for Middle Eastern Studies are voluntarily withdrawing due to current United States immigration policies or perceptions thereof. The Sharmin & Bijan Mossavar-Rahmani Center for Iran and Persian Gulf Studies at Princeton expressly aims to

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.”)(hic)1tTJ 0.131 Tw 0 -1.145 TD [(suc)12.1(h u)8.5

advance understanding of Iran and the Persian Gulf; if the Center cannot 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 United States in response to the Executive Order and its predecessor.⁵⁶ A petition circulating online has drawn thousands of signatures from scholars in the United States and abroad pledging not to attend international conferences in the United States while the travel ban persists; it continues to garner new signatures under the revised Executive Order.⁵⁷ Thus, the Executive 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-

countries—and other scholars who choose not to participate because of the 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 United States to avoid the Executive 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 the Ninth Circuit recently explained, although “the Government's interest in combating terrorism is an urgent objective of the highest

CERTIFICATE OF COMPLIANCE

Counsel for *amici curiae* certifies that this brief contains 6,481 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: March 31, 2017

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CERTIFICATE OF SERVICE

Counsel for *amici curiae* certifies that on March 31, 2017, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: March 31, 2017

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