

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

HAMEED KHALID DARWEESH, *et al.*,

Plaintiffs,

and

PEOPLE OF THE STATE OF NEW YORK, by
ERIC T. SCHNEIDERMAN, ATTORNEY
GENERAL OF THE STATE OF NEW YORK,

Intervenor-Plaintiff,

v.

DONALD J. TRUMP, President of the United
States, *et al.*,

Defendants.

17-cv-480-CBA

**BRIEF OF MASSACHUSETTS, ILLINOIS, CALIFORNIA, CONNECTICUT,
DELAWARE, IOWA, MAINE, MARYLAND, NEW MEXICO, NORTH CAROLINA,
OREGON, RHODE ISLAND, VERMONT, VIRGINIA, WASHINGTON, AND THE
DISTRICT OF COLUMBIA AS AMICI CURIAE IN SUPPORT OF PLAINTIFFS’
REQUEST FOR CONTINUING PRELIMINARY RELIEF**

LISA MADIGAN
*Attorney General
State of Illinois*

DAVID FRANKLIN
Solicitor General
100 West Randolph Street, 12th Floor
Chicago, IL 60601

MAURA HEALEY
*Attorney General
Commonwealth of Massachusetts*

ELIZABETH N. DEWAR
State Solicitor
JONATHAN B. MILLER, No. JM3508
*Public Protection & Advocacy
Bureau Chief*
GENEVIEVE C. NADEAU
Civil Rights Division Chief
One Ashburton Place
Boston, MA 02108

INTERESTS OF *AMICI*

The Commonwealth of Massachusetts and the State of Illinois, together with the States of California, Connecticut, Delaware, Iowa, Maine, Maryland, New Mexico, North Carolina, Oregon, Rhode Island, Vermont, Virginia, Washington, and the District of Columbia, submit this brief as *amici curiae* to support extending the injunctive relief already entered in this case.

Among other provisions, the Executive Order at issue in this suit bars all nationals of seven majority-Muslim countries from entering the United States for at least 90 days, halts the entire U.S. Refugee Admissions Program for at least 120 days, and permanently bars all Syrian refugees. *See* 82 Fed. Reg. 8,977-79. The barred individuals include, among others, persons who have previously been granted valid U.S. visas that otherwise entitle them to work, study, and travel within the *amici* States. In addition to harming such individuals, the Executive Order also inhibits the free exchange of information, ideas, and talent between the seven designated countries and the *amici* States, including at the States' many educational institutions; harms the States' life sciences, technology, health care, finance, and other industries, as well as innumerable other small and large businesses throughout the States; and inflicts economic harm on the States themselves through both increased costs and immediately diminished tax revenues.

While the *amici* States differ in many ways, all of us welcome and benefit from immigration, tourism, and international-student and business travel—and all of us face concrete, immediate, and irreparable injuries caused by the Executive Order. Indeed, several *amici* have filed or intervened in lawsuits raising similar claims.¹ We all share a strong interest in ensuring

¹ *See, e.g., Louhghalam v. Trump*, No. 17-cv-10154-NMG, Dkt. No. 44 (D. Mass. Feb. 2, 2017); *Aziz v. Trump*, No. 17-cv-116, Dkt. No. 37 (E.D. Va. Feb. 3, 2017); *Washington v. Trump*, No. 2:17-cv-00141-JLR, Dkt. No. 1 (W.D. Wash. Jan. 30, 2017).

that, while this litigation proceeds, the Order does not continue to harm our States and our residents.

ARGUMENT

The *amici* States respectfully submit this brief to the Court in order to highlight the extent to which the public interest and the balance of harms support granting preliminary injunctive relief here. See *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The public interest weighs strongly in favor of preliminary relief based on the injuries the Executive Order has inflicted not only on individual visa holders and refugees, but also more broadly on the public and the States themselves. States are suffering concrete injuries akin to those being inflicted on businesses and private institutions across the country, as well as injuries to the States' particular interests in collecting tax revenue, protecting our residents, and enforcing our laws. The immensity of the injuries already caused or immediately threatened by the Order—to our residents, public and private institutions, businesses, state treasuries, and economies as a whole—counsel strongly in favor of maintaining preliminary relief, thus preserving the status quo while the Executive Order's legality is adjudicated.

I. The Widespread Harms Caused by the Executive Order Demonstrate That a Preliminary Injunction Is in the Public Interest.

The Executive Order has already caused concrete irreparable harms to the States and our respective residents, institutions, and businesses. These injuries include harms to the States' public colleges and universities, medical institutions, and tax revenues, as well as to the States' interests in protecting the health, welfare, and rights of our residents. The injuries outlined

below are representative of the harms being suffered by States throughout the country.² And many of these harms are caused directly by effects of the Executive Order on persons who, like the named plaintiffs and proposed class members, hold valid visas or other documents for travel to the United States but do not have lawful permanent residence. Contrary to the suggestion of the federal government, these harms remain live—and of tremendous concern to the *amici* States.

A. The Executive Order has harmed state colleges and universities, creating staffing gaps, precluding students’ attendance, and imposing additional costs and administrative burdens.

The Executive Order has already irreparably injured—and continues to injure—state colleges and universities, which rely on faculty and students from across the world.

First, the Executive Order has disrupted these institutions’ ability to meet their staffing needs. It prevents and dissuades scholars from coming to our institutions—including scholars who had already committed to filling positions. The harm is deep and widespread. To take just a few examples, the University of Massachusetts has more than 160 employees who are affected by the Executive Order; the University of Illinois has about 30 such employees; the University of Maryland, College Park, includes about 350 such members in its community; and the California State University system has 192 faculty and staff from the seven affected countries.³

² All of the *amici* States support the legal arguments put forward in this brief, although the specific harms and other facts described do not all apply to them uniformly. For example, the State of Delaware does not have a state medical hospital and is still in the process of attempting to verify some of the other specified harms incurred by other *amici* States.

³ See, e.g., Decl. of Marcellette G. Williams, Ph. D., *Louhghalam v. Trump*, No. 17-cv-10154-NMG, Dkt. No. 52-9, at ¶ 4 (D. Mass. Feb. 2, 2017) (describing impact on the University of Massachusetts); Wallace D. Loh, *Executive Actions and Staying True to Our Values*, <https://www.president.umd.edu/executive-actions-and-staying-true-our-values> (last visited

While there is no absolute right to the maintenance or continuation of a visa, our state educational institutions—like so many employers—rely on a degree of predictability in the visa system. Moreover, foreign-born faculty who are here on visas typically have specialized expertise that cannot easily be replaced. Colleges and universities have already formed task forces and are making contingency plans to fill the unexpected gaps in their faculty rosters caused by the exclusion of scholars from the seven designated countries, but there is no guarantee that they will be able to fill such gaps. These efforts have already required a considerable expenditure of scarce resources.⁴

These harms caused by the Executive Order are neither elective nor speculative. To the contrary, the *amici* States are aware of many staffing-related harms to specific programs in our States. For example, foreign scholars from the designated countries who hold duly issued, otherwise-valid J-1 visas have abandoned their plans to come to the United States and teach because of the Executive Order. In some such cases, the scholars were hired to teach during the spring semester of 2017. Their absences leave holes in faculty rosters that our institutions must immediately fill. A second example arises from our research labs. They depend greatly on the work of foreign post-doctoral researchers to complete critical projects and studies, many of which are grant-funded. A shortfall of such researchers puts public institutions in peril of losing

February 8, 2017). The Illinois figure was provided to the Office of the Illinois Attorney General by the general counsel of the University of Illinois. The California figure is based on information provided to the Office of the California Attorney General by the Assistant Vice Chancellor of International and Off-Campus programs at the California State University System.

⁴ See, e.g., Decl. of Michael F. Collins, MD, *Louhghalam v. Trump*, No. 17-cv-10154-NMG, Dkt. No. 52-2, at ¶¶ 4-5 (D. Mass. Feb. 2, 2017) (describing creation of task force at the University of Massachusetts Medical School); Decl. of Marcellette G. Williams, Ph. D., *supra* n.3, ¶¶ 8, 10 (describing investment of resources in faculty hiring at the University of Massachusetts and the additional costs and burdens caused by the Executive Order).

grant funding. The *amici* States are aware of specific affected researchers who have accepted offers of employment but are still awaiting visas abroad, their prospects of timely assuming their positions now deeply uncertain.⁵

Additional disruption has occurred in the context of medical residency staffing, endangering the health of our communities. State medical schools participate in a “match” program that assigns residents to university hospital programs. These medical residents perform crucial services, including providing medical care to underserved populations. The process has already begun, with candidate applications and interviews largely completed; medical schools’ rankings of future residents due on February 22; the computerized “match” scheduled for March 17; and matched residents expected to begin work on July 1. Many programs regularly match medical residents from the seven designated countries. Indeed, prior to the Executive Order, institutions like the University of Massachusetts Medical School already were actively considering and had interviewed specific applicants from the affected countries. These programs now must forgo ranking applicants from these countries or risk having insufficient medical residents to meet staffing needs when their preferred choices are precluded from obtaining a visa or banned from entry even if they have one.⁶

⁵ See, e.g., Decl. of Michael F. Collins, MD, *supra* n.4, ¶ 9 (describing importance of work done by post-doctoral students, as well as two cases of individuals from the affected countries who had accepted employment offers from the University of Massachusetts Medical School); Decl. of Marcellette G. Williams, Ph. D., *supra* n.3, ¶ 8 (noting that the University of Massachusetts spent \$650 million on research in 2016 and describing risks to research funding).

⁶ If a program “matches” with an applicant who is then unable to come into the country, the program is left with an open slot. The only way to fill the slot is to seek a waiver from the National Resident Matching Program. Such a waiver puts a medical school in the difficult position of trying to hire a resident from the pool of applicants who did not match anywhere.

Second, the Executive Order creates uncertainty and imposes additional costs related to nonimmigrant faculty and other employees already in the United States. At the University of Massachusetts, for example, 42 current employees from the affected countries are due to submit applications to the U.S. Citizenship and Immigration Service this year, including for visa renewals.⁷ Because of the freeze of at least 90 days on processing visa applications under section 3(c) of the Executive Order, state institutions will in some cases be forced to pay an additional \$1,225 fee per visa for “Premium Processing Service” to expedite the approval of certain eligible visas—and will still have no guarantee that visas will be issued.⁸ These additional costs are significant for our resource-constrained public institutions.

Third, the Executive Order has disrupted the admissions process for students, imperiling millions of tuition dollars. Our state colleges and universities enroll thousands of students from the designated countries. The California State University System has more than 1,300 such students who are lawful permanent residents and more than 250 with student visas.⁹ The University of California system’s ten campuses have almost 500 graduate students and 40 undergraduates from the seven countries;¹⁰ the University of Massachusetts has 300 such

else—and the school may be unable to find a resident at all. These problems are described in detail in the Declaration of Michael F. Collins, MD, *supra* n.4, at ¶¶ 5-8.

⁷ Decl. of Marcellette G. Williams, Ph. D., *supra* n.3, ¶ 6.

⁸ Information regarding U.S. Citizenship and Immigration Services’ expediting service, including the fee, is available at <https://www.uscis.gov/i-907> (last visited February 8, 2017).

⁹ This figure is based on information provided to the California Attorney General’s Office by the Assistant Vice Chancellor of International and Off-Campus programs at the California State University System.

¹⁰ See Teresa Watanabe and Rosanna Xia, *Trump Order Banning Entry from Seven Muslim-Majority Countries Roils California Campuses*, Los Angeles Times (January 30, 2017),

graduate and undergraduate students;¹¹ the University of Illinois has over 300 students;¹² the University of Washington has more than 95 students;¹³ and the number at Washington State University is over 135.¹⁴ Other public institutions such as the Pennsylvania State University, Texas A&M University, the University of Central Florida, the University of Houston System, the University of Texas at Arlington, and Arizona State University each have hundreds of affected students.¹⁵

The Executive Order not only interferes with the matriculation of future students from the seven designated countries but also severely harms and jeopardizes the continued enrollment of current students by preventing them from travelling for research, conferences, and family visits.¹⁶ The *amici* States' public colleges and universities have already offered admission to students from the affected countries, and they anticipate that—but for the Executive Order—they would admit many more over the coming months. Already, the *amici* States are aware of students who have had to abandon plans to enroll due to the Executive Order and others who have withdrawn applications entirely. As a result, these public institutions must now alter their

<http://www.latimes.com/local/california/la-me-trump-universities-20170130-story.html> (last visited February 8, 2017).

¹¹ See Decl. of Marcellette G. Williams, Ph. D., *supra* n.3, ¶ 3.

¹² This figure was provided to the Office of the Illinois Attorney General by the general counsel of the University of Illinois.

¹³ See Decl. of Jeffrey Riedinger, *Washington v. Trump*, No. 2:17-cv-00141-JLR, Dkt. No. 9, at 2 ¶ 5 (W.D. Wash. Jan. 30, 2017).

¹⁴ See Decl. of Asif Chaudhry, *Washington v. Trump*, No. 2:17-cv-00141-JLR, Dkt. No. 5, at 2 ¶ 5 (W.D. Wash. Jan. 30, 2017).

¹⁵ Abby Jackson, *The 10 U.S. Colleges That Stand to Lose the Most from Trump's Immigration Ban*, Business Insider (Feb. 1, 2017), <https://amp.businessinsider.com/colleges-potentially-most-affected-trump-immigration-ban-2017-2>.

¹⁶ See, e.g., Decl. of Marcellette G. Williams, Ph. D., *supra* n.3, at ¶¶ 8-9.

admissions processes to account for students who can no longer attend. While colleges and universities are always subject to federal immigration law and policy, the Executive Order has injured them unexpectedly, by upending with no advance notice the established framework around which these institutions have designed their enrollment processes.¹⁷

Finally, the *amici* States are aware of specific instances where the Executive Order has already caused harm to our institutions' core missions of education and scholarship. Graduate and undergraduate students who traveled to see families abroad over winter break have been trapped outside the United States, unable to attend classes; faculty hires have been unable to reach the United States; and faculty and doctoral students who are in the United States have been prevented from traveling abroad for fieldwork or conferences because they cannot risk being unable to reenter. In some cases, such travel is necessary to complete a dissertation or remain on the tenure track.¹⁸

B. The Executive Order has disrupted staffing and research at state medical institutions.

The Executive Order has already harmed the *amici* States' medical institutions in a number of respects and threatens to inflict further irreparable harms. In addition to disrupting the medical residency matching process described above, the Executive Order also disrupts the continued training of affected medical residents who are already in our States and serving our patient populations. If such residents are unable to renew or extend their nonimmigrant visas,

¹⁷ See, e.g., Decl. of Marcellette G. Williams, Ph. D., *supra* n.3, ¶ 9 (describing admissions offers already extended to students from the affected countries as well as effects on current students).

¹⁸ See, e.g., *id.* (describing harms to specific individuals, including to doctoral student who returned home to get married and was unable to return as of February 2, 2017 and to faculty member who was prevented from attending conference needed for tenure).

state medical schools can no longer employ them; the schools will be left with unfilled positions in their multi-year programs for training physicians; and staffing gaps will open at hospitals. The health and well-being of the residents of the *amici* States will suffer. The primary care program at the University of Massachusetts Medical School, for example, currently has medical residents from the designated countries under employment contracts at a time when primary care physicians are in short supply in many areas across the country.¹⁹

Public medical institutions also employ people from the designated countries in other positions, including as fully trained physicians, research faculty, and post-doctoral researchers. As with our educational institutions, the *amici* States have current employees, already located in the United States and serving patients here, who, for the time being, cannot renew or extend their visas or statuses. In addition, public medical institutions in the *amici* States have extended offers of employment that have already been accepted by individuals from the designated countries. But these would-be employees are now waiting for visas to be approved and are uncertain if and when they will be able to start work.²⁰

Because our patients must be cared for, our facilities must immediately adapt to these changed circumstances—and spend precious time and resources to do so. The risks posed by understaffing medical facilities are of course among the gravest irreparable harms that could befall our residents.

¹⁹ *Louhghalam v. Trump*, No. 17-cv-10154-NMG, Dkt. No. 25-1, at 12 (D. Mass. Jan. 31, 2017).

²⁰ See, e.g., Decl. of Michael F. Collins, MD, *supra* n.4, ¶ 9.

C. The Executive Order has immediately reduced States' tax revenues and is harming our economies more broadly.

From the moment of its implementation, the Executive Order has also caused the States to lose tax revenues—economic damage that cannot be undone. Every foreign student, tourist, and business visitor to the *amici* States contributes to our respective economies. They do so not only by direct payments, including tuition, room, and board payments to state schools, but also through the tax receipts that their presence generates. The Executive Order abruptly blocked thousands of travelers—potential consumers all—from entering the *amici* States, thereby halting their tax contributions as well. When the Executive Order went into effect, “tens of thousands of visas” for U.S.-bound travelers immediately were revoked, with the State Department later confirming that roughly 60,000 individuals’ visas were provisionally revoked.²¹ And preliminary reports already suggest a significant downturn in international tourists traveling to the United States following release of the Executive Order.²²

Absent continuing preliminary relief during the pendency of challenges to the Executive Order, the *amici* States will lose weeks or even months of otherwise available tax revenues. The States will never recover these revenues, even if those challenges ultimately prevail. The dollars at issue are immense, even just with respect to the contributions of foreign students. California

²¹ See Rachel Revesz, *Donald Trump Immigration Ban: 60,000 Visas Revoked After Travel Restrictions Imposed on Seven Muslim-Majority Countries*, The Independent (Feb. 3, 2017), available at <http://ind.pn/2l0eovf> (last visited February 8, 2017).

²² See, e.g., Christopher Muther, *Trump's Travel Ban Is Causing a Large Drop in US Tourism*, Boston Globe (Feb. 14, 2017), available at <http://www.bostonglobe.com/lifestyle/travel/2017/02/14/trump-ban-causes-tourism-drop-and-industry-fears-lasting-effect/yzMAVzeLvqywP8gEekoFsL/story.html> (last visited Feb. 14, 2017) (citing drops of 6 to 17 percent in online booking searches for international flights to the United States).

universities and colleges host the largest number of students from the seven designated countries, with 1,286 student visa-holders from Iran alone in 2015.²³ In Illinois, students from these countries contributed \$30.3 million to the State's economy, including direct payments for tuition, fees, and living expenses.²⁴ And these amounts do not include indirect economic benefits, such as the contributions of international students and scholars to innovation in academic and medical research. These States, of course, are not the only ones affected. The seven countries singled out by the Executive Order account for more than 16,000 students who attended institutions of higher education nationally during the 2014-15 academic year.²⁵ During that period, Iran alone sent 11,338 students to colleges and universities across the United States, yielding an estimated economic impact of \$323 million.²⁶

The Executive Order has also already inflicted harms on the *amici* States' economies more broadly—even if those harms will not be fully quantifiable for some time. The health of our economies depends in large part on remaining internationally competitive and attractive

²³ See Watanabe & Xia, *Trump Order Banning Entry from Seven Muslim-Majority Countries Roils California Campuses*, *supra* n.10.

²⁴ See *id.*

²⁵ See Institute of International Education, *Open Doors Data, International Students: All Places of Origin*, <http://bit.ly/1ObpkM2> (last visited February 8, 2017).

²⁶ See Institute of International Education, *Open Doors Data, Fact Sheets for Iran: 2015*, <http://bit.ly/2lmPhjg> (last visited February 8, 2017). By way of further information, the California Governor's Office of Business and Economic Development has been able to determine, with respect to Middle Eastern countries (including four of the seven affected countries—Iran, Iraq, Syria, and Yemen—as well as twelve additional countries besides: Egypt, Bahrain, Cyprus, Israel, Jordan, Kuwait, Lebanon, Oman, Qatar, Saudi Arabia, Turkey, and United Arab Emirates), that, in 2015, 286,000 visitors from these countries spent approximately \$681,000,000 in California, all subject to state and local taxes. These travelers are conservatively estimated to have generated a total of \$49,372,500 in state and local tax revenue. Using this estimate, during a 90-day period, these travelers generate \$12,174,041 in state and local tax revenue.

destinations for companies in the life sciences, technology, finance, health care, and other industries, as well as for tourists and entrepreneurs. In Illinois alone, for example, 22.1% of entrepreneurs are foreign-born; immigrant- and refugee-owned businesses employ more than 281,000 people; and immigrants represent 37.7% of the State's software developers.²⁷ A recent study found that if even half of the more than 3,900 foreign-born graduates of Illinois universities in so-called STEM fields (science, technology, engineering, and mathematics) stayed in the United States after graduation, it could result in the creation of more than 5,100 new jobs for U.S.-born workers by 2021.²⁸ Similarly, in the State of Washington, immigrant and refugee-owned businesses employ 140,000 people.²⁹ In addition, Washington's technology industry relies heavily on the H-1B visa program, with Redmond-headquartered Microsoft alone employing nearly 5,000 people through that program.³⁰ Other Washington companies, including Amazon, Expedia, and Starbucks, likewise employ thousands of H-1B visa holders.³¹ Loss of these highly skilled workers puts companies across the United States at a disadvantage with their global competitors.³²

²⁷ See *The Contributions of New Americans in Illinois* at 2, 10 New American Economy (Aug. 2016), <http://bit.ly/2kRVVaro> (last visited February 8, 2017).

²⁸ *Id.* at 13.

²⁹ See Mot. for Temporary Restraining Order, *Washington v. Trump*, No. 2:17-cv-00141-JLR, Dkt. No. 3, at 22 (W.D. Wash. Jan. 30, 2017).

³⁰ *Id.*

³¹ *Id.*

³² See Br. for Technology Companies and Other Businesses as *Amici Curiae* In Support of Appellees at 8-21, *Washington v. Trump*, No. 17-35105, Dkt. 19-2 (9th Cir. Feb. 5, 2017).

D. The Executive Order is also harming the States’ interests in protecting our residents and enforcing our laws.

The Executive Order’s harms to the States and to the broader public go beyond these significant harms in the educational, health, and economic realms, however. The Order also harms the *amici* States’ abilities to protect “the well-being of [our] populace,” including via our anti-discrimination laws, and to ensure that our “residents are not excluded from the benefits that are to flow from participation in the federal system.” *Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 601-08 (1982).

First, the Executive Order prevents States from enforcing regimes of non-discrimination created by our state constitutions and laws. Our residents and businesses—and, indeed, many of the *amici* States ourselves—are prohibited by state law from taking national origin and religion into account in determining to whom they can extend employment and other opportunities.³³

Although the States, as well as our residents and businesses, are always constrained in employment decisions by validly enacted federal immigration law, the Executive Order is unlawful and represents an act of unconstitutional discrimination—one that the States are nevertheless constrained to follow, contrary to our federal Constitution and contrary to our own laws.

Second, the Executive Order also harms the States’ interests by violating the due process rights of a substantial number of our residents. *Cf. Snapp*, 458 U.S. at 607-608. In particular, by

³³ See, e.g., Cal. Const. art. I, §§ 7-8; Cal. Gov’t Code §§ 11135-11137, 12900 *et seq.*; Conn. Gen. Stat. § 46a-60; Ill. Const. art. I, § 3; Ill. Const. art. I, § 17; 740 ILCS 23/5 (a)(1); 775 ILCS 5/1-102 (A); 775 ILCS 5/10-104 (A)(1); 5 Maine Rev. Stat. Ann. §§ 784, 4551-4634 (2013); Mass. Gen. L. ch. 151B, §§ 1, 4; Mass. Gen. L. ch. 93, § 102; Md. Code Ann., State Gov’t § 20-606; R.I. Gen. Laws § 28-5-7(1)(i); 9 Vt. Stat. Ann. §§ 4500-07; 21 Vt. Stat. Ann. § 495.

denying re-entry to the United States without constitutionally sufficient notice and an opportunity to respond, the Executive Order violates or threatens to violate the due process rights of non-immigrant residents holding multiple-entry visas (as well as lawful permanent residents) who have already been in the United States but who have temporarily departed or wish to temporarily depart. *See State of Washington et al. v. Trump et al.*, No. 17-35105, ___ F.3d ___, 2017 WL 526497, at *7-*9 (9th Cir. Feb. 9, 2017) (per curiam); *see also Landon v. Plasencia*, 459 U.S. 21, 33 (1982).

II. The Balance of Harms Tips Decidedly in Favor of Maintaining Preliminary Injunctive Relief, Because Lifting Such Relief Would Upend the Status Quo.

All of the harms just described—harms inflicted directly by the Executive Order on the *amici* States and our residents—demonstrate why the public interest strongly favors a preliminary injunction against the Executive Order. For similar reasons, the balance of harms also favors such relief. Unlike in a typical case, it is the temporary relief entered by this Court and other courts across the country that has preserved the status quo.³⁴ Eliminating that relief would cause untold further harm.

The Executive Order abruptly and presumptively bars entry into the United States for all nationals of the seven affected countries, even if they are otherwise lawfully authorized to enter or re-enter this country on the basis of valid immigration documents previously issued by U.S.

³⁴ *See, e.g., Washington v. Trump*, 2017 WL 526497, at *7 (declining to stay nationwide temporary restraining order against entire Executive Order); *Aziz v. Trump*, No. 17-cv-116, Dkt. Nos. 111, 112 (E.D. Va. Feb. 13, 2017) (granting preliminary injunction); *Mohammed v. United States*, No. 17-cv-00786, Dkt. No. 7 (C.D. Cal. Jan. 31, 2017) (temporary restraining order that, among other provisions, blocked government from removing, detaining, or blocking entry of the 28 Yemeni-born plaintiffs or any person from any of the seven countries holding a valid immigrant visa).

authorities. Residents of the *amici* States have been prevented from traveling home, and their family members have been prevented from visiting them. Indeed, after the Order was issued, many such persons were detained at airports throughout the United States—often without access to counsel—when they attempted to enter the country.³⁵ For example, preliminary reports indicate that 376 people were detained at Los Angeles International Airport from January 28 to February 6, many of them for 10 hours or more. Of those detained, 160 were lawful permanent residents, and 92 were not even from the seven affected countries. Numerous long-term and temporary residents of the *amici* States were victims of the resulting turmoil, which also broadly disrupted travel at all major United States airports, both in the *amici* States and beyond.

These harms have been exacerbated by the government’s shifting and inconsistent implementation of the Executive Order. Customs and border control officials arrived at airports on January 28 without instructions on how to implement it.³⁶ The lack of advance warning led to “homeland security officials ‘flying by the seat of their pants[]’ to try to put policies in place.”³⁷ Officials at different airports applied different policies.³⁸ This uncertainty was compounded by

³⁵ Michael D. Shear et al., *Judge Blocks Trump Order on Refugees Amid Chaos and Outcry Worldwide*, N.Y. Times (Jan. 28, 2017), <https://goo.gl/OrUJEr> (last visited February 8, 2017); Amanda Whiting, *Despite Court Order, US Officials Won’t Allow Lawyers at Dulles to See Detainees*, Washingtonian (Jan. 29, 2017), <https://www.washingtonian.com/2017/01/29/customs-and-border-protection-still-not-allowing-lawyers-to-see-detainees/> (last visited February 8, 2017).

³⁶ *Id.*

³⁷ *Id.*

³⁸ See, e.g., Jonathan Allen & Brendan O’Brien, *How Trump’s Abrupt Immigration Ban Sowed Confusion at Airports, Agencies*, Reuters (Jan. 29, 2017), www.reuters.com/article/us-usa-trump-immigration-confusion-idUSKBN15D07S (last visited February 8, 2017) (while some visa-holders reported being “allowed into the country without a problem,” other lawful permanent residents were “turned away”).

the actions of officials at the highest levels of the federal government, who vacillated over how to interpret and apply the Executive Order. For example, the federal government wavered multiple times about whether the Executive Order applies to lawful permanent residents.³⁹ On February 1, the White House counsel acknowledged that there had been “reasonable uncertainty” about whether the travel ban applies to lawful permanent residents of the United States, and purported to “clarify that Sections 3(c) and 3(e) [of the Order] do not apply to such individuals.”⁴⁰ However, “[t]he Government has offered no authority establishing that the White House counsel is empowered to issue an amended order superseding the Executive Order signed by the President,” nor has “the Government established that the White House counsel’s interpretation of the Executive Order is binding on all executive branch officials responsible for enforcing” it. *Washington v. Trump*, 2017 WL 526497, at *8.

The temporary relief issued by this Court and others returned the policies and procedures regarding travel to the United States to the status quo that existed before the Executive Order. Faced with these orders, the Department of Homeland Security announced on February 4 that it “has suspended any and all actions implementing the affected sections of the Executive Order”

³⁹ See, e.g., Evan Perez et al., *Inside the Confusion of the Trump Executive Order and Travel Ban* (Jan. 30, 2017), <http://www.cnn.com/2017/01/28/politics/donald-trump-travel-ban/index.html> (last visited February 8, 2017); Press Release, U.S. Department of Homeland Security, *Statement By Secretary John Kelly On The Entry Of Lawful Permanent Residents Into The United States* (Jan. 29, 2017), <https://goo.gl/6krafi> (last visited February 8, 2017).

⁴⁰ See Memorandum to the Acting Secretary of State, the Acting Attorney General, and the Secretary of Homeland Security from Donald F. McGahn II (Feb. 1, 2017), www.politico.com/f/?id=00000159-fb28-da98-a77d-fb7dba170001 (last visited February 8, 2017).

and would “resume inspection of travelers in accordance with standard policy and procedure.”⁴¹

In the aftermath of that announcement, international airlines announced that they would again allow citizens of the affected nations onto flights bound for the United States.⁴² Travelers from these countries have already arrived in the United States or are in the process of coming here.⁴³

In the absence of continued preliminary relief, our States will see a return of the chaos experienced in our airports beginning on the weekend of January 28 and 29. Travelers with valid visas to enter the United States, who boarded planes to our country in reliance on the order below and the guidance of the Department of Homeland Security, will be stopped, detained, and turned around yet again. And serious harms will continue to fall on the affected individuals who live, work, and study in our States; to their families and communities; and to the institutions and businesses that employ and educate them. Our universities will continue to face uncertainty about whether affected students will be allowed to resume their studies;⁴⁴ our businesses will not

⁴¹ Press Release, U.S. Department of Homeland Security, *DHS Statement on Compliance with Recent Court Order* (Feb. 4, 2017), available at <https://www.dhs.gov/news/2017/02/04/dhs-statement-compliance-recent-court-order> (last visited Feb. 5, 2017).

⁴² A. Dewan, *Airlines Allow Passengers After Judge Blocks Travel Ban* (Feb. 4, 2017), available at <http://www.cnn.com/2017/02/04/politics/airlines-airports-trump-travel-ban/index.html> (last visited Feb. 5, 2017).

⁴³ See, e.g., D. Lavoie et al., *Travelers Arrive in the U.S. to Hugs and Tears After the Lifting of Trump’s Immigration Ban*, Time (Feb. 6, 2017), available at <http://time.com/4660709/trump-travel-ban-lifted-muslim-immigration/> (last visited Feb. 10, 2017).

⁴⁴ See Class Action Compl. for Declaratory and Injunctive Relief ¶¶ 45-48, *Al-Mowafak v. Trump*, No. 17-cv-557, Dkt. No. 1 (N.D. Cal. Feb. 2, 2017) (describing case of Wasim Ghaleb, a Yemeni national currently studying business administration at Grossmont College in San Diego on a valid F-1 visa, who traveled to Saudi Arabia for a family trip on January 15, 2017 and who is being prevented from returning to the United States because of the Executive Order); see also First Am. Pet. for Writ of Habeas Corpus and Class Compl. for Declaratory and Injunctive Relief ¶¶ 18, 52-54, 71, *Aziz v. Trump*, No. 17-cv-116, Dkt. No. 7 at 39 (E.D. Va. Feb. 3, 2017) (detailing additional instances of individuals traveling abroad who are unable to return because of the Executive Order).

know if and when affected employees will be allowed to return to their offices;⁴⁵ and a broad swath of our residents will be unable to visit with overseas family members or return home if they do.⁴⁶ The discretionary waiver provisions in the Executive Order do not mitigate these harms: universities and businesses and residents cannot plan effectively if there is no guidance from the federal government on how its waiver system will be implemented. *See Washington v. Trump*, 2017 WL 526497, at *11 (noting that the federal government “has offered no explanation for how these provisions would function in practice: how would the ‘national interest’ be determined, who would make that determination, and when?”).

Under these circumstances, the balance of harms tips decidedly in favor of leaving preliminary relief in place in order to preserve the status quo that existed before President Trump issued the Executive Order. In contrast to the abstract injuries that the federal government asserts it has suffered, allowing the Order to go back in force would lead to real and immediate hardships for the States, our residents, businesses, and institutions. The interests of the public, the States, and the Nation would be best served by entering a preliminary injunction—and avoiding further turmoil—until the very significant constitutional and other legal challenges to

⁴⁵ See Decl. of Ayesha Blackwell-Hawkins, Esq., *Washington v. Trump*, No. 17-cv-141, Dkt. No. 6 (W.D. Wash., Jan. 30, 2017) (declaration of Amazon employee stating that company’s employees may not be able to travel and that company has instructed one lawyer not to make a business trip to the United States for fear of detention); see also Jack Nicas, *Google Criticizes Impact on Staff of Trump Immigration Order*, Wall St. J. (Jan 28., 2017), available at <https://www.wsj.com/articles/google-criticizes-impact-on-staff-of-trump-immigration-order-1485596067> (last visited Feb. 5, 2017) (reporting on e-mail from Google’s CEO that expressed concern that its employees will not be able to return from abroad).

⁴⁶ Jared Maslin, “*It’s Tearing Families Apart.*” *6 Stories of Lives on Hold Due to Trump’s Visa Ban*, Time (Feb. 2, 2017), available at <http://time.com/4649876/donald-trump-visa-ban-executive-order-lives/> (last visited Feb. 5, 2017) (Iraqi-born U.S. citizen returned to Iraq to help his wife apply for a visa; and although wife procured a visa, officials will not let her enter the United States because of Executive Order; the couple remains in Iraq).

the Executive Order are more conclusively resolved. *See id.* at *7-*11 (concluding in connection with stay application that federal government had failed to show strong likelihood of success on the merits and that the balance of hardships favored maintaining temporary relief).

Dated: February 16, 2017

LISA MADIGAN
Attorney General
State of Illinois

DAVID FRANKLIN
Solicitor General
100 West Randolph Street, 12th Floor
Chicago, IL 60601

XAVIER BECERRA
Attorney General
State of California
Suite 11000
455 Golden Gate Avenue
San Francisco, CA 94102

GEORGE JEPSEN
Attorney General
State of Connecticut
55 Elm Street
Hartford, CT 06106

Respectfully submitted,

MAURA HEALEY
Attorney General
Commonwealth of Massachusetts

/s/ Jonathan B. Miller
ELIZABETH N. DEWAR
State Solicitor
JONATHAN B. MILLER, No. JM3508
Public Protection & Advocacy
Bureau Chief
GENEVIEVE C. NADEAU
Civil Rights Division Chief
One Ashburton Place
Boston, MA 02108

HECTOR BALDERAS
Attorney General
State of New Mexico
408 Galisteo Street
Santa Fe, NM 87501

JOSH STEIN
Attorney General
State of North Carolina
9001 Mail Service Center
Raleigh, NC 27699

MATTHEW P. DENN
Attorney General
State of Delaware
Carvel State Building, 6th Floor
820 North French Street
Wilmington, DE 19801

ELLEN F. ROSENBLUM
Attorney General
State of Oregon
1162 Court Street NE
Salem, OR 97301

KARL A. RACINE
Attorney General
District of Columbia
Suite 630 South
441 Fourth Street, N.W.
Washington, D.C. 20001

PETER F. KILMARTIN
Attorney General
State of Rhode Island
150 South Main Street
Providence, RI 02903

THOMAS J. MILLER
Attorney General
State of Iowa
1305 E. Walnut Street
Des Moines, IA 50319

THOMAS J. DONOVAN, JR.
Attorney General
State of Vermont
109 State Street
Montpelier, VT 05609

JANET T. MILLS
Attorney General
State of Maine
6 State House Station
Augusta, ME 04333

MARK R. HERRING
Attorney General
Commonwealth of Virginia
202 North 9th Street
Richmond, Virginia 23219

BRIAN E. FROSH
Attorney General
State of Maryland
200 Saint Paul Place, 20th Floor
Baltimore, MD 21202

ROBERT W. FERGUSON
Attorney General
State of Washington
1125 Washington Street SE
PO Box 40100
Olympia, WA 98504-0100

CERTIFICATE OF SERVICE

I, Jonathan B. Miller, hereby certify that a true copy of the above document, filed through the CM/ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants on this date.

Dated: February 16, 2017

/s Jonathan B. Miller x
Jonathan B. Miller