

No. 17-1351

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

INTERNATIONAL REFUGEE ASSISTANCE PROJECT, *et al.*,
Plaintiffs-Appellees,

v.

DONALD J. TRUMP, *et al.*,
Defendants-Appellants.

On Appeal from an Order of the United States District Court
for the District of Maryland (Hon. Theodore D. Chuang)
Civil Action No. TDC-17-0361

**BRIEF OF OXFAM AMERICA, INC. AS AMICUS CURIAE
IN SUPPORT OF PLAINTIFFS-APPELLEES**

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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INTERESTS OF AMICUS

Oxfam America, Inc. and its affiliates (Oxfam) work around the globe to end poverty. Oxfam has worked in more than 90 countries to end poverty and injustice over the past 70 years. Oxfam addresses the institutional issues that keep people poor and marginalized: inequality, discrimination, and unequal access to resources including food, water, and land. Oxfam helps people survive during and after natural and manmade disasters, and provides the support people need to build stronger futures. Oxfam seeks to challenge the structural barriers that foster conflict and human suffering and that limit people from gaining the skills, resources, and power to become self-sufficient.

Central to Oxfam's work is its advocacy to promote good policy by national governments and supranational organizations. For example, Oxfam has advocated policies to modernize food aid, so that local food merchants are not put out of business by the dropping of free supplies into food-insecure areas. Oxfam has also worked to create and implement systems that provide government transparency on payments received for natural resources, enabling citizens to hold their governments accountable. Although Oxfam plays a critical role in responding to crises, its ultimate goal is to address the root causes of violence and poverty by supporting civil society so that communities can address their own problems.

Oxfam employs 8,500 people worldwide, works with 60,000 volunteers, and operates in four of the six countries targeted by the Executive Order No. 13,780, 82 Fed. Reg. 13,209 (Mar. 9, 2017) (Order) (Yemen, Syria, Somalia, and Sudan), with more than 300 employees stationed in those four countries. Oxfam provides infrastructure and direct aid to refugees, including to people from Somalia, South Sudan, and Syria in Kenya, Ethiopia, Jordan, and Lebanon. Oxfam has helped 1.12 million Syrian refugees in Jordan and Lebanon by providing clean drinking water, cash assistance, and relief supplies. Oxfam is one of the few non-governmental organizations currently working in Sudan, providing desperately needed aid, including clean water and sanitation programs, to people in the Darfur region and beyond. The Executive Order harms Oxfam and the organizations with which it works, and prevents Oxfam from advancing its mission to help people escape violence and build better lives. Oxfam therefore has a direct interest in the outcome of this case.¹

INTRODUCTION

Much has been written about the fundamental legal concerns raised by the President's Executive Order restricting travel to, and refugee resettlement in, the United States, and rightly so. The Order threatens to disrupt lives and weaken

¹ No party's counsel authored any part of this brief, and no party or person other than *amicus*, its members, or its counsel made any monetary contribution intended to fund preparation or submission of this brief. All parties have consented to the filing of this brief. See Fed. R. App. P. 29(a)(2), (4)(E).

institutions both domestically and abroad. If the injunction is lifted, families will be separated. The Nation's great universities will suffer. And impoverished communities will be deprived of qualified and desperately needed medical professionals.

Enforcement of the Order will also render domestic governmental and non-governmental institutions less able to formulate effective foreign policy. It will block their access to a crucial educational and advocacy tool—the bringing of staff and affected individuals to the United States so they can bear witness to the violence and suffering occurring overseas. The insights gained through such in-person conferences are critical to many organizations' work to support and rebuild civil societies in the affected countries. Thus, enforcement of the Order will not only make the current situations worse for people fleeing violence, it will also prevent solutions from taking root in the countries that need them the most.

ARGUMENT

SECTION 2 OF THE EXECUTIVE ORDER HARMS THE AMERICAN PUBLIC

Section 2(c) of Executive Order No. 13,780, 82 Fed. Reg. 13,209, 13,213 (Mar. 9, 2017) (Order) suspends “entry into the United States,” for a period of 90 days, all nationals of six countries: Iran, Libya, Somalia, Sudan, Syria, and Yemen. This travel ban—based solely on a traveler's nationality—negatively and irreparably affects not only individuals from these countries, but also the American

public, including American-based organizations that work in these imperiled regions. If implemented, the ban will separate families, disrupt the lives and employment of many already in the United States, and bar many others from admission in the first place. It will also prevent organizations that work in the affected regions from fulfilling their missions and accomplishing their goals.

The travel ban will not be simply a brief administrative hiccup for those directly affected by it. Instead, it will have a lasting effect on American life, from families torn apart to students unable to return home or complete their studies; from the loss of skilled doctors and engineers to the creation of a vital information gap. Though ostensibly brief in duration, the Order's travel ban will have an immediate, adverse effect on all corners of United States society.

A. The Travel Ban Will Separate Families

One of the primary reasons many travel to the United States is to reunite with family. In fact, there are several visa categories for this very purpose.² The travel ban immediately bars these important visits, in callous disregard of the crucial family ties of everyone whose relatives are nationals of the six targeted countries. The ban's devastating effects on these families are neither speculative

² Bureau of Consular Affairs, U.S. Dep't of State, Nonimmigrant Visa for a Fiancé(e) (K-1), <http://bit.ly/1XWtHOZ> (last visited Apr. 18, 2017); Bureau of Consular Affairs, U.S. Dep't of State, Nonimmigrant Visa for a Spouse (K-3), <http://bit.ly/2o7G6Ei> (last visited Apr. 18, 2017); Bureau of Consular Affairs, U.S. Dep't of State, Nonimmigrant (V) Visa for Spouse and Children of a Lawful Permanent Resident (LPR), <http://bit.ly/2p0roCB> (last visited Apr. 19, 2017).

nor remote: they were on full display after the government's first attempt at a travel ban, contained in now-revoked Executive Order No. 13,769, 82 Fed. Reg. 8977 (Feb. 1, 2017).

Syrian refugee Milad Korkis, who now lives in Belfast with his American-citizen wife, Holly, faced the prospect of cancelling his April trip with Holly to visit her family in Pennsylvania.³ When interviewed, Holly expressed her hope that things would get better because visiting family is “a very important part of our life.”⁴ Sara, an Iranian whose brother lives in Texas, is another traveler whose hopes to reunite with family were imperiled.⁵ She had spent three years securing the necessary approvals to come to the United States for her brother's wedding. Yet by its terms, the initial ban would have barred her attendance. “My brother was looking forward to having us at his wedding,” Sara explained, “but no one from his family or the family of his [future] wife will be there.”⁶ The revised Executive Order promises the very same harms.

Individuals from targeted countries already in the United States on nonimmigrant visas will also suffer and face untenable choices. During the

³ *Trump travel ban: Belfast refugee not able to visit family*, BBC News (Jan. 31, 2017), <http://www.bbc.com/news/uk-northern-ireland-38817542>.

⁴ *Id.*

⁵ Golnaz Esfandiari, *Groom And Doom: Iranians' Wedding Visit Dashed By U.S. Travel Ban*, RadioFreeEurope/RadioLiberty (Jan. 31, 2017), <http://www.rferl.org/a/iran-travel-ban-wedding-plans-dashed/28270446.html>.

⁶ *Id.*

pendency of the ban, these individuals will have to choose between remaining in the United States and forgoing all contact with family abroad, or traveling home and risking being barred from returning. Within this category are many who have invested years in study (such as Ph.D. students and other academics) or given up jobs abroad for career opportunities in the United States.⁷ The decision for them to visit a parent, sibling, or grandchild back home will suddenly become a potentially life-altering choice.⁸

⁷ Bureau of Consular Affairs, U.S. Dep't of State, Student Visa, <http://bit.ly/1UjkJJF> (last visited Apr. 18, 2017); Bureau of Educ. & Cultural Affairs, U.S. Dep't of State, J-1 Visa: Professor and Research Scholar Program, <http://bit.ly/1GU1Rxs> (last visited Apr. 18, 2017); Bureau of Educ. & Cultural Affairs, U.S. Dep't of State, J-1 Visa: Specialist Program, <http://bit.ly/1bbhIKY> (last visited Apr. 18, 2017).

⁸ See, e.g., Lyric Lewin, *These are the faces affected by Trump's travel ban: People directly affected by the travel ban share their stories*, CNN, <http://cnn.it/2kgCbGo> (last visited Apr. 18, 2017); Shashank Bengali, Nabih Bulos & Ramin Mostaghim, *Families Hoping to Make the U.S. Their Home Scramble to Rearrange Their Lives*, L.A. Times, Jan. 27, 2017, <http://lat.ms/2kD1OO2> ("Saeed Vasebi, a 28-year-old doctoral student from northwestern Iran, said he was unsure whether he could return home this summer to visit his family and girlfriend and still be allowed to come back and complete his degree in renewable energy."); Elizabeth Redden, *Stranded and Stuck*, Inside Higher Ed (Jan. 30, 2017), <https://www.insidehighered.com/news/2017/01/30/students-and-scholars-are-stranded-after-trump-bars-travel-nationals-7-countries> (A Ph.D. student at Portland State University described how the ban would "affect her summer plans to return to her home country of Iran to conduct field research and, after four long years, to see her family.").

B. The Travel Ban Will Compromise The Ability of Many Organizations To Fulfill Their Humanitarian Missions

Humanitarian and other non-governmental organizations regularly bring staff members and other individuals from partner organizations in the affected countries to the United States. Organizations use these visits to gather, first hand, information about the work being done by their overseas counterparts. These in-person exchanges of information are crucial because they allow organizations to understand the conditions on the ground in the countries where they work, which informs both their programmatic and advocacy efforts. Without talking face to face with these partners—many of whom cannot speak freely while in the countries where they work—these organizations cannot function effectively. Already, two Oxfam staff members in Sudan have had to cancel planned visits to the United States due to the initial travel ban.

Additionally, many organizations have programs or conferences based in the United States that will be significantly hampered because of the travel ban. For instance, the Middle East Studies Association (MESA), one of the plaintiffs here, will not be able to have anyone from the six affected countries at its annual meeting in the United States—a meeting that is a “leading international forum for

scholarship, intellectual exchange, and pedagogical innovation.”⁹ MESA hosts this conference “to advance learning, facilitate communication, and promote cooperation.”¹⁰ The ban will compromise MESA’s ability to achieve its goal because, according to MESA, it will likely result in “a substantial number of scholars [being] unable to attend this year’s meeting.”¹¹ Similarly, Oxfam hosts or participates in several conferences in the United States with attendees or panelists from the affected countries. For instance, in January of 2017, Oxfam staff participated in a conference at Harvard Divinity School addressing the interaction of secular aid groups and local (mostly religious) humanitarian actors in Syria and Sudan, among other regions. One panel included Syrian Fadi Hallisso, who directs an Oxfam-partner aid organization for Syrian refugees.¹² If the travel ban had been in place, he would not have been able to attend the conference. In fact, Fadi was planning to return to the United States for further meetings regarding the Syrian

⁹ First Amended Complaint for Declaratory Relief ¶¶ 176, 180, *Int’l Refugee Assistance Project v. Trump*, No. 8:17-cv-00361-TDC (D. Md. Mar. 10, 2017), ECF No. 93.

¹⁰ *Id.* ¶ 180.

¹¹ *Id.*

¹² Elizabeth Stevens, *Humanitarian crises and the role of faith*, The Politics of Poverty, Oxfam America (Jan. 26, 2017), <http://bit.ly/2ocrdiZ>; Michael Naughton, Harvard Divinity Sch., *A Shift in Humanitarian Crisis Response* (Jan. 12, 2017), <http://bit.ly/2p1iHs8>.

crisis.¹³ But he had to cancel those plans because, due to the uncertainty caused by the Order, he was unable to obtain the necessary travel documents.¹⁴ The travel ban threatens the ability of these and other organizations to host and participate in crucial programming discussions.

C. The Travel Ban Will Adversely Affect American Institutions Including Universities, The Technology Industry, And The Medical Profession

1. Universities

Foreign students—including those from the countries targeted by the Order—play a central role in higher education in the United States. In the 2015 to 2016 school year alone, more than 15,000 students from the six targeted countries attended United States colleges and universities.¹⁵ The Order's indiscriminate ban on travel based solely on nationality makes no meaningful effort to account for their importance or wellbeing. Although there is a waiver provision, that is not something individuals can depend on because the Department of State appears to have complete discretion over the issuance of waivers and it is unclear how these

¹³ Electronic correspondence with Noah Gottschalk, Senior Humanitarian Policy Advisor, Oxfam America (Apr. 18, 2017) (on file with author).

¹⁴ *Id.*

¹⁵ *All Places of Origin 2014/15 – 2015/16*, Inst. of Int'l Educ., <http://bit.ly/2ofuy0K> (last visited Apr. 18, 2017).

decisions will be made.¹⁶ Students from the affected countries who have been accepted into United States universities are faced with the possibility that they may not be able to travel to the United States for the start of classes. And students already in this country risk being barred from returning if they make a trip home to see family.

So great was the initial Order's impact on students that numerous articles documented their plight. For example, Seyed Sajjadi, a senior at California State University, arrived in the United States from Iran in 2012. He studies artificial intelligence, and has contributed to four published research papers.¹⁷ But due to the first Executive Order, his two jobs (an internship at a video game company and a research job at his university) "have stopped processing his work authorization renewals."¹⁸ In addition, he now may be unable to attend a conference in London this fall for one of his papers.¹⁹ When interviewed about the situation, he

¹⁶ Office of Public Affairs, Dep't Homeland Security, *Q&A: Protecting the Nation From Foreign Terrorist Entry to the United States* (Mar. 6, 2017), <http://bit.ly/2pebO3u> ("Q: What is the process for overseas travelers affected by the Executive Order to request a waiver?" A: "Waivers for overseas travelers without a valid U.S. visa will be adjudicated by the Department of State in conjunction with a visa application.").

¹⁷ Caroline Simon, *Trump travel ban casts a shadow over international students' futures*, USA Today College, Feb. 17, 2017, <http://usat.ly/2ls8MJX>.

¹⁸ *Id.*

¹⁹ *Id.*

explained: “I worked really hard to get where I am at this moment, and I’m happy about it, and I don’t want to lose it all.”²⁰

Not surprisingly, the travel ban also appears to be dissuading many foreign students, including those seeking advanced degrees, from even considering study in the United States. Graduate engineering programs, for example, have already seen as much as a 30 percent decline in applications for the coming academic year.²¹ Drops of that magnitude will have dramatic adverse effects on America’s universities. According to the National Foundation for American Policy, international students account for 70% of graduate students in electrical engineering, 63% in computer science, and more than half in industrial engineering, economics, chemical engineering, materials engineering and mechanical engineering.²² These graduate students are vital to universities’ research efforts and contribute to work that “attracts and retains high quality professors at U.S. universities, which in turn helps students by keeping science and

²⁰ *Id.*

²¹ Anna Maria Barry-Jester, *Trump’s New Travel Ban Could Affect Doctors, Especially in the Rust Belt and Appalachia*, FiveThirtyEight (Mar. 6, 2017), <http://53eig.ht/2lOVcwv>; Jeffrey Mervis, *Drop in foreign applicants worries U.S. engineering schools*, Science Magazine (Feb. 14, 2017), <http://bit.ly/2kJd246>.

²² Stuart Anderson, *The Importance of International Students to America* at 1, Nat’l Found. for Am. Policy (July 2013), <http://bit.ly/2lHLOW>.

engineering programs at a high level.”²³ And by keeping these programs at high levels, American universities and America itself are able to remain “at the center of both education and innovation around the world.”²⁴

Foreign graduate students, especially in science, technology, engineering, and math, provide important economic contributions as well. One study found that for “every 100 international students who receive science or engineering Ph.D.s from American universities, the nation gains 63 future patent applications.”²⁵ And in the 2015-2016 academic year alone, international students contributed \$32.8 billion to the United States economy and supported more than 400,000 jobs.²⁶

In addition to their academic, economic, and innovative contributions, these international scholars are essential to diverse and vibrant campus environments. They provide first-hand insight into important regions of the world. And they help students and faculty alike learn to collaborate despite ethnic, religious, and geographic differences. Fostering cross-cultural understanding is a fundamental

²³ Stuart Anderson, *International Students Are 70% Of EE Grad Students in U.S.*, Forbes.com (July 15, 2013), <http://bit.ly/2otXQwa>.

²⁴ *Id.*; see also Anderson, *supra* note 22, at 2 (“Foreign graduate students are crucial in assisting in research that attracts top faculty and strengthens the academic programs at U.S. schools, which benefits U.S. students and ensures America retains its preeminence as a teaching center in science, technology, engineering and math (STEM) fields.”).

²⁵ Anderson, *supra* note 22, at 5.

²⁶ *NAFSA International Student Economic Value Tool*, NAFSA: Ass’n of Int’l Educators, <http://bit.ly/2aO3nYj> (last visited Apr. 18, 2017).

part of universities' missions, as is "giving students a stronger sense that they are world citizens."²⁷

2. Technology Industry

In addition to its adverse impact on universities, especially on their science and engineering programs, the travel ban will also harm the science and technology sector more generally. While the ban is in effect, engineers, scientists, and skilled workers from the affected countries will be prevented from traveling to the United States to work and contribute to these sectors. As of 2006, foreign-born individuals made up almost a quarter of science and engineering workers.²⁸ Not only do these foreign-born workers expand the United States' high-tech workforce, but they have also helped to start "one-fourth of all new U.S. engineering and technology business established between 1995 and 2005."²⁹

3. Medical Profession

The travel ban will be especially detrimental to the medical profession, with many rural communities being hit the hardest. There are currently more than 7,000 doctors from Iran, Syria, Sudan, Somalia, Libya, and Yemen practicing medicine

²⁷ Lisa W. Foderaro, *More Foreign-Born Scholars Lead U.S. Universities*, N.Y. Times, Mar. 9, 2011, <http://nyti.ms/2oZaEfo>.

²⁸ Mary Mederios Kent, *More U.S. Scientists and Engineers Are Foreign Born*, Population Reference Bureau (Jan. 2011), <http://bit.ly/2paDkPf>.

²⁹ *Id.*

in the United States.³⁰ These doctors provide 14 million annual medical appointments, 2.3 million of which occur in areas that have doctor shortages.³¹ “The doctors [from the affected countries] are more likely to work in underserved areas and more likely to practice in areas of medicine facing shortages, such as pediatrics and psychiatry, meaning that many likely play a vital role in vulnerable communities.”³² This is because foreign-born physicians are willing to work “in small towns where there are no other doctors, in poor urban neighborhoods and in Veterans Affairs hospitals. . . . ‘They go to the places where [other] graduates . . . don’t want to go.’”³³

Already there are not enough American doctors to fill all of the residency positions the country requires: there are 22 percent more residencies available each year than there are American medical school graduates to take them.³⁴ Iranian doctors, in particular, help to fill this residency gap.³⁵ Yet according to the Educational Commission for Foreign Medical Graduates, if the travel ban goes into

³⁰ Barry-Jester, *supra* note 21.

³¹ Felice J. Freyer, *Doctors from banned countries serve millions of Americans, analysis finds*, Boston Globe, Mar. 6, 2017, <http://bit.ly/2mBojaP>.

³² Barry-Jester, *supra* note 21.

³³ Donald G. McNeil Jr., *Trump’s Travel Ban, Aimed at Terrorists, Has Blocked Doctors*, N.Y. Times, Feb. 6, 2017, <http://nyti.ms/2lgZygH>.

³⁴ *Id.*

³⁵ *Id.*

effect, an estimated 100 to 400 doctors from the six affected countries could have trouble getting visas to start their residencies *this summer*.³⁶

The challenge posed by the travel ban extends beyond the issuance of visas and the immediate stoppage of travel. When choosing whom to select for residency spots, hospitals will likely be less inclined to select candidates who “may not be able to enter the U.S. to begin training” or who may have to leave the United States for a personal emergency and be unable to return.³⁷ The inability of these candidates to secure an American residency now makes it unlikely they will ever obtain an American residency, because typically “foreign medical graduates have just one shot at being accepted into a residency program. If they’re unable to earn a spot during their first application cycle, chances rapidly diminish thereafter, leaving many contemplating whether to pursue training elsewhere.”³⁸ Fewer foreign doctors completing American residencies means fewer doctors practicing in the United States, which will only exacerbate America’s doctor shortage.

³⁶ Lisa Schencker, *Chicago med students celebrate Match Day, though travel ban uncertainty remains*, Chi. Trib. (Mar. 18, 2017), <http://trib.in/2oZAhg7>.

³⁷ Priya Raja, *Foreign medical students say travel ban places their futures in jeopardy*, ABC News (Mar. 16, 2017), <http://abcn.ws/2nvZU4g>.

³⁸ *Id.*

D. The Travel Ban Will Prevent Policymakers And The Public From Hearing Directly From People In The Targeted Countries

Finally, if the injunction is lifted, American policymakers, government officials, and business leaders will be denied access to critical information from individuals with direct experience in the affected countries. All six countries are embroiled in varying degrees of turmoil, from drought and extreme food insecurity to political upheaval and civil war. Non-governmental organizations, along with the American government, play an important role in helping to improve the conditions in these countries, thereby saving lives and promoting global stability. The success of this work, however, relies at least in part on the ability of those organizations, along with the American public and American lawmakers, to gain a detailed understanding of the situations on the ground.

Oxfam and other similar organizations facilitate the sharing of information about conditions on the ground by regularly bringing people from the affected countries to the United States to speak with American governmental officials, such as those at the Department of State or USAID. Oxfam also arranges informational meetings with Members of Congress and their staffs, with members of the Executive Branch (including representatives of the White House and the Department of the Treasury), and with members of the United Nations Security Council. Oxfam uses these meetings and discussions to educate government officials about political and humanitarian conditions in the affected countries.

Officials who attend these meetings are able to gain information about countries where the United States' government often has limited insight because of ongoing conflict—information that is key to the shaping of effective policies related to those countries, and to global peace and security.

Despite the availability of technology, video conferencing and electronic communication are not viable substitutes for these in-person meetings. Many of those who are willing to share information about the conditions in their countries and their experiences must come to the United States to do so because they cannot safely or legally speak about these matters at home. And it is not feasible for American officials and policymakers to travel to the countries at issue, many of which are embroiled in active conflict, to obtain this information.

Non-governmental organizations also hold conferences and publish reports and articles to inform the public more generally about the situations in these countries.³⁹ Reports on country conditions from those with firsthand knowledge are of value not only to the government, but also to the financial sector, the media,

³⁹ See, e.g., *NGO Letter regarding the human rights situation in Sudan*, Human Rights Watch (Sept. 8, 2016), <http://bit.ly/2nH99lP>; *Shattered lives: Syria*, Int'l Rescue Comm., <http://bit.ly/2pw7UT8> (last visited Apr. 18, 2017); Humanitarian Response, *Yemen: Humanitarian Response Plan 2017*, <https://www.humanitarianresponse.info/en/operations/yemen> (last visited Apr. 18, 2017); *Quick Facts: What You Need to Know About the Syria Crisis*, Mercy Corps (Mar. 9, 2017), <http://bit.ly/1Hlie2t>; *Famine and Food Insecurity: What's at Stake*, Mercy Corps (Mar. 1, 2017), <http://bit.ly/2o8dc71>; Martha Newsome, *Beware: 4 Refugee Myth Busters*, Medical Teams International: Official Blog (Jan. 28, 2017), <http://bit.ly/2ouEcjt>.

and the public at large. The need for Americans to understand the situation in conflict-ridden countries could not be more pressing. Yet the travel ban will compromise the ability of all Americans to do so.

CONCLUSION

The Order should not be understood or analyzed in a vacuum. As the foregoing demonstrates, enforcement of the Order would have immediate, concrete, and significant adverse effects on people and institutions within the United States and around the world. These effects bear on the legal questions presented.

This Court should affirm the District Court's decision enjoining enforcement of Section 2(c) of the Order.

Respectfully submitted,

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April 19, 2017

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CERTIFICATE OF COMPLIANCE

I certify that the foregoing Brief of Oxfam America, Inc. *As Amicus Curiae* In Support of Plaintiffs-Appellees complies with type-volume limits because, excluding the parts of the document exempted by Fed. R. App. R. 32(f), the brief contains 4,020 words, and is proportionately spaced using a roman style typeface of 14-point.

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Dated: April 19, 2017

CERTIFICATE OF SERVICE

I, Richard P. Bress, hereby certify that on April 19, 2017, I electronically filed the foregoing Brief of Oxfam America, Inc. As *Amicus Curiae* In Support of Plaintiffs-Appellees with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system, which will send notice of such filing to all registered CM/ECF users.

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