

No. 17-17168

United States Court of Appeals

FOR THE Ninth Circuit

STATE OF HAWAII, *et al.*,
Plaintiffs-Appellees,

v.

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

On Appeal from the United States District Court
for the District of Hawaii, No. 1:17-cv-00050-DKW-KSC
District Judge Derrick K. Watson

BRIEF OF *AMICI CURIAE* 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 IN SUPPORT OF PLAINTIFFS-APPELLEES

Thomas J. Perrelli
Lindsay C. Harrison
Tassity S. Johnson
Jenner & Block LLP
1099 New York Ave NW
Washington, DC 20001-4412
Phone: (202) 639-6000

DRAFT: Privileged & Confidential; Attorney Work Product

Attorneys for Amici Colleges and Universities

DRAFT: Privileged & Confidential; Attorney Work Product

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: November 22, 2017

By: /s/ Lindsay C. Harrison
Lindsay C. Harrison
Attorney for *Amici*
Colleges and Universities

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INTEREST OF *AMICI CURIAE*¹

Amici are 31 colleges and universities.² Although *amici* are located in the U.S., their missions and reach are global: they educate, employ, conduct research, and collaborate with students, faculty, and scholars from all over the world—individuals who speak different languages, practice different religions, and have wide-ranging life experiences. These individuals make significant contributions to their fields of study and to campus life by bringing their unique perspectives and talents to *amici*'s classrooms, laboratories, and performance spaces. They also contribute by making scientific discoveries, starting businesses, and creating literature and art, all of which redound to the benefit of others far beyond *amici*'s campuses. So too, by studying and engaging with other scholars in the U.S., these individuals gain a greater understanding of and appreciation for the values we hold dear, including democratic principles and respect for the rule of law, tolerance, and human rights—values which they may then share with citizens of their home countries.

Recognizing the invaluable contributions of international students, faculty, and scholars, *amici* work to attract the most talented individuals from around the

¹ No counsel for a party authored this brief in whole or in part, and no person, other than *amici* or their counsel, made any monetary contribution intended to fund this brief. The parties have consented to the filing of this brief.

² *Amici* are listed in the Appendix.

globe and to engage persons around the world through international campuses and programs. In light of their educational missions, *amici* are deeply interested in ensuring that individuals from around the globe can continue to enter the U.S. and share their unique skills and perspectives. *Amici* recognize the government's interests in protecting national security, but students and scholars already undergo significant scrutiny on an individual basis to study or work here. *Amici* therefore submit this brief in support of Plaintiffs-Appellees on the merits of the government's appeal regarding the district court's preliminary injunction.

SUMMARY OF ARGUMENT

Amici have long recognized the importance of attracting international students, faculty, staff, and scholars. International scholars and faculty share important insights about conditions, traditions, and cultural values and practices in their nations. Their work leads to critical advancements across all disciplines, from science and technology to arts and letters, often through cross-border collaborations that enhance their teaching and research. International students study here and return home as leaders in business, medicine, politics, and other fields. The benefits of international diversity in American higher education thus inure not only to colleges and universities themselves, but to the country and indeed the world.

The third in a series of presidential orders banning entry into the U.S. of nationals of Muslim-majority countries, Presidential Proclamation No. 9645, like its predecessors, impairs *amici*'s ability to attract talented individuals from around the globe and thus to meet their goals of educating tomorrow's leaders. *See* 82 Fed. Reg. 45,161 (Sept. 24, 2017) [hereinafter "Proclamation"]. Unlike the temporary bans of its predecessors, however, the Proclamation *indefinitely* bars or

otherwise restricts entry of all immigrants and most non-immigrants from Chad, Iran, Libya, Somalia, Syria, and Yemen.³ Proclamation § 2.

The Proclamation permanently interferes with the entry of nationals from the six Muslim-majority countries who seek the categories of visas most commonly relied upon by *amici*'s international students, faculty, staff, and scholars. It excludes all Syrian nationals, preventing *amici* from recruiting promising students, faculty, staff, and scholars and jeopardizing the education and careers of Syrian nationals currently enrolled at or employed by *amici* on visas that will need to be renewed. *Id.* § 2(e)(ii). For Iranian nationals, it suspends all nonimmigrant visas, with the exception of student and exchange visas, throwing *amici*'s recruitment efforts of prospective Iranian faculty and staff, and the careers of Iranian nationals currently employed by *amici*, into similar jeopardy. *Id.* § 2(b)(ii). It also suspends travel and business visas for nationals of Chad, Iran, Libya, and Yemen, inhibiting *amici* from interviewing prospective faculty from these countries in person, recruiting prospective students from these countries through campus visits, collaborating with researchers from these countries at conferences, and inviting world-renowned scholars from these countries to speak. *Id.* §§ 2(a)(ii), (b)(ii), (c)(ii), (g)(ii).

³ See Executive Order No. 13,769, § 2(c), 82 Fed. Reg. 8,977 (Jan. 27, 2017); Executive Order No. 13,780 § 2(c), 82 Fed. Reg. 13,209 (Mar. 6, 2017).

Despite the extensive individualized vetting a person already must undergo to secure a visa to study here, the Proclamation imposes additional, unspecified “enhanced screening and vetting” on students and scholars from Iran, and students, scholars, or faculty from Somalia. *Id.* §§ 2(b)(ii), (h)(ii). This additional scrutiny may mean that many otherwise qualified students and scholars will not be able to obtain visas, and it all but ensures that others will be deterred from applying. *Amici* moreover risk losing current students, faculty, and scholars from the targeted Muslim-majority countries because their family members who remain in those countries will never be able to visit on travel visas or join them here on immigrant visas. *Id.* § 2.

The Proclamation threatens *amici*’s ability to attract persons not only from the six specified countries, but from around the world. It contradicts the values that *amici* have traditionally touted as benefits of studying and working here, including the freedom of religion and equality embodied in the First and Fourteenth Amendments. Indeed, large groups of scholars have threatened to boycott meetings and conferences hosted in the U.S. because of the travel ban. Universities in other countries have used the predecessor travel bans, and the arbitrariness and unpredictability that the bans have introduced into this country’s immigration policy, to recruit international students, faculty, and scholars away from U.S. institutions. The Proclamation only strengthens these appeals.

Amici have already felt some of the predecessor travel bans’ damaging effects, and the Proclamation promises to exacerbate these harms. International scholars and faculty advised many of *amici* that they could not accept invitations to work and teach here given the uncertainty surrounding the predecessor travel bans. The Proclamation has removed all doubt that scholars and faculty from Syria cannot work and teach at *amici*, and that persons from the other targeted countries will face an uphill battle to do so, a battle in which victory may mean permanent separation from their families. Likewise, the predecessor bans deterred students from applying to and studying at American universities. And, if permitted to stand, the Proclamation will discourage many prospective international students from applying to *amici* during future application cycles. Even worse, *amici* have been harmed by the predecessor travel bans and the Proclamation without any evidence that an appreciable number of nationals from these countries—all of whom the government already vets before permitting them to study or work here—pose any safety or security threat. Upholding the Proclamation will telegraph to all countries that their citizens may be unjustly targeted for exclusion, worsening the Proclamation’s negative effects.

Amici support the injunction of Section 2 of the Proclamation as applied to all visa applicants, rather than only to “foreign nationals who have a credible claim of bona fide relationship with a person or entity in the United States.”

Order, *Hawai'i et al. v. Trump et al.*, Civil Action No. 17-17168, Doc. No. 39 (9th Cir. Nov. 13, 2017) (quoting *Trump v. Int'l Refugee Assistance Project (IRAP)*, 137 S. Ct. 2080, 2088 (2017) (per curiam)). Limiting the Proclamation's scope to only those lacking such a "bona fide" relationship does not cure its harms to *amici*.

Because the Proclamation both harms American higher education and offends important, defining principles of our country, *amici* respectfully submit this brief in support of Plaintiffs-Appellees.

ARGUMENT

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

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

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

Amici are committed to attracting the most exceptional individuals from all nations. In the 2015–16 academic year, U.S. universities welcomed more than one

million international students.⁴ *Amici*'s campuses reflect this trend. Each is home to a significant percentage of international students, faculty, and scholars—including many nationals of the six countries affected by the Proclamation. This international presence is true across *amici*'s campuses even though *amici* vary in size, location, and focus.

For example, in fall 2016, Columbia University enrolled 1,416 international undergraduates (16% of Columbia's undergraduate population) and 7,571 international graduate and professional students (38.7% of its graduate/professional students). USC had 10,571 international students—24.1% of its student body—enrolled in fall 2016. At Duke, in fall 2016, 27% of the student population was international, including 13% of the undergraduate students, and 38% of the graduate students. The University of Pennsylvania's numbers are similar: 4,859 international students were enrolled in fall 2016, including 13% of the incoming freshmen and more than 25% of graduate students. As of October 2016, Stanford enrolled 4,164 international students, comprising 24% of the student population.

⁴ 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>.

In fall 2016, 6,764 international students were enrolled at the University of Michigan, comprising 15% of its student population.

Amici also benefit from the contributions of international faculty and scholars. More than 40% of MIT's faculty is international. At Princeton, approximately 30% of faculty appointees, 50% of academic professionals (professional researchers, specialists, librarians, and postdoctoral fellows), and 50% of visiting faculty and researchers are international (including lawful permanent residents). The University of Chicago counts as international (including lawful permanent residents) 24% of its faculty and other academic appointees, 63% of its postdoctoral researchers, and 10% of its staff members. At Cornell, 5.1% of faculty are international, as are 26.4% of other academic employees and post-doctorates. Yale's faculty is 10% international, as is approximately 65% of its postdoctoral research community. In fall 2016, Northwestern was home to 1,534 international scholars, in positions from postdoctoral scholars to researchers and faculty. 34% percent of Emory's 944 full-time research staff are nonresident aliens.

Amici's international students, faculty, and scholars include persons from the six countries affected by the Proclamation. USC had 168 students from Iran alone enrolled in fall 2016. Princeton has more than 50 students and employees from the six affected countries, and its graduate school received approximately 150

applications for fall 2017 (and more than 700 applications in the past five years) from students from those nations. Over the past three years, Rice has hosted between 32 and 35 students from the six affected countries and received more than 600 applications from undergraduate and graduate students from those countries. Brown has more than 20 students and scholars from the countries affected by the Proclamation. The University of Chicago has 22 students from Iran, as well as 2 students from Syria and 2 recent graduates from Iran employed under Optional Practical Training (OPT) and University sponsorship.⁵ In the past academic year, Northwestern was home to 45 students and 22 scholars from Iran, 2 students from Syria, 1 from Yemen, and extended offers of admission for the current academic year to at least 16 prospective students affected by the Proclamation. Carnegie Mellon has 31 students and 10 faculty and scholars from the six affected countries at its U.S. locations. WPI has 32 undergraduate and graduate students and 29 faculty and scholars from the affected countries. Harvard counts 45 students and 63 scholars from the six affected countries who are present on nonimmigrant visas, along with 77 dependents from those countries, and has admitted 23 students from those countries for fall 2017. MIT currently has 58 degree and non-degree

⁵ “Optional Practical Training (OPT) is temporary employment that is directly related to an F-1 student’s major area of study.” U.S. Customs & Immigration Services, *Optional Practical Training (OPT) for F-1 Students* (last updated Feb. 1, 2017), <https://www.uscis.gov/working-united-states/students-and-exchange-visitors/students-and-employment/optional-practical-training>.

students, 53 scholars, and 6 recent graduates on OPT from the six affected countries. Emory hosts 40 faculty members and scholars from those countries. 20 of Boston University's faculty and scholars are from two of the six countries. Tufts hosts 18 faculty and scholars from the affected countries. These are just a few of the universities where persons from the affected countries make invaluable contributions to *amici's* communities.

The international presence at *amici's* campuses is no accident. *Amici* have invested significant time and resources to attract international students, faculty, and scholars. For example, *amici* have established many programs and centers focused on specific subjects like archaeology and the ancient world, including the Joukowsky Institute for Archaeology and the Ancient World at Brown and the University of Chicago's Oriental Institute for the study of ancient Near Eastern civilizations; schools dedicated to international relations like the School of International and Public Affairs at Columbia; residential communities focusing on cross-cultural collaboration like the Global Village at Dartmouth; and centers that serve as the focal point for international students, faculty, and scholars, like the Davis International Center and Mamdouha S. Bobst Center for Peace and Justice at Princeton, the Bechtel International Center at Stanford, the McDonnell International Scholars Academy at Washington University, and the World Fellows Program, Jackson Institute for Global Affairs, and MacMillan Center for

International and Area Studies at Yale. Other programs focus on educating foreign ministers, including those from the six countries affected by the Proclamation. For example, Harvard Kennedy School 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 are invited to a rigorous summer course in Cambridge for leadership enhancement.

The success of these centers, programs, and offerings—and the success of *amici* in attracting persons from around the world—depends on U.S. immigration policies. Many international students, faculty, and scholars are present on J-1 visas. This longstanding program is administered by the State Department to “foster[] global understanding through educational and cultural exchanges.”⁶ Indeed, the State Department’s website instructs J-1 visa recipients to “return to their home country...to share their exchange experiences.”⁷ As discussed below, many do—and the U.S. and the world reap wide-ranging benefits from their return,

⁶ Bureau of Educ. and Cultural Affairs, U.S. Dep’t of State, J-1 Visa Exchange Visitor Program, Common Questions - Basics, <https://j1visa.state.gov/basics/common-questions/> (last visited Nov. 13, 2017).

⁷ *Id.* The J-1 Visa Program’s importance is underscored by the existence of J-2 visas, which permit “spouses and dependents ... of J-1 exchange visitors [to] accompany or later join the J-1 holder in the United States.” Bureau of Educational and Cultural Affairs, U.S. Dep’t of State, J-1 Visa Exchange Visitor Program, About the J-2 Visa, <https://j1visa.state.gov/basics/j2-visa/> (last visited Nov. 13, 2017).

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

The U.S. offers other types of visas to international students, faculty, and scholars as well. Many students attending full-time degree programs rely on F-1 visas, which allow them to remain in the U.S. for as long as it takes to complete their courses of study. And some university faculty, research scholars, and staff hold H-1B visas, which allow U.S. employers to fill gaps in the existing labor force with highly-skilled, temporary workers from other countries. A significant number of researchers are employed through H-1B visas, most notably for positions in technology and the sciences.⁸ Some universities also use the O-1 visa program, which enables professors or researchers with extraordinary demonstrated ability in the arts, sciences, education, business, or athletics to enter the U.S. temporarily to work in their specified field.⁹ Prospective students who wish to visit college campuses before deciding where to attend, prospective faculty and staff invited to

⁸ See, e.g., American Immigration Council, *Fact Sheet: The H-1B Visa Program: A Primer on the Program and Its Impact on Jobs, Wages, and the Economy* (Apr. 1, 2016), <https://www.americanimmigrationcouncil.org/research/h1b-visa-program-fact-sheet> (“[T]he presence of research universities accounts for H-1B demand” in many metro areas, and “[n]early two-thirds of requests for H-1B workers are for STEM occupations. There is also high demand for workers in healthcare, business, finance, and life sciences industries.”).

⁹ Bureau of Consular Affairs, U.S. Dep’t of State, U.S. Visas: Temporary Worker Visas, <https://travel.state.gov/content/visas/en/employment/temporary.html> (last visited Nov. 13, 2017).

in-person job interviews, and scholars who wish to attend conferences in their fields or to speak at university events may do so on B-1, B-2, or B-1/B-2 visas for business and travel.¹⁰

Through these visa programs, the many international students, faculty, and scholars at *amici*'s campuses are thoroughly vetted by the U.S. using existing procedures.¹¹ *Amici* must be able to assure current and prospective international students, faculty, and scholars that once they have been cleared through standard vetting procedures, they may enter the U.S. to pursue their studies and scholarship. *Amici*'s ability to accomplish their educational missions thus necessarily depends on clear, consistent, predictable, and nondiscriminatory application of American immigration policies.

B. International Students, Faculty, and Scholars Contribute Significantly to *Amici*'s Campuses.

International students, faculty, and scholars make substantial contributions to *amici*'s campuses. International diversity benefits *amici* by facilitating regular

¹⁰ Bureau of Consular Affairs, U.S. Dep't of State, U.S. Visas: Visitor Visa, <https://travel.state.gov/content/visas/en/visit/visitor.html> (last visited Nov. 13, 2017).

¹¹ Joint Decl. of Madeline K. Albright, Avril D. Haines, Michael V. Hayden, John F. Kerry, John E. McLaughlin, Lisa O. Monaco, Michael J. Morell, Janet A. Napolitano, Leon E. Panetta, and Susan E. Rice ¶ 6, *Washington v. Trump*, No. 17-35105 (9th Cir. Feb. 6, 2017), ECF No. 28-2 (hereinafter "Government Officials Declaration").

interactions between individuals from different cultures with varied life experiences: a Muslim student from Iran brings something different to the seminar table than a Jewish professor from the Midwestern U.S. or a Christian graduate student from Western Europe. This diversity promotes the free exchange of ideas, encouraging individuals to consider issues from a multiplicity of perspectives and giving students and faculty a greater understanding of our global, pluralistic society. Moreover, when individuals from different backgrounds live and study together on the same campus, the resulting diversity increases worldwide understanding.

The Supreme Court acknowledged these benefits when it 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)). “The academic mission of a university is a special concern of the First Amendment,” and “[p]art of the business of a university [is] to provide that atmosphere which is most conducive to speculation, experiment, and creation.” *Id.* at 2418 (internal quotation marks omitted; second bracket in original). A diverse student body contributes to this atmosphere by fostering “enhanced classroom dialogue” and “lessening ... isolation and stereotypes.” *Id.* Accordingly, the Court has recognized that to “fulfill[] [their] mission[s],” universities must be able to recruit

students (and, by extension, faculty and scholars) who will “contribute the most to the robust exchange of ideas.” *Grutter v. Bollinger*, 539 U.S. 306, 324 (2003) (quoting *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 313 (1978)).

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

International students, faculty, and scholars also contribute to *amici*'s campuses through their academic interests and achievements. For example, many study, teach, and research in fields that are underpopulated by American-born students, faculty, and scholars, such as STEM fields. By one account, more than one third of international students during the 2015–16 year studied engineering, math, or computer science, and “many” of the 14% who participated in F-1 OPT

worked in STEM fields.¹² Encouraging international students and faculty to study and work at *amici* 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 Benefit the U.S. and the World.

International students, faculty, and scholars make significant scientific, technological, social, and political contributions to the U.S. and the world.

To begin, international students make significant contributions to the U.S. economy. One estimate provides that international students directly contributed \$32.8 billion to the U.S. economy and supported or contributed to the creation of 400,000 American jobs in the 2015–16 academic year;¹³ others suggest that international students “inject hundreds of billions into the U.S. economy” and “support[] well over a million U.S. jobs.”¹⁴

In addition, many international students choose to remain in the U.S. and become leading innovators, entrepreneurs, artists, and thought-leaders. One study found that more than one third of U.S. innovators were born outside the country,

¹² Sara Custer, *Open Doors*, *supra* note 3.

¹³ NAFSA, NAFSA International Student Economic Value Tool, http://www.nafsa.org/Policy_and_Advocacy/Policy_Resources/Policy_Trends_and_Data/NAFSA_International_Student_Economic_Value_Tool/ (last visited Nov. 13, 2017).

¹⁴ Government Officials Declaration ¶ 5(g).

and another ten percent have at least one foreign-born parent.¹⁵ Another analysis found that “[i]mmigrants have started more than one half (44 of 87) of America’s startup companies valued at \$1 billion dollars or more and are key members of management or product development teams in over 70 percent (62 of 87) of these companies.”¹⁶

The benefits from this international presence at American universities are not just economic. These individuals make significant discoveries and contributions in their fields. Since 2000, forty percent of all American Nobel prize winners in Chemistry, Medicine, and Physics have been immigrants—and in 2016, *all six* American winners of the Nobel Prize in economics and scientific fields were foreign-born.¹⁷ These awards “represent great individual achievement but also reflect the state of research, openness and scientific advancement within [American] society.”¹⁸

¹⁵ Adams Nager, et al., Information Technology & Innovation Found., *The Demographics of Innovation in the United States* (Feb. 24, 2016), <https://itif.org/publications/2016/02/24/demographics-innovation-united-states>.

¹⁶ Stuart Anderson, Nat’l Found. for American Policy, *Immigrants and Billion Dollar Startups*, <http://nfap.com/wp-content/uploads/2016/03/Immigrants-and-Billion-Dollar-Startups.NFAP-Policy-Brief.March-2016.pdf>.

¹⁷ Stuart Anderson, *Immigrants Flooding America with Nobel Prizes*, Forbes (Oct. 16, 2016, 10:48 AM), <http://www.forbes.com/sites/stuartanderson/2016/10/16/immigrants-flooding-america-with-nobel-prizes/#3de213817f5f>.

¹⁸ *Id.*

Amici have seen these successes up close. In 2014, the late 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.¹⁹ Professor Muawia Barazangi came to the U.S. from Syria for graduate study after earning his undergraduate degree from the University of Damascus; he earned a Ph.D. from Columbia before joining the faculty at Cornell, where he became a U.S. citizen and had a long and distinguished research and teaching career in the field of Earth Sciences. Syrian-born Dina Katabi, a professor at MIT, came to the U.S. for graduate study at MIT, and has since won a MacArthur “Genius” grant for her work on improving wireless network efficiency and security.²⁰

Education and employment at leading American universities also provide opportunities for individuals to experience life in the U.S. and gain a greater appreciation for American social and political norms and ideas. Individuals return to their home countries with a deeper understanding of and appreciation for the U.S. and its values—and, hopefully, a greater desire to engage in continuing

¹⁹ See Katie Rose Quandt, *Meet the First Woman to Win the “Nobel Prize of Mathematics,”* Mother Jones (Aug. 14, 2014), <http://m.motherjones.com/mixed-media/2014/08/maryam-mirzakhani-first-woman-fields-medal-mathematics>.

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

discourse and exchange. They also return home 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 stymie radicalization.²¹

International students, faculty, and scholars become leaders in their home countries. Yale counts among its distinguished alumni many foreign leaders, including Valdis Zatlers, former President of Latvia, and Abd al-Karim al-Iryani, former Prime Minister of the Republic of Yemen. 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. World leaders educated at Harvard include current Liberian President Ellen Johnson-Sirleaf (Africa's first elected female President) and former Prime Minister of Pakistan Benazir Bhutto. And Georgetown counts among its alumni many foreign leaders, including Abdullah II bin al-Hussein, the King of Jordan; José Manuel Barroso, former President of the European Commission; Saad Hariri, former Prime Minister of Lebanon; and Nasser Judeh, former Deputy Prime Minister and Minister of Foreign Affairs of Jordan.

²¹ See, e.g., Omer Taspinar, *The Problem With Radicalism*, 19 Cairo Rev. 76, 80 (2015) (“An agenda based on human development with equal emphasis on education reform, democratic reforms, and socioeconomic advancement can address the ideological as well as economic root causes of radicalization.”).

II. The Proclamation Harms Students, Faculty, Scholars, and Universities.

The Proclamation has serious and chilling implications for *amici*'s students, faculty, and scholars. It separates current students from their families, impairs the ability of American universities to draw the finest international talent, and inhibits the free exchange of ideas. *See Washington v. Trump*, 847 F.3d 1151, 1168-69 (9th Cir. 2017) (referring to these effects as “substantial injuries” with respect to the predecessor Executive Order). It is imperative to *amici* that the Court consider these and other detrimental effects of the Proclamation.

First, the Proclamation hurts American universities by prohibiting or deterring international students, faculty, and scholars from studying here. *Amici*, like other American universities, aim to attract talented students, faculty, and scholars from around the globe. The Proclamation hampers *amici*'s ability to do so by arbitrarily and indefinitely banning or unduly burdening the entry of persons from six majority-Muslim countries and contemplating further categorical entry bans based on national origin. The exclusion of those persons diminishes the experience of studying at *amici* for everyone, and as the predecessor bans' effects demonstrate, inevitably will deter persons from other countries from choosing to study or work here.

Reducing the international presence on *amici*'s campuses will detract from the academic experience for those who do study in this country. As *amici* have

explained, the benefits of international diversity to American universities are manifold. And it is not merely the classroom experience that will suffer. The success of American laboratories, a major driver of our economy, depends on their ability to attract the best trainees and postdoctoral fellows wherever they may be found, and on their ability to collaborate with foreign scientists. The Proclamation diminishes *amici*'s ability to attract these scientists, who will otherwise go to foreign laboratories.

Indeed, international universities have noted this effect and issued statements criticizing the predecessor Orders and touting their own opportunities for international students and scholars.²² Regarding the travel ban's first iteration, the Vice-Chancellor of the University of Cambridge, UK stated: "While we acknowledge that a country must have the right to manage its own borders, this ban is fundamentally at odds with the values of openness, tolerance and evidence-based decision-making that the University of Cambridge stands for."²³ He added: "We are determined to champion openness, and the free exchange of knowledge across borders. Even as governments around the world seek to curb freedom of

²² Chris Parr, *Response: international universities speak out against Trump ban*, The Times Higher Education (Jan. 31, 2017), <https://www.timeshighereducation.com/blog/response-international-universities-speak-out-against-trump-ban>.

²³ *Id.*

movement, the University of Cambridge remains committed to welcoming the best and brightest students and staff—irrespective of their nationality.”²⁴

The Proclamation’s effects on prospective international students are not speculative. Some *amici* have already suffered the predecessor travel bans’ negative consequences, and given the indefinite nature of the Proclamation’s bans and restrictions on entry, *amici* will continue to suffer them. Many admissions letters for fall 2017 were sent in spring of this year, just after the first travel ban was issued. Prospective international students had a short window to decide whether to attend a U.S. college or university. Faced with the prospect that they might not be able to obtain visas, many reasonably chose to enroll at universities in other countries instead of studying here. Many *amici* received calls from concerned prospective and admitted students who questioned whether they could enroll at all in light of this uncertainty.

Amici’s experiences of potential, and actual, declining international student enrollment in the wake of the Proclamation and predecessor travel bans reverberate throughout U.S. higher education. In a survey issued shortly after execution of the second travel ban, 79% of surveyed U.S. college and university recruiters of international students expressed serious concerns about their yield of admitted undergraduate students from the Middle East; moreover, based only on the

²⁴ *Id.*

political rhetoric around immigration leading up to the 2016 presidential election, nearly 40% of the educational institutions surveyed reported an overall decrease in international student applications for fall 2017 enrollment.²⁵ In another survey, 46% of U.S. graduate school deans reported seeing substantial declines in admission yields for all international students for fall 2017 enrollment, and 52% reported seeing these declines in admission yields of prospective international graduate students from the Middle East and North Africa.²⁶

These very real difficulties extend to faculty and scholars. Yale's MacMillan Center Council on Middle East Studies and its Program on Iranian Studies are currently conducting searches for post-doctoral fellows and visiting scholars, with the most promising candidates being Iranian nationals who are currently abroad. The Proclamation's indefinite suspension for Iranian nationals of all immigrant visas, and all non-immigrant visas other than student and exchange visitor visas, will mean that some candidates may have to turn down Yale's offers.

²⁵ American Association of Collegiate Registrars and Admissions Officers, *Treading Topics Survey: International Applicants for Fall 2017—Institutional & Applicant Perceptions* 1-2, 8, 10 (Apr. 4, 2017), <http://www.aacrao.org/docs/default-source/TrendTopic/Immigration/final-report.pdf?sfvrsn=0>.

²⁶ Hironao Okahana, *Data Sources: Admission Yields of Prospective International Graduate Students: A First Look*, <http://cgsnet.org/data-sources-admission-yields-prospective-international-graduate-students-first-look> (last accessed Nov. 13, 2017).

The University of Pennsylvania has similar concerns, with three faculty recruits whose opportunities may be eliminated by the Proclamation. Princeton and MIT, too, have received numerous inquiries from academic departments about how to handle the questions and concerns of faculty and scholar recruits and invited visitors who have expressed hesitation about coming to the U.S.

Second, the Proclamation harms the current members of *amici*'s campuses from the six affected countries. Even if it does not prematurely cancel their visas, the Proclamation still separates members of *amici*'s communities from their family members living abroad. For instance, the spouses and children of scholars and researchers from Chad, Iran, Libya, Syria, and Yemen will be unable to enter the U.S. even for a short-term visit, creating a traumatic separation as a result of their family members' decision to study and work here. Given that the Proclamation suspends all categories of visas for Syrian nationals and suspends all visas other than student and exchange visas for Iranian nationals, students, faculty, and scholars from Syria and faculty and scholars from Iran are wary of leaving the U.S. because their re-entry may be barred or challenged by immigration authorities. Many students from the five countries also named in the predecessor travel bans remained in the U.S. this past summer, in fear that leaving to work, study abroad, or visit their families would risk indefinite exclusion or detention upon their return. By subjecting students from Iran and students, faculty, and scholars from Somalia

to undefined “enhanced screening and vetting,” the Proclamation gives them no comfort that their fears were unfounded. The inscrutability of what this additional vetting entails means that, even though students and scholars currently studying or working at *amici* have already undergone and passed thorough vetting, they have no assurances that they will pass the additional vetting ordered by the Proclamation if they leave the U.S. and seek reentry.

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

Third, the Proclamation’s chilling effects extend beyond persons from the six targeted countries. Given the review of other countries directed by the Proclamation, Proclamation § 4(a)(ii), and the possibility that other countries will be added to the Proclamation’s scope, *all* international students, faculty, and scholars may reasonably fear that their immigration status may be revoked at any

time for reasons having nothing to do with their conduct and based on no evidence that they pose any security risk to this country. And should a new country find itself the target of a subsequent Order banning entry of its nationals, the chaos resulting from the first travel ban would repeat itself, reinforcing feelings of doubt and insecurity about this nation.

Fourth, the Proclamation will impede successful academic collaboration. American universities host thousands of conferences and symposia each year. These academic meetings convene scholars within and across disciplines of study. They are incubators for innovation and promote the free flow of information and ideas. By hosting these events, *amici* ensure that their participating scholars can encounter and collaborate with other scholars. The resulting collaborations are essential to addressing problems that are global in scope, such as geopolitical conflict, terrorism, and the spread of communicable diseases.

The Proclamation threatens these efforts by prohibiting certain academics from traveling to the U.S., and by provoking a backlash from others not subject to the ban. Indeed, international universities observed that the predecessor travel bans would impede collaborative partnerships with American universities.²⁷ The

²⁷ Parr, *supra* note 21 (quoting the President of McMaster University, Canada: “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

predecessor bans' negative consequences to collaboration have already been felt. The University of Pennsylvania had planned to invite three Iranian human rights activists to a conference in March 2017, but with the second travel ban in effect, their participation would have been barred. Participants in a conference at the Harvard Center for Middle Eastern Studies voluntarily withdrew due to current U.S. immigration policies or perceptions thereof. The Sharmin & Bijan Mossavar-Rahmani Center for Iran and Persian Gulf Studies at Princeton expressly aims to advance understanding of Iran and the Persian Gulf; if the Center cannot invite Iranian guest speakers, as the Proclamation inhibits it from doing, the Center obviously will be impeded in serving its mission.

What is more, faculty members from around the world already have called for a boycott of academic conferences in the U.S. in response to the predecessor travel bans.²⁸ Thousands of scholars in the U.S. and abroad have pledged not to

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.”).

²⁸ See Shannon Najmabadi, *Academics Mull Boycott of U.S. Conferences as a Way of Fighting Travel Ban*, *The Chronicle of Higher Education* (Jan. 30, 2017), http://www.chronicle.com/article/Academics-Mull-Boycott-of-US/239047?cid=pm&utm_source=pm&utm_medium=en&elqTrackId=e9a82fa115e24765bc019b2dfc9d480e&elq=ef21be06f46043e287aeddd6a611eb6e&elqaid=12357&elqat=1&elqCampaignId=5023; Elizabeth Redden, *Boycotting the U.S.*, *Inside Higher Ed* (Jan. 31, 2017),

attend international conferences here because of these bans.²⁹ Given that the Proclamation indefinitely extends the bans' discriminatory restrictions on entry, these scholars have no reason to end their boycott.

Academic conferences and meetings facilitate major breakthroughs and discoveries, candid discussion and debate, and face-to-face meetings that generate future partnerships. Excluding scholars from the six affected countries—and other scholars who choose not to participate because of the Proclamation—will hamper the success of these collaborations. This nation will inevitably suffer when these meetings are shifted abroad to avoid the Proclamation effects.

Fifth, amici strive to foster a culture of diversity, inclusion, and tolerance on their campuses. *Supra* Part I. The Proclamation 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 and religious intolerance 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.

<https://www.insidehighered.com/news/2017/01/31/protest-trump-entry-ban-some-scholars-areboycotting-us-based-conferences>.

²⁹ In Solidarity with People Affected by the ‘Muslim Ban,’ https://docs.google.com/forms/d/e/1FAIpQLSeNN_2HHREt1h-dm_CgWpFHW8NDPGLCkOwB4ILRFtKFJqI25w/viewform?c=0&w=1&fbzx=2104368019732744200 (last visited Nov. 13, 2017).

Finally, limiting the Proclamation’s scope to individuals lacking “any bona fide relationship” with an U.S. person or entity—as the partial stay of the district court’s injunction did, *see* Doc. No. 39—does not rectify the Proclamation’s harms to *amici*. In carving out the “bona fide relationship” exception to the predecessor travel ban, the Supreme Court offered examples of relationships that would qualify as “bona fide”; regrettably, these examples did not resolve the uncertainty the Proclamation has introduced into potential collaborations between *amici* and international students, faculty, and scholars.

Students who have already been admitted to American universities, and workers who have already accepted offers of employment here, are two qualifying bona fide relationships. *IRAP*, 137 S. Ct. at 2088. But what about international scholars at *amici* who are not students or employees of *amici* or any other American entity? At *amici*, the populations of such international scholars—who are neither students nor employees on sponsored work visas—are sizeable. At Harvard alone, over 50 scholars from the six targeted countries are visiting researchers, research and postdoctoral fellows, and interns. To Harvard, these relationships are surely bona fide, but the University has no assurance that the U.S. will not conclude otherwise at the border. The discretion afforded the government under this rule has harsh consequences; for example, scholars and students may be loath to publish research or other works critical of the government, its political

preferences, or U.S. foreign policy, lest their immigration status be threatened. The “bona fide relationship” test’s inherent ambiguity and uncertainty could have a destructive chilling effect on scholars and students who have traditionally enjoyed an environment of academic freedom in this country.

The “bona fide relationship” carve-out also leaves the substantial class of *prospective* international students, faculty, and scholars in a state of uncertainty. The Supreme Court did not address whether this carve-out applies to individuals who do not currently have, but may in the near future enter into, a relationship with an American entity. International students considering applying to *amici* likely do not currently have a formal, documented relationship with any U.S. entity, and they will not unless and until they are accepted by an *amicus* university. So too for international faculty and scholars not currently employed by *amici*, or any other American entity, whom *amici* may wish to recruit, interview, invite to lecture, or host for forthcoming conferences. International students, faculty, and scholars, unable to visit campuses and meet with potential faculty or colleagues, are far less likely to select an American college or university. As partially enjoined, the Proclamation thus places *amici* at a distinct disadvantage relative to international schools.

Moreover, although the Supreme Court made clear that “a lecturer invited to address an American audience” has a qualifying bona fide relationship with the

inviting entity, *IRAP*, 137 S. Ct. at 2088, it said nothing about scholars who intend to attend academic conferences here. Those scholars may informally participate in conferences by engaging with lecturers and other attendees, but they may not have been invited formally to do so. Whether that relationship would qualify as bona fide is unknown. These scenarios arise frequently each year at *amici*.

Because the “bona fide relationship” carve-out fails to account for the myriad ways in which *amici* collaborate with international students, faculty, and scholars, it may impede the creation of *amici*’s future bona fide relationships. Worse still, this carve-out will not prevent the potential long-term attrition at *amici* of persons from the countries directly affected by the Proclamation—and from other countries as well. Even in its more limited form, the Proclamation harms *amici* and should be enjoined in its entirety.

CONCLUSION

Amici take 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 foreign nationals to our campuses. The Proclamation falls far short of justifying its

indefinite restrictions on the entry of individuals from the Muslim-majority countries it targets. Given this, as well as the significant burdens the Proclamation inflicts on *amici*'s current and potential students, faculty, and scholars and its substantial impediment of *amici*'s ability to fulfill their educational missions, *amici* respectfully urge this Court to lift its November 13, 2017 partial stay of the district court's decision enjoining the Proclamation, and affirm the injunction.

Dated: November 22, 2017

Respectfully submitted,

JENNER & BLOCK LLP

/s/ Lindsay C. Harrison

Thomas J. Perrelli
Lindsay C. Harrison
Tassity S. Johnson
1099 New York Ave NW
Washington, DC 20001-4412
Phone: (202) 639-6000
Fax: (202) 639-6066
tperrelli@jenner.com

*Attorneys for Amici
Colleges and Universities*

CERTIFICATE OF COMPLIANCE

Counsel for *amici curiae* certifies that this brief contains ____ words, based on the “Word Count” feature of Microsoft Word 2013, including footnotes. 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.

Dated: November 22, 2017

By: /s/ Lindsay C. Harrison
Lindsay C. Harrison
Attorney for *Amici*
Colleges and Universities

CERTIFICATE OF SERVICE

I hereby certify that 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 appellate CM/ECF system on November 22, 2017. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

By: /s/ Lindsay C. Harrison
Lindsay C. Harrison
Attorney for *Amici*
Colleges and Universities

DRAFT: Privileged & Confidential; Attorney Work Product

APPENDIX

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