

No. 17-1270

IN THE
Supreme Court of the United States

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, *et al.*,
—v.— *Cross-Petitioners,*

INTERNATIONAL REFUGEE ASSISTANCE PROJECT, *et al.*,
Cross-Respondents.

CROSS-PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR CROSS-RESPONDENTS

Karen C. Tumlin
Nicholas Espíritu
Melissa S. Keaney
Esther Sung
Marielena Hincapié
NATIONAL IMMIGRATION
LAW CENTER
3450 Wilshire Blvd., #108-62
Los Angeles, CA 90010

Omar C. Jadwat
Counsel of Record
Lee Gelernt
Hina Shamsi
Hugh Handeyside
Sarah L. Mehta
David Hausman
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
125 Broad Street
New York, NY 10004
212-549-2500
ojadwat@aclu.org

Attorneys for Cross-Respondents
(Counsel continued on inside cover)

Justin B. Cox
NATIONAL IMMIGRATION LAW
CENTER
P.O. Box 170208
Atlanta, GA 30317

Cecillia D. Wang
Cody H. Wofsy
Spencer E. Amdur
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
39 Drumm Street
San Francisco, CA 94111

Mariko Hirose
Linda Evarts
Kathryn Claire Meyer
INTERNATIONAL REFUGEE
ASSISTANCE PROJECT
40 Rector Street, 9th Fl.
New York, NY 10006

David Cole
Daniel Mach
Heather L. Weaver
AMERICAN CIVIL
LIBERTIES UNION
FOUNDATION
915 15th Street NW
Washington, D.C. 20005

David Rocah
Deborah A. Jeon
Sonia Kumar
Nicholas Taichi Steiner
AMERICAN CIVIL
LIBERTIES UNION
FOUNDATION OF
MARYLAND
3600 Clipper Mill Road,
Suite 350
Baltimore, MD 21211

Attorneys for Cross-Respondents IRAP, et al.

Johnathan Smith
Sirine Shebaya
MUSLIM ADVOCATES
P.O. Box 66408
Washington, D.C. 20035

Richard B. Katskee
Eric Rothschild
Andrew L. Nellis*
AMERICANS UNITED FOR
SEPARATION OF CHURCH
AND STATE
1310 L St. NW, Ste. 200
Washington, D.C. 20005

Mark H. Lynch
Mark W. Mosier
Herbert L. Fenster
Jose E. Arvelo
John W. Sorrenti
Katherine E. Cahoy
Rebecca G. Van Tassell
Karun Tilak
COVINGTON & BURLING LLP
One City Center
850 10th Street, NW
Washington, D.C. 20001

Attorneys for Cross-Respondents I.A.A.B., et al

Charles E. Davidow
Robert A. Atkins
Liza Velazquez
Andrew J. Ehrlich
Steven C. Herzog
PAUL, WEISS, RIFKIND,
WHARTON & GARRISON LLP
1285 Avenue of the Americas
New York, NY 10019

Jethro Eisenstein
PROFETA & EISENSTEIN
45 Broadway, Suite 2200
New York, NY 10006

Lena F. Masri
Gadeir Abbas
COUNCIL ON AMERICAN-
ISLAMIC RELATIONS
453 New Jersey Ave., SE
Washington, D.C. 20003

Faiza Patel
Michael Price
BRENNAN CENTER FOR JUSTICE
AT NYU SCHOOL OF LAW
120 Broadway, Ste. 1750
New York, NY 10271

Attorneys for Cross-Respondents Zakzok, et al.

*Admitted only in New York; supervised by Richard B. Katskee,
a member of the D.C. Bar

Cross-Respondents agree with the government that this Cross-Petition should be held pending the resolution of *Trump v. Hawai'i*, No. 17-965 (oral argument Apr. 25, 2018). Although Cross-Respondents initially requested that their Petition for a Writ of Certiorari, No. 17-1194, be granted and consolidated with *Hawai'i* for merits consideration, at this juncture it is clear that both the Petition and Cross-Petition should be held pending a decision in *Hawai'i*.

Cross-Respondents respectfully request that the Court afford them and the government an opportunity to submit supplemental briefing regarding certiorari once the Court issues its decision in *Hawai'i*. Such briefing would permit the parties to address the effect of the *Hawai'i* decision on the petitions in this case.

Because of the unusual posture of this case—in which the Court previously granted certiorari and the merits were fully briefed at an earlier stage of the case, and where the Court is currently considering the parallel *Hawai'i* litigation on the merits—Cross-Respondents presume that there is no need to preserve particular arguments at this stage. *Cf.* R. 15.2; *S. Cent. Bell Tel. Co. v. Alabama*, 526 U.S. 160, 170-171 (1999).

In an abundance of caution, however, Cross-Respondents wish to make clear that, should the Court grant review in this case, they intend to advance all of their preliminary injunction legal theories in support of the Fourth Circuit's judgment. In particular, Cross-Respondents intend to argue that Proclamation No. 9645, 82 Fed. Reg. 45,161

(Sept. 24, 2017) (“the Proclamation”) exceeds the President’s authority under 8 U.S.C. § 1182(f), 8 U.S.C. § 1185(a), and the Constitution; that the Proclamation violates 8 U.S.C. § 1152(a)(1)(A); that the Proclamation violates the Establishment Clause and equal protection; that the “facially legitimate and bona fide” standard of *Kleindienst v. Mandel*, 408 U.S. 753 (1972) does not apply in this case and the Proclamation does not satisfy *Mandel* in any event; that these statutory and constitutional challenges are justiciable and plaintiffs have causes of action; and that the scope of the injunction is appropriate except for the bona fide relationships limitation addressed in the Cross-Respondents’ Petition.

Dated: April 11, 2018

Respectfully submitted,

Karen C. Tumlin
Nicholas Espíritu
Melissa S. Keaney
Esther Sung
Marielena Hincapié
NATIONAL IMMIGRATION
LAW CENTER
3450 Wilshire Blvd.,
#108-62
Los Angeles, CA 90010

Justin B. Cox
NATIONAL IMMIGRATION
LAW CENTER
P.O. Box 170208
Atlanta, GA 30317

/s/ Omar C. Jadwat
Omar C. Jadwat
Counsel of Record
Lee Gelernt
Hina Shamsi
Hugh Handeyside
Sarah L. Mehta
David Hausman
AMERICAN CIVIL
LIBERTIES UNION
FOUNDATION
125 Broad Street
New York, NY 10004
212-549-2500
ojadwat@aclu.org

Cecillia D. Wang
Cody H. Wofsy
Spencer E. Amdur
AMERICAN CIVIL
LIBERTIES UNION
FOUNDATION
39 Drumm Street
San Francisco, CA 94111

Mariko Hirose
Linda Evarts
Kathryn Claire Meyer
INTERNATIONAL REFUGEE
ASSISTANCE PROJECT
40 Rector Street, 9th Fl.
New York, NY 10006

David Cole
Daniel Mach
Heather L. Weaver
AMERICAN CIVIL
LIBERTIES UNION
FOUNDATION
915 15th Street NW
Washington, D.C. 20005

David Rocah
Deborah A. Jeon
Sonia Kumar
Nicholas Taichi Steiner
AMERICAN CIVIL
LIBERTIES UNION
FOUNDATION OF
MARYLAND
3600 Clipper Mill Road,
Suite 350
Baltimore, MD 21211

Attorneys for Cross-Respondents IRAP, et al.

Johnathan Smith
Sirine Shebaya
MUSLIM ADVOCATES
P.O. Box 66408
Washington, D.C. 20035

Richard B. Katskee
Eric Rothschild
Andrew L. Nellis*
AMERICANS UNITED FOR
SEPARATION OF CHURCH
AND STATE
1310 L St. NW, Ste. 200
Washington, D.C. 20005

Mark H. Lynch
Mark W. Mosier
Herbert L. Fenster
Jose E. Arvelo
John W. Sorrenti
Katherine E. Cahoy
Rebecca G. Van Tassell
Karun Tilak
COVINGTON & BURLING
LLP
One City Center
850 10th Street, NW
Washington, D.C. 20001

Attorneys for Cross-Respondents I.A.A.B., et al.

Charles E. Davidow
Robert A. Atkins
Liza Velazquez
Andrew J. Ehrlich
Steven C. Herzog
PAUL, WEISS, RIFKIND,
WHARTON & GARRISON
LLP
1285 Ave of the Americas
New York, NY 10019

Jethro Eisenstein
PROFETA & EISENSTEIN
45 Broadway, Suite 2200
New York, NY 10006

Lena F. Masri
Gadeir Abbas
COUNCIL ON AMERICAN-
ISLAMIC RELATIONS
453 New Jersey Ave., SE
Washington, D.C. 20003

Faiza Patel
Michael Price
BRENNAN CENTER FOR
JUSTICE AT NYU
SCHOOL OF LAW
120 Broadway, Ste. 1750
New York, NY 10271

Attorneys for Cross-Respondents Zakzok, et al.

*Admitted only in New York; supervised by Richard
B. Katskee, a member of the D.C. Bar