

IN THE SUPREME COURT OF THE UNITED STATES

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DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES OF AMERICA, ET AL.,

*Petitioners,*

v.

STATE OF HAWAII, ET AL.,

*Respondents.*

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*ON WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT*

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**BRIEF OF *AMICI CURIAE* LUTHERAN IMMIGRATION AND REFUGEE  
SERVICE AND FOSTER PARENTS IN SUPPORT OF RESPONDENTS AND IN  
OPPOSITION TO THE GOVERNMENT'S APPLICATION FOR A STAY OF THE  
MANDATE OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH  
CIRCUIT AFFIRMING THE MODIFIED PRELIMINARY INJUNCTION**

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## CORPORATE DISCLOSURE STATEMENT

In accordance with United States Supreme Court Rule 29.6, *amicus* Lutheran Immigration and Refugee Service makes the following disclosures:

- 1) *Amicus* Lutheran Immigration and Refugee Service does not have parent corporations.
- 2) No publicly held company owns ten percent or more of the stock of any *amicus* or its parent corporation.

**MOTION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE* LUTHERAN  
IMMIGRATION AND REFUGEE SERVICE AND FOSTER PARENTS IN  
SUPPORT OF RESPONDENTS AND IN OPPOSITION TO THE GOVERNMENT'S  
APPLICATION FOR A STAY OF THE MANDATE OF THE UNITED STATES  
COURT OF APPEALS FOR THE NINTH CIRCUIT AFFIRMING THE MODIFIED  
PRELIMINARY INJUNCTION**

*Amici* are one of two voluntary national resettlement agencies for unaccompanied refugee minors (“URMs”) and seven foster parents directly and adversely affected by the enforcement of Executive Order 13780 to prevent the entry of assured URMs to the United States. If granted, the Government’s Application For a Stay of the Mandate of the Court of Appeals for the Ninth Circuit Affirming the Modified Preliminary Injunction would permit enforcement of that executive order against URMs with assurances pending this Court’s review, and would cause *amici* concrete and immediate harm.

The parties have consented to the filing of *amici’s* brief. While Supreme Court Rule 37 does not expressly address *amicus* participation in a motion of this sort, *amici* respectfully submit that their brief would bring to the Court’s attention information concerning the URM program that may be of assistance to the Court in resolving the Government’s application. Accordingly, *amici* respectfully move for leave to file the accompanying brief in support of Respondents.

Respectfully submitted,

/s/ Matthew D. Slater

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## INTERESTS OF *AMICI CURIAE*<sup>1</sup>

For more than seven decades, *amicus* Lutheran Immigration and Refugee Service (“LIRS”) has been a champion for migrants and refugees from around the globe. The history of LIRS reflects American Lutherans’ deep immigrant roots and passionate commitment to welcoming newcomers. LIRS draws from the deep well of Lutheran theological understanding to put faith into action in solidarity with migrants and refugees. LIRS approaches its work from a grounding in its deepest core values, reflecting Lutherans’ understanding of God’s love for all people to realize a vision of just and welcoming communities.

LIRS is one of two voluntary national resettlement agencies, along with the United States Conference of Catholic Bishops (“USCCB”), designated by the U.S. Department of Health and Human Services’ Office of Refugee Resettlement (“ORR”) to resettle unaccompanied refugee minors (“URMs”) in the United States. URMs include children and youth with refugee or asylum status, survivors of human trafficking, and other children and youth with forced migration experiences. The Government’s request to enforce Executive Order 13780 (“EO-2”) against assured minor refugees who are part of the URM program—in the face of the Court’s decision staying enforcement of EO-2 against persons with a “bona fide relationship with a person or entity in the United States”—would harm LIRS in the fulfillment

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<sup>1</sup> *Amici* moved for leave to file this *amicus* brief in support of Respondents without ten days’ advance notice to the parties, as is ordinarily required by Supreme Court Rule 37.2(a), in light of the expedited schedule under which this motion is proceeding at the Court’s direction. No party has authored this brief in whole or in part, and no one other than *amici*, their members, and their counsel have paid for the preparation or submission of this brief.

of its mission by preventing it from resettling individual URM children for whom LIRS has provided assurances and arranged specific placements in the United States.

*Amici* Nancy Berg, Dr. Dennis Icabone, Dr. Tianna Rooney, Todd Rooney, Dawn Carlen, Lyle Carlen, and Tiffany Craigie (collectively, “*Amici* Foster Parents”) are foster parents or prospective foster parents currently in the United States who are awaiting the arrival of specific URM children from abroad. Each has been matched with an individual child or children and, as discussed in greater detail below, has made arrangements to welcome that child or children into their homes in the United States. The Government’s enforcement of EO-2 against these refugees prevents the URM children with whom *amici* have been matched from joining their families in the United States. Some of the *Amici* Foster Parents also currently provide foster care for URM children, and from that experience can help the Court understand the bona fide relationship that URM children have with their foster families.

### **STATEMENT OF THE CASE**

The URM program is a specialized procedure under the United States Refugee Admissions Program (“USRAP”) to place parentless children fleeing from war and persecution in safe, loving homes in the United States. See U.S. Dep’t of Health & Human Servs., About Unaccompanied Refugee Minors, *available at* <https://goo.gl/ro5hbG> (last visited Sept. 11, 2017). This resettlement program had operated continuously since it was established in the aftermath of the Vietnam War until EO-2 was deployed. See, e.g., 8 U.S.C. § 1522(d)(2) (2016) (codifying the formal URM program from the Refugee Act of 1980, Pub. L. No. 96–212, § 311, 94 Stat. 102 (1980)); U.S. Conference of Catholic Bishops, The United States

Unaccompanied Refugee Minor Program: Guiding Principles and Promising Practices 3-7 (2013), *available at* <http://www.usccb.org/about/children-and-migration/unaccompanied-refugee-minor-program/upload/united-states-unaccompanied-refugee-minor-program-guiding-principles-and-promising-practices.pdf> [hereinafter “USCCB Principles”]. LIRS is one of two voluntary national resettlement agencies for the URM program that has been affected by EO-2, as described below.

**A. The URM Program Is A USRAP Program That Resettles Refugee Children.**

The URM program operates under regulatory authority that requires URMs to receive the same child welfare services—including placement in foster care—that are provided to unaccompanied children of the same age in the United States. See 45 C.F.R. §§ 400.112, 400.116 (2016). Minor children who enter the United States as refugees are accordingly placed in state-licensed foster homes and similar living arrangements in the states that participate in the program. U.S. Dep’t of Health & Human Servs., About Unaccompanied Refugee Minors, *supra*. These placements—which are typically accompanied by the full panoply of services available to children in foster care, including counseling, education, and specialized services as needed—are facilitated by the two national voluntary resettlement agencies, LIRS and USCCB, and local partner organizations. Id.

At filing, there were 72 specific individual children, currently overseas, for whom LIRS and USCCB have found homes in the United States, provided

assurances of resettlement, and whose entry to the United States is barred only by EO-2.

Like other refugees in USRAP, URM's are typically identified and referred by the United Nations High Commissioner for Refugees ("UNHCR") to the U.S. Department of State, which facilitates URM applications through its Resettlement Support Centers. The U.S. Department of Homeland Security's U.S. Citizenship and Immigration Services reviews the results of security screenings performed by U.S. intelligence and other agencies and interviews the applicants. See USCIS, *Refugee Processing and Security Screening*, available at <https://goo.gl/zndxDm> (last visited Sept. 11, 2017); see also Natasha Hall, *Refugees Are Already Vigorously Vetted. I Know Because I Vetted Them*, Wash. Post, Feb. 1, 2017, available at <https://goo.gl/tZqKWH>. Once a refugee minor is approved, LIRS and USCCB work with their local programs to find a home for that specific minor, only *after* which can an assurance be given to the State Department and ORR, and the refugee minor's travel to the United States can be arranged. The security screenings of URM's are typically valid for a limited period of time, and may expire if a URM does not travel to the United States within the specified period. See Hall, *supra*. Upon arrival, refugee minors are welcomed by their foster parents or placed into alternative arrangements.

The Government has interpreted EO-2 and this Court's June 26, 2017 Order to mean that assured refugees in the URM program lack a sufficient "bona fide relationship" to be permitted entry into the United States. The effect has been to

leave URM children stranded in limbo, waiting typically in refugee camps in or just outside of war zones. One refugee minor described the camp he waited in as “one of the very worst places in the world.” See, e.g., Justin Wm. Moyer, [Trump’s Travel Ban Is Leaving These Orphans Stuck in Refugee Camps](#), Wash. Post, July 28, 2017, available at <https://goo.gl/JPdeEq>; see also Andrea Gillespie, [Left Behind: Refugee Ban Abandons Vulnerable Orphans](#), Human Rights First (Aug. 2, 2017), available at <https://goo.gl/Qb1EZ2>. The Government’s current application to this Court ignores the issue of URMs who have received assurances, although the issue was expressly highlighted by the Ninth Circuit. See [Hawai’i v. Trump](#), No. 17–16426, 2017 WL 3911055, at \*11 n.14 (9th Cir. Sept. 7, 2017).

**B. The District Court And Ninth Circuit Enjoined The Government From Enforcing EO-2 Against URMs With Assurances.**

The Government’s application is before the Court as a request for relief from a preliminary injunction. EO-2 was issued on March 6, 2017. Exec. Order No. 13780, 82 Fed. Reg. 13209 (Mar. 6, 2017). On March 15, 2017, the United States District Court for the District of Hawaii temporarily enjoined the portions of EO-2 that suspended aspects of USRAP, as well as provisions barring entry of nationals of six designated foreign states. [Hawai’i v. Trump](#), CV. NO. 17–00050 DKW–KSC, 2017 WL 1011673 (D. Haw. Mar. 15, 2017). The district court’s temporary restraining order was converted to a preliminary injunction on March 29, 2017, [Hawai’i v. Trump](#), CV. NO. 17–00050 DKW–KSC, 2017 WL 1167383, at \*9 (D. Haw. Mar. 29, 2017), which was affirmed on appeal. [Hawai’i v. Trump](#), 859 F.3d 741 (9th Cir. 2017) (*per curiam*).

In a June 26, 2017 *per curiam* order, this Court granted certiorari to review the preliminary injunction, as well as a similar injunction issued by the United States District Court for the Eastern District of Virginia. Trump v. Int’l Refugee Assistance Project, 137 S. Ct. 2080 (2017) (*per curiam*) (“IRAP”). The Court’s order declined to stay the underlying injunctions insofar as they related to foreign nationals with a “bona fide relationship” to a U.S. person or entity. Id. at 2089.

On July 6, 2017, the district court modified its preliminary injunction to enjoin the Government from enforcing EO-2 against refugees who had received assurances of resettlement from U.S. refugee resettlement agencies and against certain categories of family members. Hawai’i v. Trump, CV. NO. 17-00050 DKW-KSC, 2017 WL 2989048, at \*6-7 (D. Haw. July 13, 2017). The Government then filed a motion for clarification and other relief before this Court, which the Court denied on July 19, 2017, while staying the district court’s injunction insofar as it related to refugees covered by a formal assurance pending resolution of the Government’s appeal to the Ninth Circuit. Trump v. Hawaii, Nos. 16-1540 (16A1191), 2017 WL 3045234, at \*1 (U.S. July 19, 2017). On September 7, 2017, the Ninth Circuit affirmed the district court’s order, holding that refugees covered by an assurance of resettlement—including URM—were within the carve-out in this Court’s stay order for persons with a “bona fide relationship” with an American person or entity. Hawai’i, 2017 WL 3911055, at \*10.

On September 11, 2017, the Government filed this application for a stay of the Ninth Circuit’s mandate.

## SUMMARY OF ARGUMENT

This Court's *per curiam* order of June 26, 2017 left in place lower court orders enjoining enforcement of EO-2 in respect of refugees with a "bona fide relationship with a person or entity in the United States." See IRAP, 137 S. Ct. 2080.

Refugees with assurances fall within that exception, as the URM program illustrates. URMs with assurances are minor refugee children, without parents or guardians, for whom LIRS and partner agencies have found specific foster families or other similar living arrangements under the auspices of state child welfare agencies with whom the URMs would be settled but for EO-2. For each URM who receives an assurance of resettlement but has been barred admission by EO-2, there is a foster family or other living arrangement in place, there is a network of caregivers, counselors, and others who are invested in the care of that particular child, and there is a resettlement agency like LIRS or its partner child welfare agencies that has invested considerable time, energy, and resources in developing a plan unique to that child. The relationships that individual URMs have with resettlement agencies like LIRS, with local child welfare agencies, and with foster families in the United States, are bona fide and not designed to evade EO-2.

The Government's argument paints the USRAP program with a broad brush that fails to acknowledge or appreciate the bona fide relationships that refugees with assurances—including, for example, URMs—have with resettlement agencies. It now asks this Court to ignore those individual relationships as well, contrary to the carefully balanced equitable analysis that the district court and the Ninth Circuit undertook in conformity with this Court's order. See Application for a Stay

of the Mandate of the United States Court of Appeals for the Ninth Circuit Affirming the Modified Preliminary Injunction (“U.S. Br.”) at 31-33.

The courts below were right to hold that assured refugees have bona fide relationships with U.S. entities, and their reasoning—along with this Court’s reasoning in IRAP—applies with even greater force to URM’s who have assurances. The Court should not indulge the Government’s request that it simply avoid this issue; lives hang in the balance. URM’s are a particularly vulnerable class of refugees for whom delays or suspension of admission cause special hardship. Periods of delay expose URM’s to potential victimization and trafficking in refugee camps in troubled regions of the world. The impact on children left in such conditions can be life-changing and catastrophic. For URM’s, even a temporary suspension of their admission is therefore likely to have uniquely permanent effects. Enforcing EO-2 while the underlying appeal is pending also exposes URM’s to the risk of “aging out” of the program—while children resettled as URM’s continue to receive services until they are discharged from state foster care programs (typically around age 23), URM’s cannot be accepted into the United States after they reach age 18.

Because refugees with assurances, including URM’s, have a bona fide relationship with U.S. persons and entities, and because the balances of equities identified by the Court tips in favor of continuing the stay of EO-2, the lower court injunction should be sustained pending this Court’s review of EO-2 on the merits.

## ARGUMENT

The Court's June 26, 2017 Order established that, during the pendency of the merits review of EO-2, "[a]n American individual or entity that has a bona fide relationship with a particular person seeking to enter the country as a refugee can legitimately claim concrete hardship if that person is excluded," and on that basis declined to stay the injunction preventing the Government's enforcement of EO-2 against refugees with such a bona fide relationship. IRAP, 137 S. Ct. at 2089.

The Ninth Circuit's September 7, 2017 decision properly prevents the Government from barring entry to assured refugees, including assured URM's, during the pendency of the underlying merits proceeding. As the Ninth Circuit reasoned:

[R]esettlement organizations recruit foster families in the United States for refugee children living abroad without parental support, and refugee children receive an assurance *after* they have been assigned to a foster family or other placement. Enforcing the Executive Order against such children harms American families who are waiting to welcome them.

Hawai'i, 2017 WL 3911055, at \*11 n.14 (emphasis in original).

The Ninth Circuit's reasoning is unassailable and should be affirmed. URM's with assurances are refugee immigrants who are directly affected by EO-2 and who have documented, bona fide, ordinary course relationships with Americans—resettlement agencies, child welfare agencies, and specific foster families—who are awaiting their arrival. The bona fides of those relationships are *at least* as established as students admitted to universities, workers who have accepted job

offers, and university lecturers—the categories of people whom this Court expressly barred the Government from excluding. See IRAP, 137 S. Ct. at 2088-89.

The Government’s contrary argument that refugees lack a relationship with anyone in the United States other than the U.S. Government, U.S. Br. at 23-24, both ignores the relationship that exists between refugees and resettlement agencies, see Hawai’i, 2017 WL 3911055, at \*13, and is particularly inapposite as applied to URM’s. URM’s with assurances have clear, documented, and bona fide relationships with a voluntary resettlement agency like LIRS, which implicate a host of other relationships including with individual foster families in the United States. Moreover, the Government has never articulated any public interest that is served by the exclusion of URM’s, and certainly none that would outweigh the “concrete hardships” to the affected resettlement agencies and foster families. The injunction against EO-2 should therefore be maintained.

**I. URM’s With Assurances Have Bona Fide Relationships With LIRS And Other Resettlement And Child Welfare Agencies.**

The touchstone of the Court’s Order barring enforcement of EO-2 is that the refugee’s relationship with an American must be “bona fide.” IRAP, 137 S. Ct. at 2089. As the Ninth Circuit observed, that requirement was born of this Court’s concern that the district court’s original injunction reached “foreign nationals abroad who have *no connection* to the United States at all,” as to whom the balance of equities relevant to interim relief differed. See Hawai’i, 2017 WL 3911055, at \*5 (emphasis in original). Where such a bona fide relationship is established—as it is between URM’s and U.S. resettlement agencies that have provided assurances of

resettlement, id. at \*11-13—the injunction delimited by this Court prevents the Government from enforcing EO-2. IRAP, 137 S. Ct. at 2089. The Ninth Circuit correctly held that assured refugees have bona fide relationships with Americans when it affirmed the district court’s interpretation of the injunction in this case. The case of URM’s is *a fortiori*.

URMs with assurances have formal, clearly documented, ordinary-course relationships with U.S. resettlement agencies like LIRS. As the two national refugee resettlement agencies responsible for the URM program, LIRS and USCCB work in partnership with the State Department and ORR to match eligible children with families and other appropriate living situations in the United States. See, e.g., U.S. Dep’t of Health & Human Servs., About Unaccompanied Refugee Minors, supra. LIRS and USCCB do so through their collective network of 33 local programs across 16 states that are directly involved in lining up foster care homes for particular minor refugees.

What makes the URM program unique and effective is that it places refugee children directly with state-licensed foster families operating under domestic child welfare programs. USCCB Principles, supra, at 1, 11. That means that URM’s who arrive in the United States typically are sent to a foster family who has gone through the complete state licensing program, as well as received supplemental instruction on the unique circumstances of URM’s, and who has done so with a view to welcoming a specific URM child into their home. See, e.g., id. at 32-33. The process of obtaining a license and preparing one’s home for the arrival of a child is

demanding—financially, emotionally, and in terms of time committed. It also requires substantial support from resettlement agencies like LIRS and its regional partners, who provide the specialized instruction and support to prospective foster families that is necessary to make the program work.

An essential element of the URM program is the connection between the resettlement agencies, their local partners, and specific minor children, which is developed prior to a URM's arrival in the United States. The Government argues that refugees lack any bona fide relationship with resettlement agencies, U.S. Br. at 18, but that is simply not true, particularly insofar as it relates to URM's. Prior to providing assurance concerning the arrival of a URM in the United States, the resettlement agencies—LIRS and USCCB—and their local partner organizations receive detailed, specific information about each individual child. On the basis of that information, they undertake a comprehensive case evaluation process by a staff member, followed by a team consultation with other staff of either LIRS or USCCB. See id. at 25. The purpose of the evaluation is to identify a resettlement program and, through that program, a foster family that meets each individual child's needs in consideration of facts such as age, nationality, religion, mental and physical health needs, and the intensity of services required. This is a highly individualized evaluation, at least as comprehensive in scope as the process that might lead to an offer of enrollment at a university or of work at a U.S. company, which this Court has identified as a sufficient "bona fide relationship." See Hawai'i, 2017 WL 3911055, at \*32, 34.

The relationship between LIRS or USCCB and individual URM is also an ordinary-course relationship, not one designed to evade EO-2. LIRS and its predecessor organizations have been operating continuously since the 1940s, while the URM program has been ongoing since the 1970s. See LIRS, History, available at <http://lirs.org/our-work/about-us/historyfaith/> (last visited Sept. 11, 2017); USCCB / Migration & Refugee Servs. & LIRS, The United States Unaccompanied Refugee Minor Program, available at <https://goo.gl/kuX1hg> (last visited Sept. 11, 2017). LIRS and USCCB work to place specific minors identified by the U.S. Government; they do not go out and “contact foreign nationals,” 137 S. Ct. at 2088, or otherwise attempt to induce them to apply. And, importantly, virtually all of the children to whom EO-2 currently applies entered the program and began developing relationships with LIRS or another resettlement agency *prior* to EO-2 taking effect, rather than for the purpose of evading the Order, id.

## **II. Foster Families Also Have Bona Fide Relationships With URM.**

Foster families have bona fide relationships with specific URM before they are admitted to the United States. As the Ninth Circuit correctly observed, therefore, the hardship from applying EO-2 to URM with assurances extends not only to agencies like LIRS, but also to individual foster families who, under the auspices of the assurances provided by resettlement agencies, Hawai'i, 2017 WL 3911055, at \*11 n.14, “can legitimately claim concrete hardship if that person is excluded.” IRAP, 137 S. Ct. at 2089.

Although foster families cannot claim a biological relationship with the URM they seek to welcome into their homes, the process of placing URM with

prospective foster families is comprehensive, lengthy, and involved and leads to the creation of personal bonds and lasting familial relationships. Because of the difficulties that accompany proving that biological parents of URM<sup>s</sup> (whose locations are often unknown) are unable or unwilling to care for their children, URM<sup>s</sup> are generally not eligible for adoption. USCCB Principles, *supra*, at 62. The expectation, therefore, is that the foster relationship created through URM placement will be long-term, and the URM program requires committed foster families. USCCB Principles, *supra*, at 32; *see also* LIRS & USCCB, Foster Care for Unaccompanied Refugee & Immigrant Children: Frequently Asked Questions, <https://goo.gl/7oHfb7> (last visited Sept. 11, 2017).

Prospective foster parents are required to undergo the same training required of all foster families. While those requirements can vary by state, they typically require a substantial commitment to both instruction and self-study time. URM foster parents also receive additional supplemental training tailored for the unique needs of the URM population; this training is individualized for each foster family. USCCB Principles, *supra*, at 32. Prospective foster homes must also be licensed in their respective states, which means providing detailed documentation concerning the foster parents and their finances, undergoing a criminal background check, having family members and their references interviewed by a state child welfare agency, and completing a home study. LIRS, Giving the Gift of Family, *available at* <https://goo.gl/ihcQJA> (last visited Sept. 11, 2017). This process typically takes six months or more, and may require that prospective foster parents

take time off from work, re-arrange their schedules, and commit evenings or weekends to preparation. Foster families also invest financially not only in their foster children when they arrive, but also in preparing their homes to be nurturing, welcoming environments.<sup>2</sup> See also Smith v. Org. of Foster Families For Equal. & Reform, 431 U.S. 816, 843 (1977) (“[B]iological relationships are not exclusive determination of the existence of a family.”).

The story of each foster family and prospective foster family, and the children they welcome into their lives, is necessarily unique, but are illustrated by those of *Amici* Foster Parents.<sup>3</sup>

*Amici* Nancy Berg and Dr. Dennis Icabone of Grand Rapids, Michigan, are currently awaiting the arrival of two teenage boys from Myanmar. Ms. Berg is a partially-retired 5<sup>th</sup> and 6<sup>th</sup> grade math teacher, and Dr. Icabone maintains a successful dental practice. For several years they discussed becoming foster parents, and decided the time was right once their children were grown and Ms. Berg began her retirement. They decided to open their home to unaccompanied minor foster children. They did so out of a calling to share what they have with some of the world’s most vulnerable children, and with the full support of their five adult children. To prepare themselves to receive foster children under the URM program, Ms. Berg and Dr. Icabone invested time, money, and effort in research,

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<sup>2</sup> A 2012 study concluded that in the majority of states the state-provided allowance for foster families falls below the cost of caring for a child; in a number of states, the rate was less than half of the estimated cost-of-care. Kerry DeVooght et al., Family Foster Care Reimbursement Rates in the U.S. 2 (Apr. 9, 2013), *available at* <https://goo.gl/GpXNqg>.

<sup>3</sup> Details concerning the minor children implicated by EO-2 are omitted from this brief to protect their privacy.

coursework, screening, and preparation of their home. They expressed willingness to welcome children who can be some of the most difficult to place: adolescents from Muslim backgrounds. The full process of becoming qualified as foster parents took six months, from February to July 2017. It involved their entire community. From friends and neighbors who are prepared to step in and provide child care as needed, to family members who have invested in welcoming new members of their family, Ms. Berg and Dr. Icabone have worked to build a network of support to welcome their boys when they arrive.

Ms. Berg and Dr. Icabone have made concrete preparations for the arrival of their boys. They prepared rooms for the boys to live in their home. They made arrangements with a local school for them to attend, and found them a local mosque. Ms. Berg has adjusted her part-time work schedule to be available to the boys when they arrive. And they have invested in learning about their boys' culture and background in order to help support them as they make the challenging transition to life in the United States. These efforts were very personal, and directed at the two boys they expect to join their family. Ms. Berg and Dr. Icabone are invested—personally, financially, and emotionally—in welcoming these boys into their home and giving them refuge. They were devastated to learn that the Government was relying on EO-2 to prevent the boys from traveling to the United States, and find it heartbreaking to know that they are being prevented from providing a safe haven for children who are currently in a vulnerable and

potentially life-threatening situation. Ms. Berg describes the feeling as being like getting a child and then having him taken away.

*Amici* Dr. Tianna Rooney and Todd Rooney of Brighton, Michigan, are also awaiting the arrival of their foster son, a 16-year-old boy currently living alone in an Egyptian refugee camp. Dr. Rooney is a family therapist and Mr. Rooney is a mechanical engineer for an automotive company. The Rooneys decided to become refugee foster parents in February. They were compelled by the stories they read of the harms suffered by children in refugee camps and the difficulties they face from attempting to flee elsewhere, including drowning while trying to cross the Mediterranean Sea. The Rooneys also saw participating in the URM program as a way to show their biological children, 12- and 10-year-old boys, the importance of turning their humanitarian values into action. While the process for becoming a foster family usually takes several months, the Rooneys committed to completing the process in about two months by attending classes on nights and weekends. They attended around 40 hours of classes to become certified foster parents, and another approximately 30 hours of classes specific to the URM program, all while holding full-time jobs and parenting their biological children.

The Rooneys were eventually matched with a child from Eritrea. When he was 14, the boy they expect to join their family fled from Eritrea to avoid being conscripted into the military indefinitely. Within minutes of reading about this child, the Rooneys knew that he would be a perfect match for their family. The Rooneys have prepared their home to receive this particular individual. For

example, because their prospective foster child plays soccer, they have purchased soccer equipment and spoken with the soccer coach of the school their foster child will attend. They have also purchased furniture, interviewed local high schools and physicians, and committed themselves to self-study of the Eritrean culture, geography, and political structure. The Rooneys were devastated when they were told that their foster son will not be able to travel to the United States because of EO-2. They and their children already speak of their prospective foster child as if he is a part of their family, and they have grieved for his absence as they would for a family member.

*Amici* Dawn and Lyle Carlen of Spring Lake, Michigan, currently have one foster child in their care—a child they refer to as their son—and are awaiting the arrival of his brother and sister, who are currently in a refugee camp in Africa. Mr. Carlen spent 20 years serving the United States as a Marine; Ms. Carlen is a photographer and currently pursuing a psychology degree with a view to working with refugees, inspired in part by her experience as a foster parent. The Carlens' foster son joined their family through the URM program three years ago. He is every bit as much a part of it as their three other children. For the Carlens, becoming foster parents through the URM program was a year-long process involving classes, an in-home examination, background investigations, and a process of preparing their home and family. Prior to the arrival of their son, the Carlens received significant amounts of information about him, including a photograph and detailed biography. They read and re-read the biography, and

prepared themselves for their son's arrival. The process was individualized and tailored to his specific needs and background, which, like most refugee children, involved a beautiful life marred by tragedy.

The Carlens are currently awaiting the arrival of their son's brother and sister. They are investing more than \$5,000 to add two bedrooms to their home and—as is typical of prospective foster families awaiting the arrival of URM—spending their own money to make available the necessities of life to the new foster children. Like any parents, the Carlens are agonized by watching their foster son long for the arrival of his brother and sister. While they do not know how EO-2 will be ultimately applied to those children, they fear its impact on families like theirs who have prepared to welcome refugee children into their homes. Becoming foster parents to a URM has been integral to who the Carlens are—through their son they have experienced the joy, angst, pride, and fulfillment that parenthood brings. They expect their son to be part of their family “forever,” and wait anxiously for his brother and sister to join their family.

*Amicus* Tiffany Craigie of Holland, Michigan has been awaiting arrival of her foster children, a 12-year-old girl and her 9-year-old brother, since being matched with them in May. Ms. Craigie is a Dean (assistant principal) for elementary school children at a local charter school that serves at-risk students, 70% of whom receive free or reduced lunch. Prior to this school, Ms. Craigie was also a Dean at an urban elementary (K-8) school in Grand Rapids, Michigan, where 90% of students received free or reduced lunch. Ms. Craigie is single and looking to expand her family, and

she felt called as a Christian to care for refugee children. When her placement agency presented her with background on her prospective foster children—which included their country of origin, ages, background, and medical information—it was a “pretty easy decision” for her to welcome them into her home.

In advance of the arrival of her foster children, Ms. Craigie made extensive preparations. She converted rooms in her home to be the children’s bedrooms and playrooms, including purchasing beds and other furniture. She also made arrangements for the children to attend the charter school where she teaches. Ms. Craigie met with the English-as-a-second-language teacher, spoke to other administrators, and prepared a schedule and other support systems for her children. Ms. Craigie also made arrangements with family, friends, and others to serve as a support group and substitute caregivers for the children. But for the suspension of arrivals under the URM program in spite of this Court’s stay, Ms. Craigie’s children would be living with her today. Ms. Craigie finds it difficult not to have her children here, particularly now that the school year has begun and her children are not able to start alongside the other children in the school. Ms. Craigie also thinks often of her anticipated foster son, who has an infection on his foot and needs medical attention that he cannot obtain in his refugee camp.

These foster families, and many others, who have been matched with a child and agreed to welcome that specific child into their family, have formed relationships at least as significant as the relationships that this Court has recognized justified a stay of EO-2—a student admitted to a university, a worker

who has accepted an offer of employment, or a lecturer invited to address an American audience. IRAP, 137 S. Ct. at 2088.

**III. The Balance of Hardships Favors The Status Quo *Ex Ante*—Preventing The Government From Suspending Admissions Of Assured URM's While The Underlying Appeal Proceeds.**

This Court has already recognized that, where a refugee has a bona fide relationship with an American person or entity, the balance of hardships favors preventing the Government from enforcing EO-2 until the merits appeal is resolved. IRAP, 137 S. Ct. at 2089. As described above, URM's have bona fide relationships with resettlement agencies and foster families in the United States who suffer concrete injury as a result of EO-2.

As this Court has recognized, where an organization can show that its ability to fulfill its mission is “perceptibly impaired,” then “there can be no question that the organization has suffered injury in fact.” Havens Realty Corp. v. Coleman, 455 U.S. 363, 379 (1982). The Ninth Circuit recognized that “[a]ssisting refugees and providing humanitarian aid are central to the core belief systems of resettlement entities and their employees.” Hawai'i, 2017 WL 3911055, at \*12. LIRS is such an organization. See LIRS, Vision and Mission, available at <http://lirs.org/our-work/about-us/identityvision-mission/> (last visited Sept. 11, 2017). Preventing assured URM's from entering the United States impairs LIRS's pursuit of its mission—an impact on LIRS that is certainly a concrete hardship.

Continued enforcement of EO-2 also has significant financial consequences to LIRS and other foster care agencies that may impair their ability to provide services. When URM's are denied entry to the United States, the stream of funding

associated with them—which otherwise would go to state agencies and LIRS and USCCB affiliated child welfare programs—is denied to the programs that service URM. That loss of funding, of itself, is a substantial hardship, and it is not offset by avoiding the cost of resettling the child to whom a stream of funding is attached. See Hawai'i, 2017 WL 3911055, at \*12 (“Resettlement agencies experience concrete hardship through the loss of federal funds withheld.”); Exodus Refugee Immigration, Inc. v. Pence, 165 F. Supp. 3d 718, 739 (S.D. Ind.) (“Although the funding denied to Exodus could ultimately be reimbursed, Exodus has presented evidence that, in the interim, its organizational objectives would be irreparably damaged by its inability to provide adequate social services to its clients.”), aff’d, 838 F.3d 902 (7th Cir. 2016).

For the reasons discussed above, foster families are also materially injured by the enforcement of EO-2—losing the money and time they have expended to prepare for the arrival of a particular URM, as well as suffering the emotional cost of having prepared to provide care to a child in need, only to have that process thrown into disarray and uncertainty. See supra Part II.

For its part, although it argues it will suffer “irreparable injury” if the Ninth Circuit’s order is not stayed, the Government does not meaningfully contend at this stage that a stay is necessary because refugees with assurances pose a specific national security risk. U.S. Br. at 31-32. Rather, the Government argues that a stay is necessary because “the government began implementing [EO-2] . . . more

than two months ago” and that this required significant coordination among Government agencies. See U.S. Br. at 32.

Respectfully, because the URM program, like many USRAP programs, has been in place for decades, interrupted only for a period of a few weeks this summer, staying enforcement of EO-2 with respect to it would require nothing more of the government than to continue functions for which it already has personnel, rules, and procedures in place. Put differently, the Government advocates disruption of the status quo *ex ante*, not its restoration.

#### **IV. The Suspension Of The URM Program Has Caused, And Continues To Cause, Substantial—Potentially Irreversible—Hardship To Vulnerable Children.**

Finally, the cruel hardship that EO-2 imposes on URM children requires mention. For the children implicated, it is simply not the case that staying the Ninth Circuit’s order would cause nothing more than “a brief delay in [the] entry of refugees.” See U.S. Br. at 33. Children who enter the United States as URM’s typically have no alternative option—the difference between deferral and resettlement is often the difference between abuse and care, between hardship and opportunity, and too often, between life and death. The URM program is the only unaccompanied minor refugee resettlement program *in the world*. Suspension of the URM program—even temporarily—thus threatens irreversible hardship to the impacted children.

Among the potential immediate impacts of permitting EO-2 to take effect:

- Children awaiting entry under the URM program may age-out of the program, by turning 18, while their applications are pending. Even

the “temporary” suspension of the URM program may prove to be a permanent obstacle for children who age-out while the temporary suspension is in effect. At least one child aged out in August, three have already aged out in September, and 18 more will age out by January 1, 2018. This is a hardship unique to URM, whose qualification for the program is necessarily bounded by time—while URM must be under 18 to enter the program, they may be permitted to remain in foster care until their early 20s, depending on state law. USCCB Principles, supra, at 12.

- The security clearances for URM and other refugees to enter the United States are not valid indefinitely. See Hall, supra. Expiration of a security clearance forces a potential URM to recommence the security review process, which means that a modest delay occasioned by EO-2 may be transformed into a substantially longer delay as a new security review is completed—if, in fact, such a review is ever completed, which in turn exacerbates the risk of aging out of the URM program altogether.

The conditions from which URM children travel to foster families in the United States varies from child to child, but they are all characterized by deprivation and danger. Reports recount the appalling conditions in refugee camps in various countries. See, e.g., Harv. Univ. FXB Ctr. for Health & Human Rights, [Emergency Within an Emergency: The Growing Epidemic of Sexual Exploitation](#)

and Abuse of Migrant Children in Greece (2017), *available at* <https://cdn2.sph.harvard.edu/wp-content/uploads/sites/5/2017/04/Emergency-Within-an-Emergency-FXB.pdf>. EO-2 makes no provision for considering the best interests of child refugees and the Government has not done so.

Moreover, in seeking to enforce EO-2 against assured URM's in the lower courts, the Government appears to have given no thought to the unique trauma that the uncertainty about their status caused by doing so may have on vulnerable children. See Am. Psychological Ass'n et al., On This We Can Agree: Children Require Special Care: Five Principles to Guide Any Changes to Immigration Law, Policy or Procedure 1 (2017), *available at* [http://www.cwla.org/wp-content/uploads/2017/05/Statement-of-Shared-Principles\\_Children-Require-Special-Care.pdf](http://www.cwla.org/wp-content/uploads/2017/05/Statement-of-Shared-Principles_Children-Require-Special-Care.pdf) (“Any changes to immigration law, policy or procedure must preserve or provide special protections for all children and must require decision makers to consider each child’s best interests—safety, permanency, well-being and stated interests—before rendering a decision.”).

For children who do not have access to resettlement under a program like the URM program, options are exceptionally limited, even when compared to the desperate situation of other categories of refugees. Last year, UNHCR estimated that, on average, two children drown every day attempting to enter Europe by sea. Marco Procaccini, Two Children Drown Every Day on Average Trying to Reach Safety in Europe, UN High Comm’r for Refugees, Feb. 19, 2016, *available at* <https://goo.gl/cCaF1h>. Unaccompanied children who make it to Europe or elsewhere

often fall victim to predatory adults. A recent series of reports—not atypical of the situation—recounts the story of three unaccompanied and separated Afghan boys who arrived in Greece, only to fall prey to underage prostitution and drug abuse while homeless. Daniel Howden, Refugees Caught Up in Child Prostitution in Athens, News Deeply, July 14, 2016, *available at* <https://www.newsdeeply.com/refugees/articles/2016/07/14/refugees-caught-up-in-child-prostitution-in-athens>; Daniel Howden, No Way Out for Refugee Kids Selling Themselves in Athens, News Deeply, July 21, 2016, *available at* <https://www.newsdeeply.com/refugees/articles/2016/07/21/no-way-out-for-refugee-kids-selling-themselves-in-athens>.

For children who are resettled under the auspices of LIRS or USCCB, there is robust data to confirm that successful outcomes are likely. For example, LIRS conducted an internal outcomes analysis for refugee minor cases closed in fiscal year 2016, which showed that 80% had a functional command of English, 78% were employed, 63% had completed high school equivalency, and 34% were pursuing higher education. A recent study of Eritrean refugee minors found that the “vast majority of the programs reported the youth are performing average to well academically, and making good progress in their attainment of the English language.” Jade Jackson, Anne Mullooly & Kerri Socha, LIRS & USCCB / Migration & Refugee Servs., Experiences of the U.S. Unaccompanied Refugee Minor Program Resettling Eritrean Youth 9 (2015), *available at* [http://www.usccb.org/about/children-and-migration/upload/Experiences-of-the-U-S-Unaccompanied-Refugee-Minor-Program-Resettling-Eritrean-Youth\\_December-](http://www.usccb.org/about/children-and-migration/upload/Experiences-of-the-U-S-Unaccompanied-Refugee-Minor-Program-Resettling-Eritrean-Youth_December-)

2015.pdf. In contrast, there is no evidence that a refugee minor who was admitted to the United States under the URM program has posed any threat to the national security.

### CONCLUSION

The Government's Application for a Stay should be denied or, in the alternative, the Ninth Circuit's order should be affirmed.

Respectfully submitted,

/s/ Matthew D. Slater

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Dated: September 12, 2017

**IN THE SUPREME COURT OF THE UNITED STATES**

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DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES OF AMERICA, ET AL.,

*Petitioners,*

v.

STATE OF HAWAII, ET AL.,

*Respondents.*

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*ON WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT*

**PROOF OF SERVICE**

I HEREBY CERTIFY that on September 12, 2017, the original and ten copies of the MOTION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE* LUTHERAN IMMIGRATION AND REFUGEE SERVICE AND FOSTER PARENTS IN SUPPORT OF RESPONDENTS IN OPPOSITION TO THE APPLICATION FOR A STAY OF THE MANDATE OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT AFFIRMING THE MODIFIED PRELIMINARY INJUNCTION and CORPORATE DISCLOSURE STATEMENT in the above-captioned case were served via first-class mail and electronic mail, as required by U.S. Supreme Court Rule 29.5(c), on the following:

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