

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

HAMEED KHALID DARWEESH and HAIDER
SAMEER ABDULKHALEQ ALSHAWI, on
behalf of themselves and others similarly situated,
Petitioners,

and

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

Case No. 1:17-cv-00480

-against-

DONALD TRUMP, President of the United
States; U.S. DEPARTMENT OF HOMELAND
SECURITY; U.S. CUSTOMS AND BORDER
PROTECTION; JOHN KELLY, Secretary of
DHS; KEVIN K. MCALEENAN, Acting
Commissioner of CBP; and JAMES T.
MADDEN, New York Field Director, CBP

Defendants.

**BRIEF OF *AMICUS CURIAE* THE PUBLIC ADVOCATE FOR
NEW YORK CITY IN SUPPORT OF PETITIONERS**

TABLE OF CONTENTS

INTEREST OF *AMICUS CURIAE*..... 1

ARGUMENT 2

I. New York Is a Uniquely International City That Depends on Its Immigrant Community. 2

 A. New York City’s Diversity is Essential to its Character and Survival..... 2

 B. Immigrants are the Economic Engine of New York City. 3

II. New York City Officials Have Taken an Active Role in Local Immigration Enforcement to Promote Public Health and Safety While Protecting Vulnerable Immigrant Communities. .. 4

III. The Executive Order Will Substantially and Irreparably Harm All of New York City..... 5

 A. The Executive Order Will Tear Families Apart. 6

 B. The Executive Order Will Compromise the Health and Safety of All New Yorkers. ... 6

 C. The Executive Order Will Choke the Growth of, and Investment in, New York’s Industries. 7

 D. The Executive Order Will Devastate New York’s Tourism Industry. 8

CONCLUSION..... 10

INTEREST OF *AMICUS CURIAE*

Letitia James is the duly elected Public Advocate for the City of New York. As one of only three elected city-wide officials of New York City (“New York” or the “City”), the Public Advocate is the immediate successor to the Mayor, and an *ex-officio* member of the New York City Council.¹ The Public Advocate audits the City’s provision of services, identifies systemic problems, and publishes reports concerning her areas of inquiry.² She is empowered to introduce legislation and hold oversight hearings on legislative matters.³ Her office serves as “an independent public official to monitor the operations of City agencies with the view to publicizing any inadequacies, inefficiencies, mismanagement and misfeasance found, with the end goal of pointing the way to right the wrongs of government.”⁴ In sum, the Public Advocate is “the citizens’ representative or protector.”⁵

The Public Advocate has a unique perspective and interest in the instant case based on her Office’s mission and efforts to serve the residents of New York — two thirds of which are comprised of immigrants or their children. The Public Advocate also has an interest in advocating for the economic vitality of the City: the foreign-born community makes up forty-seven percent of the workforce and provides \$257 billion in economic activity.⁶ If the January 27, 2017 Executive Order (the “Executive Order”) is not enjoined, substantial and irreparable

¹ New York City Charter (“Charter”) §§ 10(a), 22, 24(a).

² *Id.* §§ 24(h) and (f).

³ *Id.* at § 24.

⁴ *Green v. Safir*, 664 N.Y.S.2d 232, 234 (N.Y. Sup. Ct. 1997).

⁵ *Boykin v. 1 Prospect Park Alf, LLC*, 293 F.R.D. 308, 325 (E.D.N.Y. 2013).

⁶ New York State Comptroller, *Report 7-2016: The Role of Immigrants in the New York City Economy*, (Nov. 2015).

harm to legal permanent residents, refugees, visa-holders, and other individuals from nations subject to the Executive Order will spread fear across the immigrant community and chill investment, impair businesses, disrupt the provision of City services, and tear City families apart. For these reasons, the Public Advocate for the City of New York urges that the Court enjoin Defendants from implementing or enforcing the Executive Order.

ARGUMENT

I. **New York Is a Uniquely International City That Depends on Its Immigrant Community.**

A. **New York City's Diversity is Essential to its Character and Survival.**

New York City is a global center of trade, investment, and culture that fuels both the State and national economy, and, in turn, is fueled by the strength of one of the most diverse resident populations on earth. Over three million immigrants live in New York, more than any other city in the world. Among them are approximately 50,000 people born in Libya, Iran, Iraq, Somalia, Sudan, Syria, and Yemen.⁷ Our residents speak over 180 languages, and our City hosts the United Nations and hundreds of consulates, embassies, and permanent missions. Immigrants enrich New York in innumerable ways.⁸

Nearly two-thirds of City residents are either immigrants or the children of immigrants.⁹ Immigrants mitigated what could have been catastrophic population losses during the 1970s — when the City lost ten percent of its residents — and helped stabilize and then grow the City as it

⁷ Alan Berube, *These communities have a lot at stake in Trump's executive order on immigration*, BROOKINGS.EDU (Jan. 30, 2017), <https://www.brookings.edu/blog/the-avenue/2017/01/30/these-communities-have-a-lot-at-stake-in-trumps-executive-order-on-immigration>.

⁸ See e.g., *Aliessa ex rel. Fayad v. Novello*, 96 N.Y.2d 418, 431 (N.Y. 2001) (“Lawful resident aliens benefit our country in a great many ways.”).

⁹ New York City Department of City Planning, *The Newest New Yorkers* (2013).

transformed from a manufacturing to service-based economy.¹⁰ This, in turn, attracted a broader base of immigrants that today are spread across the City, including eight neighborhoods with majority foreign-born populations. These cultural enclaves — such as Chinatown and Little Italy — are key tourist attractions and cultural centers. This diversity is part of what makes New York the leading international tourist destination in North America, hosting more than twice as many visitors as the next closest city.¹¹ Finally, although many retain their own unique cultural identities and languages, the majority of New York’s foreign-born residents took oaths of allegiance to the United States and are now naturalized U.S. citizens.

B. Immigrants are the Economic Engine of New York City.

The foreign-born community comprises forty-seven percent of the City’s workforce and provided \$257 billion in economic activity in 2013 — or thirty-two percent of New York’s gross city product.¹² Immigrants are well-represented in all tiers of the City’s income earners. For example, foreign-born workers in the City make up seventy-one percent of biomedical and agricultural engineers, forty-three percent of accountants and auditors, twenty-seven percent of chief executives and legislators, and twenty-three percent of elementary and middle school teachers. One study estimated that New York immigrants paid \$500 billion in local property tax revenues and held \$188 billion in home equity over the last thirty years.¹³ Notably, nine of the

¹⁰ *Id.*

¹¹ 2016 MasterCard Global Destination Cities Index.

¹² New York State Comptroller, *Report 7-2016: The Role of Immigrants in the New York City Economy*, (Nov. 2015); *see also* Report 17-2010 (Jan. 2010).

¹³ Americas Society/Council on the Americas, *Immigration and New York City: The Contributions of Foreign-Born Americans to New York's Renaissance, 1975-2013*, <http://www.as-coa.org/sites/default/files/NYCIImmigrationReport2014.pdf>.

ten neighborhoods with the greatest share of immigrants in New York had stronger economic growth than the rest of the City.

II. New York City Officials Have Taken an Active Role in Local Immigration Enforcement to Promote Public Health and Safety While Protecting Vulnerable Immigrant Communities.

Recognizing immigrants' central role, the Public Advocate and other New York City officials have long been concerned with advocating for and protecting their immigrant communities. In 1984, New York Mayor Edward Koch established the Mayor's Office of Immigrant Affairs to help immigrants access governmental services and resources.¹⁴ Mayor Koch later issued Executive Order No. 124 barring City employees from reporting law-abiding undocumented immigrants to federal immigration authorities.¹⁵ Similarly, in 2003, Mayor Bloomberg issued Executive Order No. 41 requiring City employees to protect a person's immigration status so that all immigrants, including undocumented immigrants, would be willing to seek out the City's public health, safety, and education services.¹⁶

New York City lawmakers, including the Public Advocate, have enacted similar "sanctuary" laws to protect immigrant communities. In 2004, the Public Advocate sponsored legislation to protect those seeking immigration services from fraud and abuse.¹⁷ The Public Advocate also sponsored several local laws which restricted the circumstances in which the New York City Police Department and the Department of Corrections could honor detainer requests

¹⁴ New York City Mayor's Office of Immigrant Affairs, <http://www1.nyc.gov/site/immigrants/index.page>.

¹⁵ *City of N.Y. v. United States*, 179 F.3d 29, 31 (2d Cir. 1999).

¹⁶ New York City Comptroller Scott M. Stringer, Immigrant Rights and Services, <https://comptroller.nyc.gov/services/for-the-public/immigrant-rights-and-services>.

¹⁷ N.Y.C. Local Law 2004/031.

from United States Immigration and Customs Enforcement (ICE).¹⁸ In 2014, Public Advocate James served a vital role in coordinating legal support for unaccompanied immigrant children who faced mass deportation.¹⁹

These executive orders and local laws benefit all New Yorkers, not only immigrant communities. Instead of duplicating immigration enforcement efforts of the federal government, these City orders and laws conserve local resources so that they can address truly local concerns, such as public safety, public health, and local law enforcement. For example, if an immigrant is a victim of, or a witness to, a crime, she can approach law enforcement to assist with the investigation without fearing unrelated questions about her immigration status. Similarly, a person can freely seek medical help for herself or for her dependents without adverse immigration consequences.²⁰ By protecting the rights and well-being of immigrant communities, City officials build trust in law enforcement and other public agencies, enhancing public safety for all.

III. The Executive Order Will Substantially and Irreparably Harm All of New York City.

The travel ban imposed by the Executive Order bars entry of nationals of seven majority-Muslim countries, including U.S. legal permanent residents, as well as those who hold valid work, study, and travel visas. Immigrants have already been stopped or deterred from entering or returning to New York.²¹ If the Executive Order is not enjoined, it will choke the City's

¹⁸ N.Y.C. Local Laws 2011/0656, 2012/0982, and 2012/989.

¹⁹ Public Advocate of New York City, Progress Report, http://pubadvocate.nyc.gov/sites/advocate.nyc.gov/files/general/public_advocate_progress_report.pdf.

²⁰ Kullgren J.T., *Restrictions on Undocumented Immigrants' Access to Health Services: The Public Health Implications of Welfare Reform*. AM. J. OF PUB. HEALTH. 2003;93(10):1630-1633.

²¹ See e.g., Eli Rosenberg and Liam Stack, *Banned From U.S.: 'You Need to Go Back to Your Country,'* NEW YORK TIMES (Jan. 28, 2017), <https://www.nytimes.com/2017/01/28/us/us-immigration-ban.html>.

economy, disrupt City services, damage the City's reputation, and do immeasurable harm to its residents and their families.

A. The Executive Order Will Tear Families Apart.

The Executive Order will devastate many City residents and their families. Put simply, it will tear their families apart. Many of New York's families are a mix of native and naturalized U.S. citizens, U.S. legal permanent residents, visa-holders, immigrants and/or refugees, including family members who live, work, or study overseas. The travel ban will separate and destabilize families from the seven Muslim-majority countries targeted by the Executive Order, preventing many of their members from traveling to and from the United States — to visit family, to attend to significant life events (such as births, weddings, and funerals), to study, and to work — for fear of not being able to return. The Executive Order and the potential retaliatory policies that other countries have already threatened will prevent the City's residents — citizen and non-citizen alike — from reuniting with their families. Of all the consequences that this illegal and unconstitutional Executive Order has wrought, this may well be the one that most viscerally and destructively impacts the City's residents.

B. The Executive Order Will Compromise the Health and Safety of All New Yorkers.

The travel ban has generated fear and uncertainty in immigrant communities,²² and will likely discourage people from reaching out to law enforcement or medical care providers,

²² See Linda Kramer Jennings, *Life, Interrupted*, U.S. NEWS (Feb. 10, 2017), <http://www.usnews.com/news/the-report/articles/2017-02-10/unease-and-uncertainty-for-immigrants-after-trumps-travel-ban>.

creating a tremendous public health and safety risk.²³ Further, because the City's healthcare sector is already understaffed, the Executive Order will exacerbate public health and safety risks by preventing those with specialized skills from serving the City's population. The City's immigrants comprise seventy-five percent of nursing, psychiatric, and home health aides, fifty percent of registered nurses, and forty-six percent of physicians and surgeons.²⁴ The Executive Order has already impacted medical residency staffing in City hospitals, including those that serve our neediest populations. In the longer term, the Executive Order will impair innovation at New York's medical institutions, which will attract and retain fewer highly qualified medical workers and researchers.

C. The Executive Order Will Choke the Growth of, and Investment in, New York's Industries.

The Executive Order will have a significantly negative long-term impact on the City's industries — including our preeminent technology, health care, finance, and hospitality sectors — that rely upon a uniquely global workforce. For example, immigrants comprise thirty-six percent of the finance, insurance, and real estate workforce. They are clustered in essential fields that drive the City's local economy, such as banking (29,700 workers) and securities/commodities (22,800 workers).²⁵ With the Executive Order in place, immigrants from the seven countries who currently work in the City cannot travel overseas for business for fear they cannot return, derailing the operations of their organizations. Moreover, highly-educated

²³ See Noelle Phillips, *As Trump's policies stoke fears, Denver's Muslim community worries about eroding trust in law enforcement*, DENVER POST (Feb. 2, 2017), <http://www.denverpost.com/2017/02/04/trump-immigration-ban-denver-muslims-law-enforcement>.

²⁴ New York State Comptroller, *Report 7-2016: The Role of Immigrants in the New York City Economy*, (Nov. 2015); see also Report 17-2010 (Jan. 2010).

²⁵ New York City Department of City Planning, *The Newest New Yorkers* (2013).

and highly-skilled foreign-born professionals will be forced to — or will choose to — avoid New York and work in other financial hubs with which New York traditionally competes for talent, such as London and Dubai. The talent drain not only will create an immediate deficit in the City’s workforce, it will trigger extensive secondary effects that will set back the City’s economy for decades to come, chilling investment, stifling growth, and multiplying its effect throughout other small and family-owned businesses that thrive alongside the larger global sectors as part of the City’s vast economic network.

D. The Executive Order Will Devastate New York’s Tourism Industry.

The Executive Order will cause a sharp decrease in tourism, which in turn will harm the City economy through lost tax dollars and receipts. New York hosted over 58 million visitors in 2015, including 12.8 million international visitors who spent \$18.5 billion in New York.²⁶ The Executive Order (today) bars the nationals of seven majority-Muslim countries from entering the country, but it has a broader chilling effect on the entry of foreign visitors of all national origins and religions — especially those from predominantly Muslim countries.²⁷ Innumerable would-be visitors cannot help but conclude from the Executive Order and its chaotic implementation at American airports that their entry into the United States is unwelcome at best, and at worst, would subject them to harassment, detainment, or deportation. They will postpone or forgo

²⁶ Mastercard 2016 Global Destination Cities Index, <https://newsroom.mastercard.com/wp-content/uploads/2016/09/FINAL-Global-Destination-Cities-Index-Report.pdf>.

²⁷ That may already be happening. According to an analysis published in travel industry publication ETN Global Industry Travel News, “after Mr. Trump’s initial travel ban (imposed on January 27) net bookings issued from those seven countries (Iraq, Syria, Iran, Libya, Somalia, Sudan and Yemen) between January 28 and February 4 were down 80% on the same period last year.” The same analysis “also looked at wider international trends in bookings to the US and discovered a 6.5% negative variation compared with the equivalent eight-day period the year before,” suggesting that “turmoil over his ruling is putting off people travelling to the US from many regions of the world, beyond the Middle East.” ETN News, *Travel to the USA suffers 6.5% Trump slump*, <http://etn.travel/travel-usa-suffers-6-5-trump-slump-12078/>.

traveling to the City and the economic benefits due New York from a flourishing tourism trade — including sales tax receipts from hotels, retailers, and other businesses — will be significantly and negatively impacted.²⁸ The Executive Order has already damaged New York’s reputation as the world’s premier international city; it will continue to do irreparable damage if allowed to remain in place.²⁹

²⁸ Michelle Baran, *NYC tourism trying to minimize damage from Trump ban*, TRAVEL WEEKLY (Feb. 7, 2017), <http://www.travelweekly.com/North-America-Travel/NYC-tourism-trying-to-minimize-damage-from-Trump-ban>

²⁹ The CEO of New York City’s tourism office, NYC & Company, described several early indications that New York City tourism would be harmed by the travel plan and noted that NYC & Company has had to switch its marketing plans for the City to counteract the anticipated effects. *Id.*

CONCLUSION

The damage to New York’s reputation will not only scare off tourists, it will choke the steady flow of immigrants that is this City’s lifeblood. New York has long been the country’s main gateway for immigrants — an estimated forty percent of American citizens have an ancestor that passed through Ellis Island. And the City is still a major entry point — and final destination — today. Forty-two percent of New York State’s population lives in the City, including a whopping seventy-one percent of the state’s foreign-born residents.³⁰ Those who emigrate here choose New York City because we celebrate their culture and respect their freedom of speech, of enterprise, and of religion. For almost four hundred years, the lure of freedom has made America “a city upon a hill,” a beacon for generations of immigrants.³¹ In his farewell speech to the nation, President Reagan shared his vision of that city:

[I]n my mind it was a tall, proud city built on rocks stronger than oceans, windswept, God-blessed, and teeming with people of all kinds living in harmony and peace; a city with free ports that hummed with commerce and creativity. And if there had to be city walls, the walls had doors and the doors were open to anyone with the will and the heart to get here. That’s how I saw it, and see it still.³²

That city — the magnet for all those who must have freedom — is more than an allegory. The city on the hill is New York. And our doors must remain open to anyone with the will and the heart to come here.

For the foregoing reasons, *Amicus Curiae* Letitia James urges the Court to enjoin the Executive Order.

³⁰ Analysis of 2009-2013 American Community Survey Data by the Population Division, N.Y.C. Dep’t of City Planning.

³¹ John Winthrop, *A Model of Christian Charity* (1630).

³² President Ronald Reagan, Farewell Address to the Nation (Jan. 11, 1989).

Dated: February 16, 2017

Respectfully submitted,

OFFICE OF THE PUBLIC ADVOCATE
FOR THE CITY OF NEW YORK



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CERTIFICATE OF SERVICE

I hereby certify that on February 16, 2017, a true and correct copy of the foregoing was filed with this court by using this court's CM/ECF system, which will serve notice on the attorneys of record in this case who are registered with the CM/ECF system:

/s/ Michael T. Zoppo

Michael T. Zoppo