

PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-1351

INTERNATIONAL REFUGEE ASSISTANCE PROJECT, a project of the Urban Justice Center, Inc., on behalf of itself and its clients; HIAS, INC., on behalf of itself and its clients; MIDDLE EAST STUDIES ASSOCIATION OF NORTH AMERICA, INC., on behalf of itself and its members; MUHAMMED METEAB; PAUL HARRISON; IBRAHIM AHMED MOHOMED; JOHN DOES #1 & 3; JANE DOE #2,

Plaintiffs - Appellees,

v.

DONALD J. TRUMP, in his official capacity as President of the United States; DEPARTMENT OF HOMELAND SECURITY; DEPARTMENT OF STATE; OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE; JOHN F. KELLY, in his official capacity as Secretary of Homeland Security; REX W. TILLERSON, in his official capacity as Secretary of State; DANIEL R. COATS, in his official capacity as Director of National Intelligence,

Defendants - Appellants.

STATE OF TEXAS; STATE OF ALABAMA; STATE OF ARIZONA; STATE OF ARKANSAS; STATE OF FLORIDA; STATE OF KANSAS; STATE OF LOUISIANA; STATE OF MONTANA; STATE OF OKLAHOMA; STATE OF SOUTH CAROLINA; STATE OF SOUTH DAKOTA; STATE OF WEST VIRGINIA; PHIL BRYANT, Governor of the State of Mississippi; AMERICAN CENTER FOR LAW AND JUSTICE; SOUTHERN LEGAL FOUNDATION, INC.; AMERICAN CIVIL RIGHTS UNION; IMMIGRATION REFORM LAW INSTITUTE; U.S. JUSTICE FOUNDATION; CITIZENS UNITED; CITIZENS UNITED FOUNDATION; ENGLISH FIRST FOUNDATION; ENGLISH FIRST; PUBLIC ADVOCATE OF THE UNITED STATES; GUN OWNERS FOUNDATION; GUN OWNERS OF AMERICA; CONSERVATIVE LEGAL

DEFENSE AND EDUCATION FUND; U.S. BORDER CONTROL FOUNDATION; POLICY ANALYSIS CENTER; VICTOR WILLIAMS,

Amici Supporting Appellants,

INTERFAITH COALITION; COLLEGES AND UNIVERSITIES; T.A.; COMMONWEALTH OF VIRGINIA; STATE OF MARYLAND; STATE OF CALIFORNIA; STATE OF CONNECTICUT; STATE OF DELAWARE; STATE OF ILLINOIS; STATE OF IOWA; STATE OF MAINE; STATE OF MASSACHUSETTS; STATE OF NEW MEXICO; STATE OF NEW YORK; STATE OF NORTH CAROLINA; STATE OF OREGON; STATE OF RHODE ISLAND; STATE OF VERMONT; STATE OF WASHINGTON; DISTRICT OF COLUMBIA; CITY OF CHICAGO; CITY OF LOS ANGELES; CITY OF NEW YORK; CITY OF PHILADELPHIA; CITY COUNCIL OF NEW YORK; MAYOR OF THE CITY OF NEW YORK; CITY OF AUSTIN; CITY OF BOSTON; MARTIN J. WALSH, Mayor of Boston; TOWN OF CARRBORO; JAMES A. DIOSSA, Mayor of Central Falls, Rhode Island; COOK COUTNY, ILLINOIS; CITY OF GARY; CITY OF IOWA CITY; SVANTE L. MYRICK, Mayor of Ithaca; CITY OF JERSEY CITY; CITY OF MADISON; CITY OF MINNEAPOLIS; MONTGOMERY COUNTY; CITY OF NEW HAVEN; TONI N. HARP, Mayor of New Haven; CITY OF OAKLAND; CITY OF PORTLAND; CITY OF PROVIDENCE; JORGE O. ELORZA, Mayor of Providence; CITY OF ST. LOUIS; CITY OF SAINT PAUL; CITY OF SAN FRANCISCO; COUNTY OF SAN FRANCISCO; CITY OF SAN JOSE; SANTA CLARA COUNTY; CITY OF SANTA MONICA; CITY OF SEATTLE; VILLAGE OF SKOKIE; CITY OF SOUTH BEND; CITY OF TUCSON; CITY OF WEST HOLLYWOOD; FORMER NATIONAL SECURITY OFFICIALS; MEMBERS OF THE CLERGY; RIVERSIDE CHURCH IN THE CITY OF NEW YORK; AMERICANS UNITED FOR SEPARATION OF CHURCH & STATE; BEND THE ARC; A JEWISH PARTNERSHIP FOR JUSTICE; SOUTHERN POVERTY LAW CENTER; AMERICAN-ARAB ANTI-DISCRIMINATION COMMITTEE; NEW YORK UNIVERSITY; RODERICK & SOLANGE MACARTHUR JUSTICE CENTER; HOWARD UNIVERSITY SCHOOL OF LAW CIVIL RIGHTS CLINIC; UNIVERSITY PROFESSORS & HIGHER EDUCATION ASSOCIATIONS; INTERNATIONAL LAW SCHOLARS; NONGOVERNMENTAL ORGANIZATIONS; ISMAIL ELSHIKH; ANT-DEFAMATION LEAGUE; JEWISH COUNCIL FOR PUCLIC AFFAIRS; UNION FOR REFORM JUDAISM; CENTRAL CONFERENCE OF AMERICAN RABBIS; WOMEN OF REFORM JUDAISM; AMERICAN BAR ASSOCIATION; MUSLIM JUSTICE LEAGUE; MUSLIM PUBLIC AFFAIRS COUNCIL; ISLAMIC CIRCLE OF NORTH AMERICA; COUNCIL ON AMERICAN-ISLAMIC RELATIONS; ASIAN AMERICANS ADVANCING JUSTICE-ASIAN LAW CAUCUS; NATIONAL IMMIGRANT JUSTICE CENTER; ASISTA; AMERICANS FOR IMMIGRANT

JUSTICE; FUTURES WITHOUT VIOLENCE; NORTH CAROLINA COALITION AGAINST DOMESTIC VIOLENCE; SANCTUARY FOR FAMILIES; MEMBERS OF CONGRESS; SERVICE EMPLOYEES INTERNATIONAL UNION; AMERICAN FEDERATION OF STATE,COUNTY & MUNICIPAL EMPLOYEES, AMERICAN FEDERATION OF TEACHERS; HISTORY PROFESSORS & SCHOLARS; LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW; CENTER FOR REPRODUCTIVE RIGHTS; SOUTHERN COALITION FOR SOCIAL JUSTICE; NATIONAL CENTER FOR LESBIAN RIGHTS; JUDGE DAVID L. BAZELTON CENTER FOR MENTAL HEALTH LAW; CHICAGO LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW; MISSISSIPPI CENTER FOR JUSTICE; WASHINGTON LAWYERS' COMMITTEE FOR CIVIL RIGHTS AND URBAN AFFAIRS; TECHNOLOGY COMPANIES; FRED T. KOREMATSU CENTER FOR LAW & EQUALITY; JAY HIRABAYASHI; HOLLY YASUI; KAREN KOREMATSU; CIVIL RIGHTS ORGANIZATIONS; NATIONAL BAR ASSOCIATIONS OF COLOR; FOUNDATION FOR THE CHILDREN OF IRAN; IRANIAN ALLIANCES ACROSS BORDERS; MASSACHUSETTS TECHNOLOGY LEADERSHIP COUNCIL; EPISCOPAL BISHOPS; IMMIGRATION LAW SCHOLARS & CLINICIANS ON STATUTORY CLAIMS; FORMER FEDERAL IMMIGRATION & HOMELAND SECURITY OFFICIALS; CONSTITUTIONAL LAW SCHOLARS; MEDICAL INSTITUTIONS; ADVOCACY ORGANIZATIONS; INDIVIDUAL PHYSICIANS; TAHIRIH JUSTICE CENTER; ASIAN PACIFIC INSTITUTE ON GENDER-BASED VIOLENCE; CASA DE ESPERANZA; NATIONAL DOMESTIC VIOLENCE HOTLINE; INTERFAITH GROUP OF RELIGIOUS & INTERRELIGIOUS ORGANIZATIONS; OXFAM AMERICA, INC.; CONSTITUTIONAL LAW PROFESSORS; AMERICAN JEWISH COMMITTEE; MUSLIM RIGHTS, PROFESSIONAL & PUBLIC HEALTH ORGANIZATIONS; CATO INSTITUTE; NATIONAL ASSIAN PACIFIC AMERICAN BAR ASSOCIATION; ASSOCIATION OF ART MUSEUM DIRECTORS; AMERICAN ALLIANCE OF MUSEUMS; COLLEGE ART ASSOCIATION; 94 ART MUSEUMS; AMERICAN PROFESSIONAL SOCIETY ON THE ABUSE OF CHILDREN; ADVOCATES FOR HUMAN RIGHTS; ASIAN LAW ALLIANCE; ASIAN PACIFIC AMERICAN NETWORK OF OREGON; CASA; COMMUNITY REFUGEE & IMMIGRATION SERVICES; INTEGRATED REFUGEE & IMMIGRANT SERVICES; IMMIGRANT LAW CENTER OF MINNESOTA; SOUTHEAST ASIA RESOURCE ACTION CENTER; IMMIGRANT RIGHTS CLINIC OF WASHINGTON; SQUARE LEGAL SERVICES, INC.; AIRPORT ATTORNEYS COALITION,

Amici Supporting Appellees.

On remand from the Supreme Court of the United States.
(S. Ct. No. 16-1436)

Remanded: October 10, 2017

Decided: November 17, 2017

Before GREGORY, Chief Judge, NIEMEYER, MOTZ, TRAXLER, KING, SHEDD, AGEE, KEENAN, WYNN, DIAZ, FLOYD, THACKER, and HARRIS, Circuit Judges.

Dismissing as moot the challenge to Executive Order No. 13,780, decision by published per curiam order. Judge Niemeyer concurred in part and dissented in part from the order dismissing as moot, in which Judge Shedd and Judge Agee joined.

ORDER

PER CURIAM:

The Supreme Court held, by order dated October 10, 2017, that the appeal of our decision in this case, 857 F.3d 554 (4th Cir. 2017), no longer presents a live case or controversy because the challenged provision “expired by its own terms.” The Supreme Court expressed no view of the merits of our decision, but vacated the judgment and instructed this Court “to dismiss as moot the challenge to Executive Order No. 13,780.” Accordingly, we dismiss the challenge as moot.

IT IS SO ORDERED.

NIEMEYER, Circuit Judge, with whom Judge SHEDD and Judge AGEE join, concurring in part and dissenting in part:

I join today's per curiam order dismissing as moot the challenge to Executive Order No. 13,780. I would further vacate the district court's order and decision, 241 F. Supp. 3d 539 (D. Md. 2017), consistent with "[t]he established practice" described in *United States v. Munsingwear, Inc.*, 340 U.S. 36, 39 (1950). Indeed, the Supreme Court has stated that this is "the duty of the appellate court," *id.* at 40 (quoting *Duke Power Co. v. Greenwood County*, 299 U.S. 259, 267 (1936)), so as to prevent a decision, "unreviewable because of mootness, from spawning any legal consequences," *id.* at 41.