

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

TOFIQ NASSER AWAD AL BIHANI (ISN 893),
ABDU LATIF NASSER (ISN 244),
SHARQAWI AL HAJJ (ISN 1457),
SANAD AL KAZIMI (ISN 1453),
SUHAIL SHARABI (ISN 569),
HANI SALEH RASHID ABDULLAH (ISN 841),
ABDUL RABBANI (ISN 1460),
AHMED RABBANI (ISN 1461),
ABDUL RAZAK (ISN 685),
ABDUL MALIK (ISN 10025),
ABU ZUBAYDAH (ISN 10016),

Petitioners,

v.

DONALD J. TRUMP, *et al.*,

Respondents.

CASE NOS.

04-cv-1194 (TFH) (ISN 569)
05-cv-23 (UNA) (ISN 841)
05-cv-764 (CKK) (ISN 244)
05-cv-1607 (RCL) (ISNs 1460, 1461)
05-cv-2386 (RBW) (ISNs 893, 1453)
08-cv-1360 (EGS) (ISN 10016)
08-cv-1440 (CKK) (ISN 10025)
09-cv-745 (RCL) (ISN 1457)
10-cv-1020 (RJL) (ISN 685)

**BRIEF OF AMICI CURIAE MUSLIM, FAITH-BASED, AND CIVIL RIGHTS
COMMUNITY ORGANIZATIONS IN SUPPORT OF PETITIONERS' MOTION FOR
ORDER GRANTING WRIT OF HABEAS CORPUS**

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INTEREST OF AMICI CURIAE

The issue in this case is whether President Donald Trump’s policy to halt the release of Guantánamo’s Muslim detainees, regardless of their individualized circumstances, is unlawful and inconsistent with the Due Process Clause of the U.S. Constitution and the authority granted to the President under the Authorization for Use of Military Force (“AUMF”). Petitioners contend that the Due Process Clause substantively limits the length and purpose of detention. They also argue that, consistent with the laws of war, the AUMF only permits detention based on individualized determinations to prevent a “return to the battlefield,” and cannot justify perpetual detention.

Amici—a collection of Muslim, faith-based, and civil rights community organizations—write to highlight how President Trump’s statements and actions reflect a deep-seated antipathy towards Islam and Muslims. This ideology is inextricably intertwined with his policy determination to not release the remaining Guantánamo Muslim detainees regardless of their individualized circumstances. Accordingly, Amici support Petitioners’ claims that their detentions are driven by an impermissible purpose and that their writs of habeas corpus should be granted.

Muslim Advocates, a national legal advocacy and educational organization, works on the frontlines of civil rights to guarantee freedom and justice for Americans of all faiths. The issues at stake in this case directly relate to the work Muslim Advocates undertakes to fight institutional discrimination against the American Muslim community and to assist individuals who are impacted by discriminatory policies and acts.

Asian Americans Advancing Justice (“AAJC”) is a national nonprofit organization working to advance and protect civil and human rights for Asian Americans and to build and promote a fair and equitable society for all. AAJC is one of the nation's leading experts on issues of importance to the Asian American community, including immigration and immigrants’

rights. AAJC works to promote justice and bring national and local constituencies together through community outreach, public policy advocacy, and litigation.

The Asian American Legal Defense and Education Fund (AALDEF), founded in 1974, is a national organization that protects and promotes the civil rights of Asian Americans. By combining litigation, advocacy, education, and organizing, AALDEF works with Asian American communities across the country to secure human rights for all. The issues of discriminatory treatment of Muslims presented in this case are at the heart of AALDEF's mission.

The American-Arab Anti-Discrimination Committee ("ADC") is a nonprofit, grassroots civil rights organization committed to defending the rights of people of Arab descent and promoting their rich cultural heritage. Founded in 1980 by U.S. Senator James Abourezk, ADC is non-sectarian and non-partisan. With members from all fifty states and chapters nationwide, ADC is the largest Arab-American grassroots organization in the United States. ADC protects the Arab-American and immigrant community against discrimination, racism, and stereotyping, and it vigorously advocates for immigrant rights and civil rights.

The Capital Area Muslim Bar Association ("CAMBA") is a voluntary bar association with a diverse membership. CAMBA's mission includes fostering a sense of fellowship amongst diverse Muslim legal professionals and amplifying our collective voice to impact legal issues affecting the Muslim community. CAMBA's objectives include addressing legal issues affecting the community at large and their related impact on the Muslim American community, and educating and advocating for constitutional, civil, and human rights for all persons.

The Council on American-Islamic Relations-National ("CAIR") is the United States' largest Muslim civil liberties and advocacy organization. Its mission is to enhance the understanding of Islam, encourage dialogue, protect civil liberties, empower American Muslims,

and build coalitions that promote justice and mutual understanding. For years, CAIR has advocated against indefinite detention and for the rule of law at Guantánamo Bay.

The Muslim Bar Association of New York (“MuBANY”) is one of the nation’s largest and most active professional associations for Muslim lawyers. MuBANY strongly condemns and opposes President Trump’s determination to halt the release of any of Guantánamo’s Muslim detainees, regardless of their individualized circumstances. As a minority bar association, we take pride in our nation’s constitutional freedoms, which are at high risk in current times. The government’s actions undermine our country’s position as a global leader and erode the constitutional values that make America great.

Muslim Justice League (“MJL”) is an independent nonprofit organization advocating for the protection of human and civil rights that are threatened under national security pretexts, through community education and organizing, and legal and policy advocacy. This case is of great concern to MJL as it touches directly on the use of counterterrorism justifications to erode fundamental rights and constitutional safeguards.

The Muslim Public Affairs Council (MPAC) was founded in 1988 and is a national public affairs nonprofit organization working to promote and strengthen American pluralism by increasing understanding and improving policies that impact American Muslims. MPAC supports the right to free belief and expression for people of all faiths or no faith, holds that compulsion of any religion is antithetical to our values, and supports policies that keep affairs of the state separate from the influence of religious ideologies.

The New Jersey Muslim Lawyers Association (“NJMLA”) is one of many active professional associations for Muslim lawyers in the country. NJMLA condemns President Trump’s refusal to individually consider the circumstances of Guantánamo’s Muslim detainees

and evaluate them for release or transfer. We find that the government's actions in Guantanamo jeopardize the constitutional rights that are central to our nation.

The Revolutionary Love Project, an initiative formed in 2016 in response to the rise of nationalism and hate crimes in the U.S., equips people to practice love as a public ethic through social action. The issues at stake in this case relate to our work fighting discriminatory policies, racism, and bigotry against Muslim, Sikh, and Arab Americans.

T'ruah: The Rabbinic Call for Human Rights brings together rabbis and cantors from all streams of Judaism with all members of the Jewish community to act on the Jewish imperative to respect and advance the human rights of all people. T'ruah trains and mobilizes a network of 1,800 rabbis and cantors and their communities to bring Jewish values to life through strategic and meaningful action. As members of a religious minority, T'ruah supports this brief because it believes the government's position will propound religious discrimination.

INTRODUCTION

President Trump’s determination that he will wholly and indefinitely halt the release of the remaining Guantánamo detainees, all of whom are Muslim men, is motivated by his well-documented animus against Muslims. Many of those men have been detained for more than fifteen years without charge or trial. Some have even been approved for transfer. Yet President Trump has insisted he will not release any of them. Like the series of cases challenging the President’s “Muslim Ban,” this case presents a once-rare occurrence: a state actor whose policies are avowedly driven by a discriminatory and punitive ideology. The President has made clear his intent to use the Office of the President and Executive Branch federal agencies to discriminate against Muslims. In statements before and after taking office, Mr. Trump has professed his intent not only to halt the release of Guantánamo prisoners but to detain even more Muslims in the facility. In defiant contrast to his predecessors and in contravention of law, President Trump seeks to render Guantánamo—which functionally has always only held Muslim boys and men—a specifically Muslim prison.

Mr. Trump has referred to Muslims suspected of terrorism, like those detained at Guantánamo, as “animals”¹ not entitled to rights. In public discourse, he reflexively equates the practice of Islam with being a terrorist and has derided the efforts of past presidents, both Republican and Democrat, to release Guantánamo detainees—leveling particular scorn at efforts to close the prison. Instead, he has insisted that more Muslim men need to be imprisoned there, while never suggesting that non-Muslim terror suspects be sent to Guantánamo. This disparity

¹ Philip Bump, *The Trump toughness doctrine and Guantanamo Bay*, THE WASHINGTON POST, Nov. 1, 2017, https://www.washingtonpost.com/news/politics/wp/2017/11/01/the-trump-toughness-doctrine-and-Guantanamo-bay/?utm_term=.8ff410d222c6.

reveals the President's perception of Guantánamo as a prison exclusively for Muslims. It highlights that his refusal to even contemplate the release of Guantánamo's detainees is specifically a rejection of the rights of *Muslim* prisoners. As such, the President's actions on Guantánamo detainees dovetail with a pattern of actualizing his anti-Muslim animus through policies that target and denigrate Islam and Muslims.

Amici document here the President's deep and avowed anti-Muslim animus because it is directly relevant to the question before the Court in this case. One of President Trump's first acts as president was to promulgate an executive order blocking nationals from several predominantly Muslim countries from entering the United States. This "Muslim Ban" has now seen three iterations, each rejected by federal courts. In enjoining these bans, federal courts have taken notice of President Trump's anti-Muslim animus, including his repeated calls during the presidential campaign for "a total and complete shutdown of Muslims entering the United States."² Based on this history, the Fourth Circuit Court of Appeals sitting *en banc* concluded that the Muslim Ban "drip[s] with religious intolerance, animus and discrimination."³ As set forth below, this is but one example of how President Trump has used the power of his office to effectuate anti-Muslim policies and directives, including in his decision to refuse release for all Guantanamo detainees.

² Helena Horton, *Muslim ban statement 'removed' from Donald Trump's website*, THE TELEGRAPH, Nov. 10, 2016, <http://www.telegraph.co.uk/news/2016/11/10/muslim-ban-statement-removed-from-donald-trumps-website/>.

³ *Int'l Refugee Assistance Project v. Trump*, 857 F.3d 554, 572 (4th Cir.), *as amended* (May 31, 2017), *as amended* (June 15, 2017), *cert. granted*, 137 S. Ct. 2080 (2017), and *vacated and remanded sub nom. Trump v. Int'l Refugee Assistance*, 138 S. Ct. 353 (2017).

ARGUMENT

I. PRESIDENT TRUMP ADOPTS AND PROMOTES AN IDEOLOGY THAT UNIFORMLY EQUATES THE PRACTICE OF ISLAM WITH TERRORISM.

For years, this President has referred to Muslims in the United States as a “problem.” As early as April 2011, Mr. Trump affirmed that there “absolutely” was “a Muslim problem” in the United States.⁴ He cited the Qur’an as the source of the problem, claiming that it “teaches some very negative vibe” and “tremendous hatred.”⁵ He has since maintained that a “massive Muslim problem” exists in the U.S. and abroad.⁶ At a 2015 rally, Mr. Trump agreed with an audience member that “[w]e have a problem in this country. It’s called Muslims.”⁷ Throughout 2015 and 2016, while campaigning for President, he declined to distinguish between radical Islamism and Islam itself. When asked to clarify: “Is it really a Muslim problem, or is it a radical Islamist problem?”, he equivocated, “Maybe it’s a Muslim problem, maybe it’s not”⁸ and hedged, “[i]t’s

⁴ David Brody, *Brody File Exclusive: Donald Trump Says Something in Koran Teaches a ‘Very Negative Vibe,’* CBN NEWS (Apr. 12, 2011), <http://www1.cbn.com/thebrodyfile/archive/2011/04/12/brody-file-exclusive-donald-trump-says-something-in-koran-teaches> (last visited Jan. 18, 2018).

⁵ *Id.*

⁶ Donald J. Trump, Twitter (Dec. 10, 2015), <https://twitter.com/realDonaldTrump/status/674934005725331456> (last visited Jan. 18, 2018); Donald J. Trump, Twitter (Dec. 10, 2015), <https://twitter.com/realDonaldTrump/status/674936832010887168> (last visited Jan. 18, 2018); Donald J. Trump, Twitter (Dec. 10, 2015), <https://twitter.com/realDonaldTrump/status/675123192864899072> (last visited Jan. 18, 2018).

⁷ Jonathan Merritt, *Trump’s Proposals Could Backfire on Christians*, THE ATLANTIC (Nov. 24, 2015), <https://www.theatlantic.com/politics/archive/2015/11/donald-trump-muslims-christians/417255/> (last visited Jan. 18, 2018); Theodore Schleifer, *Trump doesn’t challenge anti-Muslim questioner at event*, CNN (Sept. 18, 2015), <http://www.cnn.com/2015/09/17/politics/donald-trump-obama-muslim-new-hampshire/> (last visited Jan. 18, 2018).

⁸ CNN Interview of Donald Trump, YOUTUBE (Feb. 4, 2016), <https://www.youtube.com/watch?v=uW9UIMqJtro> (minutes 18:42 to 18:46) (last visited Jan. 18, 2018).

very hard to define.”⁹ In fact, the President does not find the definitional query a hard one. He has declared that “Islam hates us” and that Muslims possess “tremendous hatred” and “unbelievable hatred.”¹⁰

During one of the presidential debates, when provided the opportunity to clarify whether his statement that “Islam hates us” referred to all of the world’s 1.6 billion Muslims, he responded: “I mean a lot of them. I mean a lot of them. ... [T]here’s tremendous hatred. And **I will stick with exactly what I said**”¹¹ (emphasis added). When asked in a December 2015 interview if people had been “too politically correct with Muslims in America”, he affirmed, “I think certainly so.”¹² Queried about his plan to bar entry into the United States of all Muslims in December 2015, he explained, “They’re sick people. There’s a sickness going on. There’s a group of people that’s very sick, and we have to figure out the answer.”¹³

President Trump’s attacks on Muslims have also included the affirmative dissemination of group slander. On November 29, 2017, he promoted to his millions of Twitter followers three unverified videos published by a fringe British anti-Muslim group. These videos depicted violent acts by purported Muslims—at least one of whom is not Muslim—with titles intended to inflame

⁹ *Id.*

¹⁰ Theodore Schleifer, *Donald Trump: ‘I think Islam hates us’*, CNN (Mar. 10, 2016), <http://www.cnn.com/2016/03/09/politics/donald-trump-islam-hates-us/> (last visited Jan. 18, 2018).

¹¹ *Transcript of Republican Debate in Miami*, CNN (Mar. 15, 2016), <http://www.cnn.com/2016/03/10/politics/republican-debate-transcript-full-text/> (last visited Jan. 18, 2018).

¹² *Face the Nation transcripts December 6, 2015: Trump, Christie, Sanders*, CBS NEWS (Dec. 6, 2015), <https://www.cbsnews.com/news/face-the-nation-transcripts-december-6-2015-trump-christie-sanders/>.

¹³ Dan Friedman, *Trump cites ‘sickness’ in defense of Muslim immigration ban proposal*, FOX NEWS (Dec. 13, 2015), <http://www.foxnews.com/politics/2015/12/13/trump-cites-sickness-in-defense-muslim-immigration-ban-proposal.html>.

anti-Muslim bias. The videos were titled “Muslim migrant beats up Dutch boy on crutches!”¹⁴, “Muslim Destroys a Statue of Virgin Mary!”¹⁵, and “Islamist mob pushes teenage boy off roof and beats him to death!”¹⁶ Twitter later suspended the account of the far-right British activist whom the President had retweeted as part of its crackdown on hateful and threatening content.¹⁷

In the President’s repeated remarks about Islam, there is a persistent effort to treat an entire faith community as nothing more than a source of violence. On August 17, 2017, the President suggested that terrorism could be eradicated if suspected terrorists were executed *en masse* by bullets dipped in pigs’ blood. “Study what General Pershing of the United States did to terrorists when caught. There was no more Radical Islamic Terror for 35 years!”¹⁸ The statement referred to the following apocryphal story, which Mr. Trump recounted with relish numerous times on the campaign trail:

So General Pershing....they catch 50 terrorists in the Philippines....And as you know, swine, pig....a big problem for them, big problem. He took two pigs, they chopped them open. Took the bullets that were going to go and shoot these men. Took the bullets, the 50 bullets, dropped them in the pigs, swished them around, so there was blood all over those bullets....They put the bullets into the rifles. And they shot 49 men....I’m just saying, if we’re going to win, we’re going to win or let’s not play the game and let’s not be a country any more. They put the bullets in the rifles and they shot 49 of the 50 men. Dead. Boom. So it was a pig-infested

¹⁴ Jayda Fransen, Twitter (Nov. 28, 2017), <https://twitter.com/JaydaBF/status/935609305574903812> (last visited Jan. 18, 2018).

¹⁵ Jayda Fransen, Twitter (Nov. 29, 2017), <https://twitter.com/JaydaBF/status/935805606447013888> (last visited Jan. 18, 2018).

¹⁶ Jayda Fransen, Twitter (Nov. 29, 2017), <https://twitter.com/JaydaBF/status/935775552102981633> (last visited Jan. 18, 2018).

¹⁷ Harriet Agerholm, *Jayda Fransen: Twitter suspends Britain First leader retweeted by Donald Trump*, INDEPENDENT (Dec. 18, 2017), <http://www.independent.co.uk/news/uk/home-news/jayda-fransen-britain-first-twitter-suspend-donald-trump-retweet-deputy-leader-a8116831.html>.

¹⁸ Donald J. Trump, Twitter (Aug. 17, 2017), <https://twitter.com/realDonaldTrump/status/898254409511129088> (last visited Jan. 18, 2018).

bullet in each one. . . . For 28 years, there was no terrorism. . . . We have to do what we have to do. We have to clean it out.¹⁹

Since practicing Muslims consider pigs' blood to be unclean, President Trump's position that this would be an effective means of curbing terrorism clearly illustrates his belief in a synonymy between "terrorist" and "Muslim."

The President has also spread the false story that thousands of Muslims cheered on rooftops during the September 11, 2001 attacks, claiming: "I watched when the World Trade Center came tumbling down. And I watched in Jersey City, New Jersey, where thousands and thousands of people were cheering as that building was coming down. Thousands of people were cheering."²⁰ In spite of numerous authorities debunking his claim,²¹ the President continued to reiterate this lie on several occasions to ascribe violent and criminal behavior to all Muslims.²²

¹⁹ *FULL SPEECH: Donald Trump rally in Dayton, OH 3-12-2016*, YOUTUBE (Mar. 12, 2016), <https://www.youtube.com/watch?v=-9KOAfh4GCw> (minutes 43:30 to 43:48) (last visited Jan. 18, 2018); see also Lydia Wheeler, *Trump resurrects story of Muslims shot with pig's blood-dipped bullets*, THE HILL (Mar. 12, 2016), <http://thehill.com/blogs/blog-briefing-room/news-campaigns/272780-trump-resurrects-story-of-muslims-shot-with-pigs> (last visited Jan. 18, 2018); David Mikkelson, *Pershing the Thought*, SNOPE (Apr. 28, 2016), <http://www.snopes.com/rumors/pershing.asp> (debunking Trump's story about General Pershing) (last visited Jan. 18, 2018).

²⁰ Glenn Kessler, *Trump's outrageous claim that 'thousands' of New Jersey Muslims celebrated the 9/11 attacks*, THE WASHINGTON POST (Nov. 22, 2015), <https://www.washingtonpost.com/news/fact-checker/wp/2015/11/22/donald-trumps-outrageous-claim-that-thousands-of-new-jersey-muslims-celebrated-the-911-attacks/> (last visited Jan. 18, 2018).

²¹ See, e.g., Lauren Carroll, *Fact Checking Trump's claim that thousands in New Jersey cheered when World Trade Center tumbled*, POLITIFACT (Nov. 22, 2015), <http://www.politifact.com/truth-o-meter/statements/2015/nov/22/donaldtrump/fact-checking-trumps-claim-thousands-new-jersey-ch/> (last visited Dec. 4, 2017).

²² Kessler, *supra*, note 20; AP Archive, *Trump Defends 9/11 Celebrations with Article* (Nov. 24, 2015), <http://www.aparchive.com/metadata/US-OH-Trump-CR-/cadcf1334d2a1fea065ba383ef6f8e> (last visited Dec. 4, 2017); Donald J. Trump, Twitter (Nov. 25, 2015), <https://twitter.com/realDonaldTrump/status/669682774673137665> (last visited Dec. 4, 2017).

Once elected, President Trump has consistently appointed senior advisors who have promoted anti-Muslim ideas and policies. For example, Stephen Miller, who currently serves as President Trump’s senior advisor for policy and was one of the architects of the Muslim Ban, has long believed in a war between the West and “Islamic jihad and its religion of terror.”²³ Steve Bannon, another key proponent of the Muslim Ban, served as Mr. Trump’s former chief strategist and senior counsel and was a member of his National Security Council. Like Miller, Bannon has long held a derogatory conception of Islam: “Islam is not a religion of peace. Islam is a religion of submission.”²⁴ Through these and other appointments²⁵, President Trump has enshrined anti-Muslim bigotry and animus into the operation of his administration. President Trump’s many

²³ Stephen Miller, TERRORISM AWARENESS PROJECT (Feb. 3, 2007), <https://web.archive.org/web/20070203001212/http://www.terrorismawareness.org/about/3/about-the-project?pg=2>.

²⁴ Andrew Kaczynski, *Steve Bannon in 2010: ‘Islam is not a religion of peace. Islam is a religion of submission’*, CNN (Jan. 31, 2017), <http://www.cnn.com/2017/01/31/politics/kfile-bannon-on-islam/index.html>.

²⁵ The virulently anti-Muslim views of current and former members of the administration who President Trump has gathered most closely around him, are not confined to Bannon and Miller. Sebastian Gorka, a West Wing advisor to President Trump on national security and supporter of the Muslim Ban, has stated “The dirty little secret, Steve [Bannon], that nobody wants to tell you, (is) what the bad guys do — what al-Qaeda does or what ISIS is doing right now — is not fundamentally un-Islamic.” Steve Reilly, *Bannon, Flynn and Sessions: How Trump's top advisers view Muslims, in their own words*, USA Today (Feb. 9, 2017, 3:41 PM), <https://www.usatoday.com/story/news/2017/02/09/how-some-trump-advisors-see-islam-their-own-words/97662862/>. Attorney General Jeff Sessions equated Muslim immigrants with terrorists, saying to Bannon, “We are in an age that’s very dangerous. And we are seeing more and more persons enter, and a lot of them have done terrorist acts.” *Id.* Lt. Gen. Michael Flynn, President Trump’s erstwhile national security advisor, has declared, “Fear of Muslims is rational.” Thomas Gibbons-Neff, *‘Fear of Muslims is rational’: What Trump’s new national security adviser has said online*, THE WASHINGTON POST (Nov. 18, 2016), https://www.washingtonpost.com/news/checkpoint/wp/2016/11/18/trumps-new-national-security-adviser-has-said-some-incendiary-things-on-the-internet/?utm_term=.e921388f5eac.

statements, and those of his closest advisors, align Islam with hate and terrorism and reveal his profound animosity towards Muslims.

II. PRESIDENT TRUMP HAS TARGETED THE RIGHTS OF MUSLIMS FOR CURTAILMENT, INCLUDING THROUGH THE CONTINUED USE AND PROJECTED EXPANSION OF GUANTANAMO.

A. The President Has Long Demonstrated A Cavalier Disregard For The Fundamental Constitutional Rights Of Muslims.

The President has made clear his commitment to curtailing the rights of Muslims in various ways. From the early days of his campaign, Mr. Trump promised that, if elected, he would “be looking at” getting “rid of” Muslims.²⁶ He also advocated for a registry of all Muslims in the U.S., despite the proposal’s similarity to the Nazi registration of Jewish people. On November 20, 2015, Mr. Trump stated that he would “certainly implement” a database tracking Muslims in the United States.²⁷ Asked whether he would support legally obligating Muslims to register into the database, Mr. Trump responded, “They have to be—they have to be.”²⁸ Given the opportunity to clarify whether he was “ruling out a database on all Muslims”, he doubled down: “No not at all.”²⁹ When asked how registering Muslims would differ from the Nazis’ registration of Jewish people, he manifested indifference, saying four times: “You tell me.”³⁰

²⁶ See Schleifer, *supra* note 10.

²⁷ Vaughn Hillyard, *Donald Trump’s Plan for a Muslim Database Draws Comparison to Nazi Germany*, NBC NEWS (Nov. 20, 2015), <http://www.nbcnews.com/politics/2016-election/trump-says-he-would-certainly-implement-muslim-database-n466716> (last visited Dec. 4, 2017).

²⁸ *Id.*

²⁹ Lauren Carroll, *In Context: Donald Trump’s comments on a database of American Muslims*, POLITIFACT (Nov. 24, 2015), <http://www.politifact.com/truth-o-meter/article/2015/nov/24/donald-trumps-comments-database-american-muslims/> (last visited Dec. 4, 2017).

³⁰ See Hillyard, *supra* note 27.

In a similar vein, with flagrant disregard for basic First Amendment principles, Mr. Trump advocated for shutting down mosques in the United States during his campaign. In a November 16, 2015 television appearance, when asked about shutting down mosques, he stated, “[Y]ou’re going to have to strongly consider because some of the ideas and some of the hatred—the absolute hatred—is coming from these areas.”³¹ Two days later, he announced on television that the United States had “absolutely no choice” but to shut down mosques.³²

One of the Trump campaign’s hallmark promises was to restrict the entry of Muslims into the United States. On December 7, 2015, Mr. Trump announced on his campaign website: “Donald J. Trump is calling for a total and complete shutdown of Muslims entering the United States.”³³ The same day, he disseminated that statement to his millions of Twitter followers under the title, “Statement on Preventing Muslim Immigration.”³⁴ Explicitly equating Muslims with “hatred [and] danger”, he tweeted, “Just put out a very important policy statement on the extraordinary influx of hatred & danger coming into our country.”³⁵ At a rally the same day, Mr. Trump claimed that

³¹ Jenna Johnson, *Donald Trump would ‘strongly consider’ closing some mosques in the United States*, THE WASHINGTON POST (Nov. 16, 2015), <https://www.washingtonpost.com/news/post-politics/wp/2015/11/16/donald-trump-would-strongly-consider-closing-some-mosques-in-the-united-states/>.

³² Nick Gass, *Trump: ‘Absolutely no choice’ but to close mosques*, POLITICO (Nov. 18, 2015, 6:45 AM), <https://www.politico.com/story/2015/11/trump-close-mosques-216008>.

³³ Press Release, Trump-Pence, *Donald J. Trump Statement on Preventing Muslim Immigration* (Dec. 7, 2015), <https://web.archive.org/web/20170508054010/https://www.donaldjtrump.com/press-releases/donald-j.-trump-statement-on-preventing-muslim-immigration> (Internet Archive record on May 8, 2017) (last visited Jan. 18, 2018).

³⁴ Donald J. Trump, Twitter (Dec. 7, 2015), <https://twitter.com/realDonaldTrump/status/673993417429524480> (last visited Jan. 18, 2018).

³⁵ Donald J. Trump, Twitter (Dec. 7, 2015), <https://twitter.com/realdonaldtrump/status/673982228163072000> (last visited Jan. 18, 2018).

“[w]e have no choice” but to implement “a total and complete shutdown of Muslims.”³⁶ Asked how border officials would implement his plan, Mr. Trump equated risk of terrorism with a faith of 1.6 billion, including 3.3 millions Americans. “They would say, ‘are you Muslim?’” and that “if they said yes, they would not be allowed in the country.”³⁷

President Trump has made good on his core campaign promise of a Muslim Ban during his first week in office, enacting an Executive Order which banned the entry of nationals from seven predominantly Muslim countries.³⁸ Shortly after this policy was announced, former New York City Mayor Rudy Giuliani disclosed that President Trump had approached him about how to legally implement a “Muslim ban”, resulting in a shift in focus from “religion” to geographical “areas” that are predominantly Muslim.³⁹

Despite widespread moral and legal condemnation of his Muslim Ban, Mr. Trump justified it by analogy to the internment of Japanese Americans during World War II, saying: “Take a look at Presidential proclamations back a long time ago . . . what [President Roosevelt] was doing with Germans, Italians, and Japanese because he had to do it.”⁴⁰ When asked whether being compared

³⁶ *Donald J. Trump is Calling for a Total and Complete Shutdown of Muslims Entering the United States Until Our Country’s Representatives Can Figure Out What the Hell is Going On!*, YouTube (Dec. 8, 2015), <https://www.youtube.com/watch?v=LRxozK6Bpvk> (minutes 0:00 to 0:36) (last visited Jan. 18, 2018).

³⁷ *Donald Trump On Muslim Travel Ban, Obama And 2016*, YouTube (Dec. 8, 2015), <https://www.youtube.com/watch?v=5I3E3-U-1jc> (minutes 14:58 to 15:14) (last visited Dec. 4, 2017); *Hardball with Chris Matthews Transcript 12/8/15*, MSNBC (Dec. 8, 2015), <http://www.msnbc.com/transcripts/hardball/2015-12-08> (last visited Dec. 4, 2017).

³⁸ Exec. Order No. 13769, 82 Fed. Reg. 8977 (Jan. 27, 2017).

³⁹ Rebecca Savransky, *Giuliani: Trump asked me how to do a Muslim ban ‘legally’*, THE HILL (Jan. 29, 2017, 8:48 AM), <http://thehill.com/homenews/administration/316726-giuliani-trump-asked-me-how-to-do-a-muslim-ban-legally>.

⁴⁰ YOUTUBE, *supra* note 37 at minutes 00:46 to 01:03.

to Hitler gave him “any pause at all”, Mr. Trump blithely responded, “No,”⁴¹ and again justified banning Muslims based on President Roosevelt’s treatment of Japanese Americans⁴²—a widely condemned government action for which President Ronald Reagan formally apologized in 1988.⁴³ Two days later, Mr. Trump defended his position by tweeting a link to an article stating that Islam is a “very evil and wicked religion,” a “false religion.”⁴⁴

President Trump’s Muslim Ban has now undergone three iterations, the most recent being the September 27, 2017 Presidential Proclamation 9645. Numerous judges have specifically noted the anti-Muslim animus that underlies the various versions of the Ban. For example, in a Fourth Circuit case enjoining the second version of the Ban, Judge James A. Wynn wrote in a concurring opinion: “Laid bare, this Executive Order is no more than what the president promised before and after his election: naked invidious discrimination against Muslims.”⁴⁵ Similarly, in enjoining the current version of the Ban, Judge Derrick Watson wrote that “[t]he record before this Court . . . includes significant and unrebutted evidence of religious animus driving the promulgation of the

⁴¹ Miriam Hernandez, *Trump Cites History to Defend Muslim Immigration Ban*, ABC 7 (Dec. 9, 2015), <http://abc7.com/politics/trump-cites-history-to-defend-muslim-immigration-ban/1116396/> (January 8, 2018).

⁴² *Id.*

⁴³ Bilal Qureshi, *From Wrong To Right: A U.S. Apology For Japanese Internment*, NPR (Aug. 9, 2013, 4:24 PM), <https://www.npr.org/sections/codeswitch/2013/08/09/210138278/japanese-internment-redress>.

⁴⁴ Donald J. Trump, Twitter (Dec. 10, 2015), <https://twitter.com/realDonaldTrump/status/675034063447662592> (last visited Jan. 18, 2018). *See also* Sarah Larimer, *Why Franklin Graham says Donald Trump is right about stopping Muslim immigration*, THE WASHINGTON POST (Dec. 10, 2015), <https://www.washingtonpost.com/news/acts-of-faith/wp/2015/12/10/why-franklin-graham-says-donald-trump-is-right-about-stopping-muslim-immigration/> (last visited Jan. 18, 2017);

⁴⁵ *Int’l Refugee Assistance Project*, 857 F.3d at 612 (Wynn, J., concurring).

Executive Order and its related predecessor.”⁴⁶ Many other judges have reached the same conclusion based on President Trump’s record of anti-Muslim statements.⁴⁷

B. President Trump’s Policy On Guantánamo Highlights His Contempt For The Rights of Muslims And Ensures Continuing, Unlawful Detentions Without Regard For Individualized Circumstances.

President Trump has abandoned the bipartisan practice of undertaking individualized assessments of Guantánamo detainees in favor of a blanket policy against release or transfer, regardless of circumstance. This position is a function of his regularly expressed antipathy toward Islam—one grounded in an ideology that falsely equates the religion with terrorism. Indeed, his vision of Guantánamo as a prison solely for Muslims, and his view that Muslims accused of terrorism lack basic rights and should be tortured, are well-documented. On the campaign trail, Mr. Trump proclaimed that “torture works,” “only a stupid person would say it doesn’t work,” and regardless, “**they deserve it anyway**, for what they’re doing.”⁴⁸ The last statement especially

⁴⁶ *Hawai’i v. Trump*, 241 F. Supp. 3d 1119, 1136 (D. Haw. 2017).

⁴⁷ See e.g., *Int’l Refugee Assistance Project v. Trump*, 241 F. Supp. 3d 539, 560 (D. Md.), *aff’d in part, vacated in part*, 857 F.3d 554 (4th Cir. 2017), *as amended* (May 31, 2017), *as amended* (June 15, 2017), *cert. granted*, 137 S. Ct. 2080 (2017), *and vacated and remanded sub nom. Trump v. Int’l Refugee Assistance*, 138 S. Ct. 353 (2017) (“When President Trump discussed his planned Muslim ban, he described not the preference for religious minorities, but the plan to ban the entry of nationals from certain dangerous countries as a means to carry out the Muslim ban. These statements thus continue to explain the religious purpose behind the travel ban in the Second Executive Order. Under these circumstances, the fact that the Second Executive Order is facially neutral in terms of religion is not dispositive.”); *Int’l Refugee Assistance Project v. Trump*, 265 F. Supp. 3d 570, 624 (D. Md. 2017) (“The Court notes that, on its face, the Proclamation is not entirely independent of the President’s history of public advocacy for a Muslim ban.”); *Aziz v. Trump*, 234 F. Supp. 3d 724, 736 (E.D. Va. 2017) (“The “specific sequence of events” leading to the adoption of the EO bolsters the Commonwealth’s argument that the EO was not motivated by rational national security concerns.”).

⁴⁸ Adam Serwer, *Can Trump Bring Back Torture?* THE ATLANTIC (Jan. 26, 2017), <https://www.theatlantic.com/politics/archive/2017/01/trump-torture/514463/> (emphasis added).

reveals his cavalier dismissal of the United States' human rights commitments and of the bedrock ideal of "innocent until proven guilty" when the suspect is Muslim.

Operating since 2002, Guantánamo has served as a prison for approximately 780 men and boys, all of whom have been Muslim.⁴⁹ Guantánamo is inextricably linked with the "war on terror" and the mass detention of Muslim men without process. Both the Bush and Obama administrations acknowledged that because of this, Guantánamo had become a recruiting tool for groups like al-Qaeda.⁵⁰ The Supreme Court also found that perpetual detention at Guantanamo is unlawful, and that such "wartime" detentions are authorized only for the limited purpose of "prevent[ing] a combatant's return to the battlefield."⁵¹

Bush and Obama administration officials therefore began to undertake more individualized assessments of each detainee's circumstances and security risk. Recognizing the harm to American national security posed by a Muslim prison riddled with horror stories of torture, both administrations announced their intention to shutter or reduce the facility's use.⁵² To that end, President George W. Bush released 539 of the 780 Guantánamo detainees⁵³ and contended that "it should be a goal of the [United States] to shut down Guantánamo...."⁵⁴ Likewise, President

⁴⁹ See N.Y. TIMES, *The Guantánamo Docket, Interactive Timeline*, available at <https://www.nytimes.com/interactive/projects/Guantánamo/timeline>.

⁵⁰ Jack Goldsmith, *The Bush Administration Wanted to Close GTMO Because (in Part) of its Propaganda Value to Jihadists*, LAWFARE (Feb. 5, 2015, 8:31 PM), <https://www.lawfareblog.com/bush-administration-wanted-close-gtmo-because-part-its-propaganda-value-jihadists>.

⁵¹ See *Hamdi v. Rumsfeld*, 542 U.S. 507, 519 (2004).

⁵² See e.g., Remarks by the President on National Security, National Archives, Washington, D.C., May 21, 2009, http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-On-National-Security-5-21-09/.

⁵³ Remarks of President George W. Bush, News Conference, Aug. 9, 2007, available at <http://www.presidency.ucsb.edu/ws/index.php?pid=75649>.

⁵⁴ See N.Y. TIMES, *supra* note 48.

Barack Obama approved the transfer of more than half of the remaining prisoners, with 75 men permitted to depart Guantánamo in the first two years of his presidency.⁵⁵ In total, President Obama transferred 197 Guantánamo detainees.⁵⁶ Nonetheless, 41 Muslim men remain indefinitely imprisoned at Guantánamo.⁵⁷

President Trump does not share his predecessors' understanding of Guantánamo's risks and ills. Rather, he seeks to grow its detainee population. The President has declared that he will reverse the course charted by his predecessors and increase the number of detainees in the prison. In a campaign speech in Westfield, Indiana he announced, "And Gitmo? We're not closing Gitmo, We're going to fill it up! We're not closing Gitmo."⁵⁸ Mr. Trump contrasted his position with that of President Obama's and committed himself to crowding Guantánamo with prisoners: "This morning, I watched President Obama talking about Gitmo, right, Guantánamo Bay, which by the way, which by the way, we are keeping open....and we're gonna load it up with some bad dudes, believe me, we're gonna load it up."⁵⁹ Days before his inauguration, he tweeted, "There should be no further releases from Gitmo. These are extremely dangerous people and should not be allowed back onto the battlefield."⁶⁰ A Trump administration directive drafted on the heels of the first

⁵⁵ Michelle Shephard, *Gitmo's Fallen Czar*, FOREIGN POLICY, May 22, 2013; Final Report of the Guantánamo Review Task Force, Dep't of Justice, DEP'T OF DEFENSE, DEP'T OF STATE & DEP'T OF HOMELAND SECURITY 7 (Jan. 22, 2010), *available at* <https://www.justice.gov/sites/default/files/ag/legacy/2010/06/02/guantanamo-review-final-report.pdf>.

⁵⁶ Guantánamo by the Numbers, HUMAN RIGHTS FIRST 1 (Dec. 12, 2017), <https://www.humanrightsfirst.org/sites/default/files/gtmo-by-the-numbers.pdf>.

⁵⁷ *Id.*

⁵⁸ *See Donald Trump says Guantanamo Bay releases must end*, BBC (Jan. 3, 2017), <http://www.bbc.com/news/world-us-canada-38502539>.

⁵⁹ *See* BBC, *supra* note 57.

⁶⁰ Donald J. Trump, Twitter (Jan. 3, 2017), <https://twitter.com/realdonaldtrump/status/816333480409833472?> (last visited Jan. 19, 2018).

Muslim Ban barred the transfer of current detainees and instructed the military to bring new detainees to Guantánamo.⁶¹ Lawmakers including Senator John McCain, the Chairman of Senate Armed Services Committee, have suggested that a botched January 2017 raid in Yemen was rooted in an eagerness to capture Yemenis with which to fill the prison.⁶²

Driven by his anti-Muslim animus, President Trump refuses to undertake the kind of individualized assessments of detainees that the law requires. Absent judicial intervention, no detainee will be released so long as Mr. Trump is President of the United States.

C. President Trump Has Displayed Antagonism Towards The Constitutional Rights Of Muslims Accused Of Terrorism.

This position on Guantánamo fits within President Trump's broader pattern of rejecting the basic view that Muslims accused of terrorism are entitled to constitutional rights. After the 2013 Boston Marathon attacks, where the perpetrators were Muslim U.S. citizens, Trump tweeted derisively, “Will Barack Obama personally read the Boston terrorist his Miranda Rights?”⁶³ He disparaged the Fifth and Sixth Amendment rights of Muslim suspects, tweeting, “Our politically correct country will read the ISIS terrorists who beheaded the reporter their Miranda Rights prior to good food & care!”⁶⁴

Similarly, when asked about 2014 trials in Guantánamo, Mr. Trump stated, without regard for constitutional due process, “They ought to pass a law where terrorists go quickly. You know,

⁶¹ See Molly O’Toole, *Trump Finalizes Executive Order to Put ISIS Detainees in Guantánamo*, FOREIGN POLICY (Feb. 9, 2017), <http://foreignpolicy.com/2017/02/09/trump-finalizes-executive-order-to-put-isis-detainees-in-Guantánamo-terrorism-cuba-war-on-terror-congress/>.

⁶² See *id.*

⁶³ Donald J. Trump, Twitter (Apr. 22, 2013), <https://twitter.com/realdonaldtrump/status/326429069388423168>.

⁶⁴ Donald J. Trump, Twitter (Aug. 20, 2014), <https://twitter.com/realdonaldtrump/status/502054490678521858>.

in China, it takes 24 hours and then the bullet — and the family pays for the bullet.”⁶⁵ He expressed this view again as President when discussing Sayfullo Saipov, the Uzbek Muslim lawful permanent resident and alleged perpetrator of the truck attack in New York City on October 31, 2017: “We also have to come up with punishment that’s far quicker and far greater than the punishment **these animals** are getting right now.”⁶⁶ President Trump thus appears to view a justice system that provides constitutional guarantees as a hindrance, insufficiently punitive for those he considers wholly undeserving of such protections. By refusing to consider release procedures for the 41 Muslim men still indefinitely detained at Guantánamo, the President is executing his vision that Muslims accused of violent acts are to be treated as “animals”⁶⁷ who, because of their faith, do not possess rights, dignity, or interests.

D. President Trump Views Guantánamo As A Prison Exclusively For Muslims.

The President’s public statements reflect an understanding of Guantánamo as a prison only for Muslims. His outright rejection of any detainees’ release or transfer results from his broader anti-Muslim animus. Despite the considerable number of non-Muslim men who have committed attacks of mass violence in the United States, the President has not once suggested that a non-Muslim man be sent to Guantánamo. For example, when Stephen Paddock, a non-Muslim gunman, murdered 58 people and injured 546 attending a Las Vegas concert in October 2017, President Trump never once called him a terrorist. On the other hand, when Sayfullo Saipov was identified as the suspect in the New York City attack that occurred several weeks later, the President immediately pronounced, “I would certainly consider [Guantánamo], yes...Send him to Gitmo.”⁶⁸

⁶⁵ See Bump, *supra* note 1.

⁶⁶ See *id.* (emphasis added).

⁶⁷ See *id.*

⁶⁸ See *id.*

This position aligns with a 2014 tweet in which he proposed that Americans who fight for ISIS have their passports revoked and be sent to “Gitmo for some R&R”⁶⁹ and “interrogation.”⁷⁰ The dichotomy is stark: Muslims charged with acts of violence belong in Guantánamo, but not non-Muslims, no matter how grievous the acts they commit.

Against the backdrop of his fundamental bias against Muslims and the affirmative actions he has taken as President to injure Muslims, the President’s refusal to release or transfer anyone from Guantánamo is simply a continuation of policies designed to actualize his antipathy towards Muslims and Islam. As the Muslim Ban cases demonstrates, courts recognize their obligation to check executive actions that are driven by animus and untethered to facts or law. President Trump’s indiscriminate and unlawful treatment of Guantánamo detainees calls for no less judicial scrutiny.

CONCLUSION

For the foregoing reasons, Amici respectfully urge this Court to determine that the ongoing detention of Petitioners is unlawful and to grant each of their petitions for a writ of habeas corpus.

Respectfully Submitted,

/s/Sirine Shebaya

⁶⁹ Donald J. Trump, Twitter (Dec. 3, 2014), <https://twitter.com/realDonaldTrump/status/540235446006345728>.

⁷⁰ Donald J. Trump, Twitter (Oct. 8, 2014), <https://twitter.com/realdonaldtrump/status/519962504211214337>.

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CERTIFICATE OF SERVICE

I hereby certify that on January 22, 2018, the foregoing Brief of Amici Curiae Muslim, Faith-Based, and Civil Rights Community Organizations was electronically filed in the United States District Court for the District of Columbia via CM/ECF and delivered to parties or their counsel of record through the CM/ECF system.

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