No. 16-1509

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

EXODUS REFUGEE IMMIGRATION, INC.,

Plaintiff-Appellee,

v.

MICHAEL R. PENCE, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE STATE OF INDIANA, ET AL.,

Defendants-Appellants.

On Appeal from the United States District Court
for the Southern District of Indiana, No. 15-cv-1858
(Pratt, J.)

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE IN SUPPORT OF APPELLEE

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INTRODUCTION AND INTEREST OF THE UNITED STATES

Congress established the Refugee Admissions Program to provide assistance to persons who are unable to return safely to their home countries. The federal government, which has exclusive authority to determine which refugees should be admitted to this country, conducts extensive background checks on refugees before they are permitted to come to the United States.

The Refugee Social Services Program makes federal grants available for various social services provided to refugees, such as job training, child care, and English-language training. Congress made explicit in the statutory provision authorizing such grants that "[a]ssistance and services funded under this section shall be provided to refugees without regard to race, religion, nationality, sex, or political opinion." 8 U.S.C. § 1522(a)(5).

Indiana has elected to participate in the Refugee Social Services Program. The State has recently declared, however, that it will not provide assistance for refugees from Syria because of asserted doubts about the effectiveness of the federal government's background checks of refugees from that country.

The United States is filing this *amicus* brief in support of the federal government's interest in ensuring that the refugee program is operated free of discrimination and, more generally, that recipients of federal funds do not engage in prohibited discrimination. The United States supports the district court's conclusion that Indiana has no authority to refuse assistance to refugees based on their country of origin, and in particular that the State's classification violates the Equal Protection Clause, Title VI of the Civil Rights Act of 1964, and the nondiscrimination provision of the Refugee Act of 1980.[1]

STATEMENT OF THE ISSUE

Whether the State of Indiana may, consistent with the Equal Protection Clause, Title VI of the Civil Rights Act of 1964, and the Refugee Act of 1980, refuse to provide refugee resettlement funds for Syrian refugees.

STATEMENT OF THE CASE

The State of Indiana participates in the Refugee Social Services Program. This case involves Indiana's attempt to make certain refugee resettlement funds unavailable to nonprofit organizations that would use those funds to serve Syrian refugees.

[1] The United States is not taking a position on other issues in this appeal.

A. Statutory Background

In general terms, a refugee is a person who has left his or her country of nationality and is unable or unwilling to return to that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. *See* 8 U.S.C. § 1101(a)(42). The United States has a long history of welcoming refugees and helping them build new, fulfilling, and productive lives. Federal law governs the admission of refugees into the United States and establishes programs for assisting refugees within this country.

The Refugee Act of 1980 amended the Immigration and Nationality Act to establish "a permanent and systematic procedure for the admission to this country of refugees of special humanitarian concern to the United States, and to provide comprehensive and uniform provisions for [their] effective resettlement." Pub. L. No. 96-212, § 101(b), 94 Stat. 102, 102, *codified at* 8 U.S.C. § 1521 note. The statute provides that each year the President may determine, after consultation with Congress, the number of refugees whose admission to the United States "is justified by humanitarian concerns or is otherwise in the national interest." 8 U.S.C. § 1157(a)(2).

For federal fiscal year 2016, the President has determined, after appropriate consultations with Congress, that "[t]he admission of up to 85,000 refugees to the United States . . . is justified by humanitarian concerns or is otherwise in the national interest." Presidential Determination on Refugee Admissions for Fiscal Year 2016, 2015 Daily Comp. Pres. Doc. 670 (Sept. 29, 2015).[2] The President also determined that at least 10,000 of those refugees should be from Syria. *See* Press Briefing by Press Secretary Josh Earnest (Sept. 10, 2015).[3]

Persons seeking refugee status often register with the Office of the United Nations High Commissioner for Refugees, which refers appropriate candidates for resettlement in the United States. Applicants may also be referred to the program by a U.S. Embassy or a designated nongovernmental organization, or may gain access by meeting certain predetermined criteria. Applications referred to the United States are processed at one of nine Resettlement Support Centers, which are funded

[2] http://go.usa.gov/cuCZF

[3] http://go.usa.gov/cu4Kh

by the United States and located around the globe. *See* Order 3 [Short App. 3].

U.S. Citizenship and Immigration Services (within the Department of Homeland Security) evaluates applications and coordinates necessary security checks in conjunction with the Department of State. It then makes a final determination regarding whether a refugee can be approved for admission to the United States. *See generally* U.S. Citizenship and Immigration Services, Department of Homeland Security, *Refugee Processing and Security Screening*.[4] The screening process involves "intensive biographic and biometric security checks" and refugee interviews, and constitutes "the highest level of background and security checks of any category of traveler to the United States." *Id.* Refugees do not come to the United States until security checks have been completed.

Persons approved for admission are resettled through the U.S. Refugee Admissions Program. The State Department is responsible for the initial period of resettlement of refugees (30-90 days). Services provided after that period are funded through the Office of Refugee Resettlement (within the

[4] https://www.uscis.gov/refugeescreening

Department of Health and Human Services), which, as contemplated by the statute, has entered into agreements with nonprofit groups, States, and local governments to administer funding for appropriate services. *See* 8 U.S.C. § 1522. The statute specifies that "[a]ssistance and services funded under this section shall be provided to refugees without regard to race, religion, nationality, sex, or political opinion." *Id.* § 1522(a)(5).

As particularly relevant here, the Refugee Social Services Program provides federal grants to be used for various social services provided to refugees, such as job training, child care, and English-language training. *See* 8 U.S.C. § 1522(c)(1)(A); 45 C.F.R. §§ 400.154-400.156. Indiana is a participant in the program, and accordingly receives federal funds that are to be used for these purposes. In addition to its Refugee Act obligations, Indiana is therefore subject to Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, which prohibits discrimination on the basis of "race, color, or national origin" by recipients of federal funds.

In practice, Indiana administers the program by providing grants of federal funds to nonprofit organizations within the State. The plaintiff here, Exodus Refugee Immigration, Inc., is one of those organizations.

B. Facts and Prior Proceedings

The present dispute arose when Mike Pence, the governor of Indiana, issued the following statement:

> In the wake of the horrific attacks in Paris, effective immediately, I am directing all state agencies to suspend the resettlement of additional Syrian refugees in the state of Indiana pending assurances from the federal government that proper security measures have been achieved. Indiana has a long tradition of opening our arms and homes to refugees from around the world but, as governor, my first responsibility is to ensure the safety and security of all Hoosiers. Unless and until the state of Indiana receives assurances that proper security measures are in place, this policy will remain in full force and effect.

Governor Mike Pence, *Governor Pence Suspends Resettlement of Syrian Refugees in Indiana*, *quoted in* Order 6 [Short App. 6].

Indiana sent a letter communicating this directive to the nonprofit organizations that receive grants from the State. *See* Order 6 [Short App. 6]. Concerned about whether it would be reimbursed for services provided to Syrian refugees, Exodus filed this lawsuit and sought a preliminary injunction against the directive. As relevant to this brief, Exodus argued that Indiana was (1) discriminating against Syrian refugees in violation of the Equal Protection Clause and Title VI of the Civil Rights Act; and (2) violating the Refugee Act's antidiscrimination provision (cited above).

During the district-court proceedings, Indiana clarified the scope of its directive. A declaration from the Director of the Division of Family Resources for the Indiana Family and Social Services Administration stated that the directive "applies to any refugee who is fleeing Syria, regardless of the refugee's race, religion, ethnicity, place of birth, or ancestry." Shields Decl. ¶ 9 [Appellants' App. 14]. The directive's applicability "is determined by reference to the refugee's country of origin, *i.e.*, the country of the refugee's citizenship or residence whose protection from persecution the refugee is unable or unwilling to seek, as required by federal law for refugee status." *Id.* [Appellants' App. 14-15]. Indiana further stated that it "will not pay grant monies to local resettlement agencies for social services rendered to refugees fleeing Syria while the Governor's directive remains in effect." *Id.* ¶ 11 [Appellants' App. 15]. It indicated, however, that it would continue to provide certain benefits under the Refugee Act, including medical assistance, funds to schools for educational instruction for refugee children, and cash assistance payments for living expenses. *Id.* ¶ 12 [Appellants' App. 15-16]. In addition, Syrian refugees in Indiana would continue to be eligible for state and federal programs such as the Temporary Assistance for Needy Families block grant, the Supplemental

Nutrition Assistance Program (formerly known as food stamps), and Medicaid. *Id.* ¶ 13 [Appellants' App. 13].

The district court issued a preliminary injunction, "prohibiting the State from taking any actions to interfere with or attempt to deter the resettlement of Syrian refugees by Exodus in the State of Indiana, including by withholding from Exodus funds and services due Exodus and the refugees it serves." Order 35 [Short App. 35].

The court first discussed Exodus's claims based on the Refugee Act's antidiscrimination provision, concluding that Exodus "is likely to succeed on the merits of its claim." Order 9 [Short App. 9]. The court declined to premise a preliminary injunction on its assessment of that claim, however, and instead "ultimately resolv[ed] the likelihood of success on the merits factor on Exodus's discrimination claims" on the basis of national origin under the Equal Protection Clause and Title VI, which have co-extensive analyses. *Id.* at 10 [Short App. 10].

After concluding that Exodus had standing to raise the discrimination claims, the court held on the merits that strict scrutiny should apply because the "directive discriminates on the basis of national origin." Order 20 [Short App. 20]. The court declared: "[T]he State tries to complicate a

question that is rather straightforward. It is treating refugees who originate from Syria differently than those from other countries. If this is not national origin discrimination, the Court does not know what is." *Id.* at 22 [Short App. 22].

The court held that the State's directive could not satisfy strict scrutiny. It assumed, without deciding, that the State had a compelling interest in protecting the safety and security of its citizens, although it emphasized that its "assumption . . . should not be viewed in any way as a factual determination that Syrian refugees resettled in Indiana pose any particular level of security risk." Order 23 & n.6 [Short App. 23 & n.6]. The court concluded, however, that the directive was not narrowly tailored to serve the assumed state interest in safety and security. The court noted that Exodus had continued to resettle refugees in Indiana even after the State had threatened to withhold funding, and thus reasoned that withholding funding would not accomplish the State's purpose of deterring Exodus from resettling refugees in Indiana. *Id.* at 24 [Short App. 24]. The court also held that refusing to provide social services to Syrian refugees already in Indiana did not further Indiana's goal of deterring additional refugees from coming to the State. *Id.* at 25 [Short App. 25].

The court concluded that the balance of harms and the public interest also weighed in favor of issuing a preliminary injunction. *Id.* at 27-34 [Short App. 27-34].

SUMMARY OF ARGUMENT

1. The district court correctly concluded that Indiana's refusal to provide refugee assistance funds for Syrian refugees constituted unlawful discrimination in violation of the Equal Protection Clause and Title VI of the Civil Rights Act of 1964. The Governor's directive withholds funding for Syrian refugees based on their country of origin, on the ground that such refugees are more likely to be terrorist threats. That classification is subject to strict scrutiny, and Indiana cannot satisfy that exacting standard.

Indiana's directive does not serve a compelling government interest. The State rightly does not claim authority to exclude refugees from the United States based on safety concerns; that is the prerogative of the federal government. Having elected to participate in the refugee resettlement program, Indiana does not have a compelling interest in second-guessing the adequacy of federal background checks based on speculation regarding the nationals of a particular country. Nor does the State have a compelling interest, or even a legitimate one, in discouraging

refugees who are lawfully admitted to the United States from coming to Indiana instead of residing in other States.

In any event, a blanket refusal to provide services to Syrian refugees, including refugees who already reside in Indiana, is by no means narrowly tailored to advance the State's asserted purpose.

2. Indiana's directive also violates the Refugee Act, which provides that "[a]ssistance and services funded under this section shall be provided to refugees without regard to race, religion, nationality, sex, or political opinion." 8 U.S.C. § 1522(a)(5). No aspect of the provision supports Indiana's contention that it applies solely to the federal government, and a longstanding federal regulation confirms that the provision applies to all entities that provide assistance and services. *See* 45 C.F.R. § 400.5(g).

ARGUMENT

I. Indiana's Directive Violates The Equal Protection Clause And Title VI Of The Civil Rights Act Of 1964.

A. The State's discrimination based on national origin implicates a suspect classification.

The Indiana directive at issue in this case singles out Syrian refugees for differential treatment in violation of the Equal Protection Clause and Title VI of the Civil Rights Act of 1964. The Governor of Indiana announced that

he intended "to suspend the resettlement of additional Syrian refugees in the state of Indiana." Governor Mike Pence, *Governor Pence Suspends Resettlement of Syrian Refugees in Indiana*, *quoted in* Order 6 [Short App. 6]. According to the State's declaration in district court, the Governor's directive applies to refugees whose "country of origin" is Syria. *See* Shields Decl. ¶ 9 [Appellants' App. 14-15].

The State's insistence that its directive does not discriminate on the basis of national origin cannot be reconciled with the Governor's directive or the State's subsequent elaborations. *See* Shields Second Supp. Decl. ¶ 6 [Appellants' App. 101] ("It has been the considered judgment of my team and Governor Pence's staff that applying the Governor's directive to refugees whose country of origin is Syria is the best way to achieve the directive's purpose . . . ."). The district court properly concluded that Indiana "is treating refugees who originate from Syria differently than those from other countries," and that "[i]f this is not national origin discrimination, the Court does not know what is." Order 22 [Short App. 22].

Under the Equal Protection Clause, a classification of this type is subject to strict scrutiny. The Supreme Court has long established that a state

enactment that "classifies by race, alienage, or national origin" is subject to strict scrutiny. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985); *see also Graham v. Richardson*, 403 U.S. 365, 371-72 (1971) (although a State generally "retains broad discretion to classify as long as its classification has a reasonable basis," the Supreme "Court's decisions have established that classifications based on alienage, . . . nationality or race[] are inherently suspect and subject to close judicial scrutiny" (footnotes omitted)).

The federal government has exclusive authority to determine which refugees will be admitted to the United States, and States have no authority to discriminate against those refugees based on their country of origin. The Supreme Court has long rejected the notion that "those lawfully admitted to the country under the authority of the acts of Congress . . . would be segregated in such of the states as chose to offer hospitality." *Truax v. Raich*, 239 U.S. 33, 42 (1915), *quoted in Takahashi v. Fish & Game Comm'n*, 334 U.S. 410, 416 (1948).

Indiana argues that its directive does not amount to unlawful discrimination because the directive is premised on a refugee's "experience" of fleeing Syria and not on any suspect classification. *See*

Appellants' Br. 28. But Indiana concedes that the directive is implemented simply by "us[ing] the 'country of origin' denominated on refugee documents." *Id.* at 30; *see also* Shields Second Supp. Decl. ¶ 6 [Appellants' App. 101]. Country of origin is not an "experience," and the State's directive does not purport to analyze individual experiences of refugees (an analysis that would in any event be the prerogative of the federal government). Instead, as the State acknowledges, the State's directive simply uses country of origin as a proxy for terrorist threat—precisely the type of classification precluded by the Equal Protection Clause.

Indiana's attempt to analogize its directive to a "quarantine of refugees from a particular region because they may carry a communicable disease specific to that region," Appellants' Br. 31, only underscores the impropriety of the State's classification. Syrian refugees, like other refugees, are fleeing persecution and seeking safety in the United States. The presence of terrorism in their homeland does not make them carriers of the disease of terrorism.

Indiana suggests that its directive does not constitute impermissible discrimination because the directive would apply to refugees who are fleeing Syria but may have been born in other countries. *See* Appellants' Br.

27. The only example the State can muster is a single family that included several members born in Syria, as well as members born in Jordan and Lebanon. *See, e.g.*, Appellants' Br. 27; *see* Shields Decl., Attachment 2, Dkt. No. 83-2, at 9-10.[5] Even if Indiana were correct that these individuals should not be treated as being of Syrian national origin for purposes of analysis under the Equal Protection Clause, the directive would not cease to discriminate against Syrians merely by also withholding assistance from their family members.[6]

Indiana insists that "[t]o the extent the Equal Protection Clause makes national origin a suspect classification, it does so as a proxy for race or ethnicity." Appellants' Br. 26. The State cites no authority in support of its apparent view that States have broad latitude to classify individuals based on the countries they come from absent demonstrated discrimination based on race or ethnicity. The Supreme Court has long recognized that

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[5] This attachment was partially placed under seal; the citation is to the appropriately redacted version. *See* Order, Dkt. No. 90.

[6] Indiana has also asserted that it might apply its directive to an individual who "entered the refugee program by fleeing Syria, but whose 'country of origin' is designated Iraq." Appellants' Br. 30 (quoting Second Shields Second Supp. Decl. ¶ 7 [Appellants' App. 101]). But the State cannot save a discriminatory classification by applying its prohibition to additional hypothetical individuals.

whenever a state enactment "classifies by race, alienage, or national origin," it is subject to strict scrutiny, because "[t]hese factors are so seldom relevant to the achievement of any legitimate state interest that laws grounded in such considerations are deemed to reflect prejudice and antipathy." *City of Cleburne*, 473 U.S. at 440; *see also Mathews v. Diaz*, 426 U.S. 67, 85 (1976) ("Insofar as state welfare policy is concerned, there is little, if any, basis for treating persons who are citizens of another State differently from persons who are citizens of another country." (footnote omitted)).

Indiana observes that the Supreme Court has distinguished between national-origin discrimination and classifications based upon whether an individual is a U.S. citizen. *See* Appellants' Br. 27 (citing *Espinoza v. Farah Mfg. Co.*, 414 U.S. 86 (1973)). But Indiana is not distinguishing between U.S. citizens and non-citizens—it is distinguishing *among* non-citizens. *Cf. Espinoza*, 414 U.S. at 95 ("Certainly it would be unlawful for an employer to discriminate against aliens because of race, color, religion, sex, or national origin—for example, by hiring aliens of Anglo-Saxon background but refusing to hire those of Mexican or Spanish ancestry.").

And in any event, even distinctions by States between U.S. citizens, on the one hand, and non-citizens, on the other, are subject to strict scrutiny under the Equal Protection Clause unless the State is following a federal policy. *See Graham*, 403 U.S. at 371-72. Here, Indiana is not drawing distinctions at the direction of the federal government; rather, Indiana is making generalizations about refugees based on where they come from, in a manner inconsistent with the federal government's policy in this area. The federal government has determined that Syrian refugees should be admitted to the United States and should receive services under the Refugee Social Services Program. A State has no latitude to draw classifications among refugees that are at odds with the relevant federal determinations in this area. *See Plyler v. Doe*, 457 U.S. 202, 219 n.19 (1982) (while the federal government has authority to make "alienage classifications" to conduct "foreign policy" and to "control access to the United States," "[n]o State may independently exercise a like power").

B. The directive cannot satisfy strict scrutiny.

Indiana's directive is not narrowly tailored to achieve any compelling government interest. *See Johnson v. California*, 543 U.S. 499, 505 (2005) (classifications subject to strict scrutiny must be "narrowly tailored

measures that further compelling governmental interests" (quotation marks omitted)). Indiana's assertion that its directive is designed to promote public safety ignores the respective roles of the federal and state governments in refugee programs. The federal government conducts extensive background checks of refugees to determine which refugees should be admitted to the United States, and does so even when refugees are fleeing war-torn countries in circumstances that may make it more challenging to verify the necessary information. Indiana does not and cannot assert authority to exclude refugees from the United States, or to exclude from Indiana refugees who have been admitted to the United States.

Against that background, the State cannot assert a compelling interest in declining to provide funding for services to Syrian refugees, when the federal government furnishes those funds to the State under the very refugee admission program in which the screening occurs. Having elected to participate in the refugee resettlement program, the State does not have a compelling interest in second-guessing the adequacy of the federal background check based on speculation regarding the nationals of a particular country. Nor does the State have a compelling interest, or even a

legitimate one, in discouraging refugees who are lawfully admitted to the United States from coming to Indiana instead of residing in other States.

While the directive does not serve any compelling interest, there can be no question that it inflicts harm on individuals whom the federal government has determined to be of "special humanitarian concern," 8 U.S.C. § 1157, and thus has admitted to the United States as refugees. Indiana rightly does not assert that all, or even most, Syrian refugees are undeserving of assistance. Denying assistance to deserving refugees from a war-torn region—including those refugees who already reside in Indiana—is not a narrowly tailored means of advancing the State's asserted interest. *See* Order 25 [Short App. 25] ("This is essentially a policy of punishing Syrian refugees already in Indiana in the hopes that no more will come.").

On the other side of the ledger, as the district court explained, "[t]he withholding of funds from Exodus that are meant to provide social services to Syrian refugees in no way directly, or even indirectly, promotes the safety of Indiana citizens." Order 25 [Short App. 25]. There is no reason to believe that Indiana's refusal to reimburse voluntary agencies for job training, child care, or English-language training would have any effect on any person intent on causing harm to the United States.

II. The Directive Violates The Refugee Act.

The Refugee Act provides that "[a]ssistance and services funded under this section shall be provided to refugees without regard to race, religion, nationality, sex, or political opinion." 8 U.S.C. § 1522(a)(5). Indiana's effort to deny assistance to Syrian refugees violates this clear statutory command.

Indiana mistakenly asserts that it is free to deny assistance to Syrian refugees because, in the State's view, the statutory prohibition applies only to the federal government. No such limitation appears on the face of the provision. On the contrary, the statute speaks directly to the entities (such as States and nonprofit organizations) that provide the aid funded by the program, prohibiting discrimination in the "[a]ssistance and services funded under this section." 8 U.S.C. § 1522(a)(5).

Indiana notes that the subsections that immediately precede 8 U.S.C. § 1522(a)(5) "direct a federal government official to take some action." Appellants' Br. 45. *See, e.g.*, 8 U.S.C. § 1522(a)(1). Had Congress meant to direct 8 U.S.C. § 1522(a)(5) solely to the federal government, it would have used similar limiting language. The State cannot read the limitations included in one subsection into a separate subsection that includes no such limitation. When Congress intended for a provision of section 1522 to

apply only to the federal government—or only to the States, *see id.* § 1522(a)(6) ("As a condition for receiving assistance under this section, a State must . . . .")—it said so explicitly.

Longstanding federal regulations confirm that the Refugee Act's nondiscrimination provision governs state use of federal funds. Those regulations require the State to include, as part of the state plan used to apply for refugee assistance funding, an assurance that "assistance and services funded under the plan will be provided to refugees without regard to race, religion, nationality, sex, or political opinion." 45 C.F.R. § 400.5(g). In compliance with this requirement, Indiana's state plan includes a statement that "[a]ssurance is hereby given that Indiana will provide assistance and services funded under the plan to refugees without regard to race, religion, nationality, sex or political opinion." Indiana State Plan for Title IV of the Immigration and Nationality Act: Refugee Resettlement Program 4 [Appellants' App. 40].

Indiana observes that nonprofit entities must be able to take nationality into account in order to find appropriate locations for refugee resettlement. But those placement decisions do not involve a denial of benefits on the basis of nationality. To the contrary, as Indiana acknowledges, nonprofit

entities seek to ensure that all refugees are provided appropriate services: nonprofit organizations consider "a variety of factors, including resources to address native languages, LGBT issues, or mental trauma arising from local calamities." Appellants' Br. 52. There is no basis for equating these considerations, which affirmatively promote federal policies, with Indiana's preference for declining services to Syrian refugees.

As in its challenge to the district court's equal-protection holding, Indiana asserts that the directive reflected a concern that Syria's "purported refugees might really be terrorists," Appellants' Br. 52, and that the directive therefore should not be understood to be based on nationality. That argument cannot be squared with the terms of the statute, which provides that "[a]ssistance and services funded under this section shall be provided to refugees without regard to race, religion, nationality, sex, or political opinion." 8 U.S.C. § 1522(a)(5). Indiana's asserted motive in denying assistance and services funded under the statute on the basis of nationality has no bearing on the application of the statute.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be affirmed.

Respectfully submitted,

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MAY 2016

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the requirements of Fed. R. App. P. 32(a) (5) and (6) because it has been prepared in 14-point Book Antiqua, a proportionally spaced font.

I further certify that this brief complies with the type-volume limitation of Fed. R. App. P. 25(d) because it contains 4,569 words, excluding the parts of the brief exempted under Rule 32(a)(7)(B)(iii), according to the count of Microsoft Word.

s/ Daniel Tenny
Daniel Tenny

CERTIFICATE OF SERVICE

I hereby certify that on May 16, 2016, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the appellate CM/ECF system. I further certify that I will cause 15 paper copies of this brief to be received by the Clerk within seven days of the Notice of Docket Activity generated upon acceptance of the brief. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

s/Daniel Tenny
Daniel Tenny

ADDENDUM

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8 U.S.C. § 1522(a)

§ 1522. Authorization for programs of domestic resettlement of and assistance to refugees

(a) Conditions and considerations

(1)(A) In providing assistance under this section, the Director shall, to the extent of available appropriations, (i) make available sufficient resources for employment training and placement in order to achieve economic self-sufficiency among refugees as quickly as possible, (ii) provide refugees with the opportunity to acquire sufficient English language training to enable them to become effectively resettled as quickly as possible, (iii) insure that cash assistance is made available to refugees in such a manner as not to discourage their economic self-sufficiency, in accordance with subsection (e)(2) of this section, and (iv) insure that women have the same opportunities as men to participate in training and instruction.

(B) It is the intent of Congress that in providing refugee assistance under this section—

(i) employable refugees should be placed on jobs as soon as possible after their arrival in the United States;

(ii) social service funds should be focused on employment-related services, English-as-a-second-language training (in nonwork hours where possible), and case-management services; and

(iii) local voluntary agency activities should be conducted in close cooperation and advance consultation with State and local governments.

(2)(A) The Director and the Federal agency administering subsection (b)(1) of this section shall consult regularly (not less often than quarterly) with State and local governments and private nonprofit voluntary agencies concerning the sponsorship process and the intended distribution of refugees among the

States and localities before their placement in those States and localities.

(B) The Director shall develop and implement, in consultation with representatives of voluntary agencies and State and local governments, policies and strategies for the placement and resettlement of refugees within the United States.

(C) Such policies and strategies, to the extent practicable and except under such unusual circumstances as the Director may recognize, shall—

(i) insure that a refugee is not initially placed or resettled in an area highly impacted (as determined under regulations prescribed by the Director after consultation with such agencies and governments) by the presence of refugees or comparable populations unless the refugee has a spouse, parent, sibling, son, or daughter residing in that area,

(ii) provide for a mechanism whereby representatives of local affiliates of voluntary agencies regularly (not less often than quarterly) meet with representatives of State and local governments to plan and coordinate in advance of their arrival the appropriate placement of refugees among the various States and localities, and

(iii) take into account—

(I) the proportion of refugees and comparable entrants in the population in the area,

(II) the availability of employment opportunities, affordable housing, and public and private resources (including educational, health care, and mental health services) for refugees in the area,

(III) the likelihood of refugees placed in the area becoming self-sufficient and free from long-term dependence on public assistance, and

(IV) the secondary migration of refugees to and from the area that is likely to occur.

(D) With respect to the location of placement of refugees within a State, the Federal agency administering subsection (b)(1) of this section shall, consistent with such policies and strategies and to the maximum extent possible, take into account recommendations of the State.

(3) In the provision of domestic assistance under this section, the Director shall make a periodic assessment, based on refugee population and other relevant factors, of the relative needs of refugees for assistance and services under this subchapter and the resources available to meet such needs. The Director shall compile and maintain data on secondary migration of refugees within the United States and, by State of residence and nationality, on the proportion of refugees receiving cash or medical assistance described in subsection (e) of this section. In allocating resources, the Director shall avoid duplication of services and provide for maximum coordination between agencies providing related services.

(4)(A) No grant or contract may be awarded under this section unless an appropriate proposal and application (including a description of the agency's ability to perform the services specified in the proposal) are submitted to, and approved by, the appropriate administering official. Grants and contracts under this section shall be made to those agencies which the appropriate administering official determines can best perform the services. Payments may be made for activities authorized under this subchapter in advance or by way of reimbursement. In carrying out this section, the Director, the Secretary of State, and any such other appropriate administering official are authorized—

(i) to make loans, and

(ii) to accept and use money, funds, property, and services of any kind made available by gift, devise, bequest, grant, or otherwise for the purpose of carrying out this section.

(B) No funds may be made available under this subchapter (other than under subsection (b)(1) of this section) to States or political subdivisions in the form of block grants, per capita grants, or

similar consolidated grants or contracts. Such funds shall be made available under separate grants or contracts—

(i) for medical screening and initial medical treatment under subsection (b)(5) of this section,

(ii) for services for refugees under subsection (c)(1) of this section,

(iii) for targeted assistance project grants under subsection (c)(2) of this section, and

(iv) for assistance for refugee children under subsection (d)(2) of this section.

(C) The Director may not delegate to a State or political subdivision his authority to review or approve grants or contracts under this subchapter or the terms under which such grants or contracts are made.

(5) Assistance and services funded under this section shall be provided to refugees without regard to race, religion, nationality, sex, or political opinion.

(6) As a condition for receiving assistance under this section, a State must—

(A) submit to the Director a plan which provides—

(i) a description of how the State intends to encourage effective refugee resettlement and to promote economic self-sufficiency as quickly as possible,

(ii) a description of how the State will insure that language training and employment services are made available to refugees receiving cash assistance,

(iii) for the designation of an individual, employed by the State, who will be responsible for insuring coordination of public and private resources in refugee resettlement,

(iv) for the care and supervision of and legal responsibility for unaccompanied refugee children in the State, and

(v) for the identification of refugees who at the time of resettlement in the State are determined to have medical conditions requiring, or medical histories indicating a need for, treatment or observation and such monitoring of such treatment or observation as may be necessary;

(B) meet standards, goals, and priorities, developed by the Director, which assure the effective resettlement of refugees and which promote their economic self-sufficiency as quickly as possible and the efficient provision of services; and

(C) submit to the Director, within a reasonable period of time after the end of each fiscal year, a report on the uses of funds provided under this subchapter which the State is responsible for administering.

(7) The Secretary, together with the Secretary of State with respect to assistance provided by the Secretary of State under subsection (b) of this section, shall develop a system of monitoring the assistance provided under this section. This system shall include—

(A) evaluations of the effectiveness of the programs funded under this section and the performance of States, grantees, and contractors;

(B) financial auditing and other appropriate monitoring to detect any fraud, abuse, or mismanagement in the operation of such programs; and

(C) data collection on the services provided and the results achieved.

(8) The Attorney General shall provide the Director with information supplied by refugees in conjunction with their applications to the Attorney General for adjustment of status, and the Director shall compile, summarize, and evaluate such information.

(9) The Secretary, the Secretary of Education, the Attorney General, and the Secretary of State may issue such regulations as each deems appropriate to carry out this subchapter.

(10) For purposes of this subchapter, the term "refugee" includes any alien described in section 1157(c)(2) of this title.