No. 20-1160

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

HIAS, INC.; CHURCH WORLD SERVICE, INC.; LUTHERAN IMMIGRATION & REFUGEE SERVICE, INC.,

Plaintiffs-Appellees,

v.

DONALD J. TRUMP, in his official capacity as President of the United States; MICHAEL R. POMPEO, in his official capacity as Secretary of State; ALEX M. AZAR, II, in his official capacity as Secretary of Health and Human Services; CHAD WOLF, in his official capacity as Acting Secretary of Homeland Security,

Defendants-Appellants,

On Appeal from the United States District Court for the District of Maryland, Case No. 8:19-cv-03346-PJM, Hon. Peter J. Messitte

BRIEF OF AMICI CURIAE INTERNATIONAL RESCUE COMMITTEE, UNITED STATES CONFERENCE OF CATHOLIC BISHOPS, WORLD RELIEF, THE MOST REVEREND MICHAEL BRUCE CURRY, PRESIDING BISHOP OF THE EPISCOPAL CHURCH, AND ETHIOPIAN COMMUNITY DEVELOPMENT COUNCIL, INC. IN SUPPORT OF PLAINTIFFS-APPELLEES

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CORPORATE DISCLOSURE STATEMENTS

Pursuant to Federal Rule of Appellate Procedure 26.1, International Rescue Committee states that it has no parent corporation. It has no stock, and therefore no publicly held company owns 10% or more of its stock.

United States Conference of Catholic Bishops states that it has no parent corporation. It has no stock, and therefore no publicly held company owns 10% or more of its stock.

World Relief states that it has no parent corporation. It has no stock, and therefore no publicly held company owns 10% or more of its stock.

Ethiopian Community Development Council, Inc. states that it has no parent corporation. It has no stock, and therefore no publicly held company owns 10% or more of its stock.

Dated: June 2, 2020

s/ Mark David McPherson
Mark David McPherson

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INTERESTS OF AMICI CURIAE

Amici curiae are International Rescue Committee; United States Conference of Catholic Bishops; World Relief; the Most Reverend Michael Bruce Curry, Presiding Bishop of the Episcopal Church; and The Ethiopian Community Development Council, Inc.. Each amici is or represents a non-party resettlement agency protected by the preliminary injunction.

Amicus curiae International Rescue Committee ("IRC") is dedicated to helping refugees whose lives and livelihoods have been shattered by conflict and disaster to survive, recover, and gain control of their future. IRC has substantial expertise related to the resettlement of refugees, having for nearly four decades served as one of the nine resettlement agencies responsible for refugee resettlement within the United States. Its expertise bears directly on the issues before the Court.

Amicus curiae the United States Conference of Catholic Bishops ("USCCB") is a nonprofit corporation, the members of which are the active Catholic Bishops in the United States. The Conference advocates and promotes the pastoral teachings of the U.S. Catholic Bishops in such diverse areas of the nation's life as the free expression of ideas, the rights of religious organizations and their adherents, fair employment and equal opportunity for the underprivileged, protection of the rights of parents and children, the value of human life from conception to natural death, and care for immigrants and refugees. It is the position of the Catholic Church that

pastoral, educational, medical, and social services provided by the Church are never conditioned on legal status—all persons are invited to participate in its parishes, attend its schools, and receive other services offered by its institutions and programs.

Amicus curiae World Relief is a global Christian nonprofit organization founded by the National Association of Evangelicals in 1944 to assist victims of World War II. The mission of World Relief is to empower the local church to serve the most vulnerable to overcome violence, poverty and injustice. Through love in action, it brings hope, healing and restoration to millions of the world's most vulnerable women, men and children through vital and sustainable programs in disaster response, health and child development, economic development and peacebuilding. Since 1979, World Relief has resettled roughly 300,000 refugees and currently offers programs to encourage family integration to refugees, asylees, victims of human trafficking, and other immigrants in the United States. World Relief provides immigration legal services through attorneys and Department of Justice accredited representatives in numerous states in the U.S. World Relief currently has 16 active recognized and accredited sites and is offering technical legal support to 40 church-based programs who are either currently recognized and accredited or in the application process.

Amicus curiae the Most Reverend Michael Bruce Curry is the 27th Presiding Bishop of The Episcopal Church, a hierarchical religious denomination in the United

States and 17 other countries. Under the Church's polity, he is charged with "speak[ing] God's words to the Church and to the world, as the representative of [the] Church." In 1938, The Episcopal Church followed Jesus' mandate by offering help and hope to refugees fleeing the Nazi regime. It was a significant decision, expanding a compassionate heritage that previously included port chaplaincies for ministry to sojourners of all types finding their way to our shores. In the decades that followed, The Episcopal Church continued to provide welcome and support to countless individuals, and beginning in the 1980s, Episcopal Migration Ministries became directly involved in refugee resettlement both in and for the United States, in partnership with dioceses, congregations, and local affiliates. Since 1980, The Episcopal Church has assisted over 95,000 refugees.

Amicus curiae The Ethiopian Community Development Council, Inc., ("ECDC") was established in 1983 to respond to the needs of a growing Ethiopian community both in the Washington, D.C., metropolitan area and across the country. In 1991, ECDC became the first ethnic community-based organization authorized by the Department of State to resettle refugees in the U.S. and remains the only such agency today. Since its founding, ECDC, working locally, regionally, and nationally, has served newcomers representing diverse cultural backgrounds and nationalities from around the world. ECDC increases awareness in the wider community and

among mainstream organizations about issues of concerns to refugees working to become self-sufficient, integrated members of their new communities.

No party's counsel authored this brief in whole or in part. No party's counsel contributed money intended to fund preparation or submission of this brief. No one other than the amici, their members, or counsel contributed money intended to fund preparation or submission of this brief.

Pursuant to Federal Rule of Appellate Procedure 29(a)(2), amici file this brief without an accompanying motion for leave to file, because all parties have consented to its filing.

INTRODUCTION AND SUMMARY OF ARGUMENT

Each year, tens of thousands of refugees look to countries like the United States to help them escape war or political persecution in their home countries. For decades, the United States has been a world leader in accepting such refugees, offering them a chance to rebuild their lives in safety. And for decades, the United States has done so pursuant to a system Congress carefully designed "to provide *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 the effective resettlement and absorption of those refugees who are admitted." Refugee Act of 1980, Pub. L. No. 96-212 § 101(b), 94 Stat. 102 (1980) (the "Refugee Act") (emphases added). The system

Congress envisioned—which has worked effectively for nearly four decades—is built upon close cooperation between resettlement agencies (currently nine of them, including the three appellees), the U.S. State Department, state and local governments, and of course refugees themselves. The appellees' brief details the ways in which Executive Order 13888[1] irreparably disrupts that system in violation of law and to the detriment of refugees whose lives hang in the balance.

Amici submit this brief to highlight why the district court's preliminary injunction, which "cover[s] not just" appellees, but the non-party resettlement agencies "similarly situated to them . . . whose rights might be affected if" excluded from the interim relief, is appropriate. *Trump v. Int'l Refugee Assistance Project*, 137 S. Ct. 2080, 2087 (2017). Indeed, the scope of the district court's preliminary injunction is not just appropriate; it is necessary. It is necessary to avoid harming the non-party resettlement agencies and their local affiliates who are, by the very design of the Refugee Act, similarly situated to the appellee agencies and subject to the same irreparable harms. It is necessary to give full relief to the appellee agencies and their affiliates, whose work would be strained if they were to become the only

[1] The September 26, 2019 Executive Order, which provides that the federal government "should resettle refugees only in those jurisdictions in which both the State and local governments have consented to receive refugees under the Department of State's Reception and Placement Program," was implemented via the State Department's FY 2020 Notice of Funding Opportunity for Reception and Placement Program, issued on November 6, 2019. 84 Fed. Reg. 52,355, 52,355 (Sept. 26, 2019).

agencies who could resettle refugees in locales that exercised their veto power over the resettlement of refugees. And it is necessary to protect refugees themselves, who rely on the close collaboration among all resettlement agencies to provide them with the resources necessary to rebuild their lives after unimaginable challenges that forced them away from their homes.

In short, any effort to scale back the scope of the district court's injunction would disrupt the "comprehensive and uniform" resettlement system Congress mandated in the Refugee Act—something that alone supports upholding the full scope of the injunction—and would injure all of the nine resettlement agencies (appellees and non-parties alike), their local affiliates, and the refugees they serve. The full scope of the injunction should be affirmed.

ARGUMENT

EQUITY DEMANDS AN INJUNCTION COVERING EACH OF THE NINE RESETTLEMENT AGENCIES.

A. System-Wide Injunctions Are Appropriate to Afford Complete Relief.

As the Government concedes, "this Court recently held that district courts have equitable discretion to issue nationwide injunctions even where that is not necessary to redress the plaintiffs' own injuries." AOB 26 (citing *Roe v. United States DOD,* 947 F.3d 207, 232-33 (4th Cir. 2020)). The Government does not contend that *Roe* was wrongly decided, as it is consistent with the Supreme Court's approval of "injunctions that cover[ ] not just [moving parties], but parties similarly

situated to them . . . whose rights might be affected if" excluded from the interim relief. *Int'l Refugee Assistance Project*, 137 S. Ct. at 2087. While the Government labels the district court's order a "nationwide injunction" and cites concurring opinions questioning the propriety of such injunctions, the Government does not actually take issue with the geographic scope of the injunction. AOB 26. Rather, the Government contends the injunction should not extend to the six non-party resettlement agencies, despite their being similarly situated and subject to the same harms—whether those resettlement agencies operate within the geographic reach of the district court or not.

No law supports the Government's attempt to narrow the injunction here. System-wide injunctions—insofar as nine resettlement agencies can embody a term so large—have long been established as tools of judicial efficiency and a method of avoiding inconsistent application of the law. *See, e.g., Doe 2 v. Mattis,* 344 F. Supp. 3d 16, 24 (D.D.C. 2018), *vacated on other grounds sub nom Doe 2 v. Shanahan,* 755 Fed. App'x 19 (D.C. Cir. 2019) (per curiam) ("[S]ystemwide injunctions can prevent a 'flood of duplicative litigation' by allowing similarly situated non-party individuals to benefit from an injunction rather than filing separate actions for similar relief." (citing *Nat'l Mining Ass'n v. United States Army Corps of Eng'rs,* 145 F.3d 1399, 1409 (D.C. Cir. 1998)); *E. Bay Sanctuary Covenant v. Trump*, 932 F.3d 742, 779 (9th Cir. 2018) ("In immigration matters, we have

consistently recognized the authority of district courts to enjoin unlawful policies on a universal basis.").

The Government cites no case holding that a system-wide injunction of the type issued here is inappropriate. The most the Government offers is an effort to distinguish this Court's decision in *Roe*—and their effort to do so fails to justify narrowing the district court's injunction. The Government argues that the injunction approved in *Roe* applied only to a subset of all U.S. Air Force service members (those separated or discharged based on their HIV-positive status), whereas the present injunction "applies to all [nine] refugee resettlement organizations." AOB 27. The argument ignores that the injunction in *Roe* applied to only a subset of service members because only that subset faced harm; it applied to *every* service member facing harm, all 1,194 who were HIV-positive.[2] *See Roe*, 947 F.3d at 233 ("HIV-positive individuals make up such a miniscule percentage of active-duty servicemembers[.]"). Here, all nine resettlement agencies face harm without the benefit of the district court's injunction. Under *Roe*, all nine should be protected.

As detailed more fully below, the nine resettlement agencies face the same harms as the appellee agencies. Equity demands they be afforded the same relief.

[2] Mem. ISO Plaintiffs' Mot. for Preliminary Injunction at 35, *Roe v. United States DOD*, No. 1:18-cv-01565-LMB-IDD (E.D. Va. Jan. 11, 2019), Dkt. 34.

B. A Partial Injunction Would Disrupt the "Comprehensive and Uniform System," Harming All Involved.

The Government asks this Court to vacate the injunction in its entirety and allow the enforcement of the Executive Order, which the district court correctly determined would irreparably harm the resettlement agencies, the refugees they serve, and the resettlement system as a whole. The Government's alternative request—to narrow the district court's injunction to apply only to the appellee agencies, thus breaking the comprehensive and uniform procedures of the Refugee Act into two separate sets of rules (AOB 26)—may actually be worse. It would contravene the express purpose of the Refugee Act, to provide for "uniform provisions" for the resettlement of refugees, and would injure all of the resettlement agencies, appellees and non-parties alike.

1. A Partial Injunction Would Violate a Key Purpose of the Refugee Act.

The Refugee Act was designed "to provide *a permanent and systematic procedure* for the admission to this country of refugees of special humanitarian concern to the United States, and *comprehensive and uniform provisions* for the effective resettlement and absorption of those refugees who are admitted." Pub. L. No. 96-212 § 101(b) (emphases added).[3] The Government's alternative, narrower

[3] *See also,* Deborah E Anker, *Determining Asylum Claims in the United States: A Case Study on the Implementation of Legal Norms in an Unstructured Adjudicatory Environment*, 19 N.Y.U. REV. L. & SOC. CHANGE 433, 437 (1992) (emphasizing that

injunction would destroy the "comprehensive and uniform" system Congress fashioned by forcing one group of resettlement agencies to operate under the successful status quo of the last thirty-plus years, while the other group would operate under a new, unworkable regime. Both groups would then need to align their suddenly mismatched procedures and incentives to serve the interests of refugees.

Crafting the narrower injunction the Government suggests would only replace one legally dubious act—the Executive Order—with another—an injunction contrary to Congress's express legislative intent. In an Administrative Procedure Act ("APA") case, such as this, "the test for determining if equitable relief is appropriate is whether an injunction is necessary to effectuate the congressional purpose behind the statute." *Biodiversity Legal Found. v. Badgley*, 309 F.3d 1166, 1177 (9th Cir. 2002) (citing *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 193-95 (1978)). In any case, moreover, "[a] district court cannot . . . override Congress' policy choice, articulated in a statute" or "ignore the judgment of Congress, deliberately expressed in

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the purpose of the Refugee Act was to "eliminate *ad hoc* treatment of refugees"); John A. Scanlan, *Immigration Law and the Illusion of Numerical Controls*, 36 U. MIAMI L. REV. 819, 847 (1982) ("The [Refugee] Act arose from a long history of ad hoc decisionmaking to admit particular groups of refugees, congressional reaction to the executive's domination of that decision making process, and a desire to better coordinate admission decisions with follow-up resettlement and welfare programs."); Karen K. Jorgensen, *The Role of the U.S. Congress and the Courts in the Application of the Refugee Act of 1980, in* REFUGEE LAW AND POLICY: INTERNATIONAL AND U.S. RESPONSES 129, 131 (Ved P. Nanda ed., 1989) (quoting Senator Kennedy as stating that "present law and practice is inadequate, and that the piecemeal approach of our government" in refugee cases is intolerable).

legislation." *United States v. Oakland Cannabis Buyers' Coop*., 532 U.S. 483, 497 (2001). Accordingly, an injunction issued under the APA must be consistent with the intent of the underlying statute. *See Biodiversity*, 309 F.3d at 1177. Here, Congress expressly articulated the need for "comprehensive and uniform provisions" for refugee resettlement. Because only an injunction protecting each of the nine resettlement agencies would preserve Congress's intent, the Government's alternative request for a narrower injunction should be rejected on this basis alone.

2. A Partial Injunction Would Result in an Unworkable System.

Even putting aside whether a narrower injunction would be consistent with Congress's intent, however, such an injunction would simply be unworkable. The system Congress fashioned in the Refugee Act turns on competition and cooperation among the resettlement agencies.[4] Agencies are incentivized to improve the depth and breadth of their services, while working together to place refugees in cities that best match their particular needs. (JA46-49; JA75-76; JA100-101.) Without uniformity, the system breaks, harming all involved.

Each year, the nine resettlement agencies compete for an allotment of the total number of refugees to be resettled in the United States. JA99-100. Each agency

[4] *See* Norman L. Zucker, *Refugee Resettlement in the United States: The Role of the Voluntary Agencies,* 3 MICH. J. INT'L L. 155, 165 n.21 (1982) ("The strength of the resettlement agency structure has been enhanced . . . by the ability of [each] agency to retain its individuality, and at the same time to work cooperatively.").

works with state and local governments to recommend a number of refugees to be placed in each geography. JA99-100. The allotment is determined largely by the State Department based on an assessment of each agency's community engagement (the level of resources the agency has at its disposal), program quality monitoring, and geographic reach (the number of cities in which the agency operates). JA75-76. The resettlement agencies then meet weekly to assign cases. JA100-101. These assignments are guided by the procedures set forth in the State Department's Allocations Handbook (the "Allocations Handbook"). JA100; JA174-200. Many of these placements are determined by the location of refugee family ties.[5] As the district court noted, this system has, "from all reports, worked quite smoothly since the 1986 amendments," owing to the Refugee Act's comprehensive and uniform procedures. JA446.

The Government cannot explain how this system might work were the district court's injunction to be applied unevenly among the nine agencies. The appellee agencies raised this concern with the district court (D. Ct. Dkt. No. 60 at 19), but at oral argument, the Government had no answer. As the district court explained, the Government "conceded that [the uneven application of the injunction] would 'create potential difficulties' and could not describe how the distinction between the three

[5] Congress considered the need to place refugees close to family ties so important that it overrides all other considerations in the placement process, including the impact on the placement locale. *See* JA174-200.

Resettlement Agencies that are Plaintiffs and the six which are not might work in practice." (JA456 n.24, citing Transcript of Oral Argument at 105 (Jan. 8, 2020).) And even now, with nearly three months between that oral argument and the filing of its opening brief in this appeal, the Government offers no explanation of how that system might work.

In fact, such a system could not possibly work. The Government's requested partial injunction would create an imbalanced system under which the resettlement agencies would be forced into placements that would simultaneously overwhelm and underutilize the resettlement agencies, causing refugees to be underserved. This impact would be felt most strongly in the dozens of cities across the United States that are served by both appellees and the non-party resettlement agencies.

Atlanta, Georgia provides a case study. Atlanta is served by two appellee agencies (Church World Services and Lutheran Immigration and Refugee Services) and two non-party agencies (the IRC and the Migration and Refugee Services of USCCB). The work of the local affiliates of these agencies is spread out across the metropolitan area, with each agency having access to specific resources and services within the community. With a large metropolitan area and nearly 10,000 refugees resettled there in the last five years alone (JA29), many new refugees have ties in Atlanta and so, per the Allocations Handbook, must be placed with affiliates there. *See* JA101. Normally, these refugees are divided among these four resettlement

agencies, allowing each agency to evenly distribute its nationwide allotment among the various cities in which it operates.

Absent the full injunction the district court issued, the closure of the two non-party resettlement agencies in Atlanta is a distinct possibility. To date, Georgia has, without official explanation, neither granted nor declined its consent.[6] Moreover, the competing political interests at the city, county, and state levels leave the Atlanta affiliates particularly vulnerable to sudden changes in policy. Should any level of government decline consent, forcing the two non-party agencies to cease resettlement in the locale, the funding each receives from the State Department would end and the support of private dollars would likely soon follow, resulting in the potential closure of their operations in Atlanta. JA110; JA119-120; JA128; JA135.

Should that happen, the appellee agencies would have no choice but to take each refugee with ties to the city and surrounding area. The appellee agencies would likely face difficulties meeting this demand, as the public and private resources currently used to serve these refugees may not shift to appellee agencies quickly or entirely. As a result, the remaining Atlanta affiliates of the appellee agencies would have diminished capacity, if any at all, to take other refugees in need of the specific

[6] Miriam Jordan, *Judge Halts Trump Policy That Allows States to Bar Refugees,* N.Y. TIMES (Jan. 15, 2020), https://www.nytimes.com/2020/01/15/us/refugees-states-trump.html

services offered there, leaving those refugees underserved. Narrowing the injunction would thus limit the ability of even the appellee agencies to provide refugees with crucial services.

The effects of the resulting imbalance would not be limited to cities like Atlanta; they would be felt nationwide. The appellee agencies' nationwide allotment would suddenly be consumed by cities in which the non-party agencies could no longer operate, forcing their operations in other cities to shrink or disappear. The resulting loss of capacity would result in the specific services offered by those affiliates being unavailable to refugees in need. For example, the appellee agencies currently have the ability to match refugees with particular linguistic, medical, or other services. But under a narrowed injunction, they would likely lack the remaining allotment to make those placements and maintain those resources. The resulting imbalance would also be felt by the non-party resettlement agencies that would have to compensate by taking on more refugees in the shared cities in which consents had been granted, causing similar imbalances and harms elsewhere.

As the Government concedes, it is impossible to say how this system might actually work in practice. But it is clear that a partial injunction would cause a cascade of disruption across each agency's networks, forcing placements to be made on allotment demands rather than refugee needs. The Refugee Act was designed to prevent exactly this system, and injunctions are intended to prevent exactly this

harm. *See Madsen v. Women's Health Ctr., Inc.*, 512 U.S. 753, 765 (1994) (a preliminary injunction should be as broad as "necessary to provide complete relief"); *Int'l Refugee Assistance Project*, 137 S. Ct. at 2087 (interim relief must protect "the interests of the public at large").

C. A Partial Injunction Would Harm the Appellee Agencies, the Non-Party Agencies, and the Refugees They Serve.

In denying the Government's request in the alternative for a partial injunction, the district court correctly explained that whatever *ad hoc* system might result, "impractical, unfair consequences" would follow. JA456 n.24. Those harms are not limited to the results of an unworkable system, but also include direct harms to the appellee agencies, to the non-party resettlement agencies, and to the refugees they serve. These inequities demand a complete injunction.

As this Court has explained, equitable relief requires the court to "pay particular regard for the public consequences," *Roe*, 947 F.3d at 231, and to the harm that would befall "innocent third parties." *SAS Inst., Inc. v. World Programming Ltd.*, 874 F.3d 370, 388 (4th Cir. 2017). To that end, we summarize below "the concrete burdens" that would result absent an injunction covering each of the nine resettlement agencies, including those harms to "the interests of the public at large." *Int'l Refugee Assistance Project*, 137 S. Ct. at 2087; *cf Nken v. Holder*, 556 U.S. 418, 435 (2009) ("[T]he harm to the opposing party and weighing the public interest . . . merge when the Government is the opposing party.").

1. A Partial Injunction Would Not Afford Complete Relief to the Appellee Agencies.

The district court's issuance of a nationwide injunction was "necessary to provide complete relief" to the appellee agencies, preventing irreparable harm to their local affiliates, their employees, and the refugees they serve. *Madsen*, 512 U.S. at 765. As explained above, the majority of cities in which refugees are settled are served by multiple resettlement agencies. This overlap allows for and incentivizes the local affiliates to pool resources, resulting in a greater number and depth of services for refugees in those cities.

Returning to Atlanta, IRC's local affiliate there, for example, provides services such as specialized employment and adult education, which are relied upon by refugees from each of the other three resettlement agencies. IRC, in turn, relies on other agencies to provide other services for its refugees. The resettlement agencies also currently share joint resources, such as a warehouse used to store in-kind donations. The local affiliates are, in these various ways, dependent on one another. This system allows each agency to provide more services to more refugees at a lower cost.

If the two non-party resettlement agencies were denied consent and forced to close operations in Atlanta, the appellee agencies would be irreparably harmed. They would be forced either to assume the services previously provided by (or shared with) the non-party agencies, requiring the appellee agencies to expend additional

resources, or to leave the refugees that depend on those services to do without. Some of the services the non-party agencies provide likely could not be replicated by the appellee agencies, because they depend on either personal relationships established by non-party agencies' employees or the use of their infrastructure, including private funding. JA107. Those services would simply be lost. Nor could the appellee agencies count on those services going forward, even if consent were provided this year, because non-party agencies would be subject to the withdrawal of consent next year.

Atlanta provides just one example of these harms. The negative effects would be felt across the country in any number of the cities served by an appellee agency and a non-party agency. To avoid this harm, an injunction applicable to all nine resettlement agencies is required. *See Madsen*, 512 U.S. at 765.

2. A Partial Injunction Would Place the Non-Party Agencies at a Competitive Disadvantage.

The implementation of a partial injunction would also harm the non-party resettlement agencies, beyond injury resulting from the Executive Order itself, in violation of this Court's edict that injunctions must avoid harm to "innocent third parties." *SAS Inst., Inc.*, 874 F.3d at 388.

Were the injunction limited to the appellee agencies, the non-party agencies would be competitively disadvantaged in the government's assessment of community engagement and geographic reach that determines the number of

refugees each resettlement agency is assigned (and the funding that flows from those assignments). JA75-76. With each consent that was denied, the non-party agencies would instantly lose community engagement and geographic scope, while the appellee agencies would continue to operate unabated. *See* JA119-120.

These competitive disadvantages would result in a decreased nationwide allotment for the non-party agencies, which would diminish services not just in the cities in which content was declined, but across the country, as the agencies' total pool of resources would be narrowed. IRC would suffer particular damage as its affiliates are an incorporated part of the agency as a whole, meaning the loss of revenue and investment is spread through IRC's entire network.

Moreover, the non-party agencies would be forced to spend time and resources on obtaining consents while the appellee agencies would face no such burden. And it is likely that a partial injunction would render the process more burdensome as state and local governments may not understand why the non-party agencies are required to obtain consent whereas the appellee agencies are not, or may simply be disinclined to offer consent to multiple agencies. At minimum, time and energy would be spent addressing these issues, adding to the consent system's already undue burden.

Because harm to innocent third parties can only be avoided through an injunction applicable to all nine resettlement agencies, the order should be affirmed. *See Int'l Refugee Assistance Project*, 137 S. Ct. at 2088; *Roe*, 947 F.3d at 232.

3. A Partial Injunction Would Harm Refugees.

While the resettlement agencies and their local affiliates thus face significant harm from the Executive Order—or even a narrowing of the injunction—the worst harm resulting from the Executive Order, whether implemented in full or in part, would be to those with the fewest resources to adapt: the refugees themselves. Under the Government's requested partial injunction, refugees across the country would have fewer options for resettlement, limiting their ability to be placed near their U.S. ties and the services they need most, and those refugees that have already been placed would face losing the services on which they rely. And in those jurisdictions where only non-party agencies operate, it may result in the separation of families, as family-member refugees could not be resettled there. As the Court considers the harm to innocent third parties, amici ask simply that the Court consider the harms facing these refugees who have finally found the prospect of relief from the persecution that has upended their lives only to face subsequent harm and disruption at the hands of the government that welcomed them. They, above all, deserve this Court's protection.

D. The Non-Party Agencies' Decisions to Remain Non-Parties Should Not Deprive Them of Relief.

For all of the reasons detailed above, the full injunction the district court issued is necessary to provide full relief to the appellee agencies and to avoid harming the non-party agencies and refugees themselves. That is true regardless of the reason the non-party resettlement agencies chose not to join the appellee agencies in their lawsuit. The Government's argument that the non-party agencies should be barred from relief by their decision not to directly challenge the Executive Order, AOB 27, simply has no merit, either as a matter of fact or law.

By the very design of the Refugee Act, each of the resettlement agencies is similarly situated and equally affected by the Executive Order. Because of this uniformity of interest, amici understood that any injunction issued would, as a matter of law, enjoin enforcement of the Executive Order against the non-party agencies. Amici's belief, combined with the difficult position of obtaining consents from state and local Governments across the country while simultaneously challenging their power to provide them, led amici to remain non-parties to this litigation.

Whatever the reason for the non-party agencies not to formally join this lawsuit as plaintiffs, however, there is no legal support for the Government's contention that the non-party agencies should be barred from relief. To the contrary, and as the Government acknowledges, district courts have the "equitable power . . . to issue nationwide injunctions extending relief to those" such as the non-party

resettlement agencies, "who are similarly situated to the litigants." *See Roe*, 947 F.3d at 232. Considerations of equity, and the prevention of irreparable harm, control this case. The injunction should be upheld.

CONCLUSION

This Court should uphold the full scope of injunction the district court issued, as the only viable way of effectuating Congress's intent, and as the only way to protect the appellee resettlement agencies, the non-party agencies, and refugees alike.

Dated: June 2, 2020

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CERTIFICATE OF COMPLIANCE

I hereby certify that:

1. This brief complies with the type-volume limitation of Federal Rules Appellate Procedure 29(a)(5) and 32(a)(7)(B) because: This brief contains 5,092 words, excluding the parts of the brief exempted by Federal Rule Appellate Procedure 32(f).
2. This brief complies with the typeface requirements of Federal Rule Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule Appellate Procedure 32(a)(6) because: This brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

Dated: June 2, 2020

s/ Mark David McPherson
Mark David McPherson

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing amicus brief with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit by using the CM/ECF system on June 2, 2020.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: June 2, 2020

s/ Mark David McPherson
Mark David McPherson