

No. 20-1160

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

HIAS, INC., et al.

Plaintiffs/Appellees

v.

DONALD TRUMP, et al.

Defendants/Appellants

Appeal from the U.S. District Court for the District of Maryland

**AMICUS BRIEF OF THE STATES OF CALIFORNIA, ILLINOIS,
MARYLAND, COLORADO, CONNECTICUT, DELAWARE, MAINE,
MASSACHUSETTS, MICHIGAN, MINNESOTA, NEW JERSEY, NEW
MEXICO, NEW YORK, OREGON, PENNSYLVANIA, RHODE ISLAND,
VERMONT, VIRGINIA, AND WASHINGTON IN SUPPORT OF
AFFIRMANCE OF THE PRELIMINARY INJUNCTION ISSUED IN
FAVOR OF APPELLEES**

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STATEMENT OF INTEREST OF AMICI

The *Amici* States of California, Illinois, Maryland, Colorado, Connecticut, Delaware, Maine, Massachusetts, Michigan, Minnesota, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, and Washington submit this brief in support of Plaintiffs-Appellees pursuant to Federal Rule of Appellate Procedure 29(a)(2). Each year, thousands of refugees are lawfully admitted into the United States and welcomed into the *Amici* States' communities, where they have access to services and cultural connections that help them thrive. Since October 1, 2001, the *Amici* States have collectively welcomed 50% of the total refugees entering the United States, and 47% of refugees over the last five full Federal Fiscal Years (FFY).¹

As part of these efforts, the *Amici* States have carefully constructed statewide systems that administer funding provided by the U.S. Department of Health and Human Services' Office of Refugee Resettlement ("ORR") and state funding for essential services to refugees during and after the initial resettlement process. The Executive Order and its resulting implementation challenged in this case—which require state and local consent before refugees are resettled in a

¹ Refugee Processing Center, *Admissions and Arrivals: Map - Arrivals by State and Nationality from Oct. 1, 2001 through May 27, 2020*, <https://ireports.wrapsnet.org/> (last visited May 27, 2020).

locality—threaten to disrupt these resettlement systems and bar refugees from the resources and communities that the *Amici* States have developed.

The *Amici* States are further interested in this matter because as sovereign entities, they are empowered to administer refugee resettlement systems in accordance with state law and policy. The Executive Order at issue here would undermine these systems by purporting to give local governments veto power over statewide policy decisions. Even where the *Amici* States consent to refugee resettlement—and all the *Amici* States have²—the Executive Order allows local governments to reject refugees by declining consent. And because the Executive Order requires local governments to affirmatively provide consent, localities that take no action could effectively reject refugee resettlement in their jurisdiction. Allowing local governments to veto the states' consent to refugee resettlement, even through inaction, is contrary to the law and will require a massive reallocation of resources to restructure, or completely dismantle, the highly effective programs already in place.

² All *Amici* State provided consent pursuant to the Funding Notice and Executive Order prior to the district court's issuance of the preliminary injunction in this case. See U.S. Dep't of State, *State and Local Consents Under Executive Order 13888*, <https://www.state.gov/state-and-local-consents-under-executive-order-13888/> (last visited May 27, 2020). New York and Vermont also provided consent, but their consents are not reflected on the State Department website.

In sum, the *Amici* States have an interest in the proper resolution of this appeal and urge the Court to uphold the district court's preliminary injunction.

SUMMARY OF ARGUMENT

In September 2019, the President issued an Executive Order directing the U.S. Department of State and the U.S. Department of Health and Human Services to “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.” Exec. Order No. 13,888 § 1, 84 Fed. Reg. 52,355 (Sept. 26, 2019). Shortly thereafter, the U.S. Department of State issued a Notice of Funding Opportunity (“Funding Notice”) directing all refugee resettlement agencies, including Appellees, to obtain consents from every “state governor’s office and the chief executive officer of the local government (county or county equivalent)” where refugees might be resettled, as part of their refugee resettlement federal grant applications.³

These new directives, if implemented, would disrupt a decades-old system that has successfully resettled refugees in communities throughout the *Amici* States and across the country. In particular, the Funding Notice’s instruction that

³ U.S. Dep’t of State, Bureau of Population, Refugees, and Migration, *FY 2020 Notice of Funding Opportunity for Reception and Placement Program* (Nov. 6, 2019), <https://www.state.gov/fy-2020-notice-of-funding-opportunity-for-reception-and-placement-program/> (last visited May 27, 2020).

refugees would only be resettled in communities where both states and local governments have provided written consent to resettlement would fundamentally alter the cooperative system that currently exists and harm the refugee communities that it purports to assist. Relying, in part, on these flaws, the district court entered an order preliminarily enjoining Appellants from enforcing the Executive Order and the Funding Notice.

As Appellees explain, *see* Br. 15-17, this decision was correct. Appellees are likely to succeed on their claims because, among other reasons, the Executive Order violates the Refugee Act of 1980 (“Refugee Act”) and the Funding Notice violates the Administrative Procedures Act (“APA”). Appellees also set forth how they would be irreparably harmed by the implementation of this new standard. The *Amici* States write separately, however, to describe the additional and unique harms that would be inflicted on the states, their residents, and their communities if the Executive Order and Funding Notice were implemented. For the reasons discussed below, the *Amici* States respectfully ask the Court to uphold the district court’s preliminary injunction.

ARGUMENT

I. ALLOWING LOCAL GOVERNMENTS TO VETO STATE DECISIONS VIOLATES THE REFUGEE ACT AND INTERFERES WITH THE *AMICI* STATES' SOVEREIGN INTERESTS IN ESTABLISHING STATEWIDE POLICY

As the district court explained, the text and legislative history of the Refugee Act bars the Executive Order's refugee resettlement consent requirement for several reasons. As a threshold matter, the Refugee Act "delegates no authority and establishes no 'facially broad grant of power' to the President at all." *HIAS, Inc. v. Trump*, 415 F. Supp. 3d 669, 680 (D. Md. 2020) (emphasis in original omitted); see also *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952) (the president's power must stem from either an act of Congress or the Constitution). As discussed by Appellees, see Br. 22-24, the statutory text alone supports the district court's conclusion.

Additionally, however, there are many indications that Congress did not intend to give the President the authority to grant local governments veto power over where refugees are initially resettled. On the contrary, reading any such executive power into the Refugee Act "flies in the face of clear Congressional intent." *HIAS, Inc.*, 415 F. Supp. 3d at 681 (emphasis in original omitted). It is true that Congress amended the Refugee Act in 1982 and 1986 to give states and local governments more opportunities to provide input over refugee resettlement. H.R. Rep. No. 99-132, at 19 (1985), reprinted in 1986 U.S.C.C.A.N. 5857, 5870.

The legislative history, however, makes clear that “these requirements are not intended to give states and localities any veto power over refugee placement decisions, but rather to ensure their input into the process and to improve their resettlement planning capacity.”⁴ *Id.*; see also *Alabama v. United States*, 198 F. Supp. 3d 1263, 1272 (N.D. Ala. 2016) (“the legislative history of the Act shows the Act’s consultation provision is ‘not intended to give States [] any veto power over refugee placement decisions’”) (quoting H.R. Rep. No. 132, 99th Cong., 1st Sess., 19 (1985) (brackets in original)).⁵

⁴ A resolution introduced in the House of Representatives in 2017 would have amended the Refugee Act to state that “[t]he Director shall not place or resettle a refugee within a State without the approval of the Governor of the State,” and notwithstanding a state governor’s approval, “the Director shall not place or resettle a refugee in any locality within a State if the locality has in effect a law, or a policy with the effect of law, disapproving of refugee resettlement in that locality.” The resolution failed. No Resettlement Without Consent Act, H.R. 546, 115th Congress (2017), <https://www.congress.gov/bill/115th-congress/house-bill/546>. In 2015, a bill introduced in the Senate would have amended the Immigration and Nationality Act to allow the Governor of a state to reject the resettlement of a refugee in that state unless there were adequate assurance that the refugee does not present a security risk. The bill failed. State Refugee Security Act of 2015, S. 2363, 114th Congress (2015), <https://www.congress.gov/bill/114th-congress/senate-bill/2363?r=801&s=6>.

⁵ As recently as 2017, the Trump administration took the position that, while the State Department’s Bureau of Population, Refugees, and Migration “consults with State and local governments ‘concerning the sponsorship process and the intended distribution of refugees among the States and localities before their placement,’ 8 U.S.C. § 1522(a)(2)(A), . . . the Refugee Act does not otherwise provide for the involvement of State or local governments in determining where individual refugees are resettled once admitted to the United States.” *Tennessee v. U.S. Dep’t of State*, No. 1:17-cv-01040, 2017 WL 5466382 (W.D. Tenn. June 1, 2017).

Furthermore, this reading of the statute is consistent with the states' role as "independent sovereigns with plenary authority to make and enforce their own laws as long as they do not infringe on federal constitutional guarantees." *Danforth v. Minnesota*, 552 U.S. 264, 280 (2008). Allowing the President to graft a local government veto power onto the current system would effectively allow counties or their equivalents—subunits of state government—to override refugee settlement decisions and prerogatives of the *Amici* States that reflect statewide interests and concerns, and would contravene well-settled precedent on state sovereignty. *See, e.g., Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996) (observing long-held precedent that "the States are independent sovereigns in our federal system").

Although the *Amici* States frequently work in close collaboration with the local governments within their borders, "[p]olitical subdivisions of States—counties, cities, or whatever—never were and never have been considered as sovereign entities." *Reynolds v. Sims*, 377 U.S. 533, 575 (1964). "Rather, they have been traditionally regarded as subordinate governmental instrumentalities created by the State to assist in the carrying out of state governmental functions." *Id.*; *see also* Cal. Const. art. XI, § 1; *Marin Cty. v. Superior Court of Marin Cty.*, 53 Cal. 2d 633, 638–39 (1960) ("The county is merely a political subdivision of state government, exercising only the powers of the state, granted by the state,

created for the purpose of advancing ‘the policy of the state at large....’” (internal citations excluded)); Minn. Const. Art. 12, § 3 (“The legislature may provide by law for the creation, organization, administration, consolidation, division and dissolution of local government units and their functions, for the change of boundaries thereof, for their elective and appointive officers including qualifications for office and for the transfer of county seats.”); N.J. Admin. Code § 52:27D-145 (political subdivisions derive their “authority directly or indirectly from the State of New Jersey”).

The Refugee Act acknowledges the importance of state sovereignty in this context, as one of its objectives is to give states a greater role in refugee placement decisions than that afforded to local governments. *HIAS, Inc.*, 415 F. Supp. 3d at 680. In the 1986 amendment to the Act, Congress directed the federal agencies “to the maximum extent possible, take into account recommendations of the State” regarding “the location of placement of refugees within a State.” 8 U.S.C. § 1522(a)(2)(D); Refugee Assistance Extension Act of 1986, Pub. L. No. 99-605, § 4, 100 Stat. 3449. The Executive Order, however, would violate this directive by giving local governments the ability to opt out of receiving refugees, through affirmatively refusing to consent or taking no action at all, even if their respective state consents to receiving refugees.

In addition to being irreconcilable with the Refugee Act’s intent, such a result would also harm the interests of the *Amici* States. *See HIAS, Inc.*, 415 F. Supp. 3d at 680 (concluding that “[t]he challenged Order definitely appears to undermine this arrangement”). The district court recognized that under the Executive Order, “if a State consents to resettlement, but a county (or city) objects, allowing the localities to veto resettlement in their jurisdiction would appear to interfere with the sovereign prerogative of the State to set statewide policy.” *HIAS, Inc.*, 415 F. Supp. 3d at 684 n.21; *see also, e.g., Wisconsin Pub. Intervenor v. Mortier*, 501 U.S. 597, 607-08 (1991) (localities’ ability to adopt ordinance regarding pesticides was within the “absolute discretion of the States” because localities “are created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them in its absolute discretion” (internal citations and punctuation omitted)).

While all of the *Amici* States provided consent to receive refugees in response to the Executive Order and Funding Notice, many local governments within the *Amici* States had not done so by the time of the district court’s preliminary injunction. And some local governments went further by affirmatively and publicly deciding to reject placement of refugees within their jurisdictions. For example, at least three local governments within the *Amici* States denied consent for refugee placement notwithstanding that their respective state provided

consent: Appomattox County, Virginia; Beltrami County, Minnesota; and Springfield, Massachusetts. Further, because affirmative consent is required by the Executive Order, any local government that fails to provide consent, for whatever reason, could block refugee placement in that state.⁶ As of January 13, 2020, the U.S. Department of State's website listed only 20 consents from local governments within the *Amici* States.⁷ The Executive Order requires an opt-in system for refugee resettlement, specifically that "if either a State or locality has not provided consent to receive refugees under the Program, then refugees should not be resettled within that State or locality." Exec. Order No. 13,888 § 2(b), 84 Fed. Reg. at 52,356. Because some local governments failed to respond at all, that lack of affirmative consent could lead the federal government to nullify the states' consent to receive refugees in localities throughout the states' borders.

II. THE *AMICI* STATES HAVE DEVELOPED HIGHLY EFFECTIVE REFUGEE RESETTLEMENT SYSTEMS

In addition to interfering with the *Amici* States' sovereign interests, the Executive Order and Funding Notice, if enforced, would upend the well-calibrated systems that the *Amici* States have established during the past several decades to

⁶ The Executive Order requires the U.S. Department of State to "publicly release any written consents" from states and local governments. Exec. Order No. 13,888 § 2, 84 Fed. Reg. 52,355.

⁷ See *supra* note 2. Additionally, this number is an incomplete reflection of local consent. The website records only three of the 14 counties that provided consent in Washington State before January 13, 2020.

welcome and deliver essential services to refugees arriving within their borders.

These systems, in turn, have created thriving refugee communities that strengthen the social fabric and economies of communities throughout the *Amici* States.

A. The Current Refugee Resettlement Systems Enable State Agencies to Deliver Essential Services to Refugees in an Effective and Collaborative Manner.

Refugees are legally admitted to the United States, have the right to work, are eligible for healthcare and cash assistance, and have access to employment and language services. 8 U.S.C. § 1522. To ensure refugees are able to take full advantage of these rights, the *Amici* States have carefully and successfully crafted a collaborative relationship between federal, state, and local government agencies on the one hand, and national and local nonprofit institutions on the other. Granting localities a veto power, however, would fundamentally alter these relationships and undermine the system created by decades of collaboration.

For example, each *Amici* State has designated specific state agencies to administer federal and state funding for refugees and to coordinate specialized services. These state agencies also often work together with local resettlement agency affiliates—such as Appellees’ local affiliates—to submit refugee resettlement proposals to ORR. Indeed, ORR requires each state to submit an annual State Plan, which must contain, among other things, a description of how

the state will coordinate key healthcare, social support, and employment services for refugees. *See* 45 C.F.R. §§ 400.4, 400.5.

In furtherance of the State Plan, state agencies and their local government and nonprofit partners collaborate to design and deliver essential services to eligible refugees, including programming focused on education, health, employment, language learning, cash assistance, and the care and supervision of unaccompanied minors.⁸ *See, e.g.*, Cal. Wel. & Inst. Code § 13277. Program benefits and services are then administered at the local level by county social services departments, through county contracts with local service providers, or through direct contracts between the state and local nonprofit resettlement agencies.⁹ These services are available to refugees for three to five years from initial placement in the United States. 8 U.S.C. § 1522(e)(7). If the Executive Order and Funding Notice were implemented, however, the continued viability of these networks and programs would be dependent on the locality providing consent. And if a locality were to decline to consent, the state agencies and their partners would need to create a new network in a different locality for new refugee initial placements.

⁸ *See* Cal. Dep't of Soc. Servs., *Services for Refugees, Asylees, and Trafficking Victims*, <https://www.cdss.ca.gov/Refugee-Services>.

⁹ *E.g., id.*; Ill. Dep't of Human Servs., *Refugee & Immigrant Services*, <https://www.dhs.state.il.us/page.aspx?item=30363>.

Such a loss would be devastating to the states and their communities. Through these systems, states effectively deliver critical services to refugees. For example, between July 2017 and June 2018, Illinois placed 973 refugees into jobs—99.7% of whom had retained their positions after 90 days—helped to connect 2,132 refugees with local health and human services providers, and assisted in ensuring 835 refugee children were served in after-school programs.¹⁰ In FFY 2019, Maryland assisted 1,116 refugees in obtaining jobs; connected 1,206 refugees with health screenings; served 439 refugee youth through after-school programs, mentorship and case management; and enrolled 720 refugees in English classes.¹¹

The Massachusetts Office of Refugees and Immigrants administers programs that collaborate to provide direct services to meet the culturally and linguistically diverse needs of newcomer populations, including, among other things, financial literacy programming, links to elder services, health care access assistance, cash assistance, supports in schools, and wrap-around services.¹²

¹⁰ See Ill. Refugee Resettlement Program, *Illinois Refugee Resettlement Program: FY18 Annual Report* (Nov. 2018), <https://bit.ly/35jU9gf>.

¹¹ E-mail from Myat Lin, Director, Md. Office for Refugees and Asylees (Dec. 11, 2019) (on file with author).

¹² See Mass. Office for Refugees and Immigrants, *Programs and Servs.*, <https://www.mass.gov/office-of-refugees-and-immigrants-ori-programs-and-services>.

Similarly, in Minnesota, the Resettlement Programs Office in the state's Department of Human Services—in collaboration with other federal, state, and local agencies, as well as nonprofit and community organizations—ensures access to mainstream programs for people with refugee status, distributes federal funds to local agencies for supplemental services, and provides the public with education and information about refugees. Through these partnerships, Minnesota is able to provide employment services, social services, food assistance, cash assistance, and health care services for refugees around the state.¹³

New Jersey contracts with Federally Qualified Health Centers to deliver health care services and coordinates initial health screenings for refugees.¹⁴ In partnership with the community-based resettlement agencies, New Jersey delivers case assistance, social services support, and employment services. The State Department of Human Services facilitates coordination between the local agencies and the county board of social services to ensure refugees have access to other social services supports such as SNAP, NJ FamilyCare (Medicaid) and TANF.¹⁵

¹³ See Minn. Dep't of Human Servs., *Refugee Resettlement: Program Overviews*, <https://mn.gov/dhs/partners-and-providers/program-overviews/refugee-resettlement/>.

¹⁴ N.J. Dep't of Health and Hum. Servs., “*Murphy Administration Restores New Jersey's Role in Refugee Resettlement*,” (Oct. 3, 2019), <https://www.state.nj.us/humanservices/news/press/2019/approved/20191003.html>.

¹⁵ N.J. Dep't of Health and Hum. Servs.: Office of Refugee Resettlement, “*State of New Jersey – Services by Programs and Locality*” (Nov. 18, 2015).

In Washington, the state's Office of Refugee and Immigrant Assistance invests approximately \$25 million dollars a year in federal and state funding to provide services for refugee and immigrants communities. By partnering with more than 50 different contracted service providers, Washington assists local communities in welcoming newcomers through culturally and linguistically relevant services that enable refugees to thrive. Through these partnerships, Washington helps more than 10,000 individuals every year in learning English, gaining employment, reevaluating their professional credentials to use in the United States, and eventually becoming U.S. citizens.¹⁶

To further support refugee resettlement, states themselves also often allocate their own funds to supplement ORR-funded services or otherwise expand the services available to refugees. For example, California has a Newcomer and Well-Being Education Program that provides state funding to school districts with a significant number of eligible students, including refugees, to improve their wellbeing, English language proficiency, and academic performance. The program

<https://www.acf.hhs.gov/orr/resource/state-of-new-jersey-programs-and-services-by-locality>.

¹⁶ See Wash. Dep't of Soc. and Health Servs., *Economic Services Administration Refugee and Immigrant Assistance*, <https://www.dshs.wa.gov/sites/default/files/ESA/reports/ESA-Refugee-Immigrant-Assistance.pdf>; Wash. Dep't of Social and Health Servs., *Economic Services Administration 2019 Briefing Book*, https://www.dshs.wa.gov/sites/default/files/ESA/briefing-manual/2019Refugee_Immigrant.pdf.

assists school districts in planning, designing, and implementing supplementary and social adjustment support services.¹⁷ Similarly, Washington invests general state funding into the Limited English Proficient Pathway Program, which offers English as a Second Language classes, job skills trainings, and employment assistance to refugees and immigrants; and the Naturalization Services Program, which provides professional assistance in applying for citizenship for low income immigrants, including refugees.¹⁸ And in Massachusetts, the Office for Refugees and Immigrants relies in part on state funding (\$1.5 million in FY 2019) to support both citizenship and employment services to refugees and immigrants residing in the Commonwealth.¹⁹ These strategically developed systems help refugees adapt to and succeed in their new communities.

¹⁷ See, Cal. Dep't of Soc. Servs., *California Newcomer Education and Well-Being*, <https://www.cdss.ca.gov/inforesources/refugees/programs-and-info/youth-initiatives/calnew>.

¹⁸ See, Wash. Dep't of Soc. and Health Servs., *Reports to the Legislature – Refugee and Immigrant Employment Services*, https://app.leg.wa.gov/ReportsToTheLegislature/Home/GetPDF?fileName=ORIA%20Employment%20Leg%20Report_1.1.20_4213e2a4-4bd8-48c2-a199-c1e360bd8124.pdf; Wash. Dep't of Soc. and Health Servs., *Reports to the Legislature – Naturalization Services Report*, https://app.leg.wa.gov/ReportsToTheLegislature/Home/GetPDF?fileName=SFY%202019%20ORIA%20Naturalization%20Legislative%20Report_Final_2dba1364-45fe-4abb-a190-940576327fa7.pdf; Wash. Dep't of Soc. and Health Servs., *supra*, https://www.dshs.wa.gov/sites/default/files/ESA/briefing-manual/2019Refugee_Immigrant.pdf

¹⁹ See Mass. Office for Refugees and Immigrants, *Annual Report 2019*, <https://www.mass.gov/doc/ori-2019-annual-report/download>.

B. The Existing State Systems Allow Refugee Communities to Thrive and Make Significant Contributions to the *Amici* States.

The *Amici* States' longstanding refugee resettlement systems have fostered myriad refugee communities and resources for employment and other support. As one example, these systems prioritize refugee placement in areas where there is an established community of refugees from the same country to maximize cultural supports. For example, in the last five federal fiscal years, most California refugees arrived from Iraq. However, over 70% of the 7,359 Iraqi refugees that came to California were settled in only three cities in the state, each with established Iraqi communities.²⁰ This allowed the Southern California refugee community in 2017 to create a "Refugees Welcome Guidebook" specifically for Syrian and Iraqi refugees in the area.²¹ The Guidebook offers information culled from local refugees and communities regarding topics like schooling and immigration support; transportation methods and affordable shopping; and how to get help for victims of domestic violence.²²

²⁰ The three cities are San Diego, El Cajon, and Sacramento. Refugee Processing Center, *Admissions and Arrivals*, <https://ireports.wrapsnet.org/>.

²¹ Caitlin Yoshiko Kandil, *For refugees coming to Southern California, this Welcome Guidebook is a link to a new life*, LA TIMES (July 6, 2017), <https://www.latimes.com/socal/daily-pilot/news/tn-wknd-et-refugees-welcome-guidebook-20170713-story.html>.

²² *Id*; see also *Refugees Welcome Guidebook*, <http://refugeeswelcomeguide.net>.

In Washington, Ukrainians represented 71% of refugee arrivals in FFY 2019, 65% of refugee arrivals in FFY 2018, and 49% of refugee arrivals in FFY 2017. The majority (greater than 90%) of Ukrainian refugees arrived in Washington to join family members who submitted Affidavits of Relationships through a local refugee resettlement application process that applies to refugees who are religious minorities and qualify for admission through the Lautenberg Amendment.²³ Placing refugees in locations where communities have been established provides them with a sense of belonging and safety with people who may observe similar traditions, be from the same home country, or speak the same language.

Thoughtful and consistent placement strategies also lead to economic success in these refugee communities. When refugees are welcomed in an effective manner and provided with assistance by state agencies and their local partners, the benefits of successful refugee populations also redound to the *Amici* States and communities throughout the country. Indeed, refugees are generally hardworking, productive members of society. For example, labor force

²³ Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1990, Pub. L. No. 101-167, § 559D, 103 Stat. 1261 (1989) (codified as amended at 8 U.S.C. § 1157). The Lautenberg Amendment provides special refugee consideration for certain categories of applicants. In 2004, Iranian religious minorities were added, and in 2017, Evangelical Christians, many of whom are Ukrainian, were added to the program.

participation and employment rates for refugees are higher than those of the total U.S. population.²⁴ Refugees are more likely to be skilled workers than non-refugees or foreign-born people in general.²⁵

Refugees also have substantial economic power. Large numbers of refugees are self-employed and create jobs for other residents in the state. In 2015, businesses owned and operated by refugees generated \$4.6 billion in income and their spending power in California alone totaled more than \$17.2 billion.²⁶ In Minnesota, refugees possessed a combined spending power of \$1.8 billion and paid \$227 million in state and local taxes in 2015.²⁷ A draft 2017 report by the U.S. Department of Health and Human Services found that over the past decade, refugees have contributed \$63 billion more in tax revenue than they cost in public

²⁴ Caitlin Yoshiko Kandil, *supra*, <https://www.latimes.com/socal/daily-pilot/news/tn-wknd-et-refugees-welcome-guidebook-20170713-story.html>.

²⁵ *Id.*

²⁶ New American Economy, *From Struggle to Resilience The Economic Impact of Refugees in America*, 2 (June 2017), http://research.newamericaneconomy.org/wp-content/uploads/sites/2/2017/11/NAE_Refugees_V6.pdf.

²⁷ *Id.*

benefits.²⁸ The median personal income of refugees equals that of non-refugees and exceeds the income of the average foreign-born individual overall.²⁹

In sum, the states have crafted effective systems that welcome refugees, provide necessary social services, and establish a framework wherein refugee communities can thrive socially and economically. The Executive Order and Funding Notice, if implemented, would fundamentally disrupt these systems, reduce the effectiveness of the states' resettlement programs, and subvert the purposes of the Refugee Act.

III. THE CONSENT REQUIREMENT BURDENS STATE RESOURCES AND ADVERSELY IMPACTS THE *AMICI* STATES' COMMUNITIES

As the district court properly concluded, there is no rationale “for doing away entirely with a process that has worked so successfully for so long.” *HIAS, Inc.*, 415 F. Supp. 3d at 681. But by requiring consent of states and localities, the Executive Order and Funding Notice would do just that. In addition to the negative consequences just discussed, implementation of the Executive Order and the Funding Notice would require the refugee resettlement agencies to redirect

²⁸ *Rejected Report Shows Revenue Brought In by Refugees*, N.Y. TIMES (Sept. 19, 2017), https://www.nytimes.com/interactive/2017/09/19/us/politics/document-Refugee-Report.html?_r=0.

²⁹ Donald Kerwin, *The US Refugee Resettlement Program — A Return to First Principles: How Refugees Help to Define, Strengthen, and Revitalize the United States*, *Journal on Migration and Human Security* Vol. 6(3) 205-22 (2018).

their limited resources from resettling refugees to gathering consents, recalibrate the placement systems to account for localities where consent was not received, and interfere with the states' ability to effectively pursue family reunification efforts and placement of unaccompanied refugee minors.

A. The Consent Requirement Has and Will Continue to Place Significant Burdens on the *Amici* States' Resettlement Systems.

The Funding Notice directs resettlement nonprofit agencies to obtain consents from states and counties or county-equivalents as part of their funding application process. It does not, however, provide any guidance on how to obtain those consents, identify any relevant deadlines, explain what constitutes consent language, or even offer a definition of local government or "local executive."³⁰

The lack of guidance in the Funding Notice left state agencies to scramble, forcing them to redirect resources to facilitate obtaining consents from local governments. Since the Funding Notice's publication on November 6, 2019, until the issuance of the district court's preliminary injunction on January 15, 2020, the state agencies responsible for refugee resettlement were actively coordinating with, and fielding inquiries from, resettlement agencies, county and municipal

³⁰ U.S. Dep't of State, Bureau of Population, Refugees, and Migration, *supra*, <https://www.state.gov/fy-2020-notice-of-funding-opportunity-for-reception-and-placement-program/>.

governments, and other state agencies that sought clarity on the manner and process by which to meet the consent requirement.

For instance, after Washington State's Refugee Coordinator engaged in an outreach campaign to local governmental leaders to provide notice of the need for consent and coordinate the same, some local governments had to host public forums and public meetings in order to address confusion over the consent requirement. The Washington State Refugee Coordinator estimates spending 15 – 20 hours a week from the time of the release of the Executive Order through December 20, 2019, conducting outreach and coordinating local efforts to confirm consent. In Pennsylvania, where the state's 67 counties geographically overlap with 959 boroughs, 1546 townships, and 56 cities, the state faced a particularly difficult challenge in determining which jurisdiction's consent would satisfy the consent requirement. The heavy administrative burden placed on state agencies and resettlement agencies to obtain consents frustrates the purpose of the Refugee Act and institutional mission of the agencies, and diverts their limited time and resources away from directly serving refugees.

Having a checkered approach that allows local governments to upset statewide plans and dictate where refugees may resettle will increasingly burden state agencies, potentially requiring the current system of distributing ORR and state funding within the *Amici* States to be significantly reshaped, if not completely

eliminated. If only some local governments consent, the *Amici* States will be forced to divert time and resources to re-design their existing programs to take into account the limited local governments that consent. If no local governments consent, the *Amici* States will eventually be forced to dismantle their refugee resettlement programs and limit their short-term work to providing ongoing resources to refugees already in the state. Further, if any of the local resettlement agencies are forced to close due to lack of consenting counties, the *Amici* States' delivery of services to refugees will be impaired.³¹

California, which distributes ORR funding to refugee-impacted counties,³² will need to re-assess its funding distribution program as new counties become impacted by changes in refugee placement. Further, California's reliance on local ethnic community-based organizations that aid in providing services to refugees may be undermined and may require the state to revamp its current approach if new refugees are resettled far from where these organizations operate due to a lack of county consent. Minnesota, which contracts with local nonprofit and

³¹ As an example of how the states depend on resettlement agencies to help them deliver services, Minnesota contracts with local resettlement agencies to administer federal Refugee Cash Assistance benefits in the eight counties receiving the highest number of refugee arrivals. See Minn. Dep't of Human Servs., *Combined Manual: Processing RCA Applications*, https://www.dhs.state.mn.us/main/idcplg?IdcService=GET_DYNAMIC_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=CM_00300301.

³² Cal. Welf. & Inst. Code § 13277

community organizations in different parts of the state to provide culturally appropriate and multilingual support to refugees from different ethnic groups, could be faced with similar problems.³³

The Washington Office of Refugee and Immigrant Assistance braids refugee resettlement funding with other federal and state dollars to provide services through providers, including local community-based organizations, refugee resettlement agencies, other state agencies and colleges.³⁴ Disrupting this interdependent network of programs and services would limit support to refugees and the local communities that have welcomed them. In Massachusetts, the Office for Refugees and Immigrants relies on local resettlement agencies, faith-based organizations, and ethnic community-based organizations to assist it in administering programs that provide direct services to refugees.³⁵ By potentially creating a patchwork of placement options in Massachusetts, the Executive Order

³³ See Minn. Dep't of Human Servs., *Resettlement Programs Office 2018 Agency Contract List*, <https://edocs.dhs.state.mn.us/lfserver/Public/DHS-7587J-ENG>.

³⁴ See Wash. Dep't of Soc. and Health Servs., *supra*, https://www.dshs.wa.gov/sites/default/files/ESA/briefing-manual/2019Refugee_Immigrant.pdf.

³⁵ See Mass. Office for Refugees and Immigrants, *supra*, <https://www.mass.gov/doc/ori-2019-annual-report/download>.

would disrupt this community-based approach and hinder the state's efforts to place refugees in communities where they will have the supports they need.

In Illinois, where the state has welcomed more than 130,000 refugees from at least 86 countries since 1975, the state government works more directly with local resettlement agencies. As county governments may not always have the staffing, resources, or capacity to independently evaluate the extent to which resettlement of refugees within their borders would be appropriate, it is often other local government units in Illinois—such as school districts, special service districts, and/or sub-county municipalities—that play a greater role in the process of refugee resettlement. In total, Illinois has 6,919 separate units of local government, more than any other state in the Union, including (but not limited to) 2,726 sub-county municipal or township governments, 3,204 special district governments, and 886 independent school districts. Each of these entities may, depending on the specific circumstances in a given region, have a different role to play relating to refugee issues. Accordingly, the focus in the Executive Order and Funding Notice on county governments would fundamentally disrupt the process Illinois uses to resettle refugees, drastically reducing the effectiveness of Illinois's resettlement program, and subverting the purposes of the Refugee Act.

B. The Consent Requirement Will Harm the *Amici States*' Communities by Deprioritizing Family Reunification.

The Executive Order and Funding Notice will further harm the states and their residents because they ignore the Refugee Act's clear language designating family reunification as a priority in refugee resettlement. The Refugee Act provides that federal agencies "shall" develop refugee resettlement policies where refugees are not "initially placed or resettled in an area highly impacted . . . by the presence of refugees or comparable populations *unless the refugee has a spouse, parent, sibling, son, or daughter residing in that area.*" 8 U.S.C.

§ 1522(a)(2)(C)(i) (emphasis added). Notwithstanding this clear statutory language, the Executive Order allows for the resettlement of refugees without state or local government consent only if it involves "a refugee's spouse or child following to join that refugee pursuant to 8 U.S.C. § 1157(c)(2)(A)." Exec. Order No. 13,888 § 2(c), 84 Fed. Reg. at 52,356.

As a result, the Executive Order and Funding Notice, both of which ignore the Congressional mandate to prioritize family reunification, will cause newly admitted refugees to be resettled in areas far from existing family ties. Specifically, the consent requirement could prevent the reunification of a refugee with the refugee's wife who is already in the United States, where the wife was not admitted as a refugee; a child with their parent already in the United States, where the parent was not admitted as a refugee; a parent with their child who is already in

the United States; and a refugee with their sibling who is already living in the United States. Severely limiting family reunification because local governments have not consented will disrupt refugees' ability to build the resources and social capital necessary to succeed in the *Amici* States.

The consent requirement will additionally harm the *Amici* States' citizens, lawful permanent residents, and resident visa holders, many of whom have family members and loved ones who may be presumptively denied placement with a community located in a non-consenting jurisdiction. Furthermore, families already residing within the *Amici* States' borders may be forced to decide between remaining with their supportive community and reunifying with refugee family members who do not meet the follow-to-join exception of the Executive Order and are resettled outside of a county that does not consent.

As the district court pointed out, the consent requirement also would harm the resettlement of unaccompanied refugee minors. *HIAS, Inc.*, 415 F. Supp. 3d at 684. In fact, some *Amici* States have developed state foster care programs specifically for unaccompanied refugee minors.³⁶ The consent requirement failed to consider the "foster families that have undergone extensive preparation to take

³⁶ Cal. Dep't of Soc. Servs., *Unaccompanied Refugee Minors Program*, <https://www.cdss.ca.gov/inforesources/refugees/subprograms-and-info/urm>; Wash. Dep't of Soc. and Health Servs., *Unaccompanied Refugee Minor Program*, <https://www.dshs.wa.gov/esa/csd-office-refugee-and-immigration-assistance/unaccompanied-refugee-minors-program>.

in refugee children in accordance with the Unaccompanied Refugee Minors (URM) Program,” operated by the U.S. Department of Health and Human Services. *HIAS, Inc.*, 415 F. Supp. 3d at 684. If an available foster family who has already been approved to receive a minor is located within a county or state that has not provided consent for refugee placement, the foster family agency may not be able to place the minor in the state altogether, or will have to wait until a foster family is available in a consenting county. This frustrates the mission of state foster family agencies by denying the minor a prompt resettlement at a vulnerable time in their childhood development, denies foster families the opportunity to provide support and resources to a minor, and burdens the state foster family agency with identifying another available foster family for the minor.

Just as the district court noted the reliance of resettlement agencies on “well-developed relationships with local organizations, as well as their establishment and maintenance of local resettlement sites and their undertakings with local suppliers and vendors,” the *Amici* States too rely, and benefit, from the networks and resources of local communities supporting refugee resettlement. *Id.* The consent requirement would diminish the contributions of these local communities and disrupt the overall administration of refugee resettlement programs that have been created at the state, local, and community level to appropriately and smoothly resettle refugees within the *Amici* States.

CONCLUSION

The *Amici* States request that this Court uphold the district court's preliminary injunction in favor of Appellees.

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RULE 32 CERTIFICATION

I hereby certify that that this brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) and the type-volume limitations of Rule 29(a)(5). This brief has been prepared in a proportionally spaced typeface (Times New Roman) in 14-point size, and according to Microsoft Word, contains 6,091 words, excluding the parts of the brief described in Rule 32(f).

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