

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
BROWNSVILLE DIVISION**

**STATE OF TEXAS, et al.**

*Plaintiffs,*

**v.**

**CASE NO. 1:14-CV-00254**

**UNITED STATES OF AMERICA, et al.,**

*Defendants.*

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**MOTION FOR LEAVE TO PARTICIPATE AS AMICI CURIAE IN  
SUPPORT OF PLAINTIFFS BY MEMBERS OF CONGRESS, THE  
AMERICAN CENTER FOR LAW & JUSTICE, AND THE COMMITTEE  
TO DEFEND THE SEPARATION OF POWERS**

Movants, the Members of Congress, American Center for Law & Justice (“ACLJ”), and the Committee to Defend the Separation of Powers, listed *infra*, respectfully move this court for leave to participate as amici curiae and file a brief in support of Plaintiffs’ motion for preliminary injunction. A copy of the proposed brief has been submitted with this motion.

**I. PARTIES’ POSITION ON THIS MOTION.**

This motion is unopposed. Plaintiffs’ counsel consented to Movants filing as amici curiae. Movants attempted to obtain consent from Defendants’ counsel, who responded that they took no position on this motion. Due to the short timeline and Plaintiffs’ requests that the motion for preliminary injunction “be heard before

December 31, 2014, or as soon as practicable,” Pls’. Mot. Prelim. Inj. at 2, Movants appreciate that the Parties responded promptly to the request for consent.

## **II. DISTRICT COURTS HAVE AUTHORITY TO ACCEPT AMICUS BRIEFS.**

Federal district courts possess the inherent authority to accept amicus briefs. *In re Bayshore Ford Truck Sales, Inc.*, 471 F.3d 1233, 1249 n.34 (11th Cir. 2006) (“[D]istrict courts possess the inherent authority to appoint ‘friends of the court’ to assist in their proceedings.”); *Hoptowit v. Ray*, 682 F.2d 1237, 1260 (2d Cir. 1982); *United States ex rel. Gudur v. Deloitte Consulting Llp*, 512 F. Supp. 2d 920, 927 (S.D. Tex. 2007) (“The extent to which the court permits or denies amicus briefing lies solely within the court’s discretion.”). “No statute, rule, or controlling case defines a federal district court’s power to grant or deny leave to file an amicus brief, . . . and in the absence of controlling authority, district courts commonly refer to [Federal Rule of Appellate Procedure] 29 for guidance.” *Gudur*, 512 F. Supp. 2d at 927. “Factors relevant to the determination of whether amicus briefing should be allowed include whether the proffered information is ‘timely and useful’ or otherwise necessary to the administration of justice.” *Id.* *Amici’s* role is to assist the court “in cases of general public interest by making suggestions to the court, by providing supplementary assistance to existing counsel, and by insuring a complete and plenary presentation of difficult issues so that the court may reach a proper

decision.” *N.A.A.C.P. v. Town of Harrison*, 940 F.2d 792, 808 (3d Cir. 1991). This authority supports the Court’s exercise of its discretion to accept this amici brief.

### **III. INTEREST OF THE MOVANTS.**

Movant, the American Center for Law & Justice (“ACLJ”), is an organization dedicated to defending constitutional liberties secured by law. ACLJ attorneys have argued before the Supreme Court of the United States and other federal and state courts in numerous cases involving constitutional issues. *E.g.*, *Pleasant Grove City v. Summum*, 555 U.S. 460 (2009); *Lamb’s Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993). ACLJ attorneys also have participated as amicus curiae in numerous cases involving constitutional issues before the Supreme Court and lower federal courts. *E.g.*, *FEC v. Wisconsin Right to Life, Inc.*, 551 U.S. 449 (2007); *Van Orden v. Perry*, 545 U.S. 677 (2005).

The ACLJ has been active in advocacy and litigation concerning the need for strong and secure borders in addition to immigration reform passed by Congress, as Article I of the Constitution requires. The ACLJ previously filed an amicus curiae brief defending the constitutional principles of federalism and separation of powers in the realm of immigration law in *Arizona v. United States*, 132 S. Ct. 2492 (2012).

The Committee to Defend the Separation of Powers represents over 60,500 Americans who have stood against the Defendants’ actions as an affront to the

integrity of the Constitution. These individuals are also, as Plaintiffs' have argued in their motion, negatively impacted by Defendants' action.

Furthermore, this brief is filed on behalf of Movants, United States Senators Ted Cruz, Roy Blunt, and John Cornyn, and Representatives Bob Goodlatte, Diane Black, Dave Brat, Jeff Duncan, John Fleming, Randy Forbes, Virginia Foxx, Trent Franks, Trey Gowdy, H. Morgan Griffith, Vicky Hartzler, Tim Huelskamp, Mike Kelly, David McKinley, Jeff Miller, Alan Nunnelee, Pete Olson, Ted Poe, Bill Posey, Tom Price, Phil Roe, Adrian Smith, Lamar Smith, and Rob Wittman, who are twenty-seven members of the One Hundred Thirteenth Congress. These Members of Congress have an interest in expressing their view that Defendants' actions are unconstitutional and infringe upon their Article I constitutional powers, and who, in representing their constituents, are negatively impacted by the actions.

All Movants are dedicated to the founding principles of separation of powers in this country. They believe that the laws of this nation do not empower Defendants to unilaterally "change the law" against the will of Congress. Movants believe they can offer this Court information or perspective that will assist it in deciding the pending issues. Therefore, Movants respectfully submit that their participation as amici curiae will aid the Court in resolving this case and request that this Court grant their motion for leave to appear as amici curiae and to accept for filing their amici curiae brief.

#### **IV. MOVANTS' BRIEF IS TIMELY AND USEFUL TO THE DISPOSITION OF THE ISSUES BEFORE THE COURT.**

Movants have submitted their amici curiae brief along with this motion. In preparing this brief, Movants received written confirmation that the brief should comply with Federal Rule of Appellate Procedure 29, but were given leave to file outside of the seven-day requirement by the assigned case manager. The brief complies with this Court's instructions.

The issues presented before this Court are complex matters of constitutional law. As constitutional lawyers and members of Congress who are vested with the exclusive constitutional authority to set immigration law and policy, *Amici* are uniquely situated to provide insight into why Plaintiffs are likely to succeed on the merits in this matter.

##### **A. The DHS Directive Violates the Constitution and Congress's Express and Implied Consent.**

As an initial matter, Movants explain in their brief that the Defendants' directive ("DHS directive") violates the Constitution and Congress's express and implied intent. The Constitution vested in Congress the exclusive authority to make law and set immigration policies. Congress has created a comprehensive immigration scheme—which expresses its desired policy as to classes of aliens—but the class identified by the DHS directive for categorical relief is unsupported by this scheme or policy. Moreover, the DHS directive, at the admission of the

President, changes the law and sets a new policy, exceeding Defendants' constitutional authority and disrupting the delicate balance of powers.

**B. Defendants Exceed the Bounds of their Prosecutorial Discretion and Violate their Duty to Faithfully Execute the Law.**

Movants' brief also explains that instead of setting enforcement priorities, Defendants created a class-based program that establishes eligibility requirements that if met provides for automatic relief. The lack of individualized review or guidelines by which an immigration officer could deny relief violates Supreme Court precedent.

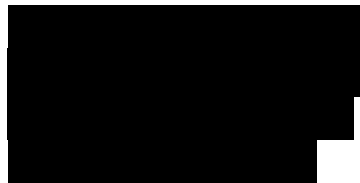
**V. CONCLUSION.**

Movants respectfully request that this Court grant this motion, allow them to participate as amici curiae, and accept for filing the amici curiae brief submitted with this motion.

Respectfully submitted on this Tuesday, December 16, 2014,

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## CERTIFICATE OF SERVICE

I hereby certify that on December 16, 2014, I electronically filed the foregoing with the Clerk of the Court using the court's CM/ECF system which sent notification of such filing to the following counsel of record for Plaintiffs, who are registered users of the CM/ECF system:

Andrew Stephen Oldham  
Texas Attorney General's Office



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Daniel P Lennington  
Wisconsin Department of Justice




Eric Murphy  
Ohio Attorney General Mike DeWine's  
Office



and sent an e-mail copy, as was approved for service by counsel, and a hard copy, via Federal Express next day delivery, to the following counsel for Defendants:

Kyle Freeny  
Trial Attorney  
U.S. Department of Justice  
Civil Division, Federal Programs Branch



/s/ Jay Alan Sekulow  
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