

November 6, 2020

ATTORNEY GENERAL RAOUL FILES BRIEF IN APPEAL AGAINST ANTI-IMMIGRANT VISA PROCLAMATIONS

Chicago — Attorney General Kwame Raoul today joined a coalition of 23 attorneys general in urging a federal appellate court to reverse a decision upholding presidential proclamations that have indefinitely halted vast amounts of immigration to the United States.

On April 22 and June 22, the federal government authorized two different immigration-related proclamations that effectively bar immigrants and foreign workers traveling on nonimmigrant work visas from entering the United States, including students, tech workers and the families of U.S. citizens and lawful permanent residents. [In an amicus brief](#) to the U.S. Court of Appeals for the District of Columbia, Raoul and the coalition argue that the proclamations unlawfully keep families apart, harm the states, and are slowing economic and societal recovery from COVID-19.

"Immigrants provide important contributions that enrich their communities and help grow the economy here in Illinois and across the country," Raoul said. "I will continue to oppose federal anti-immigrant policies that harm states and divide families."

The proclamations shut down congressionally-authorized immigration to the United States. By the federal government's own estimate, the proclamations may bar at least 525,000 people from entering the United States, including parents, adult children and siblings of U.S. citizens, as well as spouses and adult children of lawful permanent residents. The bans harm the states by denying residents the right to unite with their families, and harm economies because immigrants and non-immigrant workers fill important roles in schools, fields, and companies, create new jobs, start businesses, pay taxes, and purchase goods and services.

The proclamations are based on a deeply-flawed and erroneous understanding of how the economy actually works. Broader participation in the labor market spurs the creation of new jobs and bolsters spending in the United States. A 2014 report found that elimination of large numbers of H-1B visas – among the visas targeted by the proclamations – during the Great Recession cost the United States approximately 231,224 technology jobs as a result of the lost innovation and growth the workers would have spurred. Beyond the harms to businesses and families across the country, the proclamations also directly impact international students that colleges and universities in Illinois employ and enroll.

The brief by Raoul and the coalition is being filed today in the case of Gomez v. Trump. Joining Raoul in filing the brief are the attorneys general of California, Colorado, Connecticut, Delaware, the District of Columbia, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, Washington and Wisconsin.

ORAL ARGUMENT NOT YET SCHEDULED

20-5292

**United States Court of Appeals
for the District of Columbia Circuit**

DOMINGO ARREGUIN GOMEZ et al.,

Plaintiffs-Appellants,

v.

DONALD J. TRUMP et al.,

Defendants-Appellees.

On Appeal from the United States District Court
for the District of Columbia

**BRIEF FOR THE STATES OF CALIFORNIA, NEW YORK,
COLORADO, CONNECTICUT, DELAWARE, HAWAI'I, ILLINOIS,
MAINE, MARYLAND, MASSACHUSETTS, MICHIGAN,
MINNESOTA, NEVADA, NEW JERSEY, NEW MEXICO, OREGON,
PENNSYLVANIA, RHODE ISLAND, VERMONT, VIRGINIA,
WASHINGTON, WISCONSIN, AND THE DISTRICT OF COLUMBIA
AS *AMICI CURIAE* IN SUPPORT OF APPELLANTS**

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Dated: November 5, 2020

**CERTIFICATE AS TO PARTIES, RULINGS,
AND RELATED CASES**

Pursuant to Circuit Rule 28(a)(1), the undersigned counsel of record certifies as follows:

A. Parties and *Amici Curiae*. Plaintiffs in *Gomez v. Trump*, No. 20-cv-1419 (D.D.C.), are: Nazif Alam; Carmen Ligia Vidal Pimentel; Juan Carlos Rosario Lebron; Daniel Chibundu Nwankwo; Claudio Alejandro Sarniguet Jimenez; Angela Sinon; Loida Phelps; Nancy Abarca; Fatma Bushati; Jodi Lynn Karpes; Shyam Sundar Koirala; Aja Tamamu Mariama Kinteh; Iwundu épouse Kouadio Ijeoma Golden; Aya Nakamura; 3Q Digital; Superior Scape Inc.; Shipco Transport, Inc.; ASSE International; EurAuPair International; Domingo Arreguin Gomez; Mirna S.; Vicenta S.; Mohamed Saleh; Farangis Kurbonova; SEIU Healthcare (CIR); and PowerTrunk, Inc.¹

Defendants in *Gomez v. Trump*, No. 20-cv-1419 (D.D.C.), are: Donald J. Trump; William Barr; the United States Department of State;

¹ Plaintiffs Domingo Arreguin Gomez; Mirna S.; Vicenta S.; Mohamed Saleh; Farangis Kurbonova, SEIU Healthcare (CIR); and PowerTrunk, Inc. have filed notices of dismissal.

Michael Pompeo; Chad Wolf; and the United States Department of Homeland Security.

The following *amici curiae* appeared in the district court:

Immigration Reform Law Institute

Local Governments and Local Elected Officials (Los Angeles, California; Albany, New York; Albuquerque, New Mexico; Alexandria, Virginia; Atlanta, Georgia; Austin, Texas; Berkeley, California; Chelsea, Massachusetts; Chicago, Illinois; Contra Costa County, California; Denver, Colorado; Detroit, Michigan; Durham, North Carolina; Hartford, Connecticut; Houston, Texas; Iowa City, Iowa; New York, New York; Oakland, California; Philadelphia, Pennsylvania; Phoenix, Arizona; Pittsburgh, Pennsylvania; Sacramento, California; Saint Paul, Minnesota; Salinas, California; Seattle, Washington; Somerville, Massachusetts; and West Hollywood, California)

Leading Companies and Business Organizations (Adobe Inc., Alliance of Business Immigration Lawyers, Amazon.com, Inc., Apple Inc., Atlassian, Inc., Autodesk, Inc.; Bates White, LLC; Box, Inc.; Bloomberg L.P.; BSA Business Software Alliance, Inc. d/b/a BSA | The Software Alliance; Consumer Technology Association; Denver Metro Chamber of

Commerce; Dropbox, Inc.; Facebook, Inc.; FWD.us Education Fund; GitHub, Inc.; Google LLC; Hewlett Packard Enterprise Company; HP Inc.; HR Policy Association; Information Technology Industry Council; Institute of International Bankers; Intel Corp.; Internet Association; Juniper Networks, Inc.; LinkedIn Corporation; Metro Atlanta Chamber; Microsoft Corporation; Netflix, Inc.; New Imagitas, Inc.; North Texas Commission; Partnership for a New American Economy Research Fund; PayPal, Inc.; Plaid Inc.; Postmates Inc.; Reddit, Inc.; salesforce.com, inc.; SAP SE; Semiconductor Industry Association (SIA); ServiceNow, Inc.; Shutterstock, Inc.; Silicon Valley Bank; Society for Human Resource Management (SHRM); Splunk Inc.; Spotify USA Inc.; Square, Inc.; SurveyMonkey Inc.; Twitter, Inc.; Uber Technologies, Inc.; Upwork Inc.; Vail Valley Partnership; VMware, Inc.; Workday, Inc.; Xylem Inc.; and Zillow Group, Inc.)

The States of California, New York, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, Washington, and Wisconsin, and the District of Columbia

Society for Human Resource Management

Worldwide Employee Relocation Council

Charles Kuck, Gregory Siskind, and Joanna Main Bailey

Immigration Law Professors (Deborah Anker, Sabrineh Ardalan, David Baluarte, Lenni B. Benson, Jennifer Chacon, Gabriel Chin, Marisa S. Cianciarulo, Alina Das, Jill E. Family, Niels W. Frenzen, Maryellen Fullerton, Denise Gilman, Lindsay Harris, Elizabeth Keyes, Annie Lai, Peter Margulies, M. Isabel Medina, Jennifer Moore, Michael A. Olivas, Bijal Shah, Maureen A. Sweeney, Shoba Sivaprasad Wadhia, and Michael J. Wishnie)

All Plaintiffs in *Gomez v. Trump*, except Domingo Arreguin Gomez, Mirna S., Vicenta S., Mohamed Saleh, Farangis Kurbonova, SEIU Healthcare (CIR), and PowerTrunk, Inc., are Appellants in this Court.

All Defendants in *Gomez v. Trump* are Appellees in this Court.

The following parties have filed notices of intent to file an *amicus curiae* brief in this Court:

Global Labor Justice-International Labor Rights Forum

Immigration Law Professors (Sabrineh Ardalan, Dave C. Baluarte, Jennifer Chacon, Michael J. Churgin, Marisa S. Cianciarulo, Ingrid

Eagly, Stella B. Elias, Kate Evans, Jill E. Family, Denise Gilman, Lindsay M. Harris, Elizabeth Keyes, Peter Margulies, Michael A. Olivas, Maureen A. Sweeney, Philip L. Torrey, Shoba Sivaprasad Wadhia, Michael J. Wishnie, and Stephen Yale-Loehr)

This case is consolidated in the district court with *Mohammed v. Pompeo*, No. 20-cv-1856; *Aker v. Trump*, No. 20-cv-1926; *Fonjong v. Trump*, No. 20-cv-2128, *Panda v. Wolf*, No. 20-cv-1907, and *Kennedy v. Trump*, No. 20-cv-2639. Those cases involve several hundred individual plaintiffs who are not involved in this appeal.

B. Rulings Under Review. The ruling under review is the Memorandum Opinion and Order of the U.S. District Court for the District of Columbia (Mehta, J.), filed September 4, 2020, in *Gomez v. Trump*, No. 20-cv-1419, granting in part and denying in part plaintiffs-appellants' motion for a preliminary injunction, reproduced at JA672-756. The memorandum decision is not yet reported, but is available at 2020 WL 5367010 (D.D.C. 2020).

C. Related Cases. This case has not previously been before this Court or any court other than the U.S. District Court for the District of Columbia.

This case is consolidated in the district court with *Mohammed v. Pompeo*, No. 20-cv-1856; *Aker v. Trump*, No. 20-cv-1926; *Fonjong v. Trump*, No. 20-cv-2128; *Panda v. Wolf*, No. 20-cv-1907; and *Kennedy v. Trump*, No. 20-cv-2639.

This case is related to *Panda v. Wolf*, No. 20-5284, which is pending before this Court.

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<i>Fiallo v. Bell</i> , 430 U.S. 787 (1977)	31
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<i>National Ass’n of Mfrs. v. United States Dep’t of Homeland Sec.</i> , No. 20-cv-4887, 2020 WL 5847503 (N.D. Cal. Oct. 1, 2020)	2, 13, 26
<i>Solis-Espinoza v. Gonzales</i> , 401 F.3d 1090 (9th Cir. 2005)	31
Statutes	
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§ 1101	7, 26
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§ 655.733	27
22 C.F.R. pt. 62, subpt. B	7
Proclamation Suspending Entry of Immigrants Who Present Risk to the U.S. Labor Market During the Economic Recovery Following the COVID-19 Outbreak (Apr. 22, 2020), https://tinyurl.com/yarebd8a	1

Regulations & Presidential Proclamations	Page(s)
Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak (June 22, 2020), https://tinyurl.com/y8h88o6p	1
 Legislative Materials	
S. Rep.	
No. 89-748 (1965)	31
No. 106-260 (2000)	13
<i>Final Report of the Select Commission on Immigration and Refugee Policy</i> (Mar. 1981), https://tinyurl.com/y52joob3	35
 Miscellaneous Authorities	
Alan Berube & Nicole Bateman, <i>Who Are the Workers Already Impacted by the COVID-19 Recession?</i> , Brookings Inst. (Apr. 3, 2020), https://www.brookings.edu/research/who-are-the-workers-already-impacted-by-the-covid-19-recession/	26
Alex Nowrasteh, <i>Don't Ban H-1B Workers: They Are Worth Their Weight in Innovation</i> , Cato at Liberty (May 14, 2020), https://tinyurl.com/y69utf07	6
Alicia Sasser Modestino, <i>Coronavirus Child-care Crisis Will Set Women Back a Generation</i> , Wash. Post (July 29, 2020), https://tinyurl.com/y5g2uv8s	23, 24
Alissa Haywoode, <i>Results From Our Family Survey</i> , Eye on Early Educ. (May 7, 2020), https://eyonearlyeducation.org/2020/05/07/results-from-our-family-survey/	24
Allison Abrams, <i>Damage of Separating Families</i> , Psychology Today (June 22, 2018), https://www.psychologytoday.com/us/blog/nurturing-self-compassion/201806/damage-separating-families	33, 34

Miscellaneous Authorities	Page(s)
American Immigration Council, <i>Foreign-born STEM Workers in the United States</i> (June 14, 2017), https://tinyurl.com/yxbxaqkd	17, 18
American Immigration Council, <i>The H-1B Visa Program: A Primer on the Program and Its Impact on Jobs, Wages, and the Economy</i> (Apr. 2016), https://www.ilw.com/articles/2016,0331-AIC.pdf	16, 29
American Immigration Council, <i>Immigrants in California</i> (Aug. 6, 2020), https://tinyurl.com/ybe2bdpf	9, 12, 15
American Immigration Council, <i>Immigrants in Hawaii</i> (Aug. 6, 2020), https://tinyurl.com/y6rosvoc	15
American Immigration Council, <i>Immigrants in Maryland</i> (Aug. 6, 2020), https://tinyurl.com/yywapl6h	10
American Immigration Council, <i>Immigrants in New York</i> (June 4, 2020), https://tinyurl.com/y4z7qg4e	9, 10
American Immigration Council, <i>Immigrants in Pennsylvania</i> (Aug. 2020), https://tinyurl.com/yxdcqp66	12
Ann Carrns, <i>Multigenerational Households: The Benefits and Perils</i> , N.Y. Times (Aug. 12, 2016), https://www.nytimes.com/2016/08/12/your-money/multigenerational-households-financial-advice.html	23
Britta Glennon, <i>How Do Restrictions on High-Skilled Immigration Affect Offshoring? Evidence from the H-1B Program</i> (Nat'l Bureau of Econ. Research, Working Paper No. 27538, 2020), https://www.nber.org/papers/w27538	30
Center for American Entrepreneurship, <i>Immigrant Founders of the 2017 Fortune 500</i> (Dec. 2017), https://startupsusa.org/fortune500/	8

Miscellaneous Authorities	Page(s)
Chris J. Macias, <i>Is the Food Supply Strong Enough to Weather COVID-19?</i> , UCDavis.edu: Feeding a Growing Population (Jun. 25, 2020), https://www.ucdavis.edu/food/news/is-food-supply-strong-enough-to-weather-covid-19-pandemic	16
Claire Ewing-Nelson, <i>Four Times More Women Than Men Dropped Out of the Labor Force in September</i> (Nat'l Women's Law Ctr. Oct. 2020), https://nwlc.org/wp-content/uploads/2020/10/september-jobs-fs1.pdf	24
Colleen K. Vesely et al., <i>Immigrant Families Across the Life Course: Policy Impacts on Physical and Mental Health</i> , Nat'l Council on Family Relations (July 9, 2019), https://tinyurl.com/yynv8pss	33
Dan Kosten, <i>Immigrants as Economic Contributors: Immigrant Entrepreneurs</i> , Nat'l Immigration Forum (July 2018), https://tinyurl.com/ycohpups	9
Dan Kosten, <i>Immigrants as Economic Contributors: Immigrant Tax Contributions and Spending Power</i> , Nat'l Immigration Forum (Sept. 6, 2018), https://tinyurl.com/ycohpups	11
Dan Kosten, <i>Immigrants as Economic Contributors: They Are the New American Workforce</i> , Nat'l Immigration Forum (June 5, 2018), https://tinyurl.com/y4r6x4on	11
Dara Lind, <i>Hospitals Are Suddenly Short of Young Doctors—Because of Trump's Visa Ban</i> , ProPublica (July 17, 2020), https://tinyurl.com/y3onb8xj	19
Darrell M. West, <i>The Costs and Benefits of Immigration</i> , 126 Political Sci. Quarterly 427 (2011), https://www.jstor.org/stable/23056953?seq=1	12

Miscellaneous Authorities	Page(s)
David J. Bier, <i>About 20,000 U.S. Employers Are Affected by Trump’s Travel Bans This Year</i> , Cato at Liberty (July 16, 2020), https://www.cato.org/blog/about-20000-us-employers-are-affected-trumps-travel-bans-year	8
David J. Bier, <i>Immigrants Are About 1/3 of California’s “Essential Workers</i> , Cato at Liberty (Mar. 30, 2020), https://www.cato.org/blog/immigrants-are-about-1/3-californias-essential-workers	15
David J. Bier, <i>Trump’s Migration Ban Could Affect up to 545,500 if Consulates Reopen—Fewer than 18,000 Otherwise</i> , Cato at Liberty (July 7, 2020), https://www.cato.org/blog/trumps-migration-ban-could-affect-545500-consulates-reopen-fewer-18000-otherwise	8
Dick Startz, <i>Immigrant Teachers Play a Critical Role in American Schools</i> , Brookings Inst. (Mar. 16, 2017), https://tinyurl.com/ybxtlsrv	21
Donald Kerwin et al., <i>US Foreign-Born Essential Workers by Status and State, and the Global Pandemic</i> , Ctr. for Migration Studies (May 2020), https://cmsny.org/wp-content/uploads/2020/05/US-Essential-Workers-Printable.pdf	18
<i>The Economic and Fiscal Consequences of Immigration</i> (Francine D. Blau & Christopher Mackie, eds. 2017), https://tinyurl.com/y2p8moyu	11
Ethan Baron, <i>H-1B: Nearly Three-quarters of Silicon Valley Tech Workers Foreign-born, Report Says</i> , The East Bay Times (Jan. 17, 2018), https://tinyurl.com/y6c2h2op	17
Fatih Ozbay et al., <i>Social Support and Resilience to Stress</i> , 4 Psychiatry 35 (May 2007), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2921311/	35

Miscellaneous Authorities	Page(s)
Frederick R. Treyz et al., <i>Key Components of Immigration Reform: An Analysis of the Economic Effects of Creating a Pathway to Legal Status, Expanding High-Skilled Visas, & Reforming Lesser-Skilled Visas</i> , Reg'l Econ. Models, Inc. (July 7, 2013), https://www.remi.com/wp-content/uploads/2017/10/50-Key-Components-of-Immigration-Reform.pdf	27
Giovanni Peri et al., <i>Closing Economic Windows: How H-1B Visa Denials Cost U.S.-Born Tech Workers Jobs and Wages During the Great Recession</i> , P'ship for a New Am. Econ. (June 2014), http://research.newamericaneconomy.org/wp-content/uploads/2014/06/pnae_h1b.pdf	28
Jonathan Rothwell & Neil G. Ruiz, <i>H-1B Visas and the STEM Shortage: A Research Brief</i> (May 10, 2013), https://www.fosterglobal.com/policy_papers/2013/SSRN-id2263412.pdf	28
Jordan Salama, <i>The Great Au Pair Rush</i> , N.Y. Times (July 25, 2020), https://tinyurl.com/yxvynuah	22
Katherine Guyot & Isabel V. Sawhill, <i>Telecommuting Will Likely Continue Long After the Pandemic</i> , Brookings Inst. (Apr. 6, 2020), https://www.brookings.edu/blog/up-front/2020/04/06/telecommuting-will-likely-continue-long-after-the-pandemic/	16
Leila Schochet, <i>Trump's Attack on Immigrants is Breaking the Backbone of America's Child Care System</i> , Ctr. for Am. Progress (Feb. 5, 2018), https://tinyurl.com/y9jtbbqe	22, 23
Lena Afridi & Diana Drogaris, <i>The Forgotten Tenants: New York City's Immigrant Small Business Owners</i> , Ass'n for Neighborhood Hous. & Dev. (Mar. 6, 2019), https://tinyurl.com/y2ug3fjr	10

Miscellaneous Authorities**Page(s)**

- Linda Darling-Hammond et al., *Teacher Shortages in California: Status, Sources, and Potential Solutions*, Learning Pol’y Inst. (Oct. 15, 2018), https://learningpolicyinstitute.org/sites/default/files/product-files/GDTF_CATeacherShortage_BRIEF.pdf..... 21
- M. Renee Zerehi, *The Role of International Medical Graduates in the U.S. Physician Workforce*, Am. Coll. of Physicians (2008), https://www.acponline.org/acp_policy/policies/role_international_medical_graduates_2008.pdf 18
- Madeline Zavodny, *Immigration and American Jobs*, Am. Enter. Inst. & P’ship for New Am. Econ. (Dec. 2011), https://www.aei.org/wp-content/uploads/2011/12/-immigration-and-american-jobs_144002688962.pdf..... 30
- Maki Park et al., *Immigrant and Refugee Workers in the Early Childhood Field*, Migration Policy Inst. (Apr. 2015), <https://www.migrationpolicy.org/research/immigrant-and-refugee-workers-early-childhood-field-taking-closer-look>..... 21
- Miriam Jordan & Annie Correal, *Foreign Doctors Could Help Fight Coronavirus. But U.S. Blocks Many*, N.Y. Times (updated July 3, 2020), <https://www.nytimes.com/2020/04/13/us/coronavirus-foreign-doctors-nurses-visas.html> 19
- National Foundation for American Policy, *The Impact of Administration Policies on Immigration Levels and Labor Force Growth* (Feb. 2020), <https://nfap.com/wp-content/uploads/2020/02/Legal-Immigration.NFAP-Policy-Brief.February-2020.pdf> 14, 15
- National Military Family Association, *Military Families Relying on Au Pairs Hit Hard by J-1 Visa Ban* (June 27, 2020), <https://www.militaryfamily.org/military-families-relying-on-au-pairs-hit-hard-by-j-1-visa-ban/>..... 22

Miscellaneous Authorities	Page(s)
Neil G. Ruiz, <i>Key Facts About the U.S. H-1B Visa Program</i> , Pew Research Ctr. (Apr. 27, 2017), https://www.pewresearch.org/fact-tank/2017/04/27/key-facts-about-the-u-s-h-1b-visa-program/	17
New American Economy, <i>Immigrant Healthcare Workers Are Critical in the Fight Against Covid-19</i> (Apr. 9, 2020), https://research.newamericaneconomy.org/report/covid-19-immigrant-healthcare-workers/	18
New American Economy, <i>The Contributions of New Americans in California</i> (Aug. 2016), http://research.newamericaneconomy.org/wp-content/uploads/2017/02/nae-ca-report.pdf	9
New American Economy, <i>Immigrants and the Economy in Massachusetts</i> , https://tinyurl.com/sgbmwpg	10
New American Economy, <i>Immigrants and the Economy in New Jersey</i> , https://tinyurl.com/y5n669em	10, 12
New American Economy, <i>Immigrants and the Economy in: United States of America</i> , https://www.newamericaneconomy.org/locations/national/	9, 11
New York City Mayor’s Office of Immigrant Affairs, <i>State of Our Immigrant City</i> (2019), https://www1.nyc.gov/assets/immigrants/downloads/pdf/MOIA-Annual-Report-for-2019.pdf	12
New York Immigration Coalition, <i>Blueprint for an Immigrant New York</i> (Jan. 2019), https://tinyurl.com/y24hpdjw	10
Nicole Bateman, <i>Working parents are key to COVID-19 recovery</i> , Brookings Inst. (July 8, 2020), https://www.brookings.edu/research/working-parents-are-key-to-covid-19-recovery/	23

Miscellaneous Authorities	Page(s)
Nirmita Panchal, <i>The Implications of COVID-19 for Mental Health and Substance Use</i> , Kaiser Family Found. (Apr. 21, 2020), https://www.kff.org/coronavirus-covid-19/issue-brief/the-implications-of-covid-19-for-mental-health-and-substance-use/	34
Rachel Thomas et al., <i>Women in the Workplace</i> (McKinsey & Co. 2020), https://tinyurl.com/y3crskxu	24
United States Centers for Disease Control & Prevention, <i>Operating Schools During COVID-19</i> (last updated Oct. 29, 2020), https://tinyurl.com/y697ztpq	22
United States Centers for Disease Control & Prevention, <i>Using Telehealth Services</i> (Jun. 10, 2020), https://www.cdc.gov/coronavirus/2019-ncov/hcp/telehealth.html	16
United States Citizenship & Immigration Services, <i>Characteristics of H-1B Specialty Occupation Workers, Fiscal Year 2019 Annual Report to Congress</i> (March 5, 2020), https://www.uscis.gov/sites/default/files/document/reports/Characteristics_of_Specialty_Occupation_Workers_H-1B_Fiscal_Year_2019.pdf	26
United States Department of Homeland Security, <i>Profiles on Lawful Permanent Residents: 2017 State</i> (last updated Jan. 6, 2020), https://www.dhs.gov/profiles-lawful-permanent-residents-2017-state	32
United States Department of Labor, Wage & Hour Division, <i>Fact Sheet #62G: Must an H-1B Worker Be Paid a Guaranteed Wage?</i> (July 2008), https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/whdfs62G.pdf	27
United States Department of Labor, Wage & Hour Division, <i>H-1B Program Guidelines</i> , https://www.dol.gov/agencies/whd/immigration/h1b	27

Miscellaneous Authorities	Page(s)
United States Department of Labor, Wage & Hour Division, <i>H-2B Program Guidelines</i> , https://tinyurl.com/y2ca62np	27
United States Department of State, <i>National Interest Exceptions to Presidential Proclamations 10014 & 10052</i> (last updated Aug. 12, 2020), https://tinyurl.com/y36oqdw8	20
United States Department of State, Report of the Visa Office 2019, https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics/annual-reports/report-of-the-visa-office-2019.html	5, 6
William Wan, <i>The Coronavirus Pandemic is Pushing America into a Mental Health Crisis</i> , Wash. Post (May 4, 2020), https://www.washingtonpost.com/health/2020/05/04/mental-health-coronavirus/	34
Yeganeh Torbati, <i>U.S. Denied Tens of Thousands More Visas in 2018 Due to Travel Ban: Data</i> , Reuters (Feb. 26, 2019), https://www.reuters.com/article/us-usa-immigration-ban/us-denied-tens-of-thousands-more-visas-in-2018-due-to-travel-ban-data-idUSKCN1QF2KF	34
Zoya Gubernskaya & Joanna Dreby, <i>U.S. Immigration Policy and the Case for Family Unity</i> , 5 J. on Migration & Human Sec. 417 (2017), https://tinyurl.com/y6lcyump	33

GLOSSARY OF TERMS AND ABBREVIATIONS

April Proclamation	Proclamation Suspending Entry of Immigrants Who Present Risk to the U.S. Labor Market During the Economic Recovery Following the COVID-19 Outbreak (Apr. 22, 2020)
INA	Immigration and Nationality Act
June Proclamation	Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak (June 22, 2020)
<i>NAM</i>	<i>National Ass'n of Mfrs. v. United States Dep't of Homeland Sec.</i> , No. 20-cv-4887, 2020 WL 5847503 (N.D. Cal. Oct. 1, 2020)
STEM	Science, technology, engineering, and mathematics

INTRODUCTION AND INTERESTS OF AMICI CURIAE

The States of California, New York, Colorado, Connecticut, Delaware, Hawai'i, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, Washington, and Wisconsin, and the District of Columbia respectfully submit this brief as amici curiae in support of appellants. Amici States urge the Court to reverse the district court's denial of plaintiffs' motion for a preliminary injunction against enforcement of two Presidential Proclamations, which unilaterally—and potentially indefinitely—suspend the vast majority of the nation's immigration system and several of its most vital non-immigrant work programs.¹ Left undisturbed, these Proclamations will bar more than 500,000 people from entering the United States this year and prevent approximately 20,000 employers from bringing valued and highly skilled

¹ See Proclamation Suspending Entry of Immigrants Who Present Risk to the U.S. Labor Market During the Economic Recovery Following the COVID-19 Outbreak (Apr. 22, 2020) (internet); Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak (June 22, 2020) (internet). Hyperlinks for sources available on the internet are provided in the Table of Authorities.

employees into the United States. Countless additional individuals, families, and employers may be affected in future years if the Proclamations are renewed as is contemplated by their plain language. The Proclamations will inflict substantial economic and societal harms on Amici States and their residents.²

In Amici's experience, immigrant participation in the work force is vital to the success and survival of our communities. Immigrants and other foreign-born workers contribute to state and local economies by starting businesses and creating jobs, purchasing goods and services, and paying federal, state, and local taxes. Immigrants and foreign-born workers also supplement our workforces, filling essential labor needs in

² The district court preliminarily enjoined defendants' policy of not issuing visas for diversity visa lottery winners and those persons' derivative beneficiaries but declined to enjoin the Proclamations' entry restrictions or their application to family-based and employment-based immigrant visas and non-immigrant work visas. (Joint Appendix 685-686, 750-756). Although the district court's order requires defendants to process diversity visa applications, it does not prohibit defendants from continuing to impose the Proclamations' entry restrictions. In a separate lawsuit filed in the Northern District of California, several trade organizations obtained a preliminary injunction against enforcement of the Proclamations' bar on non-immigrant work visa programs with respect to the members of plaintiff trade organizations. See *National Ass'n of Mfrs. v. United States Dep't of Homeland Sec.*, No. 20-cv-4887, 2020 WL 5847503, at *15 (N.D. Cal. Oct. 1, 2020).

sectors that otherwise face difficulty in finding qualified workers, including health care, science, technology, education, and child care. Although the Proclamations purportedly aim to alleviate economic distress by reducing competition for employment, they will in fact extinguish a source of economic vitality.

In addition to depriving Amici of the many economic contributions of immigrants and other foreign-born workers, the Proclamations harm Amici's residents by compelling the prolonged separation of families. As a result of the Proclamations, hundreds of thousands of parents, grandparents, children, and siblings of U.S. citizens and legal permanent residents will be unable to obtain visas to reunite with their loved ones in this country. Congress has repeatedly emphasized that family reunification is of utmost importance in our immigration system because strong family structures improve our neighborhoods, communities, and societies. Having the emotional and psychological support of family members is especially significant now, as the uncertainty associated with the COVID-19 pandemic has triggered a parallel mental health crisis.

Amici respectfully urge this Court to reverse the district court's decision. Without a reversal, the Proclamations will continue to harm

Amici's interests, including our economies and marketplaces and the families and communities within our borders.

ARGUMENT

POINT I

THE PROCLAMATIONS BAR IMMIGRANTS AND FOREIGN-BORN WORKERS WHO ARE VITAL TO THE STATES' ECONOMIES AND COMMUNITIES

A. The Proclamations Suspend the Entry of Most Immigrants and Many Non-Immigrant Temporary Workers.

The Proclamations eliminate the vast majority of legal immigration pathways to the United States, as well as some of the most important non-immigrant work visa programs available under federal law. The Department of State has interpreted the Proclamations as barring not only entry into the United States, but also the issuance of visas to otherwise qualified prospective immigrants located abroad.³ (Joint Appendix (J.A.) 683-686.) Absent reversal of the district court's decision, the Proclamations will bar more than 500,000 individuals from entering the country this year. (J.A. 563.)

³ The district court found that plaintiffs were likely to succeed on their claim that defendants' "no-visa" policy is unlawful (J.A. 730-737), but nevertheless declined to grant a preliminary injunction to the non-diversity visa plaintiffs (J.A. 748-750).

The first Proclamation, issued on April 22, 2020, broadly suspends the entry of immigrants who have not yet acquired a visa or who are authorized to travel to the United States pursuant only to a visa, including most persons who would otherwise be eligible for family-sponsored immigration,⁴ employment-sponsored immigration, or immigration through the diversity visa program. Indeed, if the April Proclamation had been issued one year earlier, it would have presumptively precluded approximately 70% of the immigrant visas issued in 2019.⁵ Although the district court granted a preliminary injunction with

⁴ The April Proclamation allows for the entry of spouses and unmarried minor children of U.S. citizens under immediate relative visas. However, the Proclamations bar the entry of parents of U.S. citizens, who would otherwise qualify for an immediate relative visa, as well as all categories of family-based preference visas, which cover unmarried and married adult children of U.S. citizens, siblings of U.S. citizens, and spouses and children of legal permanent residents. 8 U.S.C. §§ 1151(b), 1153(a).

⁵ In 2019, the United States issued a total of 462,422 immigrant visas, of which 190,938 were family-sponsored preference visas, 63,442 were immediate relative visas for parents of U.S. citizens, 20,879 were non-investor employment-based preference visas, and 44,882 were diversity visas. See U.S. Dep't of State, Report of the Visa Office 2019, tbl. II ("Classes of Immigrants Issued Visas at Foreign Service Posts") (internet).

respect to the issuance of diversity visas, it denied relief as to the hundreds of thousands of other affected immigrant-visa applicants.

The second Proclamation, issued on June 22, 2020, extends the April Proclamation's bar on entry of immigrants through December 31, 2020, with the possibility of further renewal "as necessary." The June Proclamation further suspends multiple common forms of non-immigrant work visas which allow employers to sponsor foreign nationals to work in the United States on a temporary basis—specifically, the H-1B, H-2B, J, and L programs.⁶ Because an employer bears substantial financial costs associated with sponsorship, workers arriving pursuant to these programs are often specialized, highly educated, and essential to the company's ongoing success.⁷

⁶ In 2019, the United States granted 188,123 H-1B visas, 97,623 H-2B visas, 125,999 H-4 visas (for spouses and children of H-1B, H-2B and other H employer visas). The United States also granted 353,279 J-1 visas, 38,282 J-2 visas (for spouses and children of J-1s), 76,988 L-1 visas, and 80,720 L-2 visas (for spouses and children of L-1s). Spouses traveling on H-4 and J-2 visas must separately apply for employment authorization. 8 C.F.R. § 214.2(h)(9)(iv); *id.* § 214.2(j)(1)(v)(B). See U.S. Dep't of State, Report of the Visa Office 2019, tbl. XVI(B) ("Nonimmigrant Visas Issued by Classification") (internet)

⁷ See, e.g., Alex Nowrasteh, *Don't Ban H-1B Workers: They Are Worth Their Weight in Innovation*, Cato at Liberty (May 14, 2020) (internet).

The H-1B visa program, for example, allows employers to hire skilled foreign professionals in “specialty occupation[s]” requiring “theoretical and practical application of a body of highly specialized knowledge” and a “bachelor’s or higher degree in the specific specialty (or its equivalent”). 8 U.S.C. §§ 1101(a)(15)(H)(i)(b), 1184(i)(1). The H-2B visa program allows employers to hire foreign workers to perform “temporary service or labor” in non-agricultural sectors “if unemployed persons capable of performing such service or labor cannot be found in this country.” *Id.* § 1101(a)(15)(H)(ii)(b). The J visa program allows foreign-born professors, research scholars, medical residents, teachers, au pairs, and others to temporarily work in the United States. *Id.* § 1101(a)(15)(J); *see also* 22 C.F.R. pt. 62, subpt. B. And the L visa program allows multinational corporations to transfer high-level executives and managers with “specialized knowledge” to work in a U.S.-based office on a temporary basis. 8 U.S.C. § 1101(a)(15)(L). The Cato Institute has estimated that the June Proclamation will affect approximately 20,000 U.S. employers, who will be prohibited from bringing their critical

employees to this country, and over 381,000 non-immigrant workers, spouses, and children.⁸

B. The Proclamations Will Block Valuable Economic Contributions of Immigrants and Non-Immigrant Foreign Workers.

The Proclamations are premised on the erroneous, dangerous, and counterproductive assumption that immigrants and foreign-born workers threaten the integrity of the U.S. labor market. Amici's experience shows that the advantages of immigration are profound and reciprocal. Not only do immigrants benefit from the opportunities associated with living in the United States, but cities, States, and the country as a whole benefit from immigrants' contributions to our communities. As of 2017, at least 43% of Fortune 500 companies were founded by first or second-generation immigrants.⁹ Asian and Latino immigrant entrepreneurs alone

⁸ See David J. Bier, *Trump's Migration Ban Could Affect up to 545,500 if Consulates Reopen—Fewer than 18,000 Otherwise*, Cato at Liberty (July 7, 2020) (internet); David J. Bier, *About 20,000 U.S. Employers Are Affected by Trump's Travel Bans This Year*, Cato at Liberty (July 16, 2020) (internet).

⁹ See Ctr. for Am. Entrepreneurship, *Immigrant Founders of the 2017 Fortune 500* (Dec. 2017) (internet). Eleven California-based Fortune 500 firms—including EBay, Google, and Qualcomm—were founded or co-

contributed a total of \$1 trillion in revenue, 6.7 million jobs, and \$212 billion in annual payroll.¹⁰ Immigrant-owned companies in the United States employ over 7.9 million workers across a variety of sectors.¹¹ In California, one out of every six business owners is an immigrant; in the Los Angeles area, more than 45% of business owners are immigrants.¹² California's 937,000 immigrant business owners have generated \$24.5 billion in revenue for the state's economy.¹³ Foreign-born residents also make up 38% of all entrepreneurs in California, generating over \$20 billion in income as of 2014.¹⁴ Likewise, immigrants own more than 30% of all small businesses in New York State,¹⁵ and nearly half of all small

founded by immigrants. New Am. Econ., *The Contributions of New Americans in California* 3 (Aug. 2016) (internet).

¹⁰ Dan Kosten, *Immigrants as Economic Contributors: Immigrant Entrepreneurs*, Nat'l Immigration Forum (July 2018) (internet).

¹¹ New Am. Econ., *Immigrants and the Economy in: United States of America* (internet).

¹² Am. Immigration Council, *Immigrants in California* (Aug. 6, 2020) (internet).

¹³ *Id.*

¹⁴ New Am. Econ., *The Contributions of New Americans in California*, *supra*, at 2.

¹⁵ Am. Immigration Council, *Immigrants in New York* 4 (June 4, 2020) (internet).

businesses in New York City.¹⁶ As of 2014, immigrant-owned businesses employed approximately 500,000 New Yorkers,¹⁷ and as of 2018, those businesses generated nearly \$8 billion in income.¹⁸ In Massachusetts, over 70,000 immigrant entrepreneurs provide nearly 169,000 jobs, generating over \$27 billion in sales.¹⁹ In New Jersey, nearly 390,000 people are employed by over 128,000 immigrant business owners.²⁰ In Maryland, immigrant entrepreneurs represent almost 20% of the State's business owners and have generated \$1.7 billion in combined annual revenue.²¹ Many other immigrants fill important service sector jobs that

¹⁶ Lena Afridi & Diana Drogaris, *The Forgotten Tenants: New York City's Immigrant Small Business Owners*, Ass'n for Neighborhood Hous. & Dev. (Mar. 6, 2019) (internet).

¹⁷ N.Y. Immigration Coal., *Blueprint for an Immigrant New York 3* (Jan. 2019) (internet).

¹⁸ Am. Immigration Council, *Immigrants in New York*, *supra*, at 4.

¹⁹ New Am. Econ., *Immigrants and the Economy in Massachusetts* (internet).

²⁰ New Am. Econ., *Immigrants and the Economy in New Jersey* (internet).

²¹ Am. Immigration Council, *Immigrants in Maryland* (Aug. 6, 2020) (internet).

support others' ability to remain in demanding professions, including child care, domestic work, and home health work.²²

Foreign-born workers also contribute to their communities by paying taxes and promoting the success of other businesses through the use of their purchasing power. In 2014, for example, immigrants exercised \$927 billion in spending power, generating demand for goods and services and in turn creating more jobs.²³ Immigrants pay over \$458 billion in taxes annually²⁴ and account for approximately \$2 trillion in national gross domestic product.²⁵ In New York City alone, immigrants contributed \$232 billion—or approximately 25%—of the city's gross domestic product

²² Dan Kosten, *Immigrants as Economic Contributors: They Are the New American Workforce*, Nat'l Immigration Forum (June 5, 2018) (internet).

²³ Dan Kosten, *Immigrants as Economic Contributors: Immigrant Tax Contributions and Spending Power*, Nat'l Immigration Forum (Sept. 6, 2018) (internet).

²⁴ New Am. Econ., *Immigrants and the Economy in: United States of America*, *supra*.

²⁵ *The Economic and Fiscal Consequences of Immigration* 282 (Francine D. Blau & Christopher Mackie, eds. 2017) (internet).

in 2018.²⁶ In California, immigrant-led households paid over \$38 billion in state and local taxes and exercised almost \$291 billion in spending power.²⁷ In New Jersey, immigrants paid \$9.5 billion in state and local taxes and exercised nearly \$66 billion in spending power.²⁸ And in Pennsylvania, immigrant-led households paid \$3.3 billion in state and local taxes while generating more than \$24 billion in spending power.²⁹ In addition to these economic contributions, immigrants enrich our country's social and cultural life, injecting new ideas into our intellectual fabric, offering path-breaking contributions in science, technology, and other fields, and ultimately making our diverse communities more desirable places to live.³⁰ By cutting off most pathways to legal immigration and access to skilled foreign-born workers, the

²⁶ N.Y. City Mayor's Office of Immigrant Affairs, *State of Our Immigrant City* 21 (2019) (internet).

²⁷ See Am. Immigration Council, *Immigrants in California*, *supra*, at 4-5.

²⁸ New Am. Econ., *Immigrants and the Economy in New Jersey*, *supra*.

²⁹ See Am. Immigration Council, *Immigrants in Pennsylvania* (Aug. 2020) (internet).

³⁰ Darrell M. West, *The Costs and Benefits of Immigration*, 126 *Political Sci. Quarterly* 427, 437-41 (2011) (internet).

Proclamations will extinguish a vital source of economic strength and resilience to the detriment of Amici States and their residents.

POINT II

THE PROCLAMATIONS DISREGARD CONGRESS'S DETERMINATION THAT FOREIGN-BORN WORKERS PROMOTE ECONOMIC AND SOCIAL GROWTH

The Proclamations' sweeping bans override Congress's "complex, highly reticulated set of immigration laws and regulations" reflecting decades of calibrated policy judgments. *National Ass'n of Mfrs. v. United States Dep't of Homeland Sec.*, No. 20-cv-4887, 2020 WL 5847503, at *6 (N.D. Cal. Oct. 1, 2020) ("*NAM*"). In enacting and modifying the Immigration and Nationality Act (INA), Congress has repeatedly recognized that supplementing the U.S. labor force by admitting foreign workers "is in the national interest provided they enter the market under the specific terms and conditions provided by the [INA]." *Id.* at * 11; *see also* S. Rep. No. 106-260, at 12 (2000) (rejecting the premise that there is a fixed number of jobs for which competition is a zero-sum game). But the Proclamations "completely disregard[] both economic reality and the preexisting statutory framework" without justification. *NAM*, 2020 WL 5847503, at *13.

By setting aside Congress's reasoned determinations, the Proclamations will cause substantial economic harm to Amici, including by diminishing revenue collection, dampening small business creation, and adversely impacting schools and hospitals. The Proclamations will deprive key industries and professions of the workers they need to provide our communities with essential goods and services, including food, technology, health care, education and child care. Moreover, contrary to their stated purpose, the Proclamations will undermine Amici's ability to forge a robust economic recovery from the damage inflicted by the COVID-19 pandemic.

A. Foreign-Born Workers Disproportionately Fill Positions in Essential and Underserved Sectors of the Economy.

As a February 2020 study found, policies aimed at curbing immigration will result in "long-term damage to the U.S. economy" resulting in a 35% reduction in the average annual growth in the work force.³¹ The study concluded that the United States "will not be able to

³¹ Nat'l Found. for Am. Policy, *The Impact of Administration Policies on Immigration Levels and Labor Force Growth* (Feb. 2020) (internet).

maintain its current standard of living unless the U.S. government acts to significantly increase immigration, improve labor force participation, and, together with employers, raise labor productivity growth.”³² The Proclamations will accelerate the realization of these harms.

Immigrants are valued employees in essential sectors. In California, for example, immigrants make up over one-third of the total workforce, filling over 66% of the jobs in California’s agricultural sector, 45% of manufacturing positions, 43% of construction worker positions, and 42% of computer and mathematical sciences positions.³³ In Hawai‘i, immigrants comprise nearly one quarter of the total labor force, filling 35% of jobs in health care support industries.³⁴ The COVID-19 pandemic has heightened awareness about this country’s reliance on an array of

³² *Id.* at 3 (quotation marks omitted).

³³ Am. Immigration Council, *Immigrants in California*, *supra*, at 4; David J. Bier, *Immigrants Are About 1/3 of California’s “Essential Workers*, Cato at Liberty (Mar. 30, 2020) (internet).

³⁴ Am. Immigration Council, *Immigrants in Hawaii* (Aug. 6, 2020) (internet).

essential services, from telehealth,³⁵ to delivery of goods, services, and food,³⁶ as well as the technological infrastructure and software necessary to support telecommuting where up to half the U.S. workforce worked from home during the pandemic.³⁷ But despite the critical importance of these essential sectors of the economy during a global pandemic, the Proclamations unreasonably take direct aim at visa programs that supply them with essential workers.

For example, the June Proclamation's ban on the issuance of H-1B visas will cut off access to foreign-born skilled workers, two-thirds of whom have filled critical needs in STEM fields where employers otherwise struggle to find qualified employees.³⁸ From 1990 to 2015, the

³⁵ U.S. Ctrs. for Disease Control & Prevention, *Using Telehealth Services* (Jun. 10, 2020) (internet).

³⁶ Chris J. Macias, *Is the Food Supply Strong Enough to Weather COVID-19?*, UC Davis.edu: Feeding a Growing Population (Jun. 25, 2020) (internet).

³⁷ Katherine Guyot & Isabel V. Sawhill, *Telecommuting Will Likely Continue Long After the Pandemic*, Brookings Inst. (Apr. 6, 2020) (internet).

³⁸ Am. Immigration Council, *The H-1B Visa Program: A Primer on the Program and Its Impact on Jobs, Wages, and the Economy* 6 (Apr. 2016) (internet).

percentage of foreign-born workers as a percentage of the STEM workforce more than doubled.³⁹ In Silicon Valley alone, approximately 71% of tech employees are foreign-born.⁴⁰ Because there is a limited supply of prospective employees with the requisite technical knowledge and expertise, approximately 90% of H-1B visa requests are for jobs that require some high-level STEM knowledge.⁴¹ While the June Proclamation includes several limited exceptions, it bars the entry of thousands of STEM workers, including software developers and systems administrators, who are essential to maintaining the security and operation of the information technology infrastructure and systems that industries,

³⁹ Am. Immigration Council, *Foreign-born STEM Workers in the United States* 3 (June 14, 2017) (internet).

⁴⁰ Ethan Baron, *H-1B: Nearly Three-quarters of Silicon Valley Tech Workers Foreign-born, Report Says*, The East Bay Times (Jan. 17, 2018) (internet).

⁴¹ Neil G. Ruiz, *Key Facts About the U.S. H-1B Visa Program*, Pew Research Ctr. (Apr. 27, 2017) (internet).

hospitals, governments, small businesses, banks and educational institutions rely on to function.⁴²

Similarly, immigrants and non-immigrant workers are the backbone of the medical field. As of 2015, nearly 30% of physicians and surgeons in the United States were foreign-born.⁴³ In New Jersey, more than 30% of all health care workers are foreign born, including more than 40% of physicians and surgeons, nearly 30% of nurses, and more than half of health aides.⁴⁴ Foreign-born doctors serve as medical residents in underserved communities (inner city and rural) in disproportionate numbers.⁴⁵ In 2017 alone, there were approximately 2,532 medical

⁴² Donald Kerwin et al., *US Foreign-Born Essential Workers by Status and State, and the Global Pandemic*, Ctr. for Migration Studies (May 2020) (internet).

⁴³ Am. Immigration Council, *Foreign-born STEM Workers in the United States*, *supra*, at 8.

⁴⁴ New Am. Econ., *Immigrant Healthcare Workers Are Critical in the Fight Against Covid-19* (Apr. 9, 2020) (internet).

⁴⁵ M. Renee Zerehi, *The Role of International Medical Graduates in the U.S. Physician Workforce* 3, 5, Am. Coll. of Physicians (2008) (internet).

residents on H-1B visas, many of whom work in inner cities and rural areas.⁴⁶

The Proclamations will therefore have serious consequences on the provision of health care, particularly in the midst of a global pandemic. “Hospitals in coronavirus hot spots are scrambling to address a shortage of medical professionals to help care for patients, as the number of cases continues to grow and as maintaining a full supply of health care workers, who are themselves falling ill, is challenging.”⁴⁷ Even prior to the Proclamations’ issuance, foreign health care workers, who are critical to meeting this shortage, were deterred from entering the United States because of significantly reduced staffing at consulates due to COVID-19 concerns.⁴⁸

⁴⁶ Dara Lind, *Hospitals Are Suddenly Short of Young Doctors—Because of Trump’s Visa Ban*, ProPublica (July 17, 2020) (internet).

⁴⁷ Miriam Jordan & Annie Correal, *Foreign Doctors Could Help Fight Coronavirus. But U.S. Blocks Many*, N.Y. Times (updated July 3, 2020) (internet).

⁴⁸ *Id.*

While the Proclamations include exceptions for immigrant workers traveling to work in COVID-19-related medical care and health care fields that are either adversely affected by COVID-19 or which are deemed to have a substantial public health benefit, those exceptions fail to ameliorate the Proclamations' detrimental effects to critical health care institutions.⁴⁹ For example, these exceptions fail to protect hospitals and health facilities located in geographical areas that are not currently experiencing adverse effects from COVID-19 but: (1) depend on foreign-born workers to provide vital preventative and other health care services and sustain regular operations; (2) are seeking to increase staff in anticipation of providing adequate health care services in the event the community they serve is stricken; or (3) need to maintain staffing levels in the event that they need to accept patient transfers from hospitals overwhelmed with patients sick from COVID-19.

⁴⁹ See U.S. Dep't of State, *National Interest Exceptions to Presidential Proclamations 10014 & 10052* (last updated Aug. 12, 2020) (internet).

The June Proclamation's restrictions on J-1, H-1B, and immigrant visas will also cut off an essential source of child care professionals and teachers. Nationally, immigrants make up approximately 20% of early childhood educators.⁵⁰ Immigrants also make up 8% of the nation's primary and secondary school teachers.⁵¹ In California and New York, they comprise approximately 10-15% of teachers.⁵² California, which already faces a significant teacher shortage,⁵³ may experience a "teacher supply disaster[]" caused by a loss of foreign-born teachers.⁵⁴ California's shortage is particularly acute in mathematics, science, and special education, areas where immigrant teachers are vital.⁵⁵ The harms of

⁵⁰ Maki Park et al., *Immigrant and Refugee Workers in the Early Childhood Field*, Migration Policy Inst. (Apr. 2015) (internet).

⁵¹ Dick Startz, *Immigrant Teachers Play a Critical Role in American Schools*, Brookings Inst. (Mar. 16, 2017) (internet).

⁵² *Id.*

⁵³ While the State needed 24,000 new teachers in 2016, the State issued only 12,000 new teaching credentials, an historically low number. Linda Darling-Hammond et al., *Teacher Shortages in California: Status, Sources, and Potential Solutions*, Learning Pol'y Inst. (Oct. 15, 2018) (internet).

⁵⁴ *Id.*

⁵⁵ *Id.*; Startz, *supra*.

these teacher shortages will be compounded by schools' need to divide students into cohorts and to limit class sizes to mitigate the risk of COVID-19 transmission as schools reopen for in-person instruction.⁵⁶

The Proclamations also severely diminish the availability of in-home child care. Foreign-born workers disproportionately fill roles in the informal child care industry and are especially likely to work as nannies or babysitters for private families in home-based settings.⁵⁷ More than 20,000 live-in au pairs traveling on J-1 visas work for military families, essential health care workers, and others, allowing those individuals to satisfy demanding professional obligations.⁵⁸ Moreover, immigrant grandparents and other relatives are a critical source of regular and

⁵⁶ See, e.g. U.S. Ctrs. for Disease Control & Prevention, *Operating Schools During COVID-19* (last updated Oct. 29, 2020) (internet).

⁵⁷ Leila Schochet, *Trump's Attack on Immigrants is Breaking the Backbone of America's Child Care System*, Ctr. for Am. Progress (Feb. 5, 2018) (internet).

⁵⁸ Nat'l Military Family Ass'n, *Military Families Relying on Au Pairs Hit Hard by J-1 Visa Ban* (June 27, 2020) (internet); Jordan Salama, *The Great Au Pair Rush*, N.Y. Times (July 25, 2020) (internet).

emergency child care for many families who currently reside in the United States.⁵⁹

A substantial portion of the U.S. workforce requires child care: more than 40 million workers have children under the age of 18, and nearly 34 million have children under the age of 14.⁶⁰ “Without access to childcare, families face significant barriers to economic security and employers struggle to retain a productive workforce.”⁶¹ The COVID-19 pandemic has accelerated an existing lack of affordable child care into a full-blown crisis. One recent study found that more than 13% of working parents had lost a job or reduced their hours due to a lack of child care.⁶² In another study of working parents in Massachusetts, nearly half of those surveyed responded that “they will not be able to return to work

⁵⁹ Ann Carrns, *Multigenerational Households: The Benefits and Perils*, N.Y. Times (Aug. 12, 2016) (internet).

⁶⁰ Nicole Bateman, *Working parents are key to COVID-19 recovery*, Brookings Inst. (July 8, 2020) (internet).

⁶¹ Schochet, *supra*.

⁶² Alicia Sasser Modestino, *Coronavirus Child-care Crisis Will Set Women Back a Generation*, Wash. Post (July 29, 2020) (internet).

without a consistent child care solution.”⁶³ Experts predict that the child care crisis will result in thousands of mostly female workers leaving their jobs, which will disproportionately affect future economic outcomes for single mothers, low-income workers, and women of color.⁶⁴ Indeed, one recent study found that 865,000 women left the labor force as a result of the pandemic in just September 2020.⁶⁵ Rather than ameliorate unemployment in the U.S. labor market, the Proclamations’ entry ban will make it more difficult for working parents to perform their jobs, much less *remain* employed, by depriving them of the support that caregivers can provide.

⁶³ Alissa Haywoode, *Results From Our Family Survey*, Eye on Early Educ. (May 7, 2020) (internet).

⁶⁴ Modestino, *supra*. See also Rachel Thomas et al., *Women in the Workplace* 16-33 (McKinsey & Co. 2020) (internet).

⁶⁵ Claire Ewing-Nelson, *Four Times More Women Than Men Dropped Out of the Labor Force in September 1* (Nat’l Women’s Law Ctr. Oct. 2020).

B. Foreign-Born Workers Entering on Non-Immigrant Visas Enhance Economic Growth Without Displacing U.S.-Born Workers.

The Proclamations attempt to justify the President’s sweeping bans by referencing the “extraordinary economic disruptions caused by the COVID-19 outbreak” and the need to “protect unemployed Americans from the threat of competition for scarce jobs” from new immigrants and foreign-born workers. But these assertions misapprehend how the pandemic is affecting the U.S. labor market and ignore the critical role that foreign workers play in stimulating the economy. Indeed, the Proclamations suspend visas for foreign-worker classifications that pose little to no threat of competition to the U.S. workers who have lost jobs or hours during the pandemic and deprive Amici States and local communities of the types of foreign workers who enhance economic opportunity and growth for all.

First, contrary to the Proclamations’ stated justifications, the non-immigrant workers who are subject to the Proclamations’ bans generally do not work in professions that are most vulnerable to COVID-19-related job losses. According to a Brookings Institution study, the ten industries most vulnerable to contraction and job loss include food services, bars

and drinking places, in-store retailers, laundry services, amusement, gambling and recreation, and motor vehicle and parts dealers.⁶⁶ In contrast, H-1B and L visas, two of the visa programs affected by the Proclamations, bring workers who typically occupy positions in STEM fields, education, and executive management.⁶⁷

“Further, the Proclamation bars entry of noncitizens who are already prevented, by statute, from competing” for jobs with U.S.-born workers. *NAM*, 2020 WL 5847503, at *13. For example, federal regulations governing H-1B and H-2B visas require employers to certify that the hiring of these non-immigrant workers will not displace U.S. workers and will comply with federal wage requirements. *See, e.g.*, 8 U.S.C. § 1182(n)(1)(A)(i)-(ii), (n)(1)(E) (requiring “H-1B-dependent employers” to

⁶⁶ Alan Berube & Nicole Bateman, *Who Are the Workers Already Impacted by the COVID-19 Recession?*, Brookings Inst. (Apr. 3, 2020) (internet); *see also NAM*, 2020 WL 5847503, at *13 (finding a “mismatch of facts regarding the unemployment caused by the ... pandemic and the classes of noncitizens who are barred by the Proclamation”).

⁶⁷ *See* U.S. Citizenship & Immigration Servs., *Characteristics of H-1B Specialty Occupation Workers, Fiscal Year 2019 Annual Report to Congress* 11-12 (March 5, 2020) (internet); *see also* 8 U.S.C. § 1101(a)(15)(L), (a)(44)(A) (requiring L visa holders to occupy positions that are managerial, executive, or involve specialized knowledge).

affirm non-displacement); 20 C.F.R. §§ 655.731-733 (requiring sponsoring employer to pay the prevailing wage for the employee's occupation and provide working conditions that would not affect the working conditions of similarly employed workers);⁶⁸ 8 C.F.R. § 214.2(h)(6)(iii)(A)-(D), (6)(iv)(A) (requiring sponsoring employer to receive Department of Labor certification that no U.S. workers are available and that employing the H-2B worker will not adversely affect the wages and working conditions of similarly employed U.S. workers).⁶⁹

Second, research shows that the affected visa programs stimulate economic gains and increase job opportunities for foreign-born and U.S.-born residents alike.⁷⁰ For example, one study found that restrictions on

⁶⁸ See also U.S. Dep't of Labor, Wage & Hour Div., *Fact Sheet #62G: Must an H-1B Worker Be Paid a Guaranteed Wage?* (July 2008) (internet).

⁶⁹ To the extent there is a concern about misuse of non-immigrant work visas, federal agencies can take enforcement actions that include penalties for violations. See, e.g. U.S. Dep't of Labor, Wage & Hour Div., *H-1B Program Guidelines* (internet); U.S. Dep't of Labor, Wage & Hour Div., *H-2B Program Guidelines* (internet). Such concerns do not justify the June Proclamation's sweeping curtailment of the H-1B visa program.

⁷⁰ Frederick R. Treyz et al., *Key Components of Immigration Reform: An Analysis of the Economic Effects of Creating a Pathway to Legal Status, Expanding High-Skilled Visas, & Reforming Lesser-Skilled Visas* 1, Reg'l Econ. Models, Inc. (July 7, 2013) (internet).

H-1B visas hindered rather than helped the economic recovery of American cities and workers in the aftermath of the 2008 financial crisis, “cost[ing] their tech sectors hundreds of thousands of jobs and billions in missed wages.”⁷¹ The number of jobs for U.S. workers in computer-related industries would actually have grown at least 55% faster—and wages for college-educated American workers in those industries could have grown 4.9% higher—but for the denial of so many visa applications.⁷²

Studies have also shown that the H-1B program is associated with higher overall wages and lower unemployment. A Brookings Institution study found that the overall impact of H-1B visas has not lowered wages for U.S. citizens in STEM because in the majority of fields in which they work, H-1B workers actually earn more than their U.S.-citizen counterparts.⁷³ In fact, the H-1B program is associated with an overall

⁷¹ Giovanni Peri et al., *Closing Economic Windows: How H-1B Visa Denials Cost U.S.-Born Tech Workers Jobs and Wages During the Great Recession* 4, P’ship for a New Am. Econ. (June 2014) (internet).

⁷² *Id.* at 5, 17.

⁷³ Jonathan Rothwell & Neil G. Ruiz, *H-1B Visas and the STEM Shortage: A Research Brief* 1 (May 10, 2013) (internet).

increase in wages for non-H-1B visa holders.⁷⁴ From the time H-1B visas began in 1990 to 2010, a 1% increase in foreign STEM workers' share of a city's total employment was associated with increases in wages of 7-8% for both STEM and non-STEM college-educated citizens, and 3-4% for non-college educated workers.⁷⁵

Moreover, unemployment rates are lower for occupations that use a larger number of H-1B visas.⁷⁶ Studies have found that for every 100 foreign-born workers in STEM fields with advanced degrees from U.S. universities, an additional 262 jobs for U.S.-born workers are created, and for every 100 foreign-born workers with advanced degrees (regardless of the university or workforce) an additional 44 jobs are

⁷⁴ Am. Immigration Council, *The H-1B Visa Program: A Primer on the Program and Its Impact on Jobs, Wages, and the Economy*, *supra*, at 3.

⁷⁵ *Id.* at 4.

⁷⁶ *Id.*

created for U.S.-born workers.⁷⁷ Those States with the highest number of H-1B visas actually had higher employment for their residents.⁷⁸

Finally, visa restrictions do not encourage employment of U.S. citizens: studies confirm that U.S.-based multinational corporations have responded to visa restrictions by simply increasing employment abroad through their overseas affiliates.⁷⁹ Accordingly, by decimating critical STEM industries, post-secondary educational institutions, and research facilities, the Proclamations will not aid in the nation's recovery from the current economic crisis, but rather do the opposite.

⁷⁷ Madeline Zavodny, *Immigration and American Jobs* 4, Am. Enter. Inst. & P'ship for New Am. Econ. (Dec. 2011) (internet).

⁷⁸ *Id.*

⁷⁹ Britta Glennon, *How Do Restrictions on High-Skilled Immigration Affect Offshoring? Evidence from the H-1B Program* (Nat'l Bureau of Econ. Research, Working Paper No. 27538, 2020) (internet).

POINT III

THE PROCLAMATIONS MAY LEAD TO PROFOUND SOCIAL AND PSYCHOLOGICAL HARMS DUE TO PROLONGED FAMILY SEPARATION

The INA was directed at “the problem of keeping families of United States citizens and immigrants united.” *Fiallo v. Bell*, 430 U.S. 787, 795 n.6 (1977) (quoting H.R. Rep. No. 1199, at 7 (1957)); *see also Solis-Espinoza v. Gonzales*, 401 F.3d 1090, 1094 (9th Cir. 2005). During the debates surrounding the passage of the INA, Senator Edward Kennedy affirmed that “[r]eunification of families is to be the foremost consideration.” S. Rep. No. 89-748, at 13 (1965). Accordingly, Congress places no limit on the number of immediate relatives of U.S. citizens who can immigrate to the United States, such as spouses, unmarried children under the age of 21, and parents. 8 U.S.C. § 1151(b). Congress also requires the federal government to issue at least 226,000 family-preference visas annually. *Id.* § 1151(c)-(d). Hundreds of thousands of individuals immigrate to the United States annually pursuant to family-based sponsorship. *See supra* n.5. And many such individuals reunite with family members located in Amici States: in 2017, 148,621 individuals obtained lawful permanent residence as immediate relatives of U.S. citizens or through family-

sponsored preferences in California; the number was 107,259 in New York, 9,299 in Colorado, 8,709 in Connecticut, 1,551 in Delaware, 4,922 in Hawai'i, 29,059 in Illinois, 763 in Maine, 16,552 in Maryland, 28,030 in Massachusetts, 11,706 in Michigan, 7,175 in Minnesota, 9,143 in Nevada, 42,692 in New Jersey, 3,076 in New Mexico, 5,533 in Oregon, 18,927 in Pennsylvania, 3,479 in Rhode Island, 398 in Vermont, 17,972 in Virginia, 15,867 in Washington, 3,816 in Wisconsin, and 1,738 in the District of Columbia.⁸⁰

The Proclamations deny hundreds of thousands of U.S. citizens and legal permanent residents the right to be reunited with their family members. In many instances, these individuals have been waiting for years to reunite with their loved ones in this country. (J.A. 563-577.) The Proclamations baldly disregard what Congress recognized and multiple studies have confirmed: family reunification benefits the economic, social, and psychological well-being of the affected individuals, while

⁸⁰ See U.S. Dep't of Homeland Sec., *Profiles on Lawful Permanent Residents: 2017 State* (last updated Jan. 6, 2020) (internet). These figures include both new arrivals and individuals adjusting status.

family separation results in a myriad of harms.⁸¹ Separating family members from each other can result in negative health outcomes, including mental and behavioral health issues, which can lower academic achievement among children; toxic stress, which can delay brain development and cause cognitive impairment; and symptoms of post-traumatic stress disorder.⁸² Separation can be particularly traumatizing to children, resulting in a greater risk of developing mental health disorders such as depression, anxiety, and attention deficit hyperactivity disorder.⁸³ Trauma can also have negative physical effects on children, such as loss of appetite, stomachaches, and headaches, which can become

⁸¹ Zoya Gubernskaya & Joanna Dreby, *U.S. Immigration Policy and the Case for Family Unity*, 5 J. on Migration & Human Sec. 417, 422-23 (2017) (internet).

⁸² Colleen K. Vesely et al., *Immigrant Families Across the Life Course: Policy Impacts on Physical and Mental Health*, Nat'l Council on Family Relations (July 9, 2019) (internet).

⁸³ Allison Abrams, *Damage of Separating Families*, Psychology Today (June 22, 2018) (internet).

chronic if left untreated.⁸⁴ Similarly, spousal separation can cause fear, anxiety, and depression.⁸⁵

These concerns are especially resonant today because the COVID-19 pandemic has unleashed a “shadow pandemic of psychological and societal injuries,” including widespread depression and anxiety.⁸⁶ In a recent poll, nearly half of adults in the United States reported experiencing mental distress over the virus.⁸⁷ Mental health harms associated with the pandemic have been especially severe for front-line and essential workers.⁸⁸ Denying families the ability to reunite in the midst of this unprecedented global uncertainty exacerbates the mental

⁸⁴ *Id.*

⁸⁵ Yeganeh Torbati, *U.S. Denied Tens of Thousands More Visas in 2018 Due to Travel Ban: Data*, Reuters (Feb. 26, 2019) (internet).

⁸⁶ William Wan, *The Coronavirus Pandemic is Pushing America into a Mental Health Crisis*, Wash. Post (May 4, 2020) (internet).

⁸⁷ Nirmita Panchal, *The Implications of COVID-19 for Mental Health and Substance Use*, Kaiser Family Found. (Apr. 21, 2020) (internet).

⁸⁸ *Id.*

health harms caused by the pandemic and deprives Amici's residents of much needed sources of social support.⁸⁹

Amici will also feel the impact of such harms on their residents. Intact families strengthen not only the family unit, but the neighborhood, community, and civic society. *See, e.g., Moore v. City of E. Cleveland*, 431 U.S. 494, 503-04 (1977) ("It is through the family that we inculcate and pass down many of our most cherished values, moral and cultural."). "[R]eunification . . . serves the national interest not only through the humaneness of the policy itself, but also through the promotion of the public order and well-being of the nation. Psychologically and socially, the reunion of family members with their close relatives promotes the health and welfare of the United States."⁹⁰ Absent reversal of the district court's denial of plaintiffs' motion for a preliminary injunction, the Proclamations will exact a tremendous toll on our residents and communities.

⁸⁹ Fatih Ozbay et al., *Social Support and Resilience to Stress*, 4 *Psychiatry* 35-40 (May 2007) (internet).

⁹⁰ *Final Report of the Select Commission on Immigration and Refugee Policy* at 112 (Mar. 1981) (internet)

CONCLUSION

The district court's denial of plaintiffs' motion for a preliminary injunction should be reversed.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 32(a) of the Federal Rules of Appellate Procedure, William P. Ford, an employee in the Office of the Attorney General of the State of New York, hereby certifies that according to the word count feature of the word processing program used to prepare this brief, the brief contains 6,331 words and complies with the typeface requirements and length limits of Rules 29 and 32(a)(5)-(7) and the corresponding local rules.

/s/ William P. Ford

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document with the Court's CM/ECF system on November 5, 2020. I certify that all parties and counsel of record in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: November 5, 2020
New York, New York

/s/ Ester Murdukhayeva