

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

**DOMINGO ARREGUIN GOMEZ et al.,**

Plaintiffs,

v.

**DONALD J. TRUMP, et al.,**

Defendants.

**Case: 1:20-cv-01419(APM)**

**BRIEF FOR 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, WISCONSIN, AND THE DISTRICT OF COLUMBIA  
AS *AMICI CURIAE* IN SUPPORT OF PLAINTIFFS**

XAVIER BECERRA

*Attorney General  
State of California*

MICHAEL L. NEWMAN

*Senior Assistant Attorney General*

NANCY A. BENINATI

*Supervising Deputy Attorney General*

JOHN APPELBAUM

WILLIAM H. DOWNER

*Deputy Attorneys General*

LETITIA JAMES

*Attorney General  
State of New York*

BARBARA D. UNDERWOOD

*Solicitor General*

ANISHA S. DASGUPTA

*Deputy Solicitor General*

ESTER MURDUKHAYEVA

*Assistant Solicitor General*

1300 I Street, Suite 125

P.O. Box 944255

Sacramento, CA 94244-2550

T: (916) 210-6120

F: (916) 327-2319

William.Downer@doj.ca.gov

*Attorneys for Amicus Curie State of California*

28 Liberty Street

New York, NY 10005

T: (212) 416-6279

F: (212) 416-8962

Ester.Murdukhayeva@ag.ny.gov

*Attorneys for Amicus Curiae State of New York*

*(Additional counsel listed on signature page)*

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## INTRODUCTION AND INTERESTS OF AMICI CURIAE<sup>1</sup>

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 plaintiffs’ motion for a preliminary injunction against the enforcement of two Presidential Proclamations which unilaterally suspend large swathes of the nation’s legal immigration system and several of its most important non-immigrant work visa programs until at least December 31, 2020.<sup>2</sup> Absent an injunction, the Proclamations will bar more than 500,000 people from entering the United States this year and will prevent approximately 20,000 employers from bringing valued 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 texts. The Proclamations are unlawful and their enforcement should be enjoined for the many reasons set forth by plaintiffs.

The Proclamations stand to inflict distinct harms upon Amici absent an injunction. Amici’s experience has shown that immigrant participation in the work force does not hinder economic and social development—to the contrary, such participation is vital to the success and survival of our communities. Among other things, immigrants and other foreign-born workers start businesses and create jobs, support other businesses by purchasing goods and services, promote public welfare

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<sup>1</sup> Amici submit this brief pursuant to Local Civil Rule 7(o)(1).

<sup>2</sup> 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.

by paying federal, state, and local taxes, and fill important jobs in sectors that otherwise face difficulty in finding qualified labor. In addition, by providing child care and other forms of caretaking work, immigrants support United States residents in their work. The Proclamations' sweeping ban will also disrupt numerous industries that are critical to dealing with the COVID-19 crisis, including medical care, science, and technology. Although the Proclamations purportedly aim to alleviate economic distress by reducing competition for employment, the Proclamations will in fact exacerbate the pandemic's destructive economic effects.

In addition to depriving Amici of the many economic contributions of immigrants and other foreign-born workers, the Proclamations will 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 United States 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 enjoin the enforcement of the unlawful Proclamations and prevent the irreparable harm they would cause to our economies and marketplaces and to the families and communities within our borders.

## ARGUMENT

### I. THE IMMIGRANTS AND FOREIGN-BORN WORKERS BARRED BY THE PROCLAMATIONS ARE VITAL TO THE STATES' ECONOMIES AND CIVIC SOCIETIES

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. *See* Am. Compl. ¶¶ 107-118 (July 17, 2020), ECF No. 46. As a result of the State Department's interpretation, individuals who must receive a visa by a particular date in order to obtain legal immigration status pursuant to a particular classification will be precluded from receiving status under that classification. For example, individuals who won the diversity visa lottery for fiscal year 2020 are required to obtain a visa by September 30, 2020, or they will be unable to immigrate based on this year's lottery.<sup>3</sup> By the federal government's own estimate, the Proclamations will bar at least 525,000 individuals from entering the country this year. *See id.* ¶¶ 136-137.

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. The April Proclamation stops the immigration of a large majority of persons who would otherwise be eligible for family-sponsored immigration,<sup>4</sup> employment-sponsored immigration, or

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<sup>3</sup> Because an individual entrant has approximately a 0.37% chance of winning the lottery in any given year, a diversity visa recipient's failure to secure a visa by September 30 has the practical effect of almost certainly foreclosing her ability to obtain immigration status. *See* Am. Compl. ¶ 57.

<sup>4</sup> The April Proclamation allows for the entry of spouses and unmarried minor children of United States citizens under immediate relative visas. However, the Proclamations bar the entry of parents of United States citizens, who would otherwise qualify for an immediate relative visa, as well as all categories of family-based preference visas, which includes unmarried and married

immigration through the diversity visa program. Indeed, the April Proclamation would have presumptively precluded approximately 70% of the immigrant visas issued in 2019.<sup>5</sup>

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.<sup>6</sup> 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.<sup>7</sup>

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

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adult children of United States citizens, siblings of United States citizens, and spouses and children of legal permanent residents. 8 U.S.C. §§ 1151(b), 1153(a).

<sup>5</sup> 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 United States 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).

<sup>6</sup> 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).

<sup>7</sup> *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).

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, 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 United States-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 United States employers, who will be prohibited from bringing their critical employees to this country, and over 381,000 non-immigrant workers, spouses, and children.<sup>8</sup>

The Proclamations are premised on the erroneous, dangerous, and counterproductive assumption that immigrants and foreign-born workers threaten the integrity of the United States labor market. To the contrary, Amici’s experience has shown 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. Immigrants are job creators and job supporters. As of 2017, at least 43% of Fortune 500 companies were founded by first or second-generation immigrants.<sup>9</sup> Asian and Latino immigrant entrepreneurs alone contributed a total of \$1 trillion in

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<sup>8</sup> *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).

<sup>9</sup> *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-founded by immigrants. New Am. Econ., *The Contributions of New Americans in California* 3 (Aug. 2016) (internet).

revenue, 6.7 million jobs, and \$212 billion in annual payroll.<sup>10</sup> Indeed, immigrant-owned companies in the United States employ over 7.9 million workers across a variety of sectors.<sup>11</sup> In California alone, one out of every six business owners is an immigrant; in fact, in the Los Angeles area, more than 45% of business owners are immigrants.<sup>12</sup> California's 937,000 immigrant business owners have generated \$24.5 billion in revenue to the state's economy.<sup>13</sup> Foreign-born residents also make up 38% of all entrepreneurs in California, generating over \$20 billion in income as of 2014.<sup>14</sup> Likewise, immigrants own more than 30% of all small businesses in New York State,<sup>15</sup> and nearly half of all small businesses in New York City.<sup>16</sup> As of 2014, immigrant-owned businesses employed approximately 500,000 New Yorkers,<sup>17</sup> and as of 2018, those businesses generated nearly \$8 billion in income.<sup>18</sup> In Massachusetts, over 70,000 immigrant entrepreneurs provide nearly 169,000 jobs, generating over \$27 billion in sales.<sup>19</sup> In New Jersey, nearly 390,000 people are employed by over 128,000 immigrant business owners.<sup>20</sup> In Maryland, immigrant entrepreneurs represent almost 20% of the State's business owners and have generated \$1.7 billion in combined annual

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

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

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

<sup>13</sup> *Id.*

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

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

<sup>16</sup> 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).

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

<sup>18</sup> Am. Immigration Council, *Immigrants in New York*, *supra*, at 4.

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

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

revenue.<sup>21</sup> Many other immigrants fill important service sector jobs that support others' ability to remain in demanding professions, including child care, domestic work, and home health work.<sup>22</sup>

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.<sup>23</sup> Immigrants pay over \$458 billion in taxes annually<sup>24</sup> and account for approximately \$2 trillion in national gross domestic product.<sup>25</sup> In New York City alone, immigrants contributed \$232 billion—or approximately 25%—of the city's gross domestic product in 2018.<sup>26</sup> In California, immigrant-led households paid over \$38 billion in state and local taxes and exercised almost \$291 billion in spending power.<sup>27</sup> In New Jersey, immigrants paid \$9.5 billion in state and local taxes and exercised nearly \$66 billion in spending power.<sup>28</sup> And in Pennsylvania, immigrant-led households paid \$3.3 billion in state and local taxes while generating more than \$24 billion in spending power.<sup>29</sup> In addition to these economic contributions, immigrants enrich our country's social and cultural life, injecting new ideas into our intellectual fabric, offering

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

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

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

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

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

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

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

<sup>28</sup> New Am. Econ., *Immigrants and the Economy in New Jersey*, *supra*.

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



path-breaking contributions in science, technology, and other fields, and ultimately making our diverse communities more desirable places to live.<sup>30</sup>

**II. THE PROCLAMATIONS IMPERMISSIBLY DISREGARD CONGRESS’S DETERMINATION THAT THE PARTICIPATION OF FOREIGN-BORN INDIVIDUALS IN THE UNITED STATES WORKFORCE PROMOTES ECONOMIC AND SOCIAL GROWTH**

As explained above, the Proclamations substantially disrupt the nation’s carefully calibrated immigration system, which is the product of decades of well-founded policy judgments made by Congress. Among other things, Congress has repeatedly recognized that expanding the labor force, especially by admitting skilled workers, has substantial benefits for the United States economy. S. Rep. No. 106-260, at 12 (2000). Congress has also recognized the numerous benefits of an immigration system designed to advance the objectives of family reunification, admitting immigrants with useful skills, increasing diversity, and—in the case of J visas allotted under the Fulbright-Hays Act—increasing mutual understanding between the United States and other countries through cultural exchange. *Doe v. Trump*, 418 F. Supp. 3d 573, 580 (D. Or. 2019); *see also Elkins v. Moreno*, 435 U.S. 647, 664 (1978); H.R. Rep. No. 87-721, at 21 (1961); Pub. L. No. 87-256, 75 Stat. 527 (1961).

By setting aside these reasoned determinations, the Proclamations will cause substantial economic harm to Amici, including by diminishing revenue collection, dampening small business creation, adversely impacting schools (especially in rural areas and struggling cities), and reducing employment in key sectors of the economy, including essential services. 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.

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

**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.<sup>31</sup> The study concluded that the “U.S. will not be able to 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.”<sup>32</sup> The Proclamations, if enforced, will accelerate the realization of these harms.

Contrary to the Proclamations’ assumptions, immigrants *create* jobs in essential sectors of the economy, including Science, Technology, Engineering and Mathematics (STEM) fields, education and child care, and health care—each of which is critical to combatting COVID-19 and promoting and sustaining economies, civil society, and quality of life. As of February 2020, 80% of immigrant-owned businesses across the country were in “essential” industries. The majority of these businesses have continued operations during the COVID-19 crisis and have therefore continued to employ others in order to fill critical needs for basic goods and food, among other things.<sup>33</sup>

Immigrants are also valued employees in essential sectors. In California, for example, immigrants make up over one-third of the workforce, filling over 66% of the jobs in California’s agricultural sector, 45% of manufacturing positions, 43% of construction worker positions, and

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

<sup>32</sup> *Id.* at 3 (quotation marks omitted).

<sup>33</sup> Robert Fairlie, *The Impact of Covid-19 on Small Business Owners: Evidence of Early-Stage Losses from the April 2020 Current Population Survey* 8 (Nat’l Bureau of Econ. Research, Working Paper No. 27309, 2020) (internet).

42% of computer and mathematical sciences positions.<sup>34</sup> In Hawai‘i, immigrants comprise nearly one quarter of the total labor force, filling 35% of jobs in health care support industries.<sup>35</sup> The COVID-19 pandemic has heightened awareness about this country’s reliance on an array of essential services, from telehealth,<sup>36</sup> to delivery of goods, services, and food,<sup>37</sup> as well as the technological infrastructure and software necessary to support telecommuting where up to half the United States workforce worked from home during the pandemic.<sup>38</sup> But despite the critical importance of these essential sectors of the economy during a global pandemic, the Proclamations unreasonably take direct aim at programs that facilitate them.

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.<sup>39</sup> From 1990 to 2015, the percentage of foreign-born workers as a percentage of the STEM workforce more than doubled.<sup>40</sup>

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<sup>34</sup> 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).

<sup>35</sup> Am. Immigration Council, *Immigrants in Hawaii* (Aug. 6, 2020) (internet).

<sup>36</sup> Ctrs. for Disease Control & Prevention, *Using Telehealth Services* (Jun. 10, 2020) (internet).

<sup>37</sup> Chris J. Macias, *Is the Food Supply Strong Enough to Weather COVID-19?*, UC Davis.edu: Feeding a Growing Population (Jun. 25, 2020) (internet).

<sup>38</sup> Katherine Guyot & Isabel V. Sawhill, *Telecommuting Will Likely Continue Long After the Pandemic*, Brookings Inst. (Apr. 6, 2020) (internet).

<sup>39</sup> 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).

<sup>40</sup> Am. Immigration Council, *Foreign-born STEM Workers in the United States* 3 (June 14, 2017) (internet).

In Silicon Valley alone, approximately 71% of tech employees are foreign-born.<sup>41</sup> 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.<sup>42</sup> Although the June Proclamation includes several limited exceptions, it will bar 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, hospitals, governments, small businesses, banks and educational institutions rely on to function.<sup>43</sup>

Similarly, immigrants and non-immigrant workers are the backbone of the medical field. As one example, foreign-born doctors serve as medical residents in underserved communities (inner city and rural) in disproportionate numbers.<sup>44</sup> In 2017 alone, there were approximately 2,532 medical residents on H1-B visas, many of whom work in inner cities and rural areas.<sup>45</sup> As of 2015, nearly 30% of physicians and surgeons in the United States were foreign-born.<sup>46</sup> In New Jersey,

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<sup>41</sup> Ethan Baron, *H-1B: Nearly Three-quarters of Silicon Valley Tech Workers Foreign-born, Report Says*, The East Bay Times (Jan. 17, 2018) (internet).

<sup>42</sup> Neil G. Ruiz, *Key Facts About the U.S. H-1B Visa Program*, Pew Research Ctr. (Apr. 27, 2017) (internet).

<sup>43</sup> Donald Kerwin et al., *US Foreign-Born Essential Workers by Status and State, and the Global Pandemic*, Ctr. for Migration Studies (May 2020) (internet).

<sup>44</sup> M. Renee Zerehi, *The Role of International Medical Graduates in the U.S. Physician Workforce* 3, 5, Am. Coll. of Physicians (2008) (internet).

<sup>45</sup> Dara Lind, *Hospitals Are Suddenly Short of Young Doctors—Because of Trump’s Visa Ban*, ProPublica (Jul. 17, 2020) (internet).

<sup>46</sup> Am. Immigration Council, *Foreign-born STEM Workers in the United States*, *supra*, at 8.

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.<sup>47</sup>

The Proclamations will therefore have devastating 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.”<sup>48</sup> 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.<sup>49</sup>

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. For example, these exceptions fail to protect hospitals and health facilities located in geographical areas that are underserved and dependent on foreign-born workers to sustain operations, but not currently experiencing adverse effects from COVID-19. Moreover, the exceptions do not permit hospitals and health care facilities that are not currently experiencing adversity from the COVID-19 pandemic to increase staff in anticipation of providing adequate health care services in the event the community they serve is stricken. And the Proclamations harm hospitals and health care

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<sup>47</sup> New Am. Econ., *Immigrant Healthcare Workers Are Critical in the Fight Against Covid-19* (Apr. 9, 2020) (internet).

<sup>48</sup> Miriam Jordan & Annie Correal, *Foreign Doctors Could Help Fight Coronavirus. But U.S. Blocks Many*, N.Y. Times (updated July 3, 2020) (internet).

<sup>49</sup> *Id.*

facilities that are not engaged in COVID-19 related care or otherwise adversely affected by COVID-19 yet depend on foreign-born workers to provide vital preventative and other health care services.

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.<sup>50</sup> Immigrants also make up 8% of the nation's primary and secondary school teachers.<sup>51</sup> In California and New York, they comprise approximately 10-15% of teachers.<sup>52</sup> California, which already faces a significant teacher shortage, may experience a "teacher supply disaster[]" caused by the loss of its foreign-born teachers.<sup>53</sup> While the annual demand for new teacher credentials was 24,000 in 2016, the state issued only half that—approximately just 12,000 new credentials, an historically low number.<sup>54</sup> California's shortage is particularly acute in mathematics, science, and special education, areas where immigrant teachers are vital.<sup>55</sup>

The Proclamations will also severely diminish the availability of in-home child care. Immigrant workers disproportionately fill roles in the informal child care industry and are

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

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

<sup>52</sup> *Id.*

<sup>53</sup> Linda Darling-Hammond et al., *Teacher Shortages in California: Status, Sources, and Potential Solutions*, Learning Policy Institute (Oct. 15, 2018) (internet); Startz, *supra*.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

especially likely to work as nannies or babysitters for private families in home-based settings.<sup>56</sup> 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.<sup>57</sup> Moreover, immigrant grandparents and other relatives are a critical source of regular and emergency child care for many families who currently reside in the United States.<sup>58</sup>

A substantial portion of the United States 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.<sup>59</sup> “Without access to childcare, families face significant barriers to economic security and employers struggle to retain a productive workforce.”<sup>60</sup> 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.<sup>61</sup> In a recent study of working parents in Massachusetts, nearly half of those surveyed responded that “they will not be able to return to work without a consistent child care solution.”<sup>62</sup>

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<sup>56</sup> 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).

<sup>57</sup> 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).

<sup>58</sup> Ann Carrns, *Multigenerational Households: The Benefits and Perils*, N.Y. Times (Aug. 12, 2016) (internet).

<sup>59</sup> Nicole Bateman, *Working parents are key to COVID-19 recovery*, Brookings Inst. (July 8, 2020) (internet).

<sup>60</sup> Schochet, *supra*.

<sup>61</sup> Alicia Sasser Modestino, *Coronavirus Child-care Crisis Will Set Women Back a Generation*, Wash. Post (July 29, 2020) (internet).

<sup>62</sup> Alissa Haywoode, *Results From Our Family Survey*, Eye on Early Educ. (May 7, 2020) (internet).

Experts predict that the child care crisis will result in thousands of mostly female workers leaving their jobs, which will have an especially severe effect on future economic outcomes for single mothers, low-income workers, and women of color.<sup>63</sup> Rather than ameliorate unemployment for working parents, the Proclamations will make it worse by barring thousands of potential child care providers from entering the country.

**B. Foreign-Born Workers Entering on Non-Immigrant Visas Have a Positive Net Economic Effect without Displacing U.S.-Born Workers.**

The Proclamations purport to address 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. However, the Proclamations are based on several fundamentally flawed assumptions and undermine rather than enable a strong economic recovery from the pandemic. Among other things, the Proclamations restrict visas for foreign worker classifications that pose little to no threat to the United States labor market. Moreover, studies have repeatedly shown that restrictions on admitting highly skilled labor hinder economies from reaching their potential.

First, the Proclamations will not ameliorate the “extraordinary economic disruptions caused by the COVID-19 outbreak” because most of the foreign workers subject to the Proclamations’ bans 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,

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<sup>63</sup> Modestino, *supra*.



gambling and recreation, and motor vehicle and parts dealers.<sup>64</sup> 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.<sup>65</sup> Further, federal regulations governing H-1B and H-2B visas require employers to certify that the hiring of these non-immigrant workers will not displace United States 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 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);<sup>66</sup> 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 United States workers are available and that employing the H-2B worker will not adversely affect the wages and working conditions of similarly employed United States workers).<sup>67</sup>

Second, the Proclamations do not serve their stated purpose of “protect[ing] unemployed Americans from the threat of competition for scarce jobs” because research shows the affected

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<sup>64</sup> Alan Berube & Nicole Bateman, *Who Are the Workers Already Impacted by the COVID-19 Recession?*, Brookings Inst. (Apr. 3, 2020) (internet).

<sup>65</sup> *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).

<sup>66</sup> *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).

<sup>67</sup> To the extent there is any 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). At most such concerns suggest a possible need for legislative reform targeting such abuses. They do not justify or endorse the sweeping curtailment of the H-1B visa program ordered in the June Proclamation.

visa programs stimulate economic gains and increases job opportunities for foreign-born and U.S.-born residents alike.<sup>68</sup> A study analyzing the economies and job markets of cities in which a substantial number of H-1B visas for computer workers were denied in the early years following the 2008 financial crisis concluded that denying H-1B visas did not “help the economies of America’s cities or their U.S.-born workers”; “[i]nstead it cost their tech sectors hundreds of thousands of jobs and billions in missed wages.”<sup>69</sup> Indeed, the number of jobs for U.S.-born workers in computer-related industries would actually have grown at least 55% faster but for the denial of so many visa applications.<sup>70</sup> The same study found that wages for U.S.-born, college-educated, computer workers could have grown 4.9% higher during that same period.<sup>71</sup> Other studies have shown that the overall impact of H-1B visas has not lowered wages for United States citizens in STEM because in the majority of fields in which they work, H-1B workers actually make more than their U.S.-citizen counterparts.<sup>72</sup> In fact, the H-1B program is associated with an overall *increase* in wages for non-H-1B visa holders.<sup>73</sup> 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

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<sup>68</sup> 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).

<sup>69</sup> 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).

<sup>70</sup> *Id.* at 5.

<sup>71</sup> *Id.* at 17.

<sup>72</sup> Jonathan Rothwell & Neil G. Ruiz, *H-1B Visas and the STEM Shortage: A Research Brief* 1 (May 10, 2013) (internet).

<sup>73</sup> 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.

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.<sup>74</sup>

Moreover, unemployment rates are lower for occupations that use a larger number of H-1B visas.<sup>75</sup> Studies have found that for every 100 foreign-born workers in STEM fields with advanced degrees from United States 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 created for U.S.-born workers.<sup>76</sup> Those States with the highest number of H-1B visas actually had higher employment for their residents.<sup>77</sup>

Finally, visa restrictions do not encourage employment of United States citizens: studies confirm that U.S.-based multinational corporations have responded to visa restrictions by simply increasing employment abroad through their affiliates.<sup>78</sup> 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.

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<sup>74</sup> *Id.* at 4.

<sup>75</sup> *Id.*

<sup>76</sup> Madeline Zavodny, *Immigration and American Jobs* 4, Am. Enter. Inst. & P'ship for New Am. Econ. (Dec. 2011) (internet).

<sup>77</sup> *Id.*

<sup>78</sup> 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).

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

“The Immigration and Nationality Act (‘INA’) was intended to keep families together.” *Solis-Espinoza v. Gonzales*, 401 F.3d 1090, 1094 (9th Cir. 2005). The INA’s legislative history “establishes that congressional concern 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)). During the debates surrounding the INA of 1965, 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 United States 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: in 2017, 148,621 individuals obtained lawful permanent residence as immediate relatives of United States citizens or through family-sponsored preferences in California; the number was 107,259 in New York, 14,250 in Colorado, 11,938 in Connecticut, 2,244 in Delaware, 5,396 in Hawai‘i, 40,530 in Illinois, 1,594 in Maine, 25,095 in Maryland, 37,010 in Massachusetts, 18,927 in Michigan, 16,009 in Minnesota, 12,733 in Nevada, 54,440 in New Jersey, 4,002 in New Mexico, 9,221 in Oregon, 27,762 in Pennsylvania, 4,102 in Rhode Island, 787 in Vermont, 29,466 in Virginia, 27,363 in Washington, 6,881 in Wisconsin, and 2,885 in the District of Columbia.<sup>79</sup>

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<sup>79</sup> 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.

If allowed to take effect, the Proclamations will deny hundreds of thousands of United States 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. *See, e.g.*, Am. Compl. ¶¶ 138-186. 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 family separation results in a myriad of harms.<sup>80</sup> 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.<sup>81</sup> 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.<sup>82</sup> Trauma can also have negative physical effects on children, such as loss of appetite, stomachaches, and headaches, which can become chronic if left untreated.<sup>83</sup> Similarly, spousal separation can cause fear, anxiety, and depression.<sup>84</sup>

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<sup>80</sup> 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).

<sup>81</sup> 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).

<sup>82</sup> Allison Abrams, *Damage of Separating Families*, Psychology Today (June 22, 2018) (internet).

<sup>83</sup> *Id.*

<sup>84</sup> Yeganeh Torbati, *U.S. Denied Tens of Thousands More Visas in 2018 Due to Travel Ban: Data*, Reuters (Feb. 26, 2019) (internet).

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.<sup>85</sup> In a recent poll, nearly half of adults in the United States reported experiencing mental distress over the virus.<sup>86</sup> Mental health harms associated with the pandemic have been especially severe for front-line and essential workers.<sup>87</sup> Denying families the ability to reunite in the midst of this unprecedented global uncertainty exacerbates the mental health harms caused by the pandemic and deprives Amici’s residents of much needed sources of social support.<sup>88</sup>

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.”<sup>89</sup> Absent an injunction, the Proclamations will exact a tremendous human toll on our residents and communities.

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<sup>85</sup> William Wan, *The Coronavirus Pandemic is Pushing America into a Mental Health Crisis*, Wash. Post (May 4, 2020) (internet).

<sup>86</sup> Nirmita Panchal, *The Implications of COVID-19 for Mental Health and Substance Use*, Kaiser Family Found. (Apr. 21, 2020) (internet).

<sup>87</sup> *Id.*

<sup>88</sup> Fatih Ozbay et al., *Social Support and Resilience to Stress*, 4 *Psychiatry* 35-40 (May 2007) (internet).

<sup>89</sup> *Final Report of the Select Commission on Immigration and Refugee Policy* 112 (Mar. 1981) (internet)

**CONCLUSION**

This Court should grant plaintiffs' motion for a preliminary injunction.

Dated: August 7, 2020

XAVIER BECERRA

*Attorney General  
State of California*

MICHAEL L. NEWMAN

*Senior Assistant Attorney General*

NANCY A. BENINATI

*Supervising Deputy Attorney General*

JOHN APPELBAUM

WILLIAM H. DOWNER

*Deputy Attorneys General*

LETITIA JAMES

*Attorney General  
State of New York*

BARBARA D. UNDERWOOD

*Solicitor General*

ANISHA S. DASGUPTA

*Deputy Solicitor General*

ESTER MURDUKHAYEVA

*Assistant Solicitor General*

/s/ William H. Downer

WILLIAM H. DOWNER

Deputy Attorney General

*Attorneys for Amicus Curie State of California*

/s/ Ester Murdukhayeva

ESTER MURDUKHAYEVA\*

Assistant Solicitor General

*Attorneys for Amicus Curiae State of New York*

*\*Filing pursuant to LCvR 83.2(f)*

*(Counsel listing continues on the next two pages.)*

PHILIP J. WEISER  
*Attorney General*  
*State of Colorado*  
1300 Broadway  
Denver, CO 80203

MAURA HEALEY  
*Attorney General*  
*Commonwealth of Massachusetts*  
One Ashburton Place  
Boston, MA 02108

WILLIAM TONG  
*Attorney General*  
*State of Connecticut*  
165 Capitol Avenue  
Hartford, CT 06106

DANA NESSEL  
*Attorney General*  
*State of Michigan*  
P.O. Box 30212  
Lansing, MI 48909

KATHLEEN JENNINGS  
*Attorney General*  
*State of Delaware*  
820 N. French Street  
Wilmington, DE 19801

KEITH ELLISON  
*Attorney General*  
*State of Minnesota*  
102 State Capitol  
75 Rev. Dr. Martin Luther King Jr. Blvd.  
St. Paul, MN 55155

CLARE E. CONNORS  
*Attorney General*  
*State of Hawai'i*  
425 Queen Street  
Honolulu, HI 96813

AARON D. FORD  
*Attorney General*  
*State of Nevada*  
100 North Carson Street  
Carson City, NV 89701

KWAME RAOUL  
*Attorney General*  
*State of Illinois*  
100 West Randolph Street  
Chicago, Illinois 60601

GURBIR S. GREWAL  
*Attorney General*  
*State of New Jersey*  
Richard J. Hughes Justice Complex  
25 Market Street, 8th Floor  
Trenton, NJ 08625

AARON M. FREY  
*Attorney General*  
*State of Maine*  
6 State House Station  
Augusta, ME 04333

HECTOR BALDERAS  
*Attorney General*  
*State of New Mexico*  
P.O. Drawer 1508  
Santa Fe, NM 87504

BRIAN E. FROSH  
*Attorney General*  
*State of Maryland*  
200 Saint Paul Place  
Baltimore, MD 21202

ELLEN F. ROSENBLUM  
*Attorney General*  
*State of Oregon*  
1162 Court Street NE  
Salem, OR 97301



JOSH SHAPIRO  
*Attorney General*  
*Commonwealth of Pennsylvania*  
Strawberry Square, 16th Fl.  
Harrisburg, PA 17120

ROBERT W. FERGUSON  
*Attorney General*  
*State of Washington*  
1125 Washington Street SE  
P.O. Box 40100  
Olympia, WA 98504

PETER F. NERONHA  
*Attorney General*  
*State of Rhode Island*  
150 South Main Street  
Providence, RI 02903

JOSHUA KAUL  
*Attorney General*  
*State of Wisconsin*  
P.O. Box 7857  
Madison, WI 53707

THOMAS J. DONOVAN, JR.  
*Attorney General*  
*State of Vermont*  
109 State Street  
Montpelier, VT 05609

KARL A. RACINE  
*Attorney General*  
*District of Columbia*  
441 4th Street, NW  
Washington, D.C. 20001

MARK R. HERRING  
*Attorney General*  
*Commonwealth of Virginia*  
202 North Ninth Street  
Richmond, VA 23219